

**HOUSE COMMITTEE ON ENVIRONMENTAL REGULATION  
TEXAS HOUSE OF REPRESENTATIVES  
INTERIM REPORT 2006**

**A REPORT TO THE  
HOUSE OF REPRESENTATIVES  
80TH TEXAS LEGISLATURE**

**DENNIS BONNEN  
CHAIRMAN**

**COMMITTEE CLERK  
MICHAEL HOKE**



**Committee On  
Environmental Regulation**

**January 9, 2007**

**Dennis Bonnen  
Chairman**

**P.O. Box 2910  
Austin, Texas 78768-2910**

**The Honorable Tom Craddick  
Speaker, Texas House of Representatives  
Members of the Texas House of Representatives  
Texas State Capitol, Rm. 2W.13  
Austin, Texas 78701**

**Dear Mr. Speaker and Fellow Members:**

**The Committee on Environmental Regulation of the Seventy-Ninth Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Eightieth Legislature.**

**Respectfully submitted,**

*Dennis Bonnen*

**Dennis Bonnen**

*Charlie Howard*

**Charlie Howard**

*Mark Homer*

**Mark Homer**

*Edmund Kuempel*

**Edmund Kuempel**

*Joe Driver*

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*Tracy King*

**Tracy King**

*Wayne Smith*

**Wayne Smith**

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**Charlie Howard  
Vice-Chairman**

**Members: Joe Driver, Mark Homer, Tracy King, Ed Kuempel, Wayne Smith**

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## **Interim Committee Charges**

- 1. Examine the State Implementation Plan (SIP) to determine if data is being collected adequately; if recent changes to the SIP are moving the state closer to EPA requirements; and if not, evaluate if any midcourse corrections necessary.**
- 2. Consider ways to streamline the permitting process, including but not limited to improving the effectiveness and efficiency of public notice provisions and expanding the use of the Internet for permit applications and renewals.**
- 3. Evaluate environmental enforcement to determine if a streamlined permitting process would provide more resources for enforcement; whether more enforcement leads to more compliance; if stronger incentives for high performers would be effective; and if improvement can be made to the compliance history program.**
- 4. Monitor the agencies and programs under the committee's jurisdiction.**

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## Clean Air

Interim Charge 1 - Examine the State Implementation Plan (SIP) to determine if data is being collected adequately; if recent changes to the SIP are moving the state closer to EPA requirements; and if not, evaluate if any midcourse corrections necessary.

### ***Background***

The Federal Clean Air Act sets forth six criteria air pollutants that have been determined to damage health and property. These are ground level ozone, particulate matter, lead, nitrogen dioxide, carbon monoxide, and sulfur dioxide. The National Ambient Air Quality Standards (NAAQS) outline the acceptable levels of each of these pollutants. Failure to meet the standards can result in a loss of federal highway funds, federal takeover of our clean air program, and other sanctions.

Four areas of the state do not meet the NAAQS for ozone which is .08 parts per million. These areas are the focus of the state's efforts to meet the NAAQS.

#### Houston-Galveston-Brazoria (HGB)

Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties

#### Dallas-Fort Worth (DFW)

Collin, Dallas, Denton, Tarrant, Ellis, Johnson, Kaufman, Parker, and Rockwall Counties

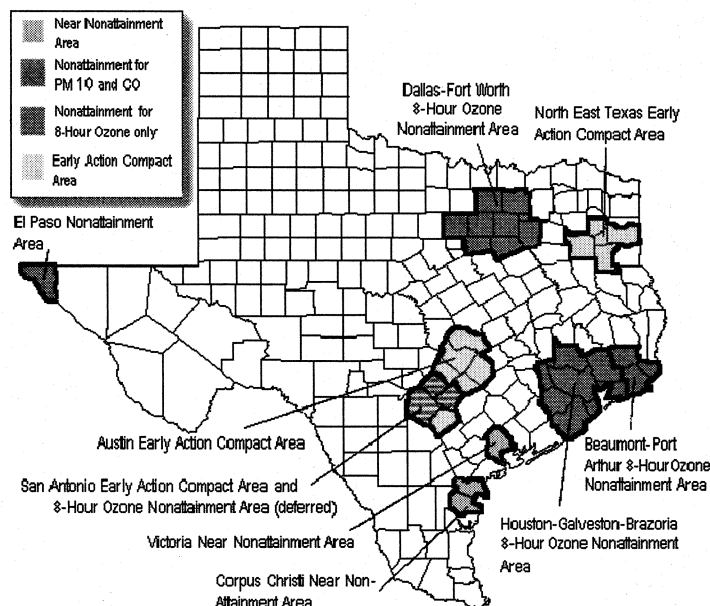
#### Baumont-Port Arthur (BPA)

