UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

July 17, 2023

Mr. Cory Chism, Director
Office of Air
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: Dallas-Fort Worth (DFW) Moderate Area Attainment Demonstration (AD) State Implementation Plan (SIP) Revision for the 2015 Ozone National Ambient Air Quality Standards (NAAQS), Project No. 2022-021-SIP-NR; Houston-Galveston-Brazoria (HGB) Moderate Area AD SIP Revision for the 2015 Ozone NAAQS, Project No. 2022-022-SIP-NR; DFW and HGB Moderate Areas Reasonable Further Progress (RFP) SIP Revision for the 2015 Ozone NAAQS, Project No. 2022-023-SIP-NR; Bexar County Moderate Area RFP SIP Revision for the 2015 Ozone NAAQS, Project No. 2022-024-SIP-NR; Bexar County Moderate Area AD SIP Revision for the 2015 Eight-Hour Ozone NAAQS, Project No. 2022-025-SIP-NR; Bexar County Inspection and Maintenance (I/M) SIP Revision, Project No. 2022-027-SIP-NR; and the proposed revisions to 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles rulemaking, Project No. 2022-026-114-AI.

Dear Mr. Chism:

Thank you for acting timely to address the recently reclassified DFW, HGB, and Bexar County Moderate nonattainment areas under the 2015 ozone NAAQS. We appreciate the opportunity to review the seven proposed SIP revisions that address these three areas. We have enclosed comments for your consideration regarding the proposed attainment demonstrations, the proposed RFP plans, the proposed I/M plan, and the proposed revisions to Chapter 114. We appreciate the work by the TCEQ in developing these documents.

We look forward to discussing the enclosed comments with you. Please feel free to contact me at magee.melanie@epa.gov or 214-665-7161 if you have questions.

Sincerely,

MELANIE MAGEE

Digitally signed by MELANIE MAGEE
Date: 2023.07.17 13:13:11 -05'00'

Melanie Magee
Section Supervisor, Infrastructure & Ozone Section

Enclosures

## Enclosure: EPA's Comments

**Acronyms used in EPA's comments:**

Alternative Control Technology (ACT)
Best Available Control Technology (BACT)
Clean Air Act (CAA)
Control Techniques Guidelines (CTG)
Destruction and Removal Efficiency (DRE)
Differential Absorption LIDAR (DIAL)
Emissions Specifications for Attainment Demonstration (ESADs)
Green House Gases (GHGs)
Highly Reactive Volatile Organic Compounds (HRVOC)
Infrared (IR)
Leak Detection and Repair (LDAR)
Light Detection and Ranging (LIDAR)
Limited English Proficiency (LEP)
Lowest Achievable Emissions Rate (LAER)
Mass Emissions Cap and Trade (MECT)
National Ambient Air Quality Standards (NAAQS)
New Source Review (NSR)
Oxides of Nitrogen (NOx)
Reasonable Available Control Technology (RACT)
Rate of Progress (ROP)
Solar Occultation Flux (SOF)
Texas Commission on Environmental Quality (TCEQ)
Volatile Organic Compounds (VOC)

**Project Number 2022-021-SIP-NR**

**Comments addressing DFW Attainment Demonstration (AD) Plan**

We appreciate the detailed work submitted in the AD plan. We have the following concerns:

1. The TCEQ's proposal includes contingency measures that rely on emissions reductions from measures that are already implemented, as opposed to measures that are prospective (i.e., that they be undertaken in the future) in nature. As noted in the TCEQ's proposal, in January 2021 the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's interpretation of the CAA to allow states to rely on already implemented control measures to meet the statutory requirements of section 172(c)(9) or 182(c)(9) for contingency measures in nonattainment plans for the ozone NAAQS (see 83 FR 62998, 63026). *Sierra Club, et al. v. EPA*, 985 F.3d 1055 (D.C. Cir. 2021). The effect of this decision is that the CAA interpretation that contingency measures must be prospective and conditional applies across the U.S.[1] If finalized as proposed, EPA would have serious concerns regarding the approvability of the contingency measures. EPA Region 6 will support TCEQ in the development of approvable contingency measures for ozone reductions. We encourage TCEQ to incorporate environmental justice considerations in developing such measures.

[1] More information on this decision is provided in our proposed disapproval of contingency measures for the DFW and HGB Serious ozone nonattainment areas for the 2008 ozone NAAQS (see 88 FR 24522, April 21, 2023).

