BY EMAIL

August 12, 2016

Daphne McMurrer and Guy Hoffman
Texas Commission on Environmental Quality (TCEQ)
TCEQ Air Quality Planning
MC-206, P.O. Box 13087
Austin, TX 78711-3087

RE: AREA AND MOBILE SOURCE CREDITS; EMISSIONS BANKING AND TRADING (EBT)

I. INTRODUCTION

Environmental Defense Fund (EDF) appreciates the opportunity to provide informal comments to the TCEQ on mobile and area source credits generated and used through the TCEQ's EBT program. EDF is a non-profit, non-partisan, non-governmental environmental organization that combines law, policy, science, and economics to find solutions to today's most pressing environmental problems. Our interest in emissions credits and the EBT program stems from our role as a clean air advocate and environmental justice stakeholder, working to help address impacts on overburdened communities and partnering with environmental justice organizations on overlapping issues. The informal feedback presented below offers considerations that EDF believes are needed to ensure that emissions reductions and improvements in air quality actually occur through the EBT program, to be able to provide measurable improvements in the health of communities living in Houston and surrounding areas.

II. MOBILE SOURCE CREDITS

Ensuring Reductions are "Real and Surplus"

Increase Minimum Source Application Size: EDF recommends that TCEQ increase the minimum source size from 0.1 ton of credit for individual facilities and mobile sources to at least 1.0 ton of credit for each application (and 0.1 ton of credit per facility or mobile source). It is important that TCEQ not be burdened by the large administrative costs of numerous small source (e.g., <0.1 ton) applications. This approach still allows owners of small sources to apply for emission credits, but requires them to package them in one larger application. In addition, by increasing the minimum application size to 1 ton of credit, it increases the likelihood that the application will spend the necessary resources on accurately quantifying the size of the emission credit.

Clarify Definition of "Mostly" for Usage (Validated with Use of GPS/AIS Data): It is important that TCEQ clearly define what it means to operate "mostly" within the nonattainment area. For tug boat companies, in particular, they may need some flexibility to move vessels around the Gulf based on seasonal and annual fluctuations in economic activity. Since GPS and AIS make it possible to accurately measure the location of large diesel engines used in tugs, locomotives, and large construction equipment, there are some recommendations/options for TCEQ to consider when defining "mostly":

- "Mostly" could be defined as at least 50% of their operational hours must be in the nonattainment area, as measured by a GPS or AIS system. Actual credits generated should be based only on actual usage in the eligible area.
- TCEQ should explore an option for an owner of a fleet of diesel vessels, locomotives, etc., to be allowed to generate emission credits based on their fleet's operation, and not on an individual vessel or locomotive. TCEQ should develop a robust measurement and monitoring protocol using GPS or AIS technology, thus providing vessel owners some flexibility with their operations, while also substantially increasing participation in the program. One option might be to limit this approach to DERCs.

Clarify Purpose of "Determine the available SIP emissions by reducing the total emissions inventory value included in the applicable SIP revision by…[1]": While the discussion in this section seems well intentioned, its purpose and operational impact remain unclear. During the Houston meeting, a number of questions were asked about this section, and the answers provided by TCEQ staff did not fully resolve the questions. TCEQ staff should clarify and/or reframe the purpose of this section to be able to better solicit feedback.

Use Two-Year Baseline for Historical Adjusted Emissions for Mobile Sources: We strongly encourage TCEQ to calculate "historical adjusted emissions" based on the previous two years. We believe this timeline would more accurately represent a baseline emissions scenario than a 10-year period, given market fluctuations and other considerations that can cause significant variability in emissions on an annual basis. The TERP guidance requires that baseline emissions be based upon the previous two years of data, so a precedent is already in place for using this timeframe.

Expected Useful Life, Hours of Operation, and Load Factor: EDF recommends that TCEQ review results from TERP, EPA, and CARB programs and work with engine manufacturers to evaluate whether the current expected useful life estimates and load factors are accurate for the purposes of the EBT program. While TERP Guidance and EPA's NONROAD model provide estimates for engine useful life and load factors, much of the research for which the estimates were developed is out of date and may be of limited applicability to current diesel engines. For example, the most recent EPA publication on useful life and load factors of nonroad engines is

[1] https://www.tceq.texas.gov/assets/public/implementation/air/banking/stakeholder/2016-07-08-presentation.pdf

based on data from 1997 to calculate engine life[2]. This was approximately 8-10 years before diesel engine manufacturers were selling Tier 2 engines, and 18-20 years before they were selling Tier 4 engines.

It is also important to understand that emissions models like NONROAD are primarily designed to estimate emissions from large fleets of equipment for SIP purposes. As such, the useful life and load factors estimates are not designed for individual projects that would be needed in the EBT program. For example, a tug used for docking purposes will have a much different load factor than one used for moving barges. Given the project-specificity needed for EBT estimates, and the substantial changes in diesel engine design over the last 20 years, additional work is needed to determine whether these estimates in the TERP guidance or EPA's reports are sufficiently accurate for use in the EBT program.

Ensuring Reductions are "Quantifiable"

"Use of an EPA-approved Protocol": EPA protocols are appropriate if there are accurate useful life, engine load and hours of operation data. Since the existing data are outdated, TCEQ should work with EPA, CARB, and industry stakeholders to come up with more accurate estimates of useful life, engine load and hours of operation (see comment and recommendations provided in previous section). As better data become available, TCEQ should incorporate this new data into their protocol.

Reduce Credits Based on Measurement Uncertainty: EDF agrees with TCEQ that the amount of credits issued should be adjusted based on the quality of the data used to determine emissions. The current proposal, however, appears to imply that these reductions are based only on the quality of future emission reduction measurements. We recommend that TCEQ also reduce the value of the credits based upon the quality of the historical data the applicant has to establish their emissions baseline, as well as the quality of the data for future emission reductions.

Administrative Procedures

Online Applications: TCEQ should simplify the application process for both applicants and the Agency by using an online web based application process. The web based form should not allow submission of the application to the Agency until all of mandatory data fields have been completed.

Give Administrative Priority to Larger Emission Reduction Projects: EDF encourages TCEQ to give priority to processing emission credit applications that generate larger emission reductions and that are well documented. While all applicants deserve an equitable opportunity to have their credit applications considered, it will be the larger applications that will generate both the largest environmental benefits and opportunity for economic growth.

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[2] Assessment and Standards Division Office of Transportation and Air Quality U.S. Environmental Protection Agency. *Median Life, Annual Activity, and Load Factor Values for Nonroad Engine Emissions Modeling.* EPA-420-R-10-016 (NR-005d). July 2010.

Align EBT Program with PM Advance and Other Health Priorities: TCEQ should consider how to align the EBT program with additional clean air and public health priorities. For example, applicants that put forward projects that also reduce PM2.5 emissions could receive administrative priority in order to help meet PM Advance goals. If applicants put forward projects that reduce emissions in highly populated areas, especially environmental justice communities, these applications should also receive administrative priority.

Limit Impact of Large ERC Purchases: We recommend that any purchase of ERCs greater than 10 tons include an EJ Screen[3] assessment to identify the potential for air quality impacts from use of emissions credits at a source adjacent to environmental justice communities and other sensitive populations. Consideration should also be given to whether the use of DERCs in large quantities can cause localized impacts.

Avoiding Pollution Hotspots & Mitigation of Accidental and Unauthorized Emissions: TCEQ should ensure that 1) the EBT program does not contribute to pollution hotspots, and 2) that the EBT program does not make it easier for facilities with a track record of accidental and unauthorized emissions events to expand their operations or otherwise benefit operationally from the EBT program. TCEQ should consider excluding these "bad actors" from the program until they have, for example, mitigated their impact through purchase of DERCs, in addition to addressing the underlying reasons for accidents and unauthorized releases.

III. AREA SOURCE CREDITS

EDF has concerns about oil and gas facilities/operations as area source credits. Other stakeholders have put forward area source project examples at meetings with TCEQ and EPA Region 6, and reference to some of these examples are made in the comments below.

1. Since production equipment (e.g., tanks) tends to have declining throughput as the wells that feed them age and production declines, using historical baselines of emissions is likely to overstate the reduction that occurs at the point in time a mitigation activity takes place. In addition, since wells have limited lifetimes, the duration of the emission reduction also needs to be accounted for.
2. It is also important to consider the performance of control systems. In the specific example of a single controlled tank replacing multiple existing tanks (without controls), a 95% reduction only occurs if the controlled system is operating to specifications. Studies show large emissions from controlled tanks connected to flares indicating either a poor design or improperly maintained vent gas control systems (Lyon et al., 2016[4]; EPA, 2015[5]). For the purposes of an area source credit, operators should be required to

[3] https://www.epa.gov/ejscreen
[4] Lyon et al., 2016. Aerial Surveys of Elevated Hydrocarbon Emissions from Oil and Gas Production Sites. *Environ. Sci. Technol.*, **2016**, *50* (9), pp 4877–4886. http://pubs.acs.org/doi/abs/10.1021/acs.est.6b00705
[5] EPA Compliance Alert, 2015. https://www.epa.gov/sites/production/files/2015-09/documents/oilgascompliancealert.pdf

demonstrate oversight practices that ensure a 95% performance or an additional discount needs to be applied for expected underperformance and/or system malfunction.

