From: George Sturges [mailto:gsturges@bestenergycorp.com]
Sent: Friday, April 04, 2014 1:40 PM
To: Joe Thomas
Cc: Lindley Anderson
Subject: EBT Stakeholder Group and potential rule changes

Dear Mr. Thomas,

One area that appears not to have been specifically addressed during the initial promulgation of the Emission Banking and Trading regulations, including DECs and MDECs, is the generation of emission credits by reducing stationary and mobile emissions via the production and sales of fuels that reduce combustion emissions. The production of fuels that reduce combustion emissions beyond required emission levels are economically viable, the emission reductions are quantifiable via EPA and TCEQ approved test methods, and this type of strategy should meet with the intent of the rule.

Since there is an opportunity at this time to make changes to the referenced rule(s). It appears that it would make sense to review the rule(s) and make any necessary changes to the definitions, the rule itself, forms, etc., to ensure that the production of cleaner burning fuels can be used as a strategy for reducing emissions beyond required levels and generate emission credits. Because fuels do not generate emissions at the specific delivery facility, they should be recognized as reducing emission in multiple facilities or vehicles over their respective distribution area. In addition, flexibility should be incorporated regarding the business entity that becomes the generator of such emission credit, as the actual blending or distribution facility may or may not be the entity with the economic burden or responsibility for the production of such emissions reducing fuel. Essentially any business, including, but not limited to the technology provider, the refiner, or the final producer, could be the responsible party for generating such emission credit and should be able to be recognized as the generator of such emission credits (with the understanding that the regulation should include measures that prevent any double counting).

Sincerely,
George Sturges
BEST Corp.
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ELEMENT MARKETS

April 3, 2014

3555 Timmons Lane, Suite 900
Houston, TX 77027

Joe Thomas
TCEQ Emissions Banking and Trading Programs, MC-206
P.O. Box 13087
Austin, TX 78711-3087

EBT Stakeholder Group: Comments on TAC §101.399(i)(5) Regarding VOC ERC Use for HRVOC Allocation

Dear Mr. Thomas,

Thank you for the opportunity to submit comments to the TCEQ Emissions Banking and Trading Program. Element Markets would like to comment on the requirement in TAC §101.399(i)(5), "Allowance Banking and Trading", for the use of HRVOC allowances received from the conversion of VOC ERCs to be limited to no more than 5% of the site's initial HRVOC allocation.

Although this provision may have been implemented at a time when the amount of VOC ERCs that could be converted was unknown, at the present time, there have been no more than 1.7 tons of HRVOC created from such a conversion over life of rule to Element Markets' knowledge.

The 5% limitation on converted HRVOC allowance use is disruptive to compliance as it requires the splitting up of allowances between numerous parties and makes compliance by facilities more complex than is necessary with no benefit to air quality.

Element Markets believes that based on the low amount of VOC ERC conversion that is occurring, the 5% limitation has no benefit to the integrity of the cap, and has proven to be needlessly disruptive.

As such, Element Markets proposes either the complete removal of the provision, or a reconsideration of the percentage limitation to facilitate ease of compliance.

Please feel free to contact me with any questions or comments regarding this proposal at mtaylor@elementmarkets.com or 281-207-7207.

Best Regards,

Michael Taylor
Senior Vice President

From: Wiley, Adina [mailto:Wiley.Adina@epa.gov]
Sent: Friday, April 04, 2014 9:45 AM
To: Joe Thomas; Lindley Anderson
Subject: EBT Stakeholder Group Comments

Joe and Lindley – Thank you for the opportunity to provide input during the Emissions Banking and Trading stakeholder process. EPA would like for TCEQ to consider the following issues as you conduct your rulemaking.

ERC Program Revisions

- TCEQ initially created the ERC program to establish a mechanism for NSR offsets, but also for compliance assistance with other SIP requirements such as Chapter 115 and 117 requirements. Historic use has shown use of ERCs has been limited to NSR offsets. The TCEQ should restrict the use of ERCs solely for NSR offsets to simplify the rule.
- TCEQ should remove the provisions for the generation of mobile ERCs. These provisions have not shown to be widely requested/used and EPA does not believe viable strategies could be developed. EPA also does not believe that mobile source reductions will satisfy the requirements of the CAA for NSR offset purposes.
- TCEQ should remove the provisions for the generation of area source ERCs These provisions have not shown to be widely used, and EPA does not believe viable strategies could be developed. If the TCEQ believes that area source generation should be maintained, we request additional demonstrations as to how area source reductions would be consistent with the CAA offset requirements.
- TCEQ needs to review the ERC geographic scope provisions at 30 TAC 101.302(f). EPA does not consider the 30 TAC 101.302(f)(1) provisions to be consistent with CAA offset requirements. If the ERC program is restricted to NSR offset generation and use as we recommend, then 30 TAC 101.302(f)(1) will need to be removed or modified to be consistent with the Act. If the non-offset uses of ERCs are retained, the TCEQ should clarify that the 30 TAC 101.302 (f)(1) provisions apply only for non-offset uses.
- The stakeholder presentation discussed incorporating the TCEQ guidance on intra and inter basin trading into the ERC rule. EPA does not generally approve state guidance documents, however if the guidance becomes part of the Texas SIP we would possibly need to review and approve each revision to the guidance as part of the Texas SIP.

DERC Program Revisions

- The DERC program was created to serve as compliance assistance for SIP requirements and to provide for NSR offsets. Like the ERC Rule, the DERC program has generally only been used for NSR offsets. The TCEQ should consider limiting the use of DERCs for NSR offset purposes to simplify the program.
- EPA approved the DERC program as part of the Texas SIP as an open market trading program. Our approval was premised on a robust market where DERCs would be created in the future years as well as used. This has not been the case since the majority of the banked DERCs were created in 2003 and few if any have been created since that time. Because DERC generation has not been robust consistent

with a viable open market trading program, the TCEQ should impose a lifetime on DERCs. Alternatively, the TCEQ will need to justify the unlimited lifespan of a DERC based on an updated demonstration that the DERC program will be viable and robust into the future and provide opportunities for DERC generation.

- TCEQ should remove the provisions for the generation of mobile DERCs. These provisions have not shown to be widely requested/used and EPA does not believe viable strategies could be developed. EPA also does not believe that mobile source reductions will satisfy the requirements of the CAA for NSR offset purposes.
- TCEQ should remove the provisions for the generation of area source DERCs These provisions have not shown to be widely used, and EPA does not believe viable strategies could be developed. If the TCEQ believes that area source generation should be maintained, we request additional demonstrations as to how area source reductions would be consistent with the CAA offset requirements.
- TCEQ needs to review the DERC geographic scope provisions at 30 TAC 101.372(f). The DERC rule at 101.372(f)(3) limits NOX and VOC DERCs generated in an ozone nonattainment area to use only in the nonattainment area of generation or as provided in 101.372(f). The only provision in 101.372(f) that discusses use outside the nonattainment area of generation is 101.372(f)(7). EPA notes that 101.372(f)(7) requires EPA approval, and our approval will be based on a demonstration consistent with the CAA offset provisions. The TCEQ should consider revising these provisions to be consistent with the CAA requirements.
- EPA would support a revision to the DFW DERC flow control to a hard cap, assuming the hard cap is demonstrated and supportable in the attainment demonstration modeling and DFW SIP.
- The stakeholder presentation discussed incorporating the TCEQ guidance on intra and inter basin trading into the DERC rule. EPA does not generally approve state guidance documents, however if the guidance becomes part of the Texas SIP, we would possibly need to review and approve each revision to the guidance as part of the Texas SIP.