2. The TCEQ's proposal asserts that the DFW area is not expected to attain the 2015 ozone NAAQS by the August 3, 2024, attainment date. Therefore, as provided in CAA section 181(b)(3), the TCEQ may request, and EPA must grant, a voluntary reclassification to the next higher classification for the DFW area, which would provide until the August 3, 2027, Serious area attainment date to attain the 2015 ozone NAAQS. We encourage the TCEQ to submit such a request early enough to maximize the available time for assessing, adopting, and implementing emission reduction measures so the area can meet the ozone NAAQS expeditiously and avoid the mandatory statutory consequences for failing to timely attain.
3. The TCEQ's proposal provides a RACT analysis that relies exclusively on a previous RACT analysis from the DFW serious classification attainment demonstration for the 2008 ozone NAAQS adopted by the commission on March 4, 2020. That RACT analysis is based exclusively on EPA's CTGs and ACTs. In EPA's Implementation Rule for the 2008 Ozone NAAQS, EPA stated that "states should refer to the existing CTGs and ACTs for purposes of meeting their RACT requirements, *as well as* all relevant information (including recent technical information and information received during the public comment period) that is available at the time that they are developing their RACT SIPs for the 2008 ozone NAAQS." 80 FR 12264, 12279 (March 6, 2015) (emphasis added). EPA repeated this in the Implementation Rule for the 2015 Ozone NAAQS.[2] As part of their RACT SIP submissions, states should provide adequate documentation that they have considered emission control requirements that are economically and technologically feasible. The analysis of economic and technological feasibility should be based on the information that is current and available as of the time of development of the RACT SIP. TCEQ should document that they examined current and relevant information and should discuss if and how such information affected their RACT determination. This documentation and discussion should be included for all types of RACT: CTG RACT, Major Source VOC RACT, and Major Source NOx RACT.
4. EPA recommends TCEQ consider any potential underreporting of VOC in the DFW area. The presence of the Barnett Shale and associated equipment may provide similar concerns that have been documented in HGB because of the presence of flares and fugitive emissions. TCEQ should consider mobile monitoring studies (fence-line and IR camera measurements) and remote sensing (e.g., satellite-measured columns of formaldehyde to estimate reacted or partially combusted VOC) and any other data and studies that suggest underreporting of VOC persists. Underreported VOC can provide an inaccurate picture of an area being NOx or VOC-limited and produce photochemical modeling results with control strategies that could be inaccurate.
5. In February 2023, the updated guidance document titled "Guidance on Quantifying NOx Benefits for Cetane Improvement Programs for Use in SIPs and Transportation Conformity" was released for cetane improvement programs.[3] This updated guidance accounts for changes in fleet composition and control technology that has occurred since 2004. Please clarify for the record if the updated guidance was considered and provide any supporting documentation.

[2] "Consistent with the EPA's prior guidance (80 FR 12279; March 6, 2015), when determining what is RACT for a particular source or source category, air agencies should also consider all other relevant information (including recent technical information and information received during the state's public comment period) that is available at the time they develop their RACT SIPs." 83 FR 62998, 63007 (December 6, 2018).

[3] Link to the main guidance page with a summary on the cetane guidance: https://www.epa.gov/state-and-local-transportation/guidance-control-strategies-state-and-local-agencies. Direct link to the cetane guidance: https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1016IFV.pdf.

**Project Number 2022-022-SIP-NR**

**Comments addressing HGB Attainment Demonstration (AD) Plan**

We appreciate the detailed work submitted in the AD plan. We have the following concerns:

1. The TCEQ's proposal includes contingency measures that rely on emissions reductions from measures that are already implemented, as opposed to measures that are prospective (i.e., that they be undertaken in the future) in nature. As noted in the TCEQ's proposal, in January 2021 the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's interpretation of the CAA to allow states to rely on already implemented control measures to meet the statutory requirements of section 172(c)(9) or 182(c)(9) for contingency measures in nonattainment plans for the ozone NAAQS (see 83 FR 62998, 63026). *Sierra Club, et al. v. EPA*, 985 F.3d 1055 (D.C. Cir. 2021). The effect of this decision is that the CAA interpretation that contingency measures must be prospective and conditional applies across the U.S.[4] If finalized as proposed, EPA would have serious concerns regarding the approvability of the contingency measures. EPA Region 6 will support TCEQ in the development of approvable contingency measures for ozone reductions. We encourage TCEQ to incorporate environmental justice considerations in developing such measures.
2. The TCEQ's proposal asserts that the HGB area is not expected to attain the 2015 ozone NAAQS by the August 3, 2024, attainment date. Therefore, as provided in CAA section 181(b)(3), the TCEQ may request, and EPA must grant, a voluntary reclassification to the next higher classification for the HGB area, which would provide until the August 3, 2027, Serious area attainment date to attain the 2015 ozone NAAQS. We encourage the TCEQ to submit such a request early enough to maximize the available time for assessing, adopting, and implementing emission reduction measures so the area can meet the ozone NAAQS expeditiously and avoid the mandatory statutory consequences for failing to timely attain.
3. The TCEQ's proposal provides a RACT analysis that relies exclusively on a previous RACT analysis from the HGB serious classification attainment demonstration for the 2008 ozone NAAQS adopted by the commission on March 4, 2020. That RACT analysis is based exclusively on EPA's CTGs and ACTs. In EPA's Implementation Rule for the 2008 Ozone NAAQS, EPA stated that "states should refer to the existing CTGs and ACTs for purposes of meeting their RACT requirements, *as well as* all relevant information (including recent technical information and information received during the public comment period) that is available at the time that they are developing their RACT SIPs for the 2008 ozone NAAQS." 80 FR 12264, 12279 (March 6, 2015) (emphasis added). EPA repeated this in the Implementation Rule for the 2015 Ozone NAAQS.[5] As part of their RACT SIP submissions, states should provide adequate documentation that they have considered emission control requirements that are economically and technologically feasible. The analysis of economic and technological feasibility should be based on the information that is current and available as of the time of development of the RACT SIP. TCEQ should document that they examined current and relevant information and should discuss if and how such information affected their RACT determination. This documentation and discussion should be included for all types of RACT: CTG RACT, Major Source VOC RACT, and Major Source NOx RACT.
4. We understand that TCEQ is relying on its MECT Program to implement RACT requirements for NOx in the HGB area. EPA's Implementation rule for the 2015 ozone NAAQS explained that "states may

[4] More information on this decision is provided in our proposed disapproval of contingency measures for the DFW and HGB Serious ozone nonattainment areas for the 2008 ozone NAAQS (see 88 FR 24522, April 21, 2023).

[5] "Consistent with the EPA's prior guidance (80 FR 12279; March 6, 2015), when determining what is RACT for a particular source or source category, air agencies should also consider all other relevant information (including recent technical information and information received during the state's public comment period) that is available at the time they develop their RACT SIPs." 83 FR 62998, 63007 (December 6, 2018).

demonstrate as part of their NOx RACT SIP submission that the weighted average NOx emission rate of all sources in the nonattainment area subject to RACT meets NOx RACT requirements; states are not required to demonstrate RACT-level controls on a source-by- source basis." 83 FR 62998, 63007 (December 6, 2018). This longstanding policy on area wide average emission rates is also explained in the final implementation rule the 2008 ozone NAAQS: "…states have the option of conducting a technical analysis for a nonattainment area considering the emissions controls required by a regional cap-and-trade program, and demonstrating that compliance by certain sources participating in the cap- and-trade program results in actual emission reductions in the particular nonattainment area that are equal to or greater than the emission reductions that would result if RACT were applied to an individual source or source category within the nonattainment area." 80 FR 12264, 12279 (March 6, 2015). The SIP should explain how the TCEQ's program achieves this "equal to or greater than" standard. The SIP should also include such technical analysis to demonstrate and document how the MECT program achieves RACT for the HGB NAA. A successful demonstration must show that the MECT program will result in actual emissions reductions that are equal to or greater than reductions that would be achieved by applying RACT on a source-by-source basis in the HGB NAA. Based on EPA's understanding of the MECT program, we believe the demonstration should include, among other things, (1) evaluation of the ESADs and a determination that each ESAD represents RACT, (2) an evaluation of the number of allowances based on a recent basis for number of sources and activity level, (3) a baseline for allowances that is reflective of the current controls in place and current operation of NOx sources, and (4) demonstrate how the implementation on an annual average to meet the MECT is protective of short-term ozone. EPA Region 6 is ready to work with TCEQ on questions going forward. The analysis included in the SIP to support these demonstrations should be based on current relevant information.[6]

