

Dated: September 27, 2005.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

[FR Doc. 05-19996 Filed 10-4-05; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R06-OAR-2005-TX-0006; FRL-7980-8]

### Approval and Promulgation of Air Quality Implementation Plans; Texas; Emission Credit Banking and Trading Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Texas State Implementation Plan (SIP) concerning the Emission Credit Banking and Trading program. Additionally, EPA is proposing approval of a section of the Texas rules on Control of Air Pollution from Volatile Organic Compounds that cross-references the Emission Credit Banking and Trading program. We are also proposing approval of a subsection of Chapter 116 of the Texas Administrative Code (TAC), Control of Air Pollution by Permits for New Construction or Modification, which provides a definition referred to in the Emission Credit Banking and Trading Program.

**DATES:** Comments must be received on or before November 4, 2005.

**ADDRESSES:** Submit your comments, identified by Regional Materials in EDocket (RME) ID No. R06-OAR-2005-TX-0006, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- Agency Web site: <http://docket.epa.gov/rmepub/>. RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

- U.S. EPA Region 6 "Contact Us" Web site: <http://epa.gov/region6/r6coment.htm>. Please click on "6PD" (Multimedia) and select "Air" before submitting comments.

- E-mail: Mr. David Neleigh at [neleigh.david@epa.gov](mailto:neleigh.david@epa.gov). Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

- Fax: Mr. David Neleigh, Chief, Air Permitting Section (6PD-R), at fax number 214-665-6762.

- Mail: Mr. David Neleigh, Chief, Air Permitting Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

- Hand or Courier Delivery: Mr. David Neleigh, Chief, Air Permitting Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to RME ID No. R06-OAR-2005-TX-0006. EPA's policy is that all comments received will be included in the public file without change, and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through RME, regulations.gov, or e-mail if you believe that it is CBI or otherwise protected from disclosure. The EPA RME Web site and the Federal regulations.gov are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public file and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. Guidance on preparing comments is given in the **SUPPLEMENTARY INFORMATION** section of this document under the General Information heading.

**Docket:** All documents in the electronic docket are listed in the RME index at <http://docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, i.e., CBI or other information the

disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in the official file, which is available at the Air Permitting Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Ms. Adina Wiley, Air Permitting Section (6PD-R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-2115; fax number 214-665-6762; e-mail address [wiley.adina@epa.gov](mailto:wiley.adina@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we," "us," or "our" is used, we mean EPA.

#### Outline

##### I. Emission Credit Banking and Trading Program

A. What action is EPA proposing?

B. Summary of the Emission Credit Banking and Trading program

1. How does the ERC program work?

2. What is the history of the ERC program?

C. EPA's Analysis

1. How did EPA review and evaluate the ERC program?

2. What criteria did EPA use to analyze the ERC program?

3. What is EPA's analysis of the fundamental principle of integrity?

4. Does the ERC program the integrity of other programs?

5. What is EPA's analysis of the fundamental principle of equity?

6. What is EPA's analysis of the fundamental principle of environmental benefit?

7. What is EPA's analysis of the use of international emission reductions and

other reductions from outside the area of use?

8. What is EPA's analysis of the cross-referenced rule language?

9. What is EPA's analysis of the ERC program with respect to section 110(l) of the Clean Air Act?

D. Conclusion

II. General Information

III. Statutory and Executive Order Reviews

## **I. Emission Credit Banking and Trading Program**

### *A. What action is EPA proposing?*

EPA is proposing approval of the Emission Credit Banking and Trading program, also referred to as the Emission Reduction Credit (ERC) program, enacted at Texas Administrative Code (TAC) Title 30, Chapter 101 General Air Quality Rules, Subchapter H, Division 1, sections 101.300–101.304, 101.306, 101.309, and 101.311. Also in this document, EPA is proposing approval of section 115.950 in 30 TAC Chapter 115, Control of Air Pollution from Volatile Organic Compounds, which cross-references the ERC program. EPA is also proposing approval of the definition of “facility” published at 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, Subchapter A, section 116.10(4). These revisions were provided in SIP revisions dated July 22, 1998; December 20, 2000; July 15, 2002; January 31, 2003, and December 06, 2004.

### *B. Summary of the Emission Credit Banking and Trading program*

#### **1. How does the ERC program work?**

In the ERC program, a source generates emission credits (ECs) from voluntary reductions that are surplus to any applicable local, state, and/or federal requirements. Emission credit is a generic term that encompasses reductions from stationary sources, emission reduction credits (ERCs), and reductions from mobile sources, mobile emission reduction credits (MERCs). Reduction strategies generating ECs are required to be permanent and will be made enforceable by a signed commitment from the generating facility. The source can then use these ECs later, or trade them to another source to use later. ECs can be used as an alternative means of compliance with the reduction requirements of 30 TAC Chapters 114, 115, and 117 (relating to Control of Air Pollution from Motor Vehicles; Control of Air Pollution from Volatile Organic Compounds; and Control of Air Pollution from Nitrogen Compounds), as offsets for Nonattainment New Source Review permits, or as annual allocations under

the Mass Emission Cap and Trade Program (30 TAC Chapter 101, Subchapter H, Division 3, section 101.356). Once applied to a facility for use, an EC is valid for the life of that facility.