MECT Program Revisions

- The TCEQ should revisit whether the provisions at 30 TAC 101.357 are necessary for the MECT program and for inclusion in the Texas SIP. EPA believes that this provision has not been used since its adoption and questions the utility of approving an element into the SIP that has not been used since its inception in 2002.

Thank you again for considering our input. I am happy to discuss the issues presented above or provide assistance in reviewing the preliminary draft rules for CAA consistency.

Adina R. Wiley, Environmental Engineer
U.S. EPA Region 6
Air Permits Section (6PD-R)
1445 Ross Ave
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wiley.adina@epa.gov

Date: Friday, April 4, 2014

To: Texas Commission on Environmental Quality

From: Eric Bierman, Managing Member of GCWA #1 Production Facility

Re: GCWA EBT Stakeholder Group Comments

Dear TCEQ,

Thank you very much for the opportunity to comment on the emission banking and trading issues that TCEQ is considering for future rulemaking. The emission banking and trading program is extremely important to the state as Texas strives to continue its remarkable progress in improving air quality while at the same time providing jobs for its growing population. Our comments will focus on the suggestion that TCEQ may remove the ability for area sources to generate emission reduction credits (ERCs).

In December 1997, the TCEQ adopted emission banking and trading rules with the clear intent of allowing small companies to participate in the ERC program provided their emissions are represented in the State Implementation Plan (SIP) in the aggregate as area source emissions. As documented in the December 19, 1997, issue of the Texas Register (22 TexReg 12521), Exxon suggested that "a definition of 'area source' be added at §101.29(a), in order to include all sources which are eligible to generate and use credits, but which may be disqualified under the rule because they are not required to submit an emissions inventory." TCEQ's response was clear that "area sources," facilities whose emissions are represented in the SIP in the aggregate, are to be eligible to generate ERCs:

> The rule is intended to allow banking and trading for all point sources, including those smaller than the 10 ton per year threshold for reporting to the agency emissions inventory. These types of sources are traditionally included in the area source category by reporting and representing their emissions in the aggregate, using population-based or other "surrogate" emission factors. The emissions inventory already includes these smaller point sources, although they are not reported as individual emission points. Therefore, the staff has added language to clarify that for the purpose of this rule, "area source" refers to any source reported or represented in the agency emissions inventory under the area source category.

EPA proposed to approve TCEQ's ERC rules, including the language allowing area sources to generate ERCS, for the State Implementation Plan (SIP) in the 5 October 2005 edition of the Federal Register (70 FR 58146-58154). This proposal and the technical support document clearly indicated that EPA was aware that TCEQ intended to allow area sources to generate ERCs. EPA did not express any concerns with the plan to include area sources in the program, nor did they receive any public comments expressing concern about the proposal. Approval of these rules is EPA's opportunity to provide input to the process and express any concerns. In the 6 September 2006 edition of the Federal Register (71 FR 52698 – 52703), EPA unconditionally adopted the ERC program rules including the language allowing area sources to generate ERCs.

The ability for area sources to generate emission reduction credits is far too valuable an asset to the state of Texas to be eliminated. While some area source categories present policy issues to be resolved, the existing rules are sufficiently stringent and comprehensive to protect the integrity of the ERC program. TCEQ included *area sources* as an eligible ERC generator category with no additional requirements, implicitly acknowledging that the adopted rules are sufficient to implement the program. On a case by case basis, TCEQ has the opportunity to evaluate the merits of each individual area source application under the currently adopted rules, which require the applicant to demonstrate that the reductions are enforceable, permanent, quantifiable, real, and surplus, among other requirements.

Eliminating area sources from ERC eligibility would be an arbitrary action, because in many cases the only difference between a small point source and an area source is slightly lower emissions. There are many possible reasons for a site to have lower emissions, including voluntary implementation of emission controls, a practice which TCEQ should encourage rather than discourage. Removing the ability for the area source to generate ERCs would simply penalize a site for being smaller.

The primary goal of the ERC program should be to improve air quality while at the same time allowing the Texas economy to grow. While it is possible that some area source emission categories are overstated in the current SIP, it is also possible that some area source emissions are understated. The possibility that past accounting for area source emissions may have been inaccurate is not a good reason for eliminating area sources from ERC eligibility. Accurate emissions information is important for air quality planning and will certainly lead to improved decision-making for future SIPs. TCEQ should view any more accurate information obtained about area sources gained through the ERC program as valuable for planning future SIPs, rather than fearing it will detract from the perceived quality of past SIPs.

Specifically, we believe that emission reductions from area sources found in the oil and gas industry appropriately qualify as ERCs. Our industry has unique features that justify claiming emission reductions as ERCs, including the following:

- Emission reductions from oil and gas production will not shift the emissions elsewhere. The industry's local activity level is driven by each well's underlying geology and potential to produce oil and gas, rather than local market demand. Shutting down one production facility does not require increased production nearby, because both oil and gas are produced, processed, refined, and marketed over a broad geographic area.
- Emissions from each oil and gas source are explicitly represented in the SIP. TCEQ staff calculated the area source emissions inventory for the oil and gas industry based on production rates. If a source had reduced production, the SIP emissions inventory would have been lower as a result. Thus, the industry's emissions from area sources are certainly traceable within the SIP.
- Emission reductions from oil and gas area sources can readily be demonstrated to be "surplus" as required by the ERC rules. "Surplus" is defined at 30 T.A.C. § 101.300(30) as "not otherwise required of a facility or mobile source by any local, state, or federal law, regulation, or agreed order and has not otherwise been relied upon in the state implementation plan." Oil and gas area sources are typically authorized by a permit by rule and are subject to defined emission standards and other controls. Historically, our industry's emissions have not been targeted for attainment demonstration SIP control strategies. Thus, reducing emissions by shutting down a facility or installing a control device not required by existing rules will result in a "surplus" emission reduction that meets the intent of the ERC rules.

We acknowledge that, for many area sources, potential emission reductions may not qualify as ERCs. However, this issue should not prejudice the ability of the oil and gas production and similarly-situated industries to reduce emissions and generate legally defensible ERCs.

In summary, TCEQ should not remove area source eligibility from the ERC program. To do so would eliminate a valuable tool for improving Texas' air quality and promoting a healthy economy. Further, doing so would arbitrarily punish smaller sources for simply having lower emissions. The ability for area sources to generate ERCs is an extremely valuable tool which is already available in TCEQ rules and approved by the EPA. The existing TCEQ rules are sufficient to ensure that area sources comply with the intent of and maintain the integrity of the ERC program. Disallowing area sources from fully participating in the ERC program would discourage smaller companies from voluntarily reducing surplus emissions and thus improving air quality. It would also prevent ERCs from being created from these area sources and thus being able to help facilitate the development of new, environmentally responsible, business opportunities in Texas. Instead of eliminating area sources reductions from consideration, TCEQ should make the necessary policy decisions to fully utilize these valuable resources.