5. In light of the difficulty in demonstrating attainment, EPA offers the following suggestions:
    a. Further control and monitoring of specific VOC other than the currently targeted HRVOC to help achieve attainment in the HGB area. TCEQ previously proposed controlling emissions of other VOC in the HGB 2004 Attainment Demonstration proposal that may be a starting point; TCEQ should also consider VOC species that have elevated levels (both retrospectively and large/increasing proportions in more recent years) in various monitoring efforts, including the extensive interagency cooperative air quality field campaigns since 2000[7] (see next comment). In fact, some of the more recent campaigns have measured very large (including short-lived emission events) ambient fluxes of aromatics and alkanes.[8]

[6] "Consistent with the EPA's prior guidance (80 FR 12279; March 6, 2015), when determining what is RACT for a particular source or source category, air agencies should also consider all other relevant information (including recent technical information and information received during the state's public comment period) that is available at the time they develop their RACT SIPs." 83 FR 62998, 63007 (December 6, 2018).

[7] Texas Air Quality Study (TexAQS 2000), Texas Air Quality Study II (2006), Study of Houston Atmospheric Radical Precursors (SHARP, 2009), Deriving Information on Surface conditions from Column and Vertically Resolved Observations Relevant to Air Quality (DISCOVER-AQ, 2013), and Tracking Aerosol Convection ExpeRiment-Air Quality (TRACER-AQ, 2021-22).

[8] "Air Quality Data Collection for TRACER-AQ-2 Field Campaign in Houston - Monitoring Report", FluxSense AQRP contract report, March 2023. Table 27 (page 51) of this report concludes that compared to studies done in 2009 and since with remote sensing flux "curtains", Houston Ship Channel HRVOC and alkane fluxes are essentially unchanged in 2022, with the reported 2013 EI about 10% of these measured flux values, whereas NO2 fluxes match reported emissions well. Mont Belvieu of that same table has seen more measured flux reductions from

b. Measures to address underreporting that is indicated for VOC in the HGB area. Remote sensing techniques, both ground-based (stationary and mobile, e.g., fence-line, IR camera measurements, and ambient flux measurements with SOF and DIAL technologies)[9] and satellite-based remote sensing (e.g., measured columns of VOC, GHGs, or formaldehyde to estimate reacted or partially combusted VOC) conclude that underreporting of VOC persists.[10] This was specifically noted in a Journal of Geophysical Research synthesis report of the 2009 SHARP field campaign.[11] Underreported VOC can provide an inaccurate picture of an area being NOx or VOC-limited and produce photochemical modeling results with control strategies that could be inaccurate. This was one of the study goals for the TRACER-AQ field campaign of 2021-22.[12] The EPA has not yet seen a synthesis of TRACER-AQ findings.

c. One source of underreporting that could be addressed is use of the default (maximum allowed) flare DRE values for flared VOC and HRVOC, as described in the attached letter EPA provided to TCEQ on May 8, 2023, providing Quadrennial Review Comments ("Attachment 1"). When DRE is allowed to be overestimated, actual emissions are underestimated and underreported; thus, related attainment demonstrations would not contain accurate emissions of VOC for accurate photochemical ozone reactions. See the FluxSense footnote above for the conclusions concerning poor combustion efficiency, hence large propylene emissions, from propylene flares in its flux measurement data. In 2009, the TCEQ had a Flare

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2009 to 2022, but the tabulated EI is still roughly 10% of the 2022 measured fluxes of HRVOC and alkanes. The report also concludes that many of the fluxes appear to still come from directions of propylene flares with poor combustion efficiency, as was found in the earlier studies.

[9] A good synthesis reference for this was provided in presentations hosted by the Houston Advance Research Center (HARC) as part of "Remote Sensing VOCs and GHGs", December 7, 2009.