Eligible EC generator categories include facilities (including area sources); mobile sources; or any facility, including area sources, or mobile sources associated with actions by Federal agencies under 30 TAC 101.30 (relating to Conformity of General Federal Actions to SIPs). The ERC rule, at 30 TAC section 101.300(13), incorporates the definition of “facility” at 30 TAC section 116.10: “a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source including appurtenances other than emission control equipment.” ERCs and MERCs must be reviewed by the state to determine if they are creditable and certified by the TCEQ Executive Director before inclusion in the TCEQ ERC Registry. Additionally, ERCs and MERCs must be shown to be surplus at the time of use before being applied to a use strategy.

Under the ERC rules, reductions of criteria pollutants, excluding lead, or of precursors of criteria pollutants for which an area is designated nonattainment, may qualify as ECs. Reductions of one pollutant may not be used to meet the reduction requirements for another pollutant, unless urban airshed modeling demonstrates that one ozone precursor may be substituted for another subject to approval by the TCEQ Executive Director and the EPA. Or, as provided in the ERC rules, if the facility generating the emission reductions is located outside the United States, one pollutant may be substituted for another if the substitution results in a greater health benefit and is of equal or greater benefit to the overall air quality of the area as determined by the TCEQ Executive Director. Additionally, the substitution must be from the reduction of an air contaminant for which the area has been designated as nonattainment or which leads to the formation of a criteria pollutant for which an area has been designated as nonattainment, and must be for any air contaminant for which the area has been designated as nonattainment or leads to the formation of a criteria pollutant for which the area has been designated as nonattainment. The user of the ECs generated outside the United States must demonstrate that the use of the reduction does not cause localized health impacts, as determined by the TCEQ Executive Director; submit all supporting information for calculations and modeling, and any

additional information requested by the Executive Director; and must be located within 100 kilometers of the Texas–Mexico border. An EC 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 EPA. This approval requirement would, of course, apply to all transactions involving reductions made outside of the United States. Except for ECs generated outside of the United States, only emission reductions generated in nonattainment areas can be certified. Please see section I.C.7 for a discussion of issues associated with international trading.

In this action, when we refer to this program as “the ERC rule” or “the ERC program” we are speaking of the entire Emission Credit Banking and Trading program, which encompasses both ERCs and MERCs.

#### **2. What is the history of the ERC program?**

The ERC rules establish a type of Economic Incentive Program (EIP). This program provides flexibility for sources in complying with certain State and Federal requirements. The ERC program was first adopted by the State at 30 TAC section 101.29 on December 23, 1997, for use with volatile organic compound (VOC) and nitrogen oxides (NO<sub>x</sub>) requirements in ozone nonattainment areas. Effective January 18, 2001, section 101.29 was repealed and Chapter 101, Subchapter H, Divisions 1, 3, and 4 were created for the ERC, Mass Emissions Cap and Trade (MECT) in the Houston/Galveston/Brazoria (HGB) ozone nonattainment area, and Discrete Emission Credit Banking and Trading (DERC) programs, respectively. The submittal effective April 14, 2002, amended the geographic scope of the ERC program to include provisions for reductions generated outside the United States at section 101.302. The submittal effective January 17, 2003, completely reorganized the ERC and DERC program rules into more standardized formats parallel to each other, with a rule structure that followed a process of recognizing, quantifying, and certifying reductions as credits while explaining the guidelines for trading and using creditable reductions. This submittal amended sections 101.300, 101.301, 101.302, 101.303, 101.304, 101.306, 101.309, and 101.311. The most recent submittal of December 06, 2004, amended sections 101.300, 101.302, 101.303, 101.304, and 101.311; expanding the ERC program to cover reductions of criteria pollutants (excluding lead) or precursors of criteria pollutants for which an area is

designated nonattainment. The ERC program adoption and the subsequent revisions were submitted to EPA for approval into the SIP; however, this proposed approval is the first time we have acted on this program. In doing so we are acting on the original submission and all subsequent revisions through the December 06, 2004, submittal.

### C. EPA's Analysis

#### 1. How did EPA review and evaluate the ERC program?

Generally, SIP rules must be enforceable and must not relax existing requirements. See Clean Air Act sections 110(a), 110(l), and 193.

A guidance document that we used to define evaluation criteria is "Improving Air Quality with Economic Incentive Programs" (EPA-452/R-01-001, January 2001) (EIP Guidance). This guidance applies to discretionary economic incentive programs (EIPs) adopted to attain national ambient air quality standards (NAAQS) for criteria pollutants, but the EIP Guidance is not EPA's final action on discretionary EIPs. Final action as to any such EIP occurs when EPA acts on it after its submission as a SIP revision. Because the EIP Guidance is non-binding and does not represent final agency action, EPA is using the guidance as an initial screen to determine whether potential approvability issues arise. A more detailed review of the ERC Program as compared to the EIP Guidance is in the Technical Support Document (TSD) for the TCEQ Emission Credit Banking and Trading Program. The TSD is available as specified in the section of this document identified as **ADDRESSES**.

#### 2. What criteria did EPA use to analyze the ERC program?

Fundamental principles that apply to all EIPs are integrity (meaning that credits are based on emission reductions that are surplus, enforceable, quantifiable, and permanent), equity, and environmental benefit. These fundamental principles can apply to an EIP in its entirety (the programmatic level) or to individual sources (the source-specific level). EPA evaluated the ERC EIP against these three fundamental principles and applicable Clean Air Act requirements. Our complete analysis of the ERC program is contained in the TSD for this action.