Sincerely,

Eric Bierman

Managing Member of GWCA #1 Production Facility

From: Lacy Hudson
Sent: Friday, April 04, 2014 4:06 PM
To: Lindley Anderson; Joe Thomas
Subject: EBT Stakeholder Group - Comments for Proposed Changes

Lindley and Joe,
This email is in regards to the issues in consideration in future rule making. The main issue of concern for me would be removing the option to generate ERCs from area sources that have undergone emission reductions. I feel area sources should remain eligible to generate ERCs since there is no reason not be eligible. Although area sources emit much less than major sources, reducing area source emissions still makes a valuable difference in pollution levels. Every little bit helps :)

Also, please consider extending the 180 deadline mentioned in the presentation.

Thanks for allowing us to submit our comments!!

Lacy Hudson

Area Source Emission Reduction Credits (ERCs)

Texas has some of the world's greatest natural resources in its shale gas reserves, and the revitalized domestic Oil & Gas industry is creating a long-term supply of favorably-priced natural gas with the potential to fuel a petrochemical manufacturing renaissance in Texas. The existing Gulf Coast chemical industry is planning historic investments, as evidenced by a series of multi-billion dollar expansions plans announced and underway by ExxonMobil, Dow, Chevron Phillips (CPChem), LyondellBassell, and other major chemical companies with Gulf Coast existing plants.

Major global chemical companies are also presently considering entering the US market with grass-roots investments in domestic manufacturing plant investments, which can provide high-paying jobs, local and state tax revenue, and spur further investments in the downstream chemical sectors and ancillary service sectors. These global chemical companies desire to locate in the Houston Gulf Coast market, which holds compelling investment advantages due to existing pipeline infrastructure, gas storage capacity (specifically in Mont Belvieu), reliable/affordable power, trained construction/operations personnel, and excellent transportation logistics (port, rail and trucking).

A primary obstacle for such investments is the EPA's designation of the Houston –Galveston – Brazoria (HGB) area as a "severe ozone nonattainment area." Due to the requirements for ozone nonattainment areas, any new chemical or other manufacturing plant must first "offset" its potential new emissions by 130% before it can be constructed. One way of satisfying this offset requirement is with "emission reduction credits" (ERCs). ERCs are generated by permanently reducing emissions at existing sources in the HGB area. Historically, ERCs have been generated by very large plants making emitting facility reductions. Fortunately, the Texas Commission on Environmental Quality (TCEQ) adopted rules in 1997 that allow smaller and diverse emitting facilities, known as "area sources," to generate ERCs (EPA approved these rules in September 2006). The ERC rules allowing area sources to participate via making emission reductions are unambiguous; *yet, to date, TCEQ has failed to allow such sources and the Texas economy to benefit from this innovative program.* HGB-area ERCs are in short supply and the price of ERCs has spiked, providing incentive and reward for area sources to reduce emissions. These emission reductions benefit the HGB non-attainment area, and should be authorized for trading to enable industrial development after providing a 30% overall emission reduction.

TCEQ must certify that ERCs meet legal requirements before they can be used. The TCEQ's ERC program concerns are easily solved with proper ERC program implementation. The benefits to the Texas economy and local and state tax base are too large to not take full advantage of the benefits and flexibility of the existing ERC program.

The alternatives to HGB area-based chemical development is transporting Texas natural resources to Louisiana for development or to foreign countries (via LNG export); both alternatives export skilled jobs, significant wages and tax revenue outside of Texas.

Submitted by R. Kinnan Golemon, President, KG Strategies, LLC

From: Hildebrand, Susana [mailto:Susana.Hildebrand@energyfutureholdings.com]
Sent: Friday, April 04, 2014 5:56 PM
To: Joe Thomas
Subject: EBT Stakeholder Group

Joe,
Just wanted to let you know that Luminant is appreciative of the TCEQ's initiation of a rulemaking to address potential future DERC usage restrictions resulting from the flow control limit tied to vehicle fleet turnover. While we have no specific comments to offer on the particular substance of a rule change, we would welcome an opportunity to discuss further as TCEQ moves from the conceptual stage to more detailed development of the rule.

Thanks,

Susana M. Hildebrand, P.E.
Energy Future Holdings
512 349-6467 *office*
512 230-5704 *cell*

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April 4, 2014

Joe Thomas
TCEQ Emissions Banking and Trading Programs
MC-206
P.O. Box 13087
Austin, TX 78711-3087
joe.thomas@tceq.texas.gov

CC: State Senator Larry Taylor

Re: Emissions Banking and Trading Stakeholder Group Issues

Dear Mr. Thomas:

Thank you for the opportunity to provide comments on the emissions banking and trading issues TCEQ is considering for future rulemaking. Our comments focus on one issue—area sources. In its presentation to stakeholders, TCEQ presents two possible changes to the current rules that allow area sources to generate ERCs:

- Adjust the rules as needed to address the difficulties associated with demonstrating how specific area source emissions are represented in the state implementation plan (SIP) and the reductions are surplus to the SIP.

Consider removing the option to generate credits from area source emission reductions.

<u>Who We Are</u>

Mainland Custom Marble Company (Mainland) is a family-owned small business located in Alvin, Brazoria County. We make various marble products, including (until December 2013) a cultured marble product manufactured using a styrene resin. That process is authorized in TCEQ NSR Permit No. 41682 with a VOC limit of 8.41 tpy, making us a "point source" area source under the TCEQ's rules. Because our emissions were less than 10 tons, we were not required to submit an emissions inventory.

The cultured marble business has been hit very badly by the downturn in building associated with the 2008 recession as well as changing consumer tastes. Mainland was once one of five businesses manufacturing cultured marble in the Houston area; there are now two left. Two of our direct competitors who shut down virtually identical operations have been granted ERCs (Bonanza and Arrow Marble). Yet when we submitted our ERC application—using identical methodologies to calculate ERCs—our application was rejected because we are an area source.

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We understand the importance of clean air in the Houston area. And we can understand that TCEQ may have concerns that some area sources could be closed down yet those emissions do not really leave the area—people are still putting gas in their cars or going to the dry cleaners, even if the one down the street from them shut down. But not every area source is like that. Mainland certainly is not. We are a point source for purposes of NSR permitting and our allowable emissions were known to the TCEQ. We did not write the emissions inventory reporting rules, which exclude small sources from being subject to reporting annual emissions to the Emissions Inventory group. We merely followed them. Yet because of that exclusion, we are being treated differently than our peers. Essentially, we are being penalized for being a small business—which seems to go against everything Texas is about.

<u>TCEQ Should Not Remove the Option to Generate Credits from Area Sources</u>

In addition to being a potentially important source of credits to aid in Houston's continued economic growth, TCEQ should recognize the importance of the money generated by the sale of ERCs to small businesses. That money would likely go right back into the Texas economy—to pay off loans, to send kids to college, and to expand into other business opportunities, which creates jobs. Small businesses should have the same opportunities to generate ERCs as larger businesses.