[10] Id. Also note that NASA Health and Air Quality Applied Sciences Team (HAQAST) and its predecessor, AQAST, provided many good analyses, reports, and publications from academic researchers of the various campaigns. For formaldehyde, especially note the July 2014 presentation by Dan Cohan at https://haqast.org/aqast-presentations/, which concluded that "Houston HRVOC emissions in the 2008 NEI are 5x too low." HAQAST meetings and presentations newer than 2016 can be found at https://haqast.org/get-involved/meetings/. Also note that even before TexAQS 2000 and TexAQS II (2006) (see https://www.tceq.texas.gov/airquality/research/texaqs), additions of VOC were provided to modeling inventories to help match monitored values in areas of HGB and to assist the photochemical models to perform better (simulate ozone in the right places at the right times to correspond with the ozone monitors). This was performed via the addition of rule effectiveness for specific source categories and for known emissions upsets. TCEQ no longer includes these in its modeled emissions inventory. Improvements were suggested through various TCEQ and pass-through funding for contract projects through the Texas Environmental Research Consortium in coordination with the Houston Advanced Research Center (https://www.tercresearch.org/aqr/projects). These pointed out many unknowns and future potential projects to study regarding HGB emissions. Some of these have been addressed, others have not. TCEQ does spend money on Air Quality Research Program (AQRP) (https://www.tceq.texas.gov/airquality/airmod/project/pj.html) contracts for emissions inventory improvement and photochemical modeling projects. EPA would like to see TCEQ implement the suggestions from these projects to understand emissions events and ongoing underreported emissions variables better, so that meaningful emission reductions can be made for improved modeled and monitored ozone impacts.

[11] "Overview of the SHARP campaign: Motivation, design, and major outcomes", Olaguer, EP, et al, 2014: http://easd.geosc.uh.edu/rappenglueck/pdf/Olaguer%20et%20al%20JGR%202014%20SHARP.pdf

[12] TRacking Aerosol Convection ExpeRiment-Air Quality (TRACER-AQ, 2021-22), at https://www-air.larc.nasa.gov/missions/tracer-aq/. TCEQ "HGB Technical Information Meeting, June 28, 2022" presentation: https://www.tceq.texas.gov/downloads/air-quality/modeling/meetings/hgb/2022/20220728-traceraq-tceq-knapp.pdf

Task Force, including internal teams, stakeholders, and a subsequent 2010 Flare Study.[13] EPA encourages TCEQ to resurrect the Flare Task Force and not rely on 40 CFR 60.18 default maximum 98% DRE and its unproven 99% DRE for 3-carbon or less VOC, which include two of the most prevalent HRVOC in HGB – ethylene (ethene) and propylene (propene). For the reasons identified throughout Attachment 1, EPA also encourages TCEQ to re-evaluate the flare DRE assumptions allowed by its guidance for 40 CFR 60.18-compliant flares and ensure that appropriate DRE assumptions are identified.

d. We encourage TCEQ to establish requirements to retrofit improvements (including monitoring or testing) and for replacements for old flares, especially those that are not emergency flares. Standard process vents can almost always be routed to relatively inexpensive condensers. BACT or LAER for controlling standard process waste gases should almost never include flares. Best practices should include flare minimization and alternative control processes for waste gases, and TCEQ should incentivize such. For many industrial processes, better technology exists. TCEQ studies and guidance (see prior references and Attachment 1) identify most of the variables that make for best practices, and we would like TCEQ to implement such improvements. Permit conditions vary on a case-by-case basis, and we would like TCEQ to take a retrospective look at existing flares upon permit renewal.

**Project Number 2022-023-SIP-NR**

**Comments addressing the DFW and HGB Reasonable Further Progress (RFP) Plans**

We appreciate the detailed work submitted in the RFP plan. We have the following concerns:

1. The TCEQ's proposal includes contingency measures that rely on emissions reductions from measures that are already implemented, as opposed to measures that are prospective (i.e., that they be undertaken in the future) in nature. As noted in the TCEQ's proposal, in January 2021 the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's interpretation of the CAA to allow states to rely on already implemented control measures to meet the statutory requirements of section 172(c)(9) or 182(c)(9) for contingency measures in nonattainment plans for the ozone NAAQS (see 83 FR 62998, 63026). *Sierra Club, et al. v. EPA*, 985 F.3d 1055 (D.C. Cir. 2021). The effect of this decision is that the CAA interpretation that contingency measures must be prospective and conditional applies across the U.S.[14] If finalized as proposed, EPA would have serious concerns regarding the approvability of the contingency measures. EPA Region 6 will support TCEQ in the development of approvable contingency measures for ozone reductions. We encourage TCEQ to incorporate environmental justice considerations in developing such measures.
   EPA has explained that "[s]ection 182(c)(9) requires that certain state submissions must provide for the implementation of contingency measures in the event of a failure to meet a milestone; it does not require the state to submit separate and distinct contingency measures allocated exclusively for a failure to meet a milestone." 86 FR 27524 at 27527 (May 21, 2021).
2. In February 2023, the updated guidance document titled "Guidance on Quantifying NOx Benefits for Cetane Improvement Programs for Use in SIPs and Transportation Conformity" was released for

[13] https://www.tceq.texas.gov/airquality/stationary-rules/stakeholder/flare_stakeholder.html. The TCEQ's 2022 Emissions Inventory Guidelines document, Appendix A, Technical Supplement 4, Flares, found at https://www.tceq.texas.gov/airquality/point-source-ei/rg-360-22 also discusses much of this topic, and has provided updates to this since 2012. The TCEQ's NSR permitting guidance, as identified in Attachment 1, provides similar details.