#### 3. What is EPA's analysis of the fundamental principle of integrity?

The integrity principle consists of the qualities of surplus, enforceable, quantifiable, and permanent. Each

element applies to the ERC EIP at the programmatic and source-specific level.

*Integrity Element One—Surplus.* The element of surplus as it applies to the ERC program provides that programmatic emission reductions are surplus as long as they are not otherwise relied on in any other air quality-related programs including: the SIP, SIP-related requirements such as transportation conformity, other adopted TCEQ measures not in the SIP, and federal rules that focus on reducing precursors of criteria pollutants such as new source performance standards. In addition to the programmatic concerns, if emission reductions are to be surplus at a source-specific level then the creation of the reductions cannot be required by a consent decree. Emission reductions measured by sources on a prospective basis are surplus if the projected baseline emissions from the source or group of sources are properly accounted for in the applicable inventory or by using an acceptable baseline.

The ERC program satisfies the surplus criteria at both the programmatic and source-specific levels. For reductions to be certified as either ERCs or MERCs, the reduction must be enforceable, permanent, quantifiable, real, and surplus at the time of generation and use according to section 101.302(c). Surplus is defined in the ERC program at section 101.300(30) to be 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 SIP. Additionally, mobile sources must have been included in the attainment demonstration baseline emissions inventory as specified in section 101.302(c)(2)(E). Section 101.303(b) specifies that the baseline for ERC generation may not exceed the quantity of emissions reported in the most recent year of emissions inventory used in the SIP. Also, for reductions being certified for use as new source review (NSR) offsets, the baseline emissions may not exceed the quantity of emissions reported in the emissions inventory used in the SIP in place at the time the reduction strategy was implemented.

*Integrity Element Two—Enforceable.* Emission reductions use, generation, and other required actions in the EIP are enforceable on a programmatic basis if they are independently verifiable, define program violations, and identify those liable for violations. For enforceability, both the state and EPA should have the ability to apply penalties and secure appropriate corrective actions where applicable. Citizens should also have access to all

the emissions-related information obtained from the source so that citizens can file suits against sources for violations. Required actions must be practicably enforceable in accordance with other EPA guidance on practical enforceability. At the source-specific level, the source must be liable for violations, the liable party must be identifiable, and the state, the public, and EPA must be able to independently verify a source's compliance. In addition to addressing the enforcement concerns discussed above, trading EIPs must incorporate provisions for assessing liability, provisions to assess penalties against participating sources, and provisions for sources with Title V permits.

The ERC program submittal satisfies the enforceable element of the integrity principle. ERCs will be made enforceable:

- By amending or altering a New Source Review permit to reflect the emission reduction and set a new maximum allowable emission limit;
- By voiding an NSR permit, when a facility has been shut down;
- For any facility authorized by standard permit, standard exemption, or permit by rule, by certifying the emission reduction and the new maximum allowable emission limit on a PI-8 Form, Special Certification Form for Exemptions and Standard Permits, or other form deemed equivalent by the executive director;
- For any facility not required to have a permit authorization by permit, standard permit, standard exemption, or permit by rule, by certifying the emission reduction and the new maximum allowable emission limit on an OPC-RE1 Form, Certified Registration of Emissions Form for Potential to Emit, or other form considered equivalent by the TCEQ Executive Director, or by obtaining an agreed order setting a new maximum allowable emission limit.

The enforceability of MERCs is addressed at section 101.304(e)(4), where MERCs will be made enforceable by obtaining an agreed order that sets a new maximum allowable mobile source emission limit.

The monitoring and testing protocols established in 30 TAC Chapters 115 and 117 are adequate for independent verifications of emission reductions certified as ERCs or MERCs and for demonstrating practicable enforceability. Citizens' access to all emissions-related information is addressed in section 101.302(h), which provides that all information submitted with notices, reports, and trades regarding the nature, quantity, and sales

price of emissions associated with the use, generation, and transfer of an ERC or MERC is public information and may not be submitted as confidential. The rule also requires that all nonconfidential notices and information regarding the generation, availability, use, and transfer of ERCs and MERCs shall be immediately made available to the public.

Penalties, corrective action, and citizen lawsuits are not addressed in the ERC rules, but are in separate laws and regulations. In particular, Texas Water Code section 7.051 provides for the assessment of administrative penalties by the TCEQ, and section 7.032 provides for injunctive relief by the TCEQ. The TCEQ enforcement rule at 30 TAC section 70.5 incorporates remedies found in the state statutes (Texas Water Code and the Texas Health and Safety Code), and permits referrals to EPA for civil, judicial or administrative action. It is our conclusion that TCEQ has adequate legal authority to enforce its ERC program. Once we approve the ERC rule into the SIP, EPA will be able to enforce it under section 113 of the Clean Air Act. Recordkeeping requirements specific to the ERC rule are set forth at section 101.302(g).

For the above reasons, and as further explained in the TSD, EPA has concluded that the ERC program is consistent with Clean Air Act requirements and EIP Guidance expectations for the integrity element of enforceability.

*Integrity Element Three—Quantifiable.* On a programmatic basis, emissions and emission reductions attributable to an EIP are quantifiable if the source can reliably and replicably measure or determine them. The generation or use of emission reductions by a source or group of sources is quantifiable on a source-specific basis if the sources can reliably calculate the amount of emissions and emission reductions occurring during the implementation of the program, and replicate the calculations. All EIPs should incorporate provisions for predicting results, addressing uncertainty, approving quantification protocols, and emission quantification methods.