If the agency is concerned about program integrity and staff work load issues as we have been told, then TCEQ should write guidance that further refines how or which area sources can satisfy the emission credit requirements found in Section 101.301(c)(1). Instead of throwing up barriers to companies like us, TCEQ should be dedicating resources to determine how our emissions were "reported or represented in the SIP." Given the sheer magnitude of the area source portion of the emissions inventory (over 160,000 tons of VOC in the 2006 Emissions Inventory compared to 44,000 tons from point sources), we cannot comprehend how TCEQ can take the position that emissions that the agency knew about and permitted (at less than 9 tons per year) were not included in that total in some form or fashion. We can demonstrate what our actual emissions were; TCEQ should have some responsibility in helping us determine how they were represented in the SIP.

<u>TCEQ Does Not Need to Adjust the Rules to Address Area Source "Difficulties"</u>

TCEQ is seeking comment on whether adjustment to the rules are needed to address the difficulties associated with demonstrating how specific area source emissions are represented in the SIP and how the reductions are surplus to the SIP. As stated above, we believe any adjustments needed could be addressed by guidance, not by rule changes.

While it may be possible and desirable to address certain types of area sources by group in order to show that reductions associated with such sources are "surplus to the SIP," we think it is important to leave in the option for a case-by-case demonstration as is currently available. The requirement in Section 101.302(c)(1)(A) is that "reductions must be enforceable, permanent,

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quantifiable, real, and surplus." In Mainland's case, we can demonstrate that no rules required us to reduce or eliminate our use of VOCs. That is the same requirement our competitors were subject to and the same requirement other point sources must demonstrate. Thus, we can meet the required showing that our emissions reductions are surplus.

As to the difficulties associated with demonstrating how specific area source emissions are represented in the SIP, we suggest that TCEQ review the assumptions it used in estimating area source SIP emissions, especially in instances where emissions are likely grossly overstated (to reach that 160,000 daily ton assumption) and work with appropriate categories of small businesses on determining how those sources were represented in the SIP. We think this is particularly important for companies like us—that have a permit from the TCEQ, have proven (and accepted) methodologies for calculating emissions, and are being penalized for being smaller than other companies who have been awarded ERCs. We think that is an appropriate use of staff resources and should not create undo "work load" issues for TCEQ staff.

Thank you for the opportunity to present these comments. This is a critical issue for Mainland and one we feel very strongly about.

Sincerely,

Kevin Bertelsman
Owner, Mainland Custom Marble Company

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

Background:

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

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

Potential Rule Impact:

Importantly, the local and global environment can benefit from not changing the eligibility requirements of the existing and approved EBT rule, and not restricting the current flexibility of the existing EBT rules. Locally, the HGB NA area could obtain a significant reduction in VOC and NOx air emissions (the pre-cursors to ground-level, ambient air ozone formation) by allowing area source participation in ERC reductions. ERCs from area sources could create an emission reduction before the time of ERC generation from "small" emission sources that are currently uncontrolled or surplus to existing emission standards; these ERC emissions are traded as "offsets" to companies that are required to utilize the Lowest Achievable Emission Rate (LAER) control technologies as part of industrial expansion or modification.

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

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

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

EBT Rules

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

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

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

Importantly, many area source can meet the other the criteria in 30 TAC §101.302 and 303 for issuing an ERC. The area sources that cannot meet these other criteria should not be able to participate in the ERC program. The area sources that can meet these other criteria should be allowed to participate in the ERC program, based on their ability to demonstrate these criteria are met. The TCEQ should make these determinations on a case-by-case basis, based on the merits of each application. The TCEQ could publish guidance on their determinations from case-by-case reviews to guide future applications and the efficient use of resources.

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

Thank you for your consideration of these comments.

Sincerely,

Scott C. Muller

NOLTEX
12220 Strang Road La Porte, TX 77571-9740
Phone: 281-842-5000 Fax: 281-842-5095

April 3, 2014

Joe Thomas
TCEQ Emissions Banking and Trading Programs
MC-206
P.O. Box 13087
Austin, Texas 78711-3087

Re: EBT Stakeholder Group

Dear Mr. Thomas,

Thank you for the opportunity to comment on the upcoming changes proposed for the emissions Banking and Trading Program. Noltex had the opportunity to attend a public session on March 3rd and in the public presentation, TCEQ stated a desire to **"Revise the HECT and MECT rules to provide a mechanism for facilities and sites to stop participating in the programs once exempt from the underlying rules in 30 TAC Chapters 115 and 117"**. During the question and answer session it was explained that "closing the facility" was the option being proposed. Our comments specifically pertain to the HRVOC Emissions Cap and Trade Program (HECT).

Noltex believes there should be other ways to opt out of HECT other than closing a facility. Removing the current "once in, always in" stipulation would provide a partial incentive to implement voluntary reductions of HRVOC. The Houston-Galveston area is in a period of unprecedented growth in the areas of Natural Gas Liquids, Midstream Processing, and Chemical Plant expansion. This growth is impeded by the inability to obtain HECT and other credits. This area is the most economical place in the United States to place a chemical facility due to available infrastructure. However, we are at the tipping point of this growth because of the current constriction of air credits required to get a permit. There simply are not enough credits available to continue growth. "Closing facilities" is not the answer. There are many different chemical processes that lend themselves to upgrading control technology (i.e. flare to thermal oxidizer). The impact of these upgrades would be impressive. For flare technology, a destruction efficiency of 99% produces 1% of unburned material going to atmosphere. Thermal oxidizers have a destruction efficiency of at least 99.99% therefore only 0.01% goes to the atmosphere, a significant reduction. Installing better technology would process emissions credits which could be sold, but even with the high current value of credits, this does not off-set the cost of upgrades. Noltex would like to request that TCEQ review incentive options that would benefit both industry and the surrounding communities.

Another issue TCEQ wishes to address is to **"Clarify HECT reporting for emission events to show which events are HECT-applicable"**. Noltex believes emissions events should **not** be HECT applicable. By definition set forth in 101.1, an emission event is an "upset or *unscheduled* maintenance, start up, or shutdown activity". This is in direct contradiction to the definition of Potential to Emit (PTE) which, under 116.10 states that this is the "maximum capacity of a stationary source to emit a pollutant under its physical and operational design". Emissions events are not part of any plant design since they are not routine and not predictable.

TCEQ would also **"Consider adding PM2.5 to the list of applicable pollutants"**. Noltex believes this listing is pre-mature since many sources have not yet been tested for PM2.5 and the historical data is not available. Many design engineering calculations for older designs are rough estimates because PM2.5 testing protocols have just recently been refined to obtain accurate results.

Thank you in advance for an opportunity to comment on upcoming rulemaking. If you have questions, please feel free to contact me at 281-842-5065.

Sincerely,

K Cameron

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Cc:

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April 4, 2014

Joe Thomas
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joe.thomas@tceq.texas.gov

Re: EBT Stakeholder Group

Dear Mr. Thomas:

Petra Nova Parish Holdings, LLC (Petra Nova) appreciates the opportunity to provide comments on TCEQ's emissions banking and trading programs. The emissions banking and trading programs have been instrumental in Petra Nova's development of the Flue Gas Carbon Capture project at the W.A. Parish electric generating station, which when built will be among of the first successful commercial-scale carbon capture and sequestration projects in the United States.