EDF encourages TCEQ to solicit feedback on other specific area source project examples.

IV. IMPORTANCE OF ENGAGING LOCAL COMMUNITIES FOR FEEDBACK

EDF strongly recommends that TCEQ contact local organizations and communities to identify possible concerns from local residents who may be affected by changes in the program, or if there might be other ways to improve the EBT program.

V. CONCLUSION

EDF appreciates the opportunity to provide informal feedback to TCEQ and encourages TCEQ to put forward specific proposals that EDF can review in greater technical detail. Our comments provided herein in no way endorse any specific idea or proposal at this time. If you have any questions, please contact Christina Wolfe at 512.691.3416 or christina.wolfe@edf.org.

Sincerely,

Ken Adler
Senior Contributing Scientist

Colin Leyden
Senior Manager, State Regulatory & Legislative Affairs - Natural Gas

Christina Wolfe
Manager, Air Quality, Port and Freight Facilities

element
MARKETS

August 12th, 2016

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Re: Emission Banking and Trading Area and Mobile Source Credit Generation Potential Rulemaking – Response for Informal Comments

Dear TCEQ,

Thank you for the opportunity to provide input and comments toward the Area and Mobile Source ERC rulemaking process. Element Markets works with stakeholders at all levels that would be impacted by changes to the Emission Banking and Trade rules, including refining, petrochemical and oil and gas companies, Texas Trade Associations, regulatory agencies and others.

We can certainly understand the TCEQ's concern about the uncertainty associated with wide-spread adoption of such a program. Element Markets agrees with the TCEQ's current approach of mitigating this concern by applying discount factors to emission reductions generated from these less traditional source categories. While we certainly agree with this principle, we would ask the TCEQ to be careful not to adopt too aggressive of a discount structure. For example, a proposed discount for an area or mobile source that has a CEMS or PEMs installed makes little sense. Practically speaking, there are very few area or mobile sources that operate a CEMS or PEMs due to installation and operating costs. For those area and mobile source companies that have installed CEMs or PEMs, it makes little sense to discount them at all based on quality of data. A CEMS or PEMS is the most accurate way to estimate emissions.

The TCEQ should also consider defining the "time-element requirement" for data quality. A source may contemplate voluntarily installing better data quality systems/procedures in order to minimize Emission Credit related discounts. If a source decides to make this decision, the TCEQ should consider moving them into a lower discount category as soon as practical, if not immediately, if the source can demonstrate with a reasonable and fair basis that the new data quality systems and

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procedures provide a good surrogate for historical emissions. By adopting such an approach, the source would be incentivized to obtain better data capturing methods, as opposed to being penalized if its historical baseline emissions were discounted due to different data capturing methods in the past.

Overall, the discount approach must be balanced. Too high of a discount could substantially limit the overall effectiveness of the program for all parties. Significant discounts might prevent emission reduction projects from being implemented because the quantity of resulting ERCs could simply be seen as too troublesome for normal business operations.

Even a sophisticated company wanting to generate ERCs within this program could easily experience a 1-1.5 year time delay between the decision to generate ERCs and the time at which they've been approved and transferred. If the discount structure for such an application is too great, a company could easily decide that the effort is "not worth it."

The TCEQ has asked for specific input regarding altering the baseline lookback from a 10-year period to a 5-year period for area sources. Element Markets would urge the TCEQ to keep a 10-year lookback period to keep consistent with the current program and avoid causing confusion and inequity for future applicants depending on if/how the sources' emissions were reported.

It is unclear that new rules are needed to have an effective area and mobile source Emission Credit program, but if the TCEQ is going to revise current regulations, we would suggest the TCEQ take advantage of the opportunity to clarify a few items within the rules.

In certain circumstances, it appears that TCEQ Emission Banking and Trading Rules and policies are potentially more stringent than those required by EPA. For example, the TCEQ might consider clarifying the mechanism that triggers the application deadline for ERC applications for individual pieces of equipment. We would recommend avoiding language that is more stringent than that required by the EPA, but at a minimum, we would suggest providing clarity into this issue because it will impact a new set of potentially interested Area and Mobile Source ERC generators that will be evaluating these opportunities, and they will undoubtedly seek clarity on any potentially ambiguous terms, definitions or requirements. In addition, it will also help provide clarify and certainty for the traditional Point Source Industrial Companies as they continue to evaluate their environmental assets.

We applaud the TCEQ in working with and listening to Texas stakeholders on this rulemaking effort and believe the outcome will be that a fair and pragmatic Area and Mobile Source ERC program be established for all stakeholders.

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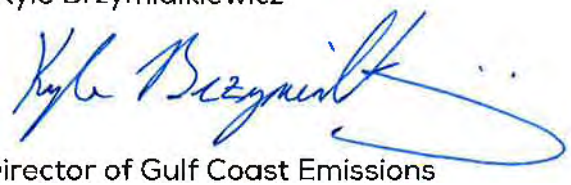
We appreciate your time and consideration in submitting these comments and would welcome the opportunity for further discussion.

-Kyle Brzymialkiewicz



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Re: Emission Banking and Trading Area and Mobile Source Credit Generation Potential Rulemaking

Dear Sir or Madame

EMSI thanks the TCEQ for the opportunity to submit informal comments pertaining to the Area and Mobile Source Emission Credit rulemaking. In general, EMSI supports the TCEQ's approach of allowing emission reductions at area and mobile sources to be eligible as generator categories within the Emission Banking and Trading rules.

EMSI provides fugitive emission monitoring services to a wide variety of industries including refining, chemical, transmission, and oil and gas, amongst others. Our clients are often interested in utilizing new fugitive emission monitoring practices and technologies to reduce emissions. For example, some clients would like to implement Optical Gas Imaging technology, such as infrared monitoring cameras, at existing sites as part of an enhanced fugitive monitoring program. By doing so, these companies could potentially "see" any resulting leaks at a higher frequency than what would normally occur at sites using more traditional fugitive monitoring programs and technology, such as Method 21 monitoring, or at other sites which would not otherwise require a fugitive monitoring program. By "seeing" leaks more often, the companies would then be able to repair them at a faster rate.

There are other technologies and hardware, such as installing Low Emission (Low E) valves, which could also reduce emissions.

EMSI would suggest companies that install or implement these types of additional measures not be discounted simply because they do not have a CEMS

or PEMS to measure such reductions before or afterward. Emissions from fugitive sources are based on measured values, correlation equations and/or sampling analysis, and the resulting quantity of emissions that exist and which could be reduced is then based on best engineering estimates. There is no opportunity to have a CEMS or PEMS evaluate these types of emissions. Applying a discount to these types of projects would reduce the economic incentive for implementing them.

Thank you again for your consideration. EMSI would invite the opportunity for additional discussion. Please feel free to contact me at matthew.gobert@emsi-air.com, or (832) 454-5663 should you have any questions.

Sincerely,

Matthew Gobert

Vice President

EMSI

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August 12th, 2016

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Re: Informal comments on the Emissions Banking and Trading (EBT) rules in 30 Texas Administrative Code Chapter 101, Subchapter H, Divisions 1 and 4.

Dear Messrs. McMurrer and Hoffman:

IdleAir appreciates this opportunity to share informal comments on the Emissions Banking and Trading (EBT) rule amendments. An EBT program provides market driven solutions to implement the most cost effective emissions reduction actions. We applaud TCEQ's efforts to further develop and implement a program with diverse stakeholder involvement.

IdleAir works with truck stops across the country to install Truck Stop Electrification (TSE) systems, providing long-haul truck drivers with an alternative to overnight idling by supplying hot/cold air, electricity, TV and internet to the window of a parked truck. These systems, already approved by EPA as a SmartWay verified technology, are beneficial to stakeholders on multiple fronts because they help reduce wasted fuel and the emissions associated with rest-period idling at these locations. According to estimates by the Argonne National Laboratory, rest-period idling wastes about 1 billion gallons of diesel and results in the emission of about 55,000 tons of nitrogen oxides (NOx) released annually in the U.S., in addition to VOC and greenhouse gas emissions.[1]

Because most truck drivers idle their engines during overnight stays in order to maintain a safe and comfortable interior environment, Texas represents a large portion of rest-period idling. Hours of Service rules require all Class 8 drivers to take a stationary rest for 10 hours every day after no more than 14 hours of work (made up of no more than 11 hours of driving and a maximum of 3 hours of additional non-driving work). Since drivers are confined to a sleeper berth in the rear of the cab, they are obliged to seek interior comfort by idling their engine when alternatives to idling are not available. This dynamic creates a significant amount of unmet demand for TSE services such as IdleAir.