The ERC program meets the quantifiable criteria, because its rules require that reductions certified as ERCs or MERCs be quantifiable, which is defined as an emission reduction that can be measured or estimated with confidence using replicable methodology. As protocols for making these determinations, the ERC program refers to the emission quantification requirements of 30 TAC Chapter 115

and Chapter 117. These monitoring requirements are reliable and replicable and have previously been approved by EPA. Generators/users wanting to use other quantification protocols must follow the quantification requirements at section 101.302(d)(1)(C), which include a requirement for EPA adequacy review of such alternate protocols. Under this section, if a facility or mobile source wishes to use a quantification protocol that has not been approved by EPA, the protocol must go through a 30 day public comment period. The TCEQ will make the protocol available on the agency's website during the public comment period. The TCEQ then submits the protocol and any comments received to the EPA for a 45 day adequacy review. During this 45 day period, EPA can approve or disapprove the protocol through a letter to the TCEQ. Outside of the 45 day time period, the EPA will propose a disapproval in the **Federal Register** if appropriate. After EPA has proposed a disapproval in the **Federal Register**, the quantification protocol will not be accepted for use.

*Integrity Element Four—Permanent.* To satisfy the permanence element of the integrity principle, a compliance flexibility EIP must ensure that no emission increases occur over the time defined in the SIP. On a source-specific basis, the permanence expectations are met if the sources participating in the EIP commit to action or achieve reductions for a future period of time as defined in the EIP.

The ERC program meets the permanence expectation at both the programmatic and source-specific levels. The rules at sections 101.303(d) and 101.304(e) describe the certification procedures to ensure that ERCs and MERCs generated are permanent so that the reduction will be effective for the life of the source.

4. Does the ERC program violate the integrity of other programs?

In addition to determining the programmatic and source-specific integrity elements for an EIP, it is important to determine whether the EIP generates emission reductions in a manner consistent with other EIPs functioning in the same area. EPA published a final rule approving the HGB Mass Emissions Cap and Trade (MECT) program on November 14, 2001 (66 FR 57252). With this action, EPA approved the use of ERCs within the MECT at § 101.356(h). Subsequent revisions to the MECT rules submitted on January 31, 2003, and December 6, 2004, have reorganized the MECT rules such that the provisions for ERC usage

are now found at § 101.356(i), but the substance of the provision for ERC use in the MECT is the same as the version EPA approved.

The MECT program was adopted by Texas in December 2000 as a compliance mechanism for the stringent NO<sub>x</sub> control requirements adopted under rules contained in the December 2000 revision to the HGB SIP. In addition to providing flexibility in complying with the NO<sub>x</sub> control requirements, the MECT also provides a finite cap on NO<sub>x</sub> emissions at a level demonstrated as necessary for the HGB area to attain the NAAQS for ozone. The amount of allowances (the authorization to emit one ton of NO<sub>x</sub>) under the cap gradually decreases beginning in 2002 to the final cap level in 2007. The final 2007 cap level was developed through the Control Case modeling that included a controlled 2007 future case point-source emissions inventory along with the addition of emissions from NO<sub>x</sub> increases permitted after 1997 and increases in NO<sub>x</sub> emissions attributable to the use of banked discrete emission credits and ERCs.

Emission reduction credits may be converted into a yearly allocation of allowances under the MECT at the rate of one ERC to one allowance per year only if the ERCs were generated before December 1, 2000, and provided that:

1. The ERC is quantifiable, real, surplus, enforceable, and permanent as required in § 101.302 at the time the ERC is converted;
2. The ERC was generated in the HGB area;
3. The ERC was generated from a reduction in NO<sub>x</sub>;
4. The ERC has not expired; and
5. The owner of the ERC has prior approval from the TCEQ Executive Director.

These ERCs, all generated before December 1, 2000, total 1.7 tons per day of additional NO<sub>x</sub> emissions that have been included in the attainment demonstration by TCEQ.

TCEQ has also included a provision for ERC usage in the Highly-Reactive VOC Emissions Cap and Trade (HECT) program, submitted to EPA on December 17, 2004. The HECT is a mandatory cap on emissions of ethylene, propylene, 1,3-butadiene, and all isomers of butenes for covered facilities, at a site subject to 30 TAC Chapter 115, Subchapter H. The HECT has a provision to allow a facility to convert credits of less-reactive VOCs generated through the ERC rule into a yearly HRVOC allocation. ERCs eligible for this conversion must be generated:

1. From a reduction at a site in the HGB area;

2. From a reduction strategy implemented after December 31, 2004; and

3. From a reduction in VOC species other than those defined as HRVOCs under 30 TAC Chapter 115.10.

VOC reductions from the installation of best available control technology do not qualify for conversion into HRVOC allocations. Additionally, the ERCs must be real, quantifiable, surplus, enforceable, and permanent as specified in the ERC rule at § 101.302 at the time the ERC is converted. The conversion of less-reactive VOC ERCs into HRVOC allowances is limited to 5 percent of the site's initial HRVOC allocation and is based on the Maximum Incremental Reactivity (MIR) Scale.