Petra Nova respectfully requests that TCEQ continue to rely on both existing provisions in the emission credit rules for allowing inter-basin emission credit uses. Specifically, TCEQ's EPA-approved banking and trading rules at 30 Tex. Admin. Code § 101.302(f) provide that:

> [(f)] An emission credit must be used in the nonattainment area in which it is generated unless the user has obtained prior written approval of the executive director and the EPA; and
>
> (1) a demonstration has been made and approved by the executive director and the EPA to show that the emission reductions achieved in another county or state provide an improvement to the air quality in the county of use; **or**

(2) the emission credit was generated in a nonattainment area that has an equal or higher nonattainment classification than the nonattainment area of use, and a demonstration has been made and approved by the executive director and the EPA to show that the emissions from the nonattainment area where the emission credit is generated contribute to a violation of the national ambient air quality standard in the nonattainment area of use.

The current TCEQ guidance on inter-basin use of emission credits[1] establishes a procedure by which an applicant can demonstrate that the emission credits in question will lead to an overall air quality benefit in the area in which the credits are proposed to be used. This is consistent with the test under subsection (f)(1).

TCEQ guidance should also consider applicants that rely on the test described in subsection (f)(2). The (f)(2) test closely mirrors the provision for inter-basin offsets in section 173 of the federal Clean Air Act.[2] Under the (f)(2) test, it is not necessary to demonstrate the particular air quality improvement associated with a specific emission credit. Rather, the necessary demonstration is that the collective "emissions from the nonattainment area where the emission credit is generated" impact the area of proposed credit use. We believe that this demonstration need only be made once. TCEQ should therefore embrace the (f)(2) approach, if necessary by revising or supplementing the current guidance on inter-basin emission credit uses. Petra Nova continues to believe that a local demonstration of air quality benefit in the area of inter-basin emission credit use is appropriate.

Petra Nova also supports and endorses the Texas Industry Project's comments on TCEQ's project to evaluate issues for future rulemaking on the emissions banking and trading programs.

Petra Nova appreciates your consideration of these comments. If you have questions, please do not hesitate to contact me at 832-357-5291 or craig.eckberg@nrgenergy.com.

Sincerely,

C.R. Eckberg

Craig Eckberg

---

[1] TCEQ, *Guidance on the Inter-Basin Use of Credits for Nonattainment New Source Review Permit Offset Requirements* (Jan. 2014), available at http://www.tceq.texas.gov/assets/public/implementation/air/banking/guidance/inter-basin.pdf.

[2] 42 U.S.C. § 7503(c)(1) provides in part that "[T]he State may allow the owner or operator of a source to obtain such emission reductions in another nonattainment area if (A) the other area has an equal or higher nonattainment classification than the area in which the source is located and (B) emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located."

STAKEHOLDER COMMENTS

DATE: **April 4, 2014**

TO: **Mr. Joe Thomas – Texas Commission on Environmental Consulting**

FROM: **Sage Environmental Consulting, L.P.**

RE: **Emissions Banking and Trading Stakeholder Group**

Thank you for the opportunity to provide comments on the changes TCEQ will be considering in a future rulemaking to the current Emission Banking and Trading (EBT) Program. Sage Environmental Consulting, LP (Sage) represents companies who would be affected by these proposed changes, both in the generation and use of ERCs.

In general, Sage believes that the rules are sufficient as currently promulgated and that only one change is needed to the rule.

Remove the 180 day Limit

Sage agrees with TCEQ that the requirement found in Section 101.303(d) that facilities with potential ERCs must submit an EC-1 Form to the agency within 180 days of the implementation of the emission strategy is outdated and should be removed from the rule.

When originally promulgated, the EBT program was voluntary and was not the only mechanism by which companies could generate offsets. Since then, the program has been made mandatory and is currently the only mechanism by which companies can create credits for use as offsets. Having such a strict timeline remain in a mandatory rule--if a company misses the deadline, they cannot create ERCs or otherwise establish those reductions as offsets--is neither logical nor fair. The rules, as it currently exists, has unnecessarily reduced the amount of offsets available for use in the HGB nonattainment area at a time where offsets are greatly needed.

Moreover, the TCEQ has indicated the original rationale behind the 180 day rule--that TCEQ needed to know for SIP planning purposes which reductions might be banked because rules at one time could be developed from concept to adoption in six months-- is outdated and not in alignment with current SIP rulemaking timeframes.

Sage recommends that the TCEQ extend the 180 day deadline to align with 30 TAC 101.309(b)(3), which states that ERCs are valid for 5 years after the date of the reduction. If a source can demonstrate that the emissions reduction satisfy the EBT program requirements i.e. "enforceable, permanent, quantifiable, real, and surplus," the source should be able to generate and use the credits up until the time that the credits would expire. Moreover, we believe that the TCEQ should make this provision retroactive so as to not penalize companies that inadvertently miss the 180 day deadline prior to any rule change. If an emissions reduction otherwise meets the criteria, it would thus be available for use within five years of generation.

<u>No Rule Changes are Needed for Area Sources</u>

Area sources should remain in the banking rules and no changes are actually needed to address concerns TCEQ may have regarding the generation of ERCs from area sources. Rather, any concerns TCEQ has regarding the suitability of certain area sources to generate ERCs can and should be addressed by case by case determination based on the merits of the application.

1. *TCEQ Has Not Provided Sufficient Information Regarding Its Concerns About Area Sources nor Adequate Time for Interested Persons to Respond*

Area sources remain an important source of ERCs to the regulated community and revenues from the generation of ERCs are important to those area sources who choose to reduce emissions by installing control technologies beyond requirements currently found in the rules.

In the materials previously posted to the TCEQ website for which TCEQ is seeking comment, TCEQ states only that it is considering modifying the rules to address difficulties associated with demonstrating how specific area source emissions are represented in the SIP and how the area source emission reductions are surplus to the SIP. TCEQ also identified removing the ability to generate credits from area source reductions altogether as one option being considered..

However, when reviewing the TCEQ EBT Stakeholder Group Meeting Minutes (only recently posted to the TCEQ website), Sage noticed that, in response to a question regarding why the TCEQ is considering to remove the option to generate credits from area and mobile sources, TCEQ referenced EPA's *Economic Incentive Program* guidance and requested "input from stakeholders on ways to make these types of generation practical under the Economic Incentive Program guidance from U.S. Environmental Protection Agency. If no practical method of generation is possible, these options may be removed from the rules."

This guidance document was not referenced during the Stakeholder Meeting at the Houston-Galveston Area Council or listed in the *Emission Banking and Trading Issues for Consideration in Future Rulemaking* presentation. The EPA guidance is almost 300 pages long. If TCEQ is truly seeking input on these issues from interested stakeholders, we ask that the agency be clear about its concerns and extend the public comment period so that stakeholders have adequate time for review and comment on all issues under consideration.

Moreover, it is unclear why TCEQ is even raising issues about the applicability of this guidance to the generation of area sources and mobile sources at this time. In 2002, TCEQ made changes to the banking rule to address "concerns raised by the EPA regarding the quantification protocols used when measuring baseline emissions for the generation and use of credits." EPA had outlined elements necessary for approval of trading programs that would be used within a SIP in guidance titled "Improving Air Quality with Economic Incentive Plans (EPA 452/R-01-001 dated January 2001)." Thus, the TCEQ has already made changes to conform to this guidance, with the rules being subsequently approved by EPA.