Idling emissions from mobile sources such as trucks and buses are similar in nature to those seen for ships and barges that create idling emissions when performing loading operations at ports across the Texas Gulf Coast. These types of emissions can be controlled in cost effective ways by using innovative approaches and technologies, such as those provided by IdleAir, and other companies.

The basic economic and environmental proposition for IdleAir is simple - 1.5 kW/hr. hotel load of HVAC centric services can offset a full gallon of typical idling diesel waste per hour. The American Carbon Registry recognizes IdleAir's approximate net GHG mitigation of approximately 20 lbs of CO_2 for every hour of IdleAir usage, a greater than 90% reduction in GHGs net of grid-related emissions used to power IdleAir.

[1] See http://www.afdc.energy.gov/uploads/publication/hdv_idling_2015.pdf. Accessed August 3, 2016.

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Even if IdleAir were using grid power generated exclusively from coal-fired combined cycle power plants, our GHG reduction would still be over 75%, compared to an idling 500 hp diesel engine. Local NOx, SOx, and $PM_{2.5}$ emissions drop more than 95% when stationary electric air conditioners replace a roaring diesel truck engine running at idle speeds. Because TSE also offsets VOC emissions on site, there are immediate reductions in ground-level ozone formation that would otherwise impact vulnerable populations living near these facilities.

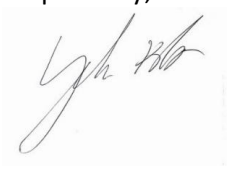
The US Department of Transportation, through the Federal Highway Administration[2], as well as EPA[3], separately rate truck stop electrification as a highly cost effective solution to mitigate criteria pollutants like NOx emissions. Texas is IdleAir's largest market and presents our largest opportunity for growth. This is due to generally hot weather, expansive interstates with heavy truck traffic, and busy border crossings. IdleAir's 15 Texas locations are responsible for roughly half of our national network utilization.

IdleAir understands and respects the TCEQ's concern for emission representations in the SIP for these types of activities, in addition to other concerns. IdleAir urges the TCEQ to approach such emission reduction projects pragmatically when determining eligibility and applying discounts. Verifiable utility records and emission estimations, and the resulting emission reductions can be well documented, and made enforceable by operator agreements and certified permit conditions to satisfy TCEQ concerns.

The EBT program, by allowing for such emission reductions to be certifiable, helps create the economic incentive needed for widespread implementation of these types of projects. Allowing Truck Stop Electrification projects to participate in the EBT program, and keeping the discount to fair and acceptable levels, will achieve a greater environmental return at a faster rate. This is especially critical in areas where improvement is needed most, since truck stops and fleet terminals tend to be located near disadvantaged communities.[4]

The EBT program represents a promising opportunity for industries to invest in low hanging fruit technologies like TSE in a manner that costs less money to achieve a greater environmental return. The trade also delivers air quality improvements where they are needed the most. We invite any opportunity for a follow-up discussion. Should you have any questions, please feel free to contact me at yale.klat@idleair.com or (646) 481-6684.

Respectfully,



Yale Klat
Director, IdleAir Government Relations

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[2] National Research Council (U.S.) Committee for the Evaluation of the Congestion Mitigation and Air Quality Improvement Program. *The Congestion Mitigation and Air Quality Improvement Program: Assessing 10 years of Experience / Committee for the Evaluation of the Congestion Mitigation and Air Quality Improvement Program*. Available at http://onlinepubs.trb.org/onlinepubs/sr/sr264.pdf. Accessed July 6, 2016.
See also. United States Department of Transportation. *Congestion Mitigation and Air Quality (CMAQ) Improvement Program - Cost Effectiveness Tables Development and Methodology.* Accessed July 13, 2016. Available at http://www.fhwa.dot.gov/environment/air_quality/cmaq/reference/cost_effectiveness_tables/report/costeffreport.pdf.

[3] Available at https://www3.epa.gov/otaq/stateresources/policy/general/420b07006.pdf. Accessed August 5, 2016.

[4] Populations within 1.5 miles of IdleAir's 15 Texas locations represent 65% more minorities and have per capita income 24% lower than the statewide average. See http://www.idleair.com/tse-environmental-justice/

From:	Jon Kiggans
To:	Daphne Mcmurrer; Guy Hoffman
Cc:	Scott Muller; Kevin Bertelsman
Subject:	FW: Area and Mobile Source Credits
Date:	Friday, August 12, 2016 6:20:47 PM

Please see revised comments below. Also please note that these comments are being submitted on behalf of JWK Consulting and Mainland and do not necessarily express the views of Sage ATC Environmental Consulting.

Jon Kiggans
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Weekly Independent Contractor Highlight

Gordon Frisbie, gordon.frisbie@sagenvironmental.com, has 26+ years' experience in conducting air dispersion modeling analyses, compiling emission inventories & preparing air quality permit applications for numerous air quality projects. He is an expert in preparing PSD/NSR air quality permit applications for a variety of industrial sources including power plants, oil & gas plants, and mining operations. His key areas of expertise are in PSD/NSR Permitting, Air Quality Dispersion Modeling, Meteorological Data Processing, Emission Inventories, Regulatory Review, Due Diligence, Title IV Acid Rain Permits, Title V Operating Permits, PBR, HAZ Air Pollutants, Oil & Gas, and Power Plants.

From: Jon Kiggans
Sent: Friday, August 12, 2016 4:16 PM
To: 'Daphne.McMurrer@tceq.texas.gov' <Daphne.McMurrer@tceq.texas.gov>; 'Guy.Hoffman@tceq.texas.gov' <Guy.Hoffman@tceq.texas.gov>
Cc: Kevin Bertelsman <kevin@mainlandstoneworks.com>
Subject: Area and Mobile Source Credits

Mainland Stoneworks, formerly Mainland Custom Marble (Mainland), is a small business located in Brazoria County. Mainland operated a marble manufacturing facility under NSR Permit No. 41682. The permit was originally issued in 1999, and it was renewed in 2010. Mainland is applying for 2.26 tons/year of VOC ERC's based on complete and permanent shutdown of the facility on December 15, 2013. Mainland initially applied for ERC's on June 6, 2013, and TCEQ denied the application on November 8, 2013, claiming that the emissions were not reported in the EI that was used in the SIP that was adopted for the HGB nonattainment area on March 10, 2010. Sage Environmental Consulting, L.P. resubmitted the application on behalf of Mainland on December 11, 2015. To date, Mainland and Sage have not received any feedback from TCEQ about the application.

Mainland respectfully submits the following comments on TCEQ's upcoming planned rulemaking.

1. TCEQ already has the authority under the existing rules to issue ERC's to area sources. Although we support TCEQ clarifying the rules to better facilitate generation of these ERC's, we urge TCEQ to immediately process applications that have already been submitted. Additionally, TCEQ has not adequately explained why amendments to the existing rules are required, as the TCEQ has SIP-approved rules authorizing ERC's from area sources. The TCEQ has issued area source ERC's under the current rules in the past.

ERC's are required for offsets in major New Source Review permitting in the ozone nonattainment areas and are inherently part of NSR. The TCEQ and federal NSR programs are mature programs with well established policies that have been thoroughly vetted and/or legally established through the US judicial system. We further urge the TCEQ to evaluate the existing TCEQ NSR policies (e.g. emission estimation methodology, potential to emit, enforceable permit limits, etc.) that could apply to ERC's approval, rather than establishing new definitions, rules, and policies through ERC rule amendments.

2. TCEQ should use a 10 year, not five, lookback period to establish baseline emissions. This approach would be consistent with NSR.

3. TCEQ should not utilize front-end discounting. Back-end discounting already exists due to greater than 1:1 offsets required for NSR permitting. Furthermore, all methods of establishing permit limits and demonstrating compliance should be treated equally. For sources with CEMS, the CEMS provide a concentration, but to calculate the mass emission rate, a flow rate must be estimated because flow meters usually do not exist with CEMS. Also, stack testing is just a snapshot in time. AP-42 factors are accepted methods of establishing permit limits and demonstrating compliance. ALL emissions are estimated using best available data and engineering judgement. If TCEQ insists on front-end discounting, a more appropriate value is 5-10%, not 20-30%.

4. TCEQ issued ERC's to two of Mainland's former, and much larger, competitors. Denial of ERC's to Mainland constitutes discrimination against a small business. Leaders of the great state of Texas would certainly frown on such a practice.