EPA will evaluate the HECT and the generation of ERCs based on reactivity in a separate rulemaking (RME Dockets R06-OAR-2005-TX-0018 and R06-OAR-2005-TX-0033). The ERC rule does not specifically state that ERCs can be used in the HECT, but addresses this cross-over at section 101.306(a)(7) where ERCs can be used for compliance with other requirements as allowable within the guidelines of local, state, and federal laws. TCEQ has informed EPA in a letter dated September 8, 2005, that it will revise the language in section 101.306 to specify that ERCs may be used within the HECT program as an annual allocation of allowances as provided under 30 TAC section 101.399.

The combination of the ERC and MECT and the ERC and HECT programs not only caps the NO<sub>x</sub> or HRVOC emissions in the HGB area at a level demonstrated as necessary for attainment of the ozone standard, but also attempts to provide flexibility while ensuring protection of the HGB SIP.

5. What is EPA's analysis of the fundamental principle of equity?

The equity principle is composed of two elements—general equity and environmental justice.

*Equity Element One—General Equity.* General equity means that an EIP ensures that all segments of the population are protected from public health problems and no segment of the population receives a disproportionate share of a program's disbenefits.

The ERC program satisfies the general equity element. Consideration of health impacts from emission credit use is included throughout the ERC rule. A facility wishing to use reductions of one pollutant to meet the reduction requirement of another pollutant must use urban airshed modeling to obtain TCEQ and EPA approval. If the facility generating the reductions is located

outside the United States, the substitution must result in a greater health benefit and be of equal or greater benefit to the overall air quality of the area. EPA approval is necessary any time a reduction from outside the nonattainment area is requested for use. We expect that such review would occur through a SIP revision. Stakeholder involvement and public participation is an additional measure to ensure adequate protection from disproportionate impacts. The public information requirements in section 101.302(h) and the information that must be submitted to the TCEQ for inclusion in the credit registry on the use and banking of ECs in sections 101.306 and 101.309 demonstrates the importance of public participation in the ERC program.

*Equity Element Two—Environmental Justice.* The environmental justice element applies if an EIP covers VOCs and could disproportionately impact communities populated by racial minorities, people with low incomes, or Tribes. EIPs that include hazardous air pollutants (HAPs) must also address the concerns described in Appendix 16.2 of the EIP Guidance (the "HAP Framework"), which discusses how to prevent and/or mitigate impacts from trades involving HAPs, the need to make sufficient information available for meaningful review and participation, public participation, and periodic program evaluations.

Because the ERC program allows for the generation and use of ECs from VOCs and/or HAPs, we evaluate it with respect to the environmental justice element, including the HAP Framework. We conclude that the ERC program meets our expectations for environmental justice. First, as outlined above under General Equity, the ERC program provides for public participation. Second, the program satisfies the HAP Framework. It addresses the HAP Framework issues through the ERC audit program, under which TCEQ may discontinue trading of ECs as a remedy for problems in a localized area of concern; in public information requirements and the requirements for the credit registry on the use and banking of ECs; and through public participation requirements. TCEQ held four public hearings in the course of developing the program, and maintains a list of stakeholders who receive copies of all TCEQ rulemaking actions for comment and participation in development. Also, during implementation of the ERC program, the public has the opportunity to participate in the approval process for alternate quantification protocols, and in the

periodic audit of the ERC program required by the rule.

As an added measure that demonstrates general equity and environmental justice, TCEQ has developed the Toxicological Risk Assessment (TARA) Effects Evaluation Procedure. Under this process, which is authorized under section 382.0518(b)(2) of the Texas Health and Safety Code, TCEQ may not grant a permit to a facility unless it is demonstrated that emissions will not have an adverse impact on public health and welfare. This demonstration is accomplished by (1) establishing off-property ground-level air concentrations of constituents resulting from the proposed emissions, and (2) evaluating these concentrations for the potential to cause adverse health or welfare effects. The TARA Effects Evaluation is used to evaluate the use of ECs in an air permit. The TCEQ guidance document "How to Determine the Scope of Modeling and Effects Review for Air Permits" (RG-324, Oct. 2001) has a detailed discussion of TARA Effects Evaluation procedures.

6. What is EPA's analysis of the fundamental principle of environmental benefit?

All EIPs must be environmentally beneficial, as demonstrated through achieving more rapid emission reductions or faster attainment than would have occurred without the EIP. The ERC program satisfies the environmental benefit principle by requiring a user of ECs to retire 10 percent more credits than are needed. Additionally, the approved EC generation strategies also provide an environmental benefit by achieving more rapid emission reductions than would have occurred without the ERC program. The approved EC generation strategies include permanent facility shutdowns that results in a loss of capability to produce emissions; the installation and operation of pollution control equipment that reduces emissions below the level required of the facility; a change in the manufacturing process that reduces emissions below the level required of the facility; a permanent curtailment in production that reduces the facility's capability to produce emissions; or pollution prevention projects that produce surplus emission reductions.

7. What is EPA's analysis of the use of international emission reductions and other reductions from outside the area of use?

Certain geographic restrictions apply to EC generation and use. These restrictions are found at section

101.302(f). Generally, only emission reductions generated in nonattainment areas can be certified. As a threshold requirement, an emission reduction must be used in the nonattainment area in which it is generated unless the user has obtained prior written approval of the TCEQ Executive Director and EPA. In addition to this written approval, one of the following must occur:

- A demonstration must be approved by the Executive Director and EPA that shows that the emission reductions achieved in another county, State, or nation provide an improvement to air quality in the county of use; or

- 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 approved by the Executive Director and EPA to show that the emissions from the nonattainment area where the emission credit is generated contribute to a violation of the NAAQS in the nonattainment area of use; or

- A facility using emission reductions generated outside the United States that have been determined by the Executive Director to be real, permanent, enforceable, quantifiable, and surplus to any applicable international, Federal, State, or local law and the result would provide a greater health benefit to the area as determined by the Executive Director; and the facility demonstrates that the use of the reduction does not cause localized health impacts; submits all supporting information for calculations and modeling and any additional information requested; and is located within 100 km of the Texas-Mexico border.