[14] More information on this decision is provided in our proposed disapproval of contingency measures for the DFW and HGB Serious ozone nonattainment areas for the 2008 ozone NAAQS (see 88 FR 24522, April 21, 2023).

cetane improvement programs.[15] This updated guidance accounts for changes in fleet composition and control technology that has occurred since 2004. Please clarify for the record if the updated guidance was considered and provide any supporting documentation.

**Project Number 2022-024-SIP-NR**

**Comments addressing the Bexar County Reasonable Further Progress (RFP) Plan**

We appreciate the detailed work submitted in the RFP plan. We have the following concerns:

1. Bexar County was not classified as Moderate nonattainment or higher under a previous ozone NAAQS and thus, does not have a previously approved RFP or Rate of Progress (ROP) plan for a previous ozone NAAQS. In accordance with the CAA and EPA's associated regulations, the state shall submit a plan consistent with CAA section 182(b)(1): "… the State shall submit a revision to the applicable implementation plan to provide for volatile organic compound emission reductions … of at least 15 percent from baseline emissions …."[16] However, the TCEQ's proposal does not demonstrate the required initial 15 percent ROP in emission reductions for VOC. The TCEQ's proposal declares that emission reductions of NOx are expected to be more effective at reducing ozone concentrations in the Bexar County nonattainment area than VOC emission reductions and thus, relies on a mix of NOx and VOC emissions reductions to provide the 15 percent ROP through the attainment year (2023). The statute and implementing regulations for the 2015 ozone NAAQS at 40 CFR 51.1310(a)(4) are clear regarding the initial VOC ROP requirement for nonattainment areas without an approved prior ozone NAAQS 15 percent VOC ROP plan, and EPA's action must be consistent with such rules.

   We recognize the TCEQ has engaged a contractor to further investigate potential reductions. We encourage TCEQ to fully investigate feasible reductions to meet the requirement. The CAA appears to provide only one option if the 15% reductions cannot be achieved. CAA section 182(b)(1)(A)(ii) provides that a percentage less than 15 percent may be used for purposes of [CAA section 182(b)(1)(A)(i)] in the case of any State which demonstrates to the satisfaction of the Administrator that—

   (I) new source review provisions are applicable in the nonattainment areas in the same manner and to the same extent as required under subsection (e) of this section in the case of Extreme Areas (with the exception that, in applying such provisions, the terms "major source" and "major stationary source" shall include (in addition to the sources described in section 7602 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 5 tons per year of volatile organic compounds);

   (II) reasonably available control technology is required for all existing major sources (as defined in subclause (I)); and

   (III) the plan reflecting a lesser percentage than 15 percent includes all measures that can feasibly be implemented in the area, in light of technological achievability.

[15] Link to the main guidance page with a summary on the cetane guidance: https://www.epa.gov/state-and-local-transportation/guidance-control-strategies-state-and-local-agencies. Direct link to the cetane guidance: https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1016IFV.pdf.

[16] See 83 FR 62998, 63034 (December 6, 2018), 40 CFR 51.1300(m), and 40 CFR 51.1310(a)(4).

To qualify for a lesser percentage under this clause, a State must demonstrate to the satisfaction of the Administrator that the plan for the area includes the measures that are achieved in practice by sources in the same source category in nonattainment areas of the next higher category.