5. TCEQ claimed in the November 8, 2013 denial letter that Mainland's emissions were not included in the 2006 EI that was used to establish the SIP that was adopted on March 10, 2010. Mainland's emissions were less than 10 tons/year, so they were not required to report them in an EI. It was TCEQ's sole responsibility to accurately report the HGB area emissions to establish the SIP, and we believe that Mainland's emissions were included in either the architectural coatings or surface coating category. Both of these categories had large amounts of emissions, specifically 31.24 and 22.81 tpd. Surely TCEQ would not include miniscule sources like pesticide use and traffic marking and neglect permitted industrial sources. The NSR permit program is part of the Texas SIP.

6. If TCEQ is going to exclude certain area sources from the ERC program, they should, at a minimum, allow them for area sources that operated under an NSR permit.

7. Mainland does not meet any of the criteria listed on pages 13-14 of the presentation that Donna Huff presented to the stakeholder group in Austin on July 25, 2016.

Thank you for this opportunity to provide comments prior to the planned proposed rulemaking. We look forward to continuing our participation in this program that is extremely important to the state of Texas and business that provide jobs in this great state.

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From:	Jenny Narvaez
To:	Guy Hoffman; Daphne Mcmurrer
Subject:	FW: Area and Mobile Source Credits
Date:	Sunday, August 14, 2016 8:52:15 AM
Attachments:	image001.png image002.png image003.png image004.jpg image005.png image006.png
Importance:	High

Guy and Daphne,

I looks like this email got hung up in my outbox on Friday. Please confirm your receipt of this email.

Thanks,
Jenny

From: Jenny Narvaez
Sent: Friday, August 12, 2016 4:49 PM
To: Guy Hoffman <guy.hoffman@tceq.texas.gov>
Subject: Area and Mobile Source Credits

Guy,

The North Central Texas Council of Governments (NCTCOG) appreciates the opportunity to provide feedback on the information provided at the July 21st, 2016 meeting to seek input for consideration during upcoming revisions to the Emissions Banking and Trading rules in 30 Texas Administrative Code Chapter 101, Subchapter H, Divisions 1 and 4. Below please find NCTCOG staff's comments:

Overall:

1. Has TCEQ conducted a national review on this type of program, and if so, what results have been found?
2. NCTCOG requests clarification that the banking and trading of emissions may only be conducted within the same nonattainment area (i.e. Dallas-Fort Worth cannot purchase emission credits from Houston).
3. NCTCOG wishes to be involved and collaborate with TCEQ for the development of any such program.
4. Recommend historical adjusted emission be based on either the immediate two consecutive preceding years or all five preceding years. Allowing any two years to be selected as the basis opens the door for the highest two years to be chosen, thus inflating the historical emissions and opening the door for over-projecting emissions reductions.

Non-road:

1. There could be great value in developing a banking and trading program for non-road sources to help incentivize "early action" for non-road sector sources. NCTCOG recommends before establishing a program for this sector, a statewide registration program

should be created. Similar to the calculation of emissions using the Texas on-road registration program, the non-road version will allow baseline emissions to be developed ensuring credits are set at the appropriate levels during program design.

On-road:

1. NCTCOG recommends modifying or enhancing existing on-road programs before creating this new banking and trading initiative to further reduce emissions. Examples include, but are not limited to: expanding I/M to encompass light-duty diesel vehicles, or eliminating clean scan emissions inspections by updating software to abort test if the VIN manually entered does not match the VIN read by the analyzer.

Thanks,
Jenny

Jenny Narvaez | Principal Air Quality Planner
North Central Texas Council of Governments
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NCTCOGtrans

From:	Kenneth Gathright
To:	Daphne Mcmurrer; Guy Hoffman
Cc:	Leah Oberlin
Subject:	Port of Houston Authority comments on the Area and Mobile Source Credits potential rulemaking
Date:	Friday, August 12, 2016 5:16:43 PM
Attachments:	image001.png

The Port of Houston Authority (PHA) offers the following comments on the proposed rulemaking. The majority of the comments will be a list of possible credit generation projects that PHA or our tenants have done in the past or potentially could do in the future.

However, before we list the projects, we have two comments on the overall proposed strategy.

- Credits must be surplus to the SIP emissions - Some future PHA equipment/vehicle replacement projects could be done with the VW Partial Consent Decree funds. Will emission reductions that result from projects funded by the VW settlement be considered surplus? PHA asks this question since the VW settlement was done to make up for emissions reductions that did not occur. Also, PHA plans to set up a SEP in the future. Will PHA projects that use SEP funds be eligible for mobile emission reduction credits?

- Credits will not be issued to mobile sources that do not operate mostly with the nonattainment area – One possible future project could be providing shorepower to ocean going vessels however these vessels do not spend the majority of the time in the HGB nonattainment area. PHA recommends that TCEQ clarify this restriction for projects like this one.

What follows are projects that PHA or its tenants have done in the past or will possibly do in the future

- Replacing old equipment/vehicles with newer less emitting equipment/vehicles.
  - However, if the replacement is electric powered will emissions from the power plant providing the electricity have to be considered.

- Moving containers by barge instead of truck from PHA terminal. For instance, instead of a 100 trucks picking up 100 containers from the Bayport Container terminal and taking it to a warehouse in Baytown; the containers would instead be placed on a barge and shipped over to a barge terminal near the warehouse.
  - In this case it is assumed the credit would be based on the avoided truck emissions with the emissions from the boat pushing the barge plus the crane/container handler (that moves the containers onto and off the barge) subtracted out. The boat emissions and the crane/container handler emissions will be known, however, how do you account for the avoided truck emissions? Do you just use the emission standard from the average model year of the trucks that visit PHA?

- Improvements to the truck gates at PHA container terminals. PHA has recently made improvement to our container terminals that result in less idling. For instance at our Bayport terminal we are using Optical Character Recognition (OCR) at two of the four gates. This means that at those gates, the trucks no longer have to stop where a clerk on the ground types all the information into a handheld. Now they just proceed through these gates and the OCR collects all the required data. It is expected that a credit can be generated by the idling that no longer occurs. PHA will be implementing a truck registry soon which means we will know the model year of each truck that visits the terminal but the

amount of idling will be from estimates from our gate operations staff.

- Double tracking at a rail bottleneck – There is a future project that will build another rail track so that trains will not have to idle several hours. Currently, there is a location where only a single track goes under a road which has created a bottle neck for rail traffic near the ship channel. This means trains have to idle several hours before the rail is clear. When the second track is built at this location, then the idling will not occur or be a lot less. The credit would occur from the reduced or eliminated idling emissions. However, the amount of idling would be based on estimates from the industry and details on the actual locomotives will not be known (unless a system was set up to report that information.)

Thanks for this opportunity to provide feedback and please contact me at kgathright@poha.com or 713-670-2690.

Ken

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SAGE ATC
ENVIRONMENTAL CONSULTING

INFORMAL COMMENTS

DATE: **August 12, 2016**

TO: **Daphne McMurrer and Guy Hoffman – TCEQ Air Quality Planning**

FROM: **Sage ATC Environmental Consulting, LLC.**

RE: **Proposed Rules for Area and Mobile Source Credits**

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

In general, Sage believes that ERCs are a vital component to the long term economic and environmental prosperity of Texas and that current rules regarding area and mobile source credit generation are sufficient. We respect the TCEQ mandate that to meet federal requirements, ERCs must be surplus, real, quantifiable, permanent, and enforceable. However, if ERC generation is desirable to a growing economy and environmental improvement, we contend that once these elements are met, TCEQ policy should be aimed at aggressively issuing ERC certificates.

Sage proposes that area source ERC applications submitted under the current rules be processed by TCEQ without further delay.

Promoting Industry and Environmental Progress in Texas

Houston and the surrounding area is a global leader in the petrochemical sector. Houston remains one of the most desirable locations for major petrochemical plant development and job creation on a global level due to its extensive infrastructure benefits.

However, environmental permitting uncertainty created by the availability of ERCs is limiting petrochemical expansion and job creation in the Greater Houston ozone non-attainment area requiring emission offsets and ERCs. Major, new industrial expansion, and high-paying jobs, will continue to go to Louisiana and elsewhere globally until TCEQ makes progress toward greater ERC liquidity.

In addition to economic benefits created by industrial expansion, more robust ERC policies would incentivize industry to invest in and develop new control technologies. This will drive innovation and could result in break through control technologies being developed. These voluntary reductions that go beyond any state, federal, or local regulation will improve overall

air quality and help to drive non-attainment areas into compliance with current and future NAAQS. With emissions offsets ratios currently at 1.3 to 1, an additional 30% improvement in the airshed is realized with each ERC transaction.