Although the threshold EPA approval requirement of section 101.302(f) ensures that EPA approval is necessary for any of the above types of trades, TCEQ has agreed to clarify the language in section 101.302(f) so that EPA approval is more clearly required for all transactions involving emission reductions generated in another state or nation, as well as those transactions from one nonattainment area to another or from attainment counties into nonattainment areas.

EPA has addressed the possibility of cross-jurisdictional trades, such as those in section 101.302, in Appendix 16.16 of the Economic Incentive Program Guidance. Satisfaction of the provisions of Appendix 16.16 is necessary to ensure that cross-jurisdictional trades are consistent with the fundamental integrity, equity, and environmental benefit principles described in the EIP guidance. The EPA review and approval authority contained in section

101.302(f) will be the mechanism by which EPA ensures that inappropriate trades do not take place. In particular, EPA intends to require a further SIP revision (either a detailed trading program, such as an interstate MOU, or a trade-specific submission) before approving any international trades, interstate trades, or intrastate trades that involve reductions from beyond the nonattainment area.

International trades present an especially difficult case. For instance, currently there is no approvable mechanism for demonstrating that reductions made in another country are surplus or enforceable. Nonetheless, emission reductions in other countries could potentially offer substantial air quality benefits in the United States. In approving the ERCs rule, EPA is recognizing the concept of international trading and describing a framework (*i.e.*, the submission of a SIP revision demonstrating among other things the validity and enforceability of foreign reductions) for such trading, in the event that a suitable and approvable mechanism is ever developed for resolving concerns including enforceability and surplus. Until such a mechanism is developed and approved by EPA, however, EPA will not approve international trades under the ERCs rule.

#### 8. What is EPA's analysis of the cross-referenced rule language?

The revisions to section 115.950, submitted by TCEQ on December 20, 2000, are approvable. This subsection cross-references the use strategies for ERCs and MERCs in section 101.306, which we are proposing to approve.

The definition of "facility" published at 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction, Subchapter A, section 116.10(4), submitted by TCEQ on July 22, 1998, is approvable. This definition is approvable as defining what is a "facility" for purposes of permitting under Chapter 116. This satisfies the provisions of 40 CFR—51.160(e) by identifying the types of facilities, building, structures, or installations which will be subject to review.

#### 9. What is EPA's analysis of the ERC program with respect to section 110(l) of the Clean Air Act?

Section 110(l) of the Clean Air Act states:

Each revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable

requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.

Thus, under section 110(l), this SIP revision must not interfere with attainment or reasonable further progress or any other applicable requirement of the Act.

As a general matter, the satisfaction of the environmental benefit principle and the other integrity principles applicable to trading programs will tend to demonstrate that a trading program will do no worse than maintain existing air quality. Accordingly, EPA has determined that discretionary EIPs that are consistent with the EIP Guidance are consistent with section 110(l):

Congress did not address specific requirements for EIPs in the CAA. Consistent with our mandate, the EPA has interpreted what an EIP should contain in order to meet the requirements of the CAA. This document is a guidance document that sets forth EPA's non-binding policy for EIPs. This document does not represent final EPA action on the requirements for EIPs. Rather, this document identifies several different types of economic incentive programs, and proposes elements for each type that, if met, EPA currently believes would assure that the program would meet the applicable CAA provisions. The guidance phrases these elements in the imperative B that is, using the terms "must" or "shall". This is done only to signify that EPA would propose to approve a SIP submittal of a program containing the indicated elements on grounds that under section 110(l) of the CAA, the SIP revision does not interfere with any applicable requirement concerning attainment, reasonable further progress, or any other applicable requirement.

(EIP Guidance, section 1.9.) Thus, if the ERC program is consistent with the EIP Guidance it will satisfy section 110(l). As explained throughout this document, we have determined that the ERC rule is consistent with the EIP Guidance. To further support this determination, we will discuss the rule in connection with specific locations and criteria pollutants.

As a preliminary matter, we note that a user of ECs must retire 10 percent more credits than are needed, which provides a built-in source of reductions under this program that would not occur without it. Further, emission reductions used to generate ECs are permanent, enforceable, and ongoing in nature, so that the environment will always experience the reduction.

We have also considered whether emissions increases resulting from the use of ECs have the potential to interfere with attainment. Because of the ongoing nature of the reductions that can generate an EC, an emissions increase

resulting from a traded credit will always be associated with a contemporaneous, and 10 percent greater, emissions decrease. One ozone precursor may also be used to meet the requirements for reductions of another precursor (a facility could use NO<sub>x</sub> reductions to satisfy a VOC requirement or vice versa), subject to an urban airshed modeling demonstration and TCEQ Executive Director and EPA approval. In very limited cases, the rule allows for such interpollutant trading across the U.S.-Mexico border without specifically requiring urban airshed modeling, but any such trades would be subject to the EPA approval process described below. There remains, however, the question of whether geographic separation between the location of the reduction and increase from any given EC might interfere with attainment. We believe this problem will not occur with the ERC rule, because in the usual case reductions and associated increases will occur in the same nonattainment area. The rule does contain provisions for the use in a nonattainment area of reductions from outside that nonattainment area, but such use is subject to TCEQ Executive Director and EPA approval. EPA intends to address any such requests through a SIP revision, which would require a demonstration of consistency with section 110(l). TCEQ will also conduct an audit of the ERC program every three years. The audit will specifically evaluate the impact of EC generation and use on the State's attainment demonstration. If problems are identified, the TCEQ Executive Director may suspend or discontinue the trading of ECs as a remedy.