2. The TCEQ's proposal indicates that the TCEQ will require additional analysis to determine the best means to address the 15 percent VOC ROP requirement. What is the TCEQ's schedule for such analysis?
3. The TCEQ's proposal includes contingency measures that rely on emissions reductions from measures that are already implemented, as opposed to measures that are prospective (i.e., that they be undertaken in the future) in nature. As noted in the TCEQ's proposal, in January 2021 the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's interpretation of the CAA to allow states to rely on already implemented control measures to meet the statutory requirements of section 172(c)(9) or 182(c)(9) for contingency measures in nonattainment plans for the ozone NAAQS (see 83 FR 62998, 63026). *Sierra Club, et al. v. EPA*, 985 F.3d 1055 (D.C. Cir. 2021). The effect of this decision is that the CAA interpretation that contingency measures must be prospective and conditional applies across the U.S.[17] If finalized as proposed, EPA would have serious concerns regarding the approvability of the contingency measures. EPA Region 6 will support TCEQ in the development of approvable contingency measures for ozone reductions. We encourage TCEQ to incorporate environmental justice considerations in developing such measures.

**Project No. 2022-025-SIP-NR**

**Comments addressing the Bexar County Attainment Demonstration (AD) Plan**

We appreciate the detailed work submitted in the AD plan. We have the following concerns:

1. The TCEQ's proposal includes contingency measures that rely on emissions reductions from measures that are already implemented, as opposed to measures that are prospective (i.e., that they be undertaken in the future) in nature. As noted in the TCEQ's proposal, in January 2021 the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's interpretation of the CAA to allow states to rely on already implemented control measures to meet the statutory requirements of section 172(c)(9) or 182(c)(9) for contingency measures in nonattainment plans for the ozone NAAQS (see 83 FR 62998, 63026). *Sierra Club, et al. v. EPA*, 985 F.3d 1055 (D.C. Cir. 2021). The effect of this decision is that the CAA interpretation that contingency measures must be prospective and conditional applies across the U.S.[18] If finalized as proposed, EPA would have serious concerns regarding the approvability of the contingency measures. EPA Region 6 will support TCEQ in the development of approvable contingency measures for ozone reductions. We encourage TCEQ to incorporate environmental justice considerations in developing such measures.
2. The TCEQ's proposal does not include a RACT analysis. For each nonattainment area classified Moderate or higher, the state shall submit a SIP revision that meets the VOC and NOx RACT requirements in CAA sections 182(b)(2) and 182(f).[19] We look forward to reviewing the TCEQ's proposed Bexar County RACT SIP revision later in 2023 and appreciate that the AD proposal indicates the final adopted RACT analysis and any regulations to implement RACT will be submitted to the EPA by May 7, 2024.
3. The TCEQ's proposal asserts that Bexar County is not expected to attain the 2015 ozone NAAQS by the September 24, 2024, attainment date and declares that ozone formation in the San Antonio

[17] More information on this decision is provided in our proposed disapproval of contingency measures for the DFW and HGB Serious ozone nonattainment areas for the 2008 ozone NAAQS (see 88 FR 24522, April 21, 2023).
[18] More information on this decision is provided in our proposed disapproval of contingency measures for the DFW and HGB Serious ozone nonattainment areas for the 2008 ozone NAAQS (see 88 FR 24522, April 21, 2023).
[19] 40 CFR 51.1312.

nonattainment area is primarily NOx limited. Therefore, as provided in CAA section 181(b)(3), the TCEQ may request, and EPA must grant, a voluntary reclassification to the next higher classification for the Bexar County area, which would provide until the September 24, 2027, Serious area attainment date to attain the 2015 ozone NAAQS. We encourage the TCEQ to submit such a request early enough to maximize the available time for assessing, adopting, and implementing emission reduction measures so the area can meet the ozone NAAQS expeditiously and avoid the mandatory statutory consequences for failing to timely attain.

4. How many tons of NOx reductions does the model predict as needed for the Bexar County nonattainment area to attain the ozone NAAQS?
5. In February 2023, the updated guidance document titled "Guidance on Quantifying NOx Benefits for Cetane Improvement Programs for Use in SIPs and Transportation Conformity" was released for cetane improvement programs.[20] This updated guidance accounts for changes in fleet composition and control technology that has occurred since 2004. Please clarify for the record if the updated guidance was considered and provide any supporting documentation.
6. The TCEQ's proposal includes a certification that nonattainment new source review and Stage I gasoline vapor recovery program requirements have been met for the Bexar County nonattainment area for the moderate classification. 30 TAC Chapter 115.229 in the approved SIP addresses gasoline dispensing facilities in Bexar County that dispense at least 25,000 gallons of gasoline per month. We encourage TCEQ to adopt the same Stage I requirements for Bexar County as are implemented in the DFW and HGB areas, which currently exempt gasoline dispensing facilities that dispense less than 10,000 gallons of gasoline per month from the Stage I requirements.
7. We support the inclusion of the SmartWay Transport Partnership program, which works to reduce mobile source emissions from partners located in and traveling through Bexar County.
8. We support the energy efficiency/renewable energy (EE/RE) measures, even though the EE/RE emission reductions are not quantified in the SIP. We appreciate that these EE/RE measures result in lower emissions from fossil-fuel fired electric generating facilities state-wide.
9. We support the continued implementation of the TERP, which has been a cost-effective way to reduce NOx from mobile sources.
10. EPA would like the TCEQ to consider field study data conducted[21] around the Eagle Ford Shale area indicating emissions contribute to upwind ozone production; this should include upwind/downwind analysis of Bexar County monitors that showed elevated NOx and VOC levels when Eagle Ford Shale emission sources are upwind of Bexar County monitors.