There is no other program that aligns the goals of economic interests and environmental concerns better than ERCs.

Processing Area Source Applications under Current Rules and SIP Year

Current EBT rules allow for generation of ERCs from Area and Mobile Sources. However, TCEQ has stated that they will not process any area source applications under existing rules. Effectively, this means there are area source applications that have been submitted to TCEQ within the appropriate timeline, which are based on a permanent and enforceable reduction in real emissions that have quantified using verifiable data and accepted methodologies and are surplus to the area source representation in the 2006 SIP attainment demonstration, which TCEQ is failing to process.

Additionally, TCEQ has not offered any guidance or indication as to the status of currently submitted area source ERC applications. In the best case scenario, it would seem that the area source ERCs currently submitted to TCEQ would be grandfathered and processed. However, these ERCs would still be at risk of being devalued or expiring before they can be used due TCEQ's delay in processing the application. However it now seems TCEQ will deny these applications even though they were submitted in compliance with existing rules.

The 2014 SIP attainment demonstration (AD) is another factor potentially limiting ERC generation. The timeline that TCEQ has provided for the finalization EBT rules means that it will be improbable that area and mobile source applications will begin to be processed prior to the 2014 SIP AD. Requiring area sources to be processed under the 2014 SIP AD will mean the loss of thousands of tons of potential ERCs from the Oil and Gas sector alone.

The timing for both rulemaking and the 2014 SIP AD, in combination with TCEQ's decision not to process area and mobile sources under the current rules, will result in a de facto determination that no area or mobile sources can be processed under the 2006 SIP year.

Sage proposes that area source applications be processed under the current rules on a "first come, first serve" basis for any applications submitted prior to the 2014 SIP AD.

Allowing companies to claim some of their current ERC potential under the existing rules will allow for an increase in available ERCs in the current market. The ERCs generated from area sources could even be discounted under the proposed strategies that the TCEQ working group is attempting to establish. Any application submitted after the 2014 SIP AD would be still be subject to the new SIP year and the new area source rules.

Proposed Discounts for Area and Mobile Sources

It is important to consider that placing limits on ERC generation beyond the criteria of being real, surplus, quantifiable, permanent, and enforceable may have an adverse impact on both NNSR permitting and industrial expansion. The availability of ERCs must be great enough to offset both the potential emissions created by industrial expansion and the offset ratio of 1.3 to 1. Since the HGB area is already facing a scarcity of ERC availability, this problem could be greatly compounded by discounts being proposed by TCEQ.

We understand TCEQ's preference to use to best available technology and methodology to quantify emissions. However, some of these sites have no requirement to install continuous emissions monitoring systems and do not wish to invest capital to do so voluntarily when alternative methodology is available to accurately quantify these emissions for a much lower cost. The discounts being described here are aimed at discouraging the use of calculation methodologies that have been widely accepted for many years. While it is understandable to make allowance for the uncertainty of using some of these methods, a 30% maximum discount seems unnecessarily severe.

Additionally, the 20% discount for the shutdown of area source sites makes shutting down an O&G production facility unattractive. By discouraging area source shutdowns, TCEQ could reduce incentives for innovation and compound the existing problem of ensuring that wells are properly plugged and abandoned.

Sage proposes using a 5% overall reduction for quality of data concerns to ensure that the reductions from area and mobile sources are quantifiable, permanent, and enforceable; in addition to 5% discount for area source shutdowns to ensure that reductions are real and surplus.

Proposed 5 Year Baseline Period

TCEQ is proposing that ERCs use a 5 year look back period, citing that the emissions will be more representative of activity for recent years. However, NSR uses a 10 year look back for this exact reason. A ten year window allows companies to account for a full business cycle instead of being stuck with the emissions report in the years immediately preceding the project or reduction which may be unusually high or low. This concept is at the heart of NSR policy and EBT rules should be consistent.

Sage applied a 5 year baseline to previously submitted point source applications from O&G sites to determine the impact of this policy. On average, 22% of the pre-discounted ERCs (i.e. the amount of ERCs prior to the application of discounts due to quality of data or area source shutdown) were lost per application for oil and gas production sites. While there were some sites that did not lose any of their ERC value in a 5 year look back, other sites lost as much 84% of pre-discounted ERCs. While this data does come from a limited number of O&G production sites, it is clear that a 5 year baseline period will have a range effects on different sites and will serve as an additional discount to ERC generation that may further discourage ERC generation.

If TCEQ believes that the discounting of area and mobile source credits is necessary to ensure that the reductions meet the criteria for ERC generation, then Sage proposes that these discounts be consistent with NSR policy and not left to the mercy of economic cycles.

Elastic vs. Inelastic Source

TCEQ has previously expressed concerns about processing area source applications for inelastic sources. These are sources such as gas stations and dry cleaners that if shut down could easily be restarted somewhere in the immediate area to meet demand. In addition, these sources are represented in SIP using calculation methodology based on population density, making them very difficult to quantify.

However, oil and gas sites are not based on population density but are calculated using the same methodology that applies to similar point source sites. These sites are also required to submit the data regarding installed control technology or the well plugging report to demonstrate that these sites will not be put back into operation. Since these area source sites meet the criteria of being real, surplus, permanent, quantifiable, and enforceable, and since this is the only criteria that ERC generation eligibility should be judged, these sites should be considered for ERC generation.

Area sources with quantifiable calculation methodology, such as oil and gas sites, should be eligible for ERCs.

ERC Approval vs. Capital Investment Timing

On serval applications, TCEQ has denied requests for a completeness determination prior to the ERC generator's investment of capital to implement emission reduction strategies. These applications have taken the strategy of resolving technical and administrative issues first and requesting that the installation of control device or plugging of the well and verification of that action be the final steps taken on an ERC application.

The emission reduction strategy being implemented at these sites are voluntary and in some cases are being done for the sole purpose of generating ERCs. Equipment removal, well plugging and/or potential site reclamation are material capital costs for small O&G companies with irreversible long-term implications; some companies cannot risk cost of emission reduction with no certainty from TCEQ.

While it is perfect reasonable that TCEQ not issue credits prior to the finalization of the reduction strategy nor conditionally approve applications that do not meet the requirements for ERC generation, TCEQ Air Permits Division has a similar precedent and deems an application "technically complete" prior to final public notice. The TCEQ EBT group could similarly state all technical review has been completed, and giving a completeness determination of a known ERC amount as a good faith effort to encourage the installation of control devices closure of these wells.

Sage is proposing that TCEQ offer a completeness determination to companies whose ERC applications are technically and administratively complete pending the installation of a control device or the plugging of a well.

Sage understands that these are complex issues that will affect public policy as well as economic and environmental interests for many years to come. We appreciate the effort that TCEQ has put into addressing these issues and working toward a solution. We also appreciate the opportunity to submit these comments and would welcome the opportunity for further discussion.

TEXAS ASSOCIATION OF BUSINESS

PRO–BUSINESS • PRO–TEXAS
FOR OVER 75 YEARS

August 12, 2016

Submitted via e-mail to donna.huff@tceq.texas.gov

Ms. Donna Huff
Air Quality Planning Section Manager
Air Quality Division – MC 206
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

RE: Potential Rules for Emissions Banking and Trading and Emission Reduction Credits

Dear Ms. Huff:

TAB would like to thank both the management and staff at TCEQ for their investment of time and their willingness to work with the business stakeholders on what can be a very technical and detailed issue. We continue to have concerns about the proposal related to emission reduction credits (ERCs), but the productive coordination we have experienced gives us confidence that those concerns can be addressed in ways that are beneficial to all.

TAB has joined other associations in providing detailed comments regarding the provisions of potential rulemaking related to ERCs. We are fully supportive of those comments and their objectives and urge you to fully consider and evaluate them. We want to be sure that everyone interested in or involved in the ERC program understands how important this issue is - to businesses and local economies, to the TCEQ and to Texas state leadership. We all have a vested interest in ensuring that this works as well as possible.

We acknowledge the challenge that EPA has placed before all of us in Texas. Businesses in Texas must be able to function under whatever set of tools are finally determined by TCEQ to be available to both achieve compliance with the ozone NAAQS and maintain a viable nonattainment NSR permitting program. Ultimately, the TCEQ will be judged on the basis of how well those tools achieve the ultimate goals of a compliant design value on schedule and an economic environment that continues to meet the needs of this growing state.

At this point, the hard fact is that no one can credibly identify a comprehensive set of compliance tools that will reasonably lead to ozone compliance. Therefore, any and every viable option must be on the table and depended on to the maximum extent possible. We simply cannot afford to be too cautious and look back one day and realize that not approaching this issue more aggressively may be the reason we did not succeed.