We believe that the structure of the ERC rule as discussed above is sufficient to ensure that the rule is consistent with section 110(l), but we have further considered the potential impact as to specific pollutants. Under the Texas program, ECs can only be generated for criteria pollutants (except lead) and precursors of criteria pollutants for which an area is designated nonattainment.

First, as to ozone, attainment demonstrations under the 8-hour standard currently in effect are not yet due. The only 8-hour ozone nonattainment areas in Texas at present are the Beaumont/Port Arthur (BPA), Dallas/Fort Worth (DFW), and HGB 8-hour ozone nonattainment areas. (El Paso was designated as serious under the revoked 1-hour ozone standard, but was designated as attainment for 8-hour ozone, with an obligation to submit a maintenance plan.) Until 8-hour attainment demonstrations are due, EPA

believes that preservation of the status quo air quality while new plans are being developed will prevent interference with the States' obligations to develop timely attainment demonstrations and reasonable further progress plans and to attain as expeditiously as practicable. Accordingly, for 8-hour ozone nonattainment areas in Texas, EPA believes that a demonstration that this rule will not worsen existing air quality is sufficient. We conclude that the environmental benefit provided by the ERC program, as discussed above, is sufficient to demonstrate that this rule will not worsen existing air quality.

We note in addition that as to the HGB nonattainment area in particular, a fuller discussion of the section 110(l) analysis appears in EPA's evaluation of the HGB attainment demonstration submitted for the 1-hour ozone standard (RME Docket R06-OAR-2005-TX-0018). That rulemaking contains EPA's proposed determination that the area will attain the 1-hour ozone standard and that the current attainment strategy does not interfere with attainment of the 8-hour standard in the HGB area. In addition, EPA has already approved TCEQ's 1-hour reasonable further progress plan for HGB (70 FR 07407, February 14, 2005).

As to other criteria pollutants, El Paso is classified as nonattainment for carbon monoxide (CO) but has monitored attainment for approximately the past five years and is expected to submit a request for redesignation by the end of 2005. Also, El Paso is classified as nonattainment for particulate matter with a diameter of 10 micrometers and smaller (PM<sub>10</sub>). We therefore consider whether the generation and use of ECs could interfere with attainment or reasonable further progress under the PM<sub>10</sub> or CO standards. Because no ECs of any type have yet been generated in El Paso, any use of ECs there will require either the generation of ECs through reductions in that area, or the approval of ECs from elsewhere. In the first case, the reductions would have to occur before the associated increases from use of the ECs, and as already noted the reductions would have to exceed the increases by ten percent. In the second case, use of ECs from elsewhere would have to be based on a determination that such use would provide a benefit in the nonattainment area (and subject to EPA review through the SIP revision process, as noted above). In either case, therefore, we conclude that the use of ECs in El Paso will not interfere with attainment and reasonable further progress.

As to all other criteria pollutants, all areas of Texas are currently in attainment. ECs may only be generated and used for nonattainment pollutants in nonattainment areas, and so there will be no EC trades involving areas in attainment for the pollutant in question. We conclude that this rule should not interfere with attainment as to these other criteria pollutants. The reductions of NO<sub>x</sub> in the BPA, DFW, and HGB nonattainment areas could include reductions in NO<sub>2</sub>, a separate criteria pollutant from ozone. These potential NO<sub>2</sub> reductions will not interfere with attainment of the NO<sub>2</sub> NAAQS.

We have also considered whether potential uses of ECs are contrary to section 110(l) by allowing sources to exceed limits in their CAA Title V permits, which are "applicable requirements" under the Act. For the following reasons, we conclude that the rule does not violate section 110(l) in this respect. First, EPA has addressed the interface of Title V permits and trading programs in the EIP guidance, which provides:

If a facility that has a title V operating permit wishes to participate in your approved EIP, you must modify the facility's operating permit to include the detailed compliance provisions necessary to assure compliance with the EIP. Thus, the permit becomes a valuable tool to ensure the source meets the requirements of the EIP.

Once the permit includes terms and conditions necessary to implement the EIP (as described below), the source may typically make individual trades under the EIP without the need for future formal permit revisions. This is true because most trading activity under such a permit would already be addressed and allowed by the specific terms and conditions of the permit and such trading would not normally conflict with the permit. This is the principle expressed by section 70.6(a)(8) of the CFR, which states that permit revisions are not required for trading program changes that are "provided for" in the permit.

(EIP Guidance, Appendix 16.8). Texas has modified its Title V permit template so as to address the permissible use of ECs to meet Title V permit requirements. As further explained in the TSD for this action, we find that the Texas permit language satisfies the concerns identified in Appendix 16.8.