Accordingly, Sage requests that TCEQ provide much more detailed and specific information regarding its concerns about banking emissions from area sources, as well as provide additional time for interested persons to review EPA's *Economic Incentive Program* guidance document and provide comments to the TCEQ on proposing guidelines for generating ERCs at area sources that meet the requirements of the EBT program. As initially stated, we believe this would be better accomplished by issuing clarifying guidance, not rulemaking.

2. *TCEQ Should Consider all Options for Fair Treatment of Area Sources*

The category of "area sources" includes point sources that are excluded from emissions inventory reporting requirements because their emissions are less than 10 tons per year. One of the primary issues for which the agency is seeking comment in this process is how to ensure that specific area source emissions are represented in the SIP and that those emissions are surplus to the SIP. One simple way to address this issue in the future would be to notify area sources of the opportunity to submit emissions inventories and have their emissions expressly considered as part of the SIP planning process. Yet TCEQ recently emailed a notice about the opportunity to make revisions to 2012 emissions inventory submissions that will be used as the base inventory year in the DFW area only to subscribers of the point source emission inventory. Moreover, that notice expressly states that "emissions inventories for DFW-area sites that do NOT meet the reporting requirements of 30 TAC Section 101.10 for calendar year 2012 will not be processed at this time." (emphasis in original). Thus, point sources greater than 10 tpy are being provided with an opportunity to revise their EIs and notified that revisions received after May 14, 2014 will not be captured in the 2012 base year DFW AD SIP inventory, which would impact future credit generation, while sources smaller than 10 tons are not being notified --even by a posting on the TCEQ website--and thus are not being provided with an opportunity to submit emissions inventory information to the agency for use in the SIP planning process.

If an area source seeks to provide EI information to the TCEQ so that those emissions can be expressly included in the inventory used for a SIP demonstration, it should be given the opportunity to do so. Failure to provide, or even allow, such an opportunity in the DFW SIP raises concerns for the fair treatment of area sources to generate ERCs. This seems shortsighted and unfair to smaller sources, especially those that use the same calculation methodologies to determine emissions as larger sources.

3. *TCEQ Should Develop Policies and Protocols Based on Categories of Area Sources*

In the absence of established TCEQ guidance, companies with area source emissions should be allowed to work with the TCEQ on a case by case basis, just like TCEQ works with larger companies, to demonstrate that the source and ERC application can meet the TCEQ rule criteria necessary to generate

ERCs. TCEQ could publish precedence and guidance on its website based on these case-by-case determinations.

4. *TCEQ's TexAER Website Remains "Down for Maintenance "*

TCEQ is soliciting comment on how to address the difficulties associated with demonstrating that specific area source emissions are represented in the SIP. Sage personnel have spent extensive time reviewing and understanding the 2006 Emissions Inventory and SIP submittal package in order to help both clients and the TCEQ address this issue. However, the agency's TexAER website, which contains very pertinent area source EI data, has been down for maintenance for at least the week immediately following the stakeholder meetings and at least this week leading up to the stakeholder comment submittal date. Thus, Sage is unable to independently review area source EI data and provide specific comments on this issue as part of these informal comments. We ask that TCEQ prioritize the maintenance needed to address these issues associated with the website and extend the public comment period once access to the area source EI is restored.

5. *Area Source Emissions may be Overstated in the 2006 Emissions Inventory*

While Sage cannot confirm its belief that area source emissions are overstated in the 2006 EI because the TexAER website has been down, we suggest the TCEQ further study the emission accounting estimation methods used in the 2006 SIP versus the current TCEQ guidance and accepted methodologies. Currently, TCEQ has stated a concern that emission reductions from area sources might be "surplus to the SIP"; an overestimation of the SIP emissions should alleviate this concern. In its request for comments, the TCEQ has not indicated the regulatory definition of surplus to the SIP or adequately defined this term or guidance to provide for informed public comment. Accordingly, Sage requests the public comment period be extended, and that the TCEQ provides additional public clarification on this requirement within the context of the existing TCEQ EBT rules.

To that end, a review of assumptions used in the attainment demonstration SIP regarding a comparison of assumptions made for area source emissions to current information should be helpful in addressing program integrity concerns. For example, the TCEQ assumed a robust growth in area source emissions (22%) from 2006 to 2018 and relied upon that growth in making its attainment demonstration. In 2008-2009 and beyond, the United States experienced a financial crisis and historic economic retraction, reducing manufacturing and emissions from most economic sectors; some of industrial sectors have not recovered and will not recover. Thus, it is certainly possible that area source emissions were not only initially overstated, but that higher growth rates have been projected than have actually occurred. This would mean that concerns about how to demonstrate that reductions are surplus, to the extent required for an individual ERC application, may be possible to address on a macro-level for situations where case-by-case demonstrations are unclear or not sufficiently understood by TCEQ staff.

It also means that, unlike point sources, reductions from area sources that came into existence after 2006 are likely “surplus” given application of the growth factor.

Sage recognizes that these issues are complex and will require staff resources. However, we believe that there are important public policy and economic reasons to expend such resources and thus move towards a solution that will address concerns about program integrity while still allowing area sources to generate emission reduction credits.

We appreciate the opportunity to submit these comments and would welcome the opportunity for further discussion.

Kyle Brzymialkiewicz

Kyle Brzymialkiewicz on behalf of Sage Environmental Consulting

From: Glenn Sliva
Sent: Thursday, April 03, 2014 2:55 PM
To: Joe Thomas
Subject: EBT Stakeholder Group

Joe

My informal comment is short and regarding the 180 day limit to submit an application to generate ERCs and MERCs.

I propose a 5 year look back for a period of 1 year that sunsets to give the ability of owners more time to submit applications that were subject to the 180 day limit.

Several owners have lost the ability to generate because of this narrow short limit.

For example. Beginning July 1, 2014, and back to June 30, 2009, owners may file an application or modify one that was created for lost credits because of the 180 limit.

This look back period would be allowed until July 1, 2015, and subsequently the rule would revert to a 1 year or 365 day limit for look backs or material facility changes thereafter July 1, 2015.

This seems like a reasonable rule change and would not create a large workload increase for the TCEQ staff yet give owners more time to complete an application to generate ERCs/MERCs and the resulting positive impact of reducing emissions of pollutants. A win win for everyone.

Thank you for allowing my input and listening to the voices of EBT stakeholders.

Kindest Regards

Glenn Sliva

Glenn Sliva

TEXAS CHEMICAL COUNCIL
1402 Nueces Street • Austin, Texas 78701-1586 • (512) 646-6400 • Fax (512) 646-6420

April 4, 2014

Mr. Joe Thomas
Texas Commission on Environmental Quality
MC-206
P.O. Box 13087
Austin, Texas 78711-3087

***Submitted electronically via e-mail*.**

RE: *TCEQ Emissions Banking & Trading Program Stakeholder Group & Future Rulemaking*

Dear Mr. Thomas:

On behalf of the Texas Chemical Council (TCC), I am writing to provide informal comments with feedback on stakeholder discussions related to issues for consideration in a future rulemaking on the Emission Banking and Trading (EBT) program. These comments will both respond to the presentation made by TCEQ staff, issues raised by other stakeholders during TCEQ-led meetings, and other thoughts by TCC.