We believe that TCEQ should be focused on what achieves the maximum benefit to Texas as far as the generation of emission reduction credits from mobile and area sources. It is far better to have EPA deny a proposed approach than never to have offered it for fear of it being rejected. We think there is a very real chance that TCEQ will be overly-conservative in its rulemaking and will leave credit opportunities on the table if it follows the path it has described in our discussions to date..

TCEQ must recognize the position of the EPA in any discussions of approval of revisions to our ERC program. We do not presume to suggest what decisions EPA will make in response to a proposed rule, but it must be acknowledged that EPA is as much in need of an effective ozone compliance plan and viable NSR permit program as are TCEQ and TAB and our business partners. We believe there is little value to EPA in adopting a more stringent ozone standard if it cannot be shown that tools exist to achieve compliance with that standard. Providing for attainment of the 2015 ozone standard while allowing for continued industrial growth in affected airsheds is essential for everyone. That is a fundamental goal of the NSR program.

Ultimately, the ERC banking program is intended to provide industry with the credits it needs when it needs them. We need to treat it that way and establish a framework that provide reasonable opportunities to generate those credits without the burden of too many caveats and qualifiers. Those provisions proposed out of concern or caution may provide comfort in dealing with uncertainties, but they may also preclude credits we simply cannot afford to lose.

We believe that much of TCEQ's concern over some provisions of this potential rule that stakeholders have supported has as much to do with the financial and resource impacts of the rule as with the technical merit. That concern is absolutely appropriate and we in no way intend to ignore the fact that the most flexible, robust and effective ERC program will take resources to operate. We believe just as strongly, however, that such a program must be designed to be as effective as possible, regardless of resource considerations. There is simply no way to credibly fight for funding of a program that is not under formal proposal and possible adoption.

Doing everything possible to get this right is critical. It does not overstate the case to suggest that TCEQ's decisions on the ERC proposal will have very real and very significant consequences for our state's future economic health. It also cannot be ignored that for every instance in which an ERC is not available in a nonattainment area to support economic development and growth, we put more pressure on existing attainment areas with the risk of moving those areas even closer to nonattainment. For these reasons and others that our business and economic development partners will echo, we encourage TCEQ to propose a reasonable, streamlined framework that clarifies how area and mobile sources can create ERCs to the maximum extent practical.

Also, please know that TAB and other business groups have been making the strongest case in the Capitol for a resolution to the funding issues at TCEQ. It is simply irrational that we continue to limit funding for the agency (often when the funds are already in the Treasury) for functions such as permitting and federal environmental compliance that are fundamentally critical to our economy, infrastructure investment and job creation. We have already begun new discussions with the leadership and appropriate legislative committees and can ensure TCEQ's management that

the ERC program is front and center as an example of how TCEQ funding directly affects the economy of this state and legislator's districts and constituents.

Again, thank you to the staff for the investment in time and energy in consideration of this proposal and of the business and industry stakeholders thoughts and concerns. Your thoughtful consideration of these and the other comments you will receive is appreciated. If you have any questions or need any additional information regarding our position in this matter, please feel free to contact me at 512.637.7707 or sminick@txbiz.org.

Sincerely,

Vice President for Government Affairs

August 12, 2016

Submitted via e-mail to daphne.mcmurrer@tceq.texas.gov; guy.hoffman@tceq.texas.gov

Daphne McMurrer
Guy Hoffman
CC: Donna Huff
Air Quality Division – MC 206
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

RE: Presentation to Emissions Banking and Trading Stakeholder Group, "Emission Banking and Trading Area and Mobile Source Credit Generation Potential Rulemaking"

Dear Ms. McMurrer and Mr. Hoffman:

The Texas Association of Business (TAB), Texas Association of Manufacturers (TAM), Texas Chemical Council (TCC), Texas Industry Project (TIP), Texas Oil and Gas Association (TXOGA), and Texas Pipeline Association (TPA), collectively, "the trades," appreciate the opportunity to provide comments on the Texas Commission on Environmental Quality's (TCEQ) draft strategy presentation for generating area and mobile source emission reduction credits (ERCs).

TAB is a broad-based, bipartisan organization representing more than 4,000 Texas employers and over 200 local chambers of commerce. As Texas' leading employer organization for more than 90 years, TAB represents some of the largest multi-national corporations as well as small businesses in almost every community in the state. TAB's mission is to make Texas the best place to do business.

TAM represents over 500 large and small companies from every manufacturing sector, employing more than 894,000 Texans with an average compensation of $79,350 a year (the highest in the private sector). Manufactured goods account for 94.6 percent of all Texas exports, and Texas has held the distinction as the number one exporting state in the United States for several consecutive years.

TCC is a statewide trade association representing over 70 chemical manufacturers operating approximately 200 Texas facilities. The Texas chemical industry has more than $75 billion in physical assets in the state and pays over $1 billion annually in state and local taxes. TCC's members provide approximately 75,000 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.

The Baker Botts Environmental Clients Group consists of 63 companies in the chemical, refining, oil and gas, oilfield services, electronics, forest products, terminal, electric power, transportation and national defense industries with operations in Texas. The group leverages its members' collective voice under the name Texas Industry Project (TIP).

TXOGA is a non-profit corporation representing the interests of the oil and natural gas industry in the State of Texas. Founded in 1919 and currently representing more than 5,000 members, TXOGA is the largest and oldest petroleum organization in Texas. The membership of TXOGA produces in excess of 90 percent of Texas' crude oil and natural gas, operates nearly 100 percent of the state's refining capacity and is responsible for the vast majority of the state's pipelines. The oil and natural gas industry not only produces the products we use every day; it anchors our state's economy. In 2015 Texas' oil and natural gas industry paid $13.8 billion in taxes and royalties that directly fund our schools, roads and emergency services.

TPA is an organization composed of over 45 members who gather, process, treat, and transport natural gas and hazardous liquids materials through intrastate pipelines in Texas. TPA member companies operate in the loosely-defined "midstream" industry. As such its member companies own and operate facilities in the gathering and boosting, processing, compression/transmission, pipeline, natural gas storage, and liquefied natural gas storage.

GENERAL COMMENTS

- While we believe the TCEQ has the present ability to issue such ERCs and has, indeed done so in the past, we, the groups listed above, support clarifying the current rules on area and mobile source ERCs to better facilitate the generation of these types of ERCs. New sources of ERCs are key to ensuring continued growth in nonattainment areas, especially in view of the new, more stringent 2015 ozone standard. The high costs and limited quantities of ERCs presently available are constraining business development and are directly contributing to decisions to locate and expand facilities in locations outside of Texas.

- As TCEQ works to develop these frameworks, we encourage TCEQ to continue to work with the regulated community, EPA, and other interested parties on key issues that will affect the viability of the programs. That being said, we encourage TCEQ to work as

quickly as possible to flesh out these programs. A March 2017 proposal date and August 2017 adoption date leaves the regulated community—and those who would generate area and mobile source ERCs—in continued limbo for another year.

- We ask that TCEQ expedite this rulemaking so that we have final rules in place more quickly. The regulated community has been seeking clarification on these issues since before TCEQ revised the Chapter 101 ERC rules in June 2015. We thought that we would have area and mobile source program clarifications in place by this summer at the latest—yet now we are hearing that there will not even be a draft rule proposal for another eight months. There are area source applications that are in-house now at TCEQ that are simply not being worked by staff. We find this very troubling and encourage TCEQ to find a way to move forward so that needed ERCs can be generated and used prior to the end of 2017. This issue is too important to have such a long drawn out timeline.

- EPA requires that ERCs must be quantifiable, surplus, enforceable, real, and permanent. TCEQ is considering a number of restrictions in order to ensure that these conditions are satisfied. We ask that TCEQ propose and, ultimately, adopt only those restrictions that are necessary and that the agency not adopt multiple layers of "insurance" that may have unintended consequences for the generation of area and mobile source ERCs.

- It is important to ensure that the area and mobile source ERC frameworks actually result in credits that can be utilized by point sources as offsets. Too many restrictions and too much discounting to address uncertainties could result in programs that do not achieve their goals. We want to be sure that TCEQ creates frameworks that encourage innovation and the generation of ERCs—not programs that are on the books but never used because the paperwork required and the costs involved outweigh the benefits.

    - This a real concern for the regulated community because of the investment that will be needed to create viable area and mobile source ERCs and the participation that will be needed by smaller companies.

    - If managed properly, these programs have the potential to provide an economic benefit to smaller businesses while helping Texas nonattainment areas attain the ozone standard at the same time. This seems like an outcome that Texas should want to encourage, not discourage.

- Other jurisdictions, including Louisiana's Department of Environmental Quality (LDEQ) and California's South Coast Air Management District, (SCAQMD) are considering similar programs.