In reaching this conclusion, we also considered that a Title V permit is not itself a source of substantive limits. Rather, it incorporates applicable requirements under other permits and programs. In Texas, as elsewhere, many of the allowable emission levels in T5 permits are determined through New Source Performance Standards (NSPS), Best Available Control Technology (BACT), Lowest Achievable Emission



Rate (LAER), or National Emission Standards for Hazardous Air Pollutants (NESHAPs). The ERC rule does not authorize the use of ECs for compliance with any of these programs. The rule does allow ECs to be used for compliance with Reasonably Available Control Technology (RACT) standards, in accordance with EPA's guidance. Specifically, the guidance provides that "[i]f your EIP allows sources to avoid direct application of RACT technology, your EIP must ensure that the level of emission reductions resulting from implementation of the EIP will be equal to those reductions expected from the direct application of RACT." EIP Guidance, Appendix 16.7. The Texas program ensures consistency with that element of the EIP guidance through the requirement that a user of ECs must retire 10 percent more credits than are needed. Accordingly, any use of ECs for RACT compliance will have been preceded by a ten percent greater reduction.

For the above reasons, and based also on the analysis in the HGB rulemaking, we conclude that the Texas ERC rule represents an environmental improvement on the status quo, and does not interfere with attainment, reasonable further progress, or any other requirement of the Act. TCEQ will need to evaluate EC generation and use for the BPA and DFW nonattainment areas in the appropriate attainment demonstrations and reasonable further progress plans, and in any future plans developed for El Paso.

#### D. Conclusion

EPA reviewed the ERC program revisions with respect to the concerns discussed in the EIP Guidance and the requirements of the Clean Air Act. We conclude that the ERC program is approvable, and propose to approve the revisions to sections 101.301, 101.306, and 101.309 submitted by TCEQ on January 31, 2003, for rule log number 2002-044-101-AI, and the revisions to sections 101.300, 101.302-101.304, and 101.311 submitted by TCEQ on December 6, 2004, for rule log number 2003-064-101-AI.

We have also reviewed the subsection in 30 TAC Chapter 115, which cross-references the ERC program, and have concluded that this subsection is approvable. We are proposing to approve the revisions to section 115.950 submitted by TCEQ on December 20, 2000, for rule log number 1998-089-101-AI. Because this section involves the use of discrete emission credits and emission credits for compliance, the use of discrete emission credits for compliance with Chapter 115 is not

approved until the Discrete Emission Credit Banking and Trading program has been approved. The rules for discrete emission credit generation and use are being considered in a separate **Federal Register** action.

EPA has also reviewed the definition of facility provided in 30 TAC Chapter 116, and has concluded that this subsection is approvable. We are proposing to approve section 116.10(4) submitted by TCEQ on July 22, 1998, for rule log number 98001-116-AI.

## II. General Information

### A. Tips for Preparing Your Comments

When submitting comments, remember to:

1. Identify the rulemaking by File ID number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

### B. Submitting Confidential Business Information (CBI)

Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official file. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

## III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the



absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: September 27, 2005.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

[FR Doc. 05-19997 Filed 10-4-05; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R06-OAR-2005-TX-0029; FRL-7980-7]

#### Approval and Promulgation of Air Quality Implementation Plans; Texas; Discrete Emission Credit Banking and Trading Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to conditionally approve revisions to the Texas State Implementation Plan (SIP) concerning the Discrete Emission Credit Banking and Trading Program. Additionally, we are proposing approval of a subsection of Chapter 115 of the Texas Administrative Code (TAC), Control of Air Pollution from Volatile Organic Compounds, which cross-references the Discrete Emission Credit Banking and Trading Program. We are also proposing approval of a subsection of 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, which provides a definition referred to in the Discrete Emission Credit Banking and Trading Program.

**DATES:** Comments must be received on or before November 4, 2005.

**ADDRESSES:** Submit your comments, identified by Regional Materials in EDocket (RME) ID No. R06-OAR-2005-TX-0029, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- Agency Website: <http://docket.epa.gov/rmepub/>. RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

- U.S. EPA Region 6 "Contact Us" web site: <http://epa.gov/region6/r6comment.htm>. Please click on "6PD" (Multimedia) and select "Air" before submitting comments.

- E-mail: Mr. David Neleigh at [neleigh.david@epa.gov](mailto:neleigh.david@epa.gov). Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

- Fax: Mr. David Neleigh, Chief, Air Permitting Section (6PD-R), at fax number 214-665-6762.

- Mail: Mr. David Neleigh, Chief, Air Permitting Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

- Hand or Courier Delivery: Mr. David Neleigh, Chief, Air Permitting Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted only between the hours of 8 am and 4 pm weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to RME ID No. R06-OAR-2005-TX-0029. EPA's policy is that all comments received will be included in the public file without change, and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through RME, [regulations.gov](http://www.regulations.gov), or e-mail if you believe that it is CBI or otherwise protected from disclosure. The RME website and the Federal [regulations.gov](http://www.regulations.gov) are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment.

If you send an e-mail comment directly to EPA without going through RME or [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public file and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. Guidance on preparing comments is given in the

**SUPPLEMENTARY INFORMATION** section of this document under the General Information heading.

**Docket:** All documents in the electronic docket are listed in the RME index at <http://docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in the official file which is available at the Air Permitting Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 am and 4:30 pm weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Ms. Adina Wiley, Air Permitting Section (6PD-R), Environmental Protection Agency, Region 6, 1445 Ross Avenue,