TCC is a statewide trade association representing nearly 70 chemical manufacturers with more than 200 Texas facilities. The Texas chemical industry has invested more than $50 billion in physical assets in the state, as well as pays over $1 billion annually in state and local taxes and over $20 billion in federal income taxes. TCC's members provide approximately 70,000 direct jobs and over 400,000 indirect jobs to Texans across the state. TCC member companies manufacture products that improve the quality of life for all Americans and millions of people around the world.

TCC member companies represent a large segment of industry that has been able to utilize this program to the benefit of the state, and therefore our members have unique expertise in understanding how the program has operated in the past and how it can adapt into the future. It is our aim to enhance the usability of the program tools without compromising its effectiveness. TCC appreciates the TCEQ staff's efforts in working on this program and ensuring that in moving forward, stakeholders have the ability to fully vet any potential changes and suggest enhancements.

Using Allowances for Offsets

TCC supports the Agency's suggestion to clarify the ability to use MECT and HECT allowances for the entire offset requirement. The current regulatory language suggests that allowances can only be used to satisfy the one to one portion of the offset requirements. 30 TAC §101.352(e), §101.393(d). However, the relevant guidance document and current practice permit the use of allowances to satisfy the additional 0.3 portion of the offset requirement, so long as those allowances are permanently retired and transferred into the *TCEQ Offset Retirement Account* before the facility commences operation. *See TCEQ Guidance on the Use of Allowances for Nonattainment New Source Review Permit Offset Requirements*, Oct. 2013. This is an appropriate action, as it is currently being utilized, and the clarity provided by incorporating that declaration into the rules would benefit the regulated community.

TCC supports the use of Mass Emissions Cap and Trade (MECT) allowances as offsets for non-MECT sources.

TCC supports limiting possible future devaluation of allowances for the purpose of meeting offset requirements. Allowances used to satisfy offset requirements for *new* facilities should not devalue due to future regulatory changes as this creates uncertainty for projects. New sources are already required to be built to meet the most stringent control standards. If the allowances used in the permitting process are devalued and the new source was built using LAER/BACT controls, then additional reductions are likely not possible to meet a lower cap.

TCC recognizes that this approach could mean that *existing* sources might need to make further reductions to adjust for *newer* sources that have no further emission reduction alternatives. There are existing sources that are not controlled and are meeting the MECT obligation through other means and can be controlled in the next round of NOx reductions. Regardless, leaving the possibility open for any source to be subject to future regulatory changes that result in the devaluation of allowances is too uncertain and unpredictable for projects of such magnitude and that require significant prospective investment.

<u>Using Credits for Offsets</u>

TCEQ has suggested clarifying the requirements for interpollutant and interbasin use of ERCs, MERCs, DERCs, and MDERCs. However, TCC continues to encourage the Agency to develop an equivalency of pollutants by region for specific chemicals of concern with eventual development of conservative standards. These standards could be used as a default in lieu of site specific photochemical modeling to decrease the time, administrative burden, and cost to both the Agency and applicants. Furthermore, TCEQ should consider cases where existing modeling information can be applied to avoid case-by-case modeling for every applicant.

TCC additionally supports allowing companies using DERCs and MDERCs to submit required forms for multiple years. This will result in a reduction of the administrative burden for both the Agency and the regulated community, and TCC members companies foresee no downside to allowing this option.

<u>Generating Credits from MECT and HECT Sources</u>

TCC supports the requirement for allowances to be surrendered at a 1:1 ratio based on historical emissions when generating ERCs from sources in the MECT and HECT programs.

TCC also supports the generation of ERCs from HRVOC emissions from sources in the HECT program if allowances are surrendered at a 1:1 ratio based on historical emissions.

TCC understands these provisions are intended to prevent holders of allowances from selling/retiring both a MECT and/or ERC related to the same transaction potentially resulting in double-accounting. However, some clarity may be needed on the purchasing side for entities buying ERCs who may or may not be subject to applicable MECT/HECT programs.

Generating Credits from Area and Mobile Sources

TCEQ should retain the options to generate credits from area and mobile sources. TCC appreciates the often difficult task of ensuring that such credits are real, surplus, and enforceable, but continuing to allow these types of innovative programs to be available as a potential tool for credit generation is overall beneficial to the region's air quality and may prove useful into the future, especially in the light of the tight credit market as it exists today.

Credit Generation

TCC supports an extension of the 180-day limit to provide more time to submit an application to generate ERCs/MERCs. By comparison, Pennsylvania, another state that utilizes offset trading for ozone, permits submittal of an ERC application to generate ERCs two years after initiating reduction or shutdown. *See* 25 Pa. Code §127.207(2). This is limited by the fact that written notice of the source's deactivation is required within one year. *See id.* This approach is reasonable, and will give both the applicant and the agency sufficient time to finalize the calculation of ERCs generated.

TCC would further like to encourage TCEQ to consider revising the shelf life of ERCs. Currently, regulations only authorize ERCs to be used within 60 months of initial generation. *See* 30 TAC §101.309(b)(3). Pennsylvania currently allows a shelf life of credits for 10 years. 20 Pa. Code §127.206(f). Extending the shelf life of ERCs to a longer period, such as 120 months, would provide more flexibility to ERCs users without resulting in reduced air quality or in limiting the effectiveness of the program.

Furthermore, TCC supports the addition of $PM_{2.5}$ to the list of applicable solutions. This will give Texas the flexibility into the future should any areas be designated nonattainment. Texas submitted to EPA in December 2013 our recommendation that all Texas counties by designated as unclassifiable/attainment. EPA is expected to issue final designations on December 12, 2014. Because this rule timeline is closely related (it is expected to be proposed in October 2014 and adopted in March 2015), it is prudent for TCEQ to move forward with including this ability in the rule structure at this time.

Credit Baseline Emissions

TCC agrees that the baseline emissions cannot exceed the emissions inventory (EI) used in the attainment demonstration SIP and believe that clarity is needed for areas that do not yet have an attainment demonstration SIP or a recently submitted EI.

Credit Reporting

TCC requests that TCEQ clarify that ERCs and MERCs are considered "used" when an air permit application is submitted.

HECT and MECT Applicability

TCC agrees that a mechanism is needed to allow sites to terminate participation in HECT and MECT once those programs are no longer applicable to a given site or operation. Continued submittal of reporting forms to the agency when the programs are no longer applicable would be an unnecessary burden.

TCC appreciates the opportunity to provide input on this future rulemaking and in participating in the stakeholder process. This program is essential to the progress of the state in maintaining our business climate as well as making steps toward a better air quality. TCC looks forward to working with stakeholders and TCEQ staff regarding our suggestions and general remarks.

Thank you for your consideration of these comments. If you have any questions, please do not hesitate to contact me at (512) 646-6403 or landwehr@texaschemistry.org.