    - We understand that LDEQ is developing a straightforward program that does not utilize the concept of discounting. The program is intended to create maximum flexibility with minimal programmatic restrictions, while satisfying federal requirements for offset generation and emissions banking programs. A simple Louisiana program that maximizes the generation of ERCs contrasted with an overly-restrictive Texas program would create a substantial business competitive advantage for both users and generators in Louisiana.

- We are aware that SCAQMD recently released its 2016 Air Quality Management Plan, a regional blueprint for achieving compliance with applicable ozone and PM 2.5 NAAQS. The Plan contains many innovative incentive-based approaches, including on- and off-road ERC programs. Yet SCAQMD is not interpreting "surplus" as restrictively as TCEQ, nor is it proposing to discount the credibility of its attainment demonstration programs based on the presence or absence of CEMS. To the contrary, SCAQMD is proposing that the majority of the innovative control measures in its Plan be given a rule effectiveness credit of 100% in the SIP, based on planned and existing compliance tools. That certainly seems to support our position that discounting based on whether an area source has CEMS data is not necessary.

- We encourage TCEQ to review and consider how these and other jurisdictions are satisfying EPA's "quantifiable, surplus, enforceable, and permanent" requirements as there may be useful insights and ideas which could be helpful in refining the Texas proposal. All states are subject to the same Federal Nonattainment New Source Review permitting program requirements, as well as the same SIP demonstration criteria. Thus, the elements of what is needed to satisfy EPA's requirements for approvable emissions banking programs and the creation of offsets—especially as to "real" and "surplus"—should be the same across jurisdictions.

SPECIFIC REMARKS ON DRAFT STRATEGY PRESENTATION

Prohibited Source Categories

- TCEQ has developed an extensive list of area and mobile sources that would not be eligible to generate ERCs, especially from shutdowns. While there may be source categories that TCEQ feels are not appropriate for area or mobile source ERC generation today, blanket prohibitions may well result in Texas programs that are unnecessarily restrictive five or ten years down the road. We urge TCEQ to include rule language that will allow for "prohibited" mobile or area source ERC generation categories to be removed from the list without the delay associated with the SIP approval process, if EPA approves the category as one that can create "quantifiable, surplus, enforceable, and permanent" reductions in another jurisdiction.

Restrictions on ERC Generation and Use

- The requirements for generating and using NNSR emission offsets are well established—after all, NNSR permitting is a federal program with a long history. Emissions banking and credit programs simply create the mechanisms to "store" those emission reductions until needed for future growth and to allow for companies to trade amongst themselves for mutual benefit.

- TCEQ should not attempt to impose more stringent requirements on offset generation and use through its EBT rules in the name of "SIP integrity." Under NSR reform, the highest two years out of ten are used to determine the historical adjusted baseline emissions. Emission reductions from that baseline can be used for internal netting purposes or traded

as offsets per federal law. The current Chapter 101 EBT rules are consistent with NSR reform and allow credits to be banked for up to ten years. We believe this is the right baseline to use—not two out of five (a more restrictive limitation) as presented by TCEQ at its public meetings. A five year baseline will have the result of removing credits from the market that would otherwise be allowed to be used as offsets under federal law.

- When developing the current Chapter 101 emissions and banking rules, TCEQ added program elements, such as a deadline for application submissions, which are not required by EPA. These elements, in turn, have been stringently applied and used on a "bright line" basis to deny the generation of otherwise eligible ERCs—further restricting an already very tight market. Adding a shorter usage restriction goes against the goal of creating more offsets for the marketplace.

- We understand that TCEQ is concerned that area source reductions that occur outside the SIP cycle used for a particular attainment demonstration may be used for EBT. We understand further that one reason TCEQ is suggesting a five year baseline is because they believe that there are some area sources with a natural decline in production such that a ten year look-back would not result in near-term real reductions. We feel these concerns are overrated and that other aspects of this proposal already address "SIP integrity" concerns. As an initial matter, EPA's programs already envision that reductions that occur outside of a SIP cycle can be used for offsets. TCEQ does not need to establish more stringent requirements to satisfy EPA. Using a "one size fits all" two out of five years means ignoring business cycles for industries that are the same as point sources, except for size. For example, activity in the midstream natural gas industry is somewhat driven by production levels but there are many other factors that are much more cyclical in nature, such as weather cycles, customer demands, and market pricing. Coating operations are another example of an industry with cyclical business cycles (in part dependent on other industries' business cycles) that would make a five year look back overly putative.

- In fact, we urge TCEQ to add more flexibility to the rules we currently have and to interpret the current rules less prescriptively. Given the current market limitations, TCEQ should be liberally interpreting its "state-only" application due date submission deadline—especially when the rules are ambiguous as to when the "start date" for submission of an application even begins. Yet TCEQ continues with rule interpretations that result in severe results for what is deemed to be a missed deadline—in this case, documented emission reductions now rendered worthless and unavailable for future growth in Texas. We need more flexibility until new sources of ERCs become available through the improved mobile and area source frameworks and more flexibility—not less—in this rulemaking.

Discounts

- It is important to remember that there is always "back end" discounting when ERCs are used since NNSR permitting requires offsets at a greater than 1:1 ratio. Those reductions may occur to "benefit the environment" rather than ensure SIP integrity—but they still have the same result of emissions being removed from the airshed.

- Here, TCEQ is proposing is to add "front end" discounting for mobile and area source ERCs in addition to the inherent "back end" discounting already found in the NNSR rules to account for uncertainty about these emission sources and their inclusion in the emissions inventory.

- We can support a small discount of the overall baseline year emissions inventory for the area and mobile source categories to address TCEQ's uncertainty concerns. We do not anticipate that the majority of area source, on-road mobile, or non-road mobile emissions in the current SIP inventory or the likely 2015 NAAQS baseline inventory would be utilized for the generation of ERCs. Based on our review of historical point source inventory data and growth, there are limitations on demand in any given SIP cycle.

    - However, it is difficult to predict the future and we have concerns about imposing a large discount—potentially as much as 30%—to the overall inventory by rule, especially since emissions inventory data for area sources is likely to greatly improve in future SIP cycles.

    - We think 5% is a more appropriate airshed reduction for this rule.

- We agree with the idea of determining ERCs on a first-come, first-serve basis.

- We have significant concerns regarding TCEQ's proposal to add additional levels of discounting on a source-specific basis. Excessive discounting increases the risk that, at the end of the day, the area and mobile source ERC programs will fail because the effort it will take to apply for an ERC will be disproportionate to the amount of ERCs that can be generated from the emissions reduction project.

- TCEQ did not provide specifics on mobile source discounts so we cannot speak to those at this time.

- For individual area sources, TCEQ is proposing multiple discounts of up to 30% overall, including a discount of up to 20% depending on the quality of the data used to calculate the emissions reduction. Discounts start from the premise that only CEMs data is properly quantifiable (and that discounting may be appropriate even with CEMs). Area sources are, by their nature, small sources of less than 10 tons per year. Few, if any, area sources will have continuous emission monitoring systems.

    - If source- or industry-specific data or AP-42 factors are utilized by TCEQ for stationary source permitting and/or emissions inventory purposes, they should be also appropriate for area source ERC generation.

    - We disagree that a data quality discount is needed to ensure that a specific area source emission reduction is "quantifiable, permanent, and enforceable."

    - TCEQ has already proposed that inelastic sources would be ineligible for the EBT program. Given that, additional discounting to address "population growth" (on the theory that emissions shifting is inevitable for all area source ERCs) is

inappropriate and putative. Population growth does not equal emissions shifting and has never been considered as an impact in the current ERC program.

- We also disagree that a 20% discount is appropriate for individual area sources that are shut down, rather than controlled. This is a very large discount, especially when considered alongside the two airshed discounts and TCEQ's proposed data quality discount. Discouraging shutdowns by making an area source ERC generation program unattractive could result in higher airshed emissions and reduce incentives for innovation. Not all sources lend themselves to controls. If TCEQ is already prohibiting inelastic source categories from participating in the program, large discounts for shutdowns are not necessary to ensure that reductions are "permanent."

- Any discounting should be demonstrated to be necessary and should be the minimum needed to satisfy programmatic concerns.

    - We think, at most a 5% discount for the overall area and mobile source inventory is appropriate, along with a 5% discount for area sources that are shut down rather than controlled. No discounts should be charged for data quality reasons if the data is the same that would be accepted for a point source. And no discounts should be charged simply because the nonattainment area might experience population growth in the future.

Program Mechanics

- We support the use of the APD-CERT form or similar as a means of documenting area and mobile source reductions. TCEQ will need documentation that reductions have been made, and without a streamlined mechanism, delays and unnecessary man-hours could be spent just on this aspect of the program. Utilizing existing documentation mechanisms should reduce agency and company resources.