[20] Link to the main guidance page with a summary on the cetane guidance: https://www.epa.gov/state-and-local-transportation/guidance-control-strategies-state-and-local-agencies. Direct link to the cetane guidance: https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1016IFV.pdf.

[21] One of these studies is "Comparing Permitted Emissions to Atmospheric Observations of Hydrocarbons in the Eagle Ford Shale Suggests Permit Violations," Holliman and Schade, Texas A&M Univ., Feb 2021, https://www.mdpi.com/1996-1073/14/3/780. Another example study for this area "Quantifying Emissions from the Eagle Ford Shale Using Ethane Enhancement," Roest and Schade, Texas A&M Univ., Dec 2014, https://ui.adsabs.harvard.edu/abs/2014AGUFM.A13F3250R/abstract

**Project Number 2022-026-114-AI**

**Comments addressing 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles**

30 TAC 114.1 (Definitions): We have no comments regarding the proposed revisions to these definitions.
30 TAC 114.2 (Inspection and Maintenance Definitions): We have no comments regarding the revisions to 114.2(10)(D) and (10)(E).
30 TAC 114.50 (Vehicle Emission Inspection Requirements): We have no comments regarding the revisions, which add Bexar County to the vehicle emission inspection requirements.
30 TAC 114.53 (Inspection and Maintenance Fees): We have no comments regarding these revisions, which add Bexar County to the various sections addressing I/M fees.
30 TAC 114.309 (Affected Counties): We have no comments regarding the removal of Ellis, Johnson, Kaufman, Parker, Rockwall, and Wise counties from this list of counties required to comply with the low Reid Vapor Pressure (RVP) program.

**Environmental Justice and Civil Rights**

Executive Order 12898, directed each listed federal agency to make "achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations."[22] Executive Order 14008, made explicit that federal agencies should address "climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts."[23] Provisions ensuring that environmental justice and civil rights be addressed in a State Implementation Plan (SIP) is one way to help ensure fair treatment of all communities affected by government decisions all represent a fairer distribution of environmental burdens and benefits. The TCEQ should carefully review applicable authorities for opportunities to incorporate environmental justice considerations and to ensure that such considerations are adequately and appropriately incorporated into SIP revisions.

EPA is committed to advancing environmental justice (EJ) and incorporating equity considerations into all aspects of our work. We encourage the TCEQ to screen their SIP actions for EJ concerns and to consider potential issues related to civil rights of the communities potentially impacted early in the SIP process by utilizing EJScreen and knowledge of the impacted area.[24] This screening will indicate whether a SIP revision has the potential to contribute to significant public health or environmental impacts, if the community may be particularly vulnerable to impacts from the SIP revision, and whether the community is already disproportionately impacted by public health and/or environmental burdens. A sound screening practice will also provide important information as to whether there are residents of the affected community who could be disproportionately subjected to adverse health, environmental and/or quality of life impacts on the basis of income, national origin (including LEP status), or other demographic factors. The TCEQ should also take into consideration whether facilities (major and minor sources of pollution) contribute to community risk. An area with an above average number of sources, especially if those sources are large or in close proximity to residents, is an area of concern.

[22] Exec. Order No. 12898, 59 FR 7629 (February 16, 1994)

[23] Exec. Order No. 14008, 86 FR 7619 (February 1, 2021)

[24] EJScreen is an environmental justice mapping and screening tool that provides the EPA with a nationally consistent dataset and approach for combining various environmental and demographic indicators. The EJScreen tool is publicly available at https://www.epa.gov/ejscreen.