Yours respectfully,

Martha K. Landwehr
General Counsel

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April 4, 2014

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Re: Comments of the Texas Industry Project EBT Stakeholder Group Issues

Dear Mr. Thomas:

TCEQ has invited public comments on its stakeholder process to consider issues for future rulemaking in connection with the emissions banking and trading program rules. The Texas Industry Project[1] ("TIP") respectfully submits the following comments on the issues raised in TCEQ staff's February and March 2014 stakeholder meetings.

TIP's comments at this stage of the stakeholder process focus on TCEQ's suggested areas for rule changes, rather than on further development of guidances. Separately, TIP will be recommending further flexibility in the application of guidances, including TCEQ's emerging guidance for use of Mass Emission Cap and Trade ("MECT") and Highly Reactive VOC Cap and Trade ("HECT") allowances and for inter-basin and inter-pollutant credits.

I. TCEQ should preserve current, EPA-approved rule language to the greatest extent possible.

With the exception of certain narrowly targeted changes, TIP recommends that TCEQ preserve current banking and trading rule language. The divisions of TCEQ's Chapter 101 rules on Emission Reduction Credits ("ERC"), MECT, Discrete Emission Reduction Credits, and HECT have all been approved by EPA and thus are currently part of the federally enforceable Texas State Implementation Plan ("SIP"). 40 C.F.R. § 52.2270.

As a general matter, these rules and TCEQ staff's historical implementation practices provide sufficient certainty and flexibility for affected companies to comply with the rules and efficiently obtain authorization for new projects. The benefits of the program's current federally-approved status are substantial. While there can be benefits of improved clarity and flexibility, these benefits must be weighed against the risks associated with a gap between state rules and the approved SIP. Thus, with three exceptions described in these comments, TIP requests that TCEQ preserve the current rule language.

---

[1] TIP is composed of 70 companies in the chemical, refining, oil and gas, electronics, forest products, terminal, electric utility, transportation, and national defense industries with operations in Texas.

In particular, TIP requests that TCEQ preserve the following existing rule language:

- Provisions addressing inter-basin and inter-pollutant trading at 30 Tex. Admin. Code §§ 101.302 and 101.372. The current rule language provides for protection of air quality in connection with inter-basin and inter-pollutant emission offsets while allowing substantial flexibility. As offsets remain scarce and Texas industries expand, efforts to secure offsets through inter-basin and inter-pollutant trades are likely to continue. Any change to make the current rule provisions on inter-basin and inter-pollutant transfers more prescriptive could thus foreclose offset approaches that would allow new economic development projects to go forward.

- Rule provisions addressing the availability of MECT and HECT program allowances as offsets, at 30 Tex. Admin. Code §§ 101.352(e) and 101.393(d). This existing rule language provides sufficient regulatory certainty and flexibility.

As noted above, TIP believes that TCEQ should continue to develop its guidance on practice in implementing rules in both of these areas. TIP will follow up separately on these guidances.

II. TIP supports three targeted changes to current rule language.

TIP requests that TCEQ make three targeted changes to current emissions banking and trading rule language.

A. TCEQ should eliminate the 180-day deadline to submit an EC-1.

Current TCEQ rules provide that "Facilities with potential ERCs must submit, to the executive director, an EC-1 Form, Application for Certification of Emission Credits, ***within 180 days of the implementation of the emission reduction strategy***." 30 Tex. Admin. Code § 101.303(d)(1) (emphasis added).

TIP requests that TCEQ delete this sentence from § 101.303(d)(1). The 180-day deadline is not necessary to ensure ERC program integrity, but it does create a paperwork barrier to generating ERC. Eliminating the 180-day EC-1 submission deadline would not extend the life of any current or future ERC, as the rules provide that ERC generated since 2001 "shall be available for use for 60 months from the date of the emission reduction," 30 Tex. Admin. Code § 101.309(b)(3), regardless of when the EC-1 was submitted.

Notably, EPA rules do not require offsets to be certified within 180 days of the reduction taking place, nor do EPA rules establish an expiration date for offsets. *See* 40 C.F.R. § 51.165(a)(3).

Further, states with similar emissions banking and trading programs allow ERC applications to be submitted for longer periods of time. For example, Pennsylvania's ERC registry application need only be submitted within two years of the initiation of an emissions reduction used to generate ERC. *See* 25 Pa. Code § 127.207(2).

B. TCEQ should adjust the deadlines for identifying ERC as potential offsets and submitting an EC-3 to "prior to operation."

Current ERC regulations provide as follows:

> For emission credits which are to be used as offsets in a New Source Review permit in accordance with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), ***the emission credits must be identified prior to permit issuance. Prior to construction, the offsets must be provided through submittal of a completed EC-3 Form***, Notice of Intent to Use Emission Credits, along with the original credit certificate.

30 Tex. Admin. Code § 101.306(c)(1) (emphasis added).

TIP requests that TCEQ amend this rule language to insert "prior to operation" where the rule currently reads "prior to permit issuance" or "prior to construction," and to delete the clause "along with the original credit certificate."[2] Such a revised § 101.306(c)(1) would read as follows:

> For emission credits which are to be used as offsets in a New Source Review permit in accordance with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), the emission credits ***must be identified prior to operation. Prior to operation***, the offsets must be provided through submittal of a completed EC-3 Form, Notice of Intent to Use Emission Credits.

Changing the deadline to "prior to operation" would help to avoid paperwork compliance requirements that do not help to ensure the validity of an offset. For example, in the current economic climate, companies are evaluating options to generate and acquire the most cost effective offset options available. These options will likely continue to evolve even after a permit is issued for a new-build project and construction has begun, and it is likely that many sources will ultimately seek to rely on offsets that became available during the period shortly

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[2] Removing the reference to the original credit certificate is appropriate as we understand that TCEQ practice no longer includes issuance of paper certificates.

before beginning operation. By moving back the offset deadlines to "prior to operation," these sources will not be in a position of seeking to retract earlier EC-3 submissions or update permit application representations.

The requested change would be consistent with federal requirements. EPA regulations do not require an offset to be identified prior to permit issuance or in place prior to construction. *See* 40 C.F.R. § 51.165(a)(3). Changing these deadlines to "prior to operation" as TIP recommends would also align with the federal Clean Air Act, which provides:

> Such emission reductions shall be, ***by the time a new or modified source commences operation***, in effect and enforceable and shall assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area.

42 U.S.C. § 7503(c)(1) (emphasis added).

C. TCEQ should clarify rule language on the emissions inventory year that sets a cap on each facility's potential ERC baseline.

TCEQ's February and March 2014 stakeholder meeting presentations indicate that the agency is considering amending 30 Tex. Admin. Code § 101.303(b)(1), which currently provides that ERC or other offsets' baselines "may not exceed the quantity of emissions reported in the most recent year of emissions inventory used in the SIP." TIP supports TCEQ's historical practice of interpreting the "SIP" in this context to mean the most recent attainment demonstration SIP.

We understand that the amendments under consideration would clarify that the SIP for purposes of this rule provision is the most recent attainment demonstration SIP, and specify an alternative for areas that do not yet have an attainment demonstration SIP. TIP concurs with TCEQ that adding the term "attainment demonstration" before "SIP" would be a good clarification that should not affect the approved SIP.

III. Conclusion

TIP appreciates your consideration of these comments. If you have questions, please do not hesitate to contact me.

Sincerely,

Zach Craft