- We also support the creation of an expedited mechanism to claim area and mobile source ERCs. TCEQ currently spends many months processing point-source EBT applications, much of it assessing emissions on a FIN-by-FIN basis (a state program requirement, not part of the federal rules). For an area and mobile source ERC program to be successful, there must be a way for TCEQ to process many small quantity applications in a timely manner (similar to PBR processing).

- Most TCEQ rulemakings are accompanied by guidance documents, which help explain program nuances and can be updated over time as the programs evolve. Rather than attempt to address every contingency in this rulemaking, TCEQ should focus on addressing key elements (the ones for which it felt a rulemaking was necessary rather than relying on current rules) and plan to issue guidance. This will help ensure that the Texas program can be adjusted if/when other states receive EPA approval for similar programs as well as help

Texas address changes in SIP cycle data without having to resubmit rules to EPA for approval.

Oil and Gas Area Sources

- Finally, we believe that it is vitally important to allow the generation of area and mobile source ERCs from the air contaminant-emitting sources that actually exist in the airshed and from which real reductions can be made. In the Houston-Galveston-Brazoria county nonattainment area, for example, that means allowing the shut down and removal of oil and gas equipment such as storage tanks, separators, and treaters to be used to generate ERCs. Emissions from this equipment are real and the reductions can be quantified using the same factors that are used for permitting point source oil and gas operations. Concerns about activity shifting are not practical because any future oil and gas development in the airshed will be subject to stringent new source performance standards. This should address agency concerns on "permanence" in the same manner that any future construction projects for other air-emitting activities in the airshed are addressed.

We look forward to working with TCEQ on these issues and appreciate the opportunity to provide comments on this important issue.

Sincerely,

Steven Minick
Texas Association of Business

Stephanie S. Simpson
Texas Association of Manufacturers

Martha K. Landwehr
Texas Chemical Council

Jennifer Keane
Texas Industry Project

Cory Pomeroy
Texas Oil & Gas Association

Thure Cannon
Texas Pipeline Association

SWANA
SOLID WASTE ASSOCIATION OF NORTH AMERICA
The Lone Star

August 12, 2016

Via Electronic Transmission
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TCEQ Air Quality Planning, MC-206
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Re: MERC Informal Comments

Dear Ms. McMurrer and Mr. Hoffman:

The Texas Chapter of the Solid Waste Association of North America (TXSWANA) applauds the TCEQ's initiative to establish a workable protocol for the certification and sale of mobile emission reduction credits (MERCs). We think it is an excellent idea that can have a positive impact on improving air quality in Texas.

We will be providing information and comments regarding our inventory of on road and off road vehicles to assist the TCEQ in this effort.

Sincerely,

Ellen Smyth, President
TXSWANA Board of Directors

cc: TXSWANA Board of Directors
Mr. Paul Gosselink
Mr. Jeff Reed

Western Refining

WNR LISTED NYSE

August 12, 2016

Daphne McMurrer
Guy Hoffman
Air Quality Planning Section Manager
Air Quality Division - MC-206
Texas Commission on Environmental Quality
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Submitted by email to: daphne.mcmurrer@tceq.texas.gov; guy.hoffman@tceq.texas.gov

Re: **Presentation to Emissions Banking and Trading Stakeholder Group, "Emission Banking and Trading Area and Mobile Source Credit Generation Potential Rulemaking"**

Dear Ms. McMurrer and Mr. Hoffman:

Western Refining, Inc. ("Western") respectfully submits these comments regarding the Texas Commission on Environmental Quality (TCEQ) presentation to the emissions banking and trading stakeholder group, "Emission Banking and Trading Area and Mobile Source Credit Generation Potential Rulemaking". EPA lowered the ozone standard from 75 ppb to 70 ppb in October 2015. This lowering of the ozone standard results in the potential for El Paso County to be designated as nonattainment and thus major projects in El Paso County for nitrogen oxide (NOx) or volatile organic compound (VOC) emissions will need access to a viable credits market. We appreciate the opportunity to provide comments on this critical step towards implementing the 2015 ozone standard in El Paso County and supporting the economic growth and vitality of the region.

Western is an independent crude oil refiner and marketer of refined products, headquartered in El Paso, Texas. Western owns and operates three refineries, located in or near each of El Paso, Texas; Gallup, New Mexico, and St. Paul Park, Minnesota, with a combined capacity of 253,800 barrels per day. The wholesale segment includes a fleet of crude oil and finished product truck transports plus wholesale petroleum products operations in several states throughout the United States. The retail segment includes retail service stations and convenience stores in Arizona, Colorado, Minnesota, New Mexico, Texas and Wisconsin operating primarily through the Giant, Howdy's, and SuperAmerica brands. Western Refining, Inc. also owns the general partner and approximately 65% of the limited partnership interest of Western Refining Logistics, LP.

In El Paso County, Western's business and operations provide a substantial positive impact. Western has approximately 500 employees in the El Paso area, in the refinery and company offices. Our average wage for these employees is one of the highest average wages in El Paso. We employ a number of contractors in addition to company

employees. And we operate more than 25 retail gasoline stations with convenience stores in El Paso, providing additional employment. We are the largest property tax payer in the county. Western donates approximately $1,000,000 annually to local non-profit, charitable organizations; our charitable donations include scholarships and donations to nearby schools, among other things, and we are the largest contributor to the United Way of El Paso.

Western Refining supports and adopts the comments submitted jointly by several trade associations including associations to which Western belongs, namely Texas Industry Project (TIP), Texas Association of Manufacturers (TAM), and Texas Oil & Gas Association (TXOGA). Western provides this letter to supplement those comments with information about the critical importance of this potential rulemaking to El Paso County in particular and to emphasize a few key points made by the trade associations, of particular importance to El Paso County.

El Paso County has an ozone design value hovering at or near the threshold for a potential nonattainment designation when the EPA makes the final designations for the 2015 ozone standard, anticipated in October 2017. Just this week, on August 8, the UTEP monitor in El Paso County measured 78 ppb, resulting in an apparent design value of 71 ppb for the County, based on the years 2014 through 2016. Thus, El Paso County may be designated as nonattainment and major projects for NOx and/or VOC compounds may require offsets in a ratio of 1 to 1.1.

Finding offsets needed to support the economic growth and vitality of El Paso County will be challenging at best. The county simply has few potential sources of point source emission credits. For all practical purposes, we anticipate a likely scenario that point source credits will not be generated and traded, and any credits generated for trade will need to come from area and mobile sources exclusively. The emissions inventory indicates well over 90 percent of VOC emissions and approximately 85 percent of NOx emissions result from area and mobile sources. The emissions banking and trading (EBT) potential rulemaking would support an equitable structure to issue credits from area and mobile sources, which will be critically needed in the future in a nonattainment scenario.

Western Refining emphasizes the following points from the trade association comments, points that will be critical for El Paso County, should it be designated nonattainment:

- We encourage TCEQ to expedite the rulemaking to the extent practical. While mobile and area source credits will not be needed in El Paso County until at least October 2017, should a final nonattainment designation be made at that time, companies need the certainty of seeing a formal program with appropriate rulemaking well in advance of that timing to support business planning and regulatory certainty.

- We encourage TCEQ to ensure that the Texas program does not contain unnecessary and overly restrictive elements. For example, TCEQ should limit discounting as much as possible and avoid piling discounts onto discounts. Additionally, TCEQ should use the ten year baseline instead of five, for the reasons articulated in the trade association letter. El Paso has historically been an

economically depressed area, and heavy discounts or limited baselines may discourage the economic growth much needed in the area. Similar to the Texas/Louisiana border where companies may choose to locate in Louisiana, companies considering the El Paso area may take their projects to nearby New Mexico or possibly even outside the country, to Mexico.

- We strongly support the trade associations' comment to include language in any rulemaking of TCEQ's that will allow for "prohibited" mobile or area source ERC generation categories to be removed from the list without the delay associated with the SIP approval process, if EPA approves the category as one that can create "quantifiable, surplus, enforceable, and permanent reductions in another jurisdiction". While we may not be able to see our way to certain sources of credits today, years of experience with area and mobile source credits down the road may facilitate being able to realize what we cannot see today.

Finally, Western Refining thanks TCEQ for moving forward with both the area and mobile source credit programs. In areas like El Paso, with limited point source credit availability, both the area and the mobile source programs will likely be needed to support future needs. While fewer details of mobile source credits have been discussed as of this time, we encourage TCEQ to keep this program on the same track for rulemaking as the area source program.

If you have any questions on the information contained in this email, please contact Marise Textor at 915-474-7897 or marise.textor@wnr.com.

Sincerely,

Leslie Ann Allen
Senior Vice-President, Environmental

cc: Donna Huff – donna.huff@tceq.texas.gov