Hardin, Jefferson, and Orange Counties

#### San Antonio (deferred until 2007)

Bexar, Comal, and Guadalupe Counties

### Texas' Nonattainment and Near Nonattainment Areas



Ozone occurs naturally in the atmosphere. In the upper atmosphere it helps shield the planet from solar radiation. However, in the lower atmosphere it creates smog and can cause respiratory problems in vulnerable populations. Rather than being emitted directly, ozone is a product of chemical reactions in the atmosphere. There are two main classes of precursor chemicals, nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs), that lead to the formation of ozone. Our air quality policy focuses on reducing the amount of these precursor chemicals in the air. Policies that control NO<sub>x</sub> have been found to be much more effective at reducing ozone, and this NO<sub>x</sub> is the main focus of the state's strategy.

Prior to June 2005, the federal standards for ozone concentrations were based on one-hour averages. The EPA has now begun averaging ozone concentrations over eight hour periods. This change greatly alters the state's clean air strategy. The state is in the process of crafting plans to meet this new 8-hour ozone standard. Though the deadline for meeting the new standard is June 15, 2010, ozone levels must be reduced by the 2009 modeling season. In practice, this means that policies must be in place well before this date to reduce the levels of ozone to acceptable levels.

To attain the NAAQS, the federal Clean Air Act requires the state to craft a State Implementation Plan (SIP) that outlines the specific control strategies that will reduce the amount of pollutants emitted into the air. This is the state's blueprint for reaching our clean air goals. TCEQ is currently developing new SIPs for the Dallas-Ft. Worth Area and the Houston-Galveston-Brazoria area. These plans will be submitted to EPA in June 2007.

The SIP development process seeks to meld science and policy into a coherent plan to effectively reduce the amount of NO<sub>x</sub> and VOCs emitted into the air. The agency begins by collecting data on sources of emissions, including the time of day they are active. These break down into the following broad categories:

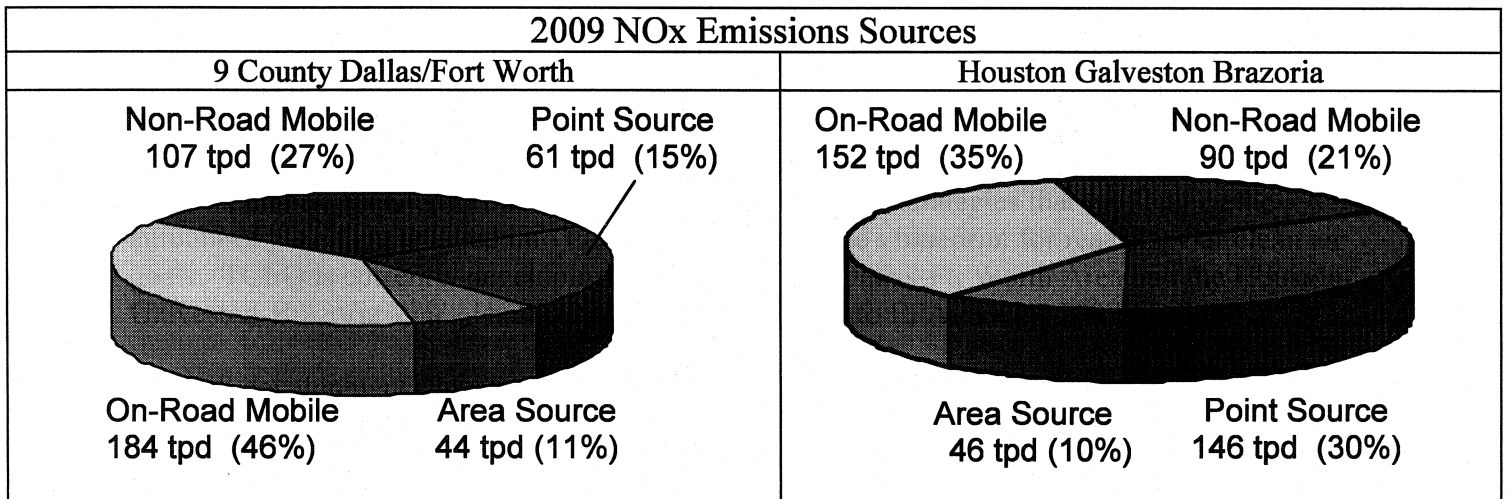
Point Sources - Industrial sources

On-Road Mobile Source - Cars, truck, buses, motor cycles, 18 wheelers

Non-road mobile sources - Construction equipment, trains, planes

Area Sources - Dry Cleaners, gas stations, bakeries, garden equipment, pumps

### 2009 NO<sub>x</sub> Emissions Sources



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A network of air monitoring stations throughout the nonattainment areas measures the levels of ozone and NO<sub>x</sub> present in the air. Maps of these monitors are in the appendix.

Once the sources of emissions are inventoried, this data is used to build a computer simulation of the atmosphere. The computer model includes data for every hour of the day, every day of the year, at 40 atmospheric layers, with meteorological data, and information on the chemical reactions that occur in the air. Using this information TCEQ is able to analyze the effectiveness of current and proposed control strategies.

In addition to the scientific research that goes into the SIP, there is substantial public input. The agency has participated in dozens of meetings in both the DFW and HGB regions. After the proposed SIPs have been presented to the TCEQ Commissioners, there will be an official public comment period.

The core of the SIP is the control strategies, the specific policies that will reduce the amount of NO<sub>x</sub> and VOC released into the air. These must be long-term solutions that are quantifiable and verifiable. The list of current control strategies along with estimates of the emissions reductions for each measure can be found in the appendix. TCEQ is considering a number of new concepts to add to the existing measures in the new SIPs. New measures still need to go through the agency's rulemaking process, including opportunities for public comment.

In the HGB non-attainment area the TCEQ is considering three main concepts. The first would require marine distillate fuels to comply with the existing TxLED standards for clean diesel fuel. The second would tighten VOC rules on storage and degassing operations. As a result of preliminary studies using hydrocarbon cameras, the TCEQ has identified a number of underestimated sources of emissions such as leaking chemical storage tanks, transport vessels, and marine vessels with liquid heels. The third concept includes locally implemented control strategies to reduce on-road mobile emissions, such as stoplight synchronization, and funding for clean vehicle fleets and is expected to reduce approximately 2.82 tons per day of NO<sub>x</sub>.

In the DFW non-attainment area the TCEQ is considering five main concepts. The first would change NO<sub>x</sub> specification for major and minor sources, including adding rules that are currently in place in the HGB area to sources in the nine county DFW region. Second, TCEQ is considering a NO<sub>x</sub> emissions site cap on cement kilns. Third, are rules on stationary, gas-fired engines in the 39 county East Texas region that would mostly apply to pipeline compressor engines. Fourth, they are considering expanding existing VOC Reasonable Available Control Technology (RACT) requirements that are currently in place in Dallas, Tarrant, Collin, and Denton counties to include Ellis, Johnson, Kaufman, Parker, and Rockwall counties. These would include industrial wastewater treatment facilities, transport vessels, refining, natural gas and petrochemical processes, and pharmaceutical manufacturing. The fifth concept includes control strategies implemented by the local governments working through the North Central Texas Council of Governments (NCTCOG). The council of governments has committed to implementing programs to reduce 2.89 tons per day of NO<sub>x</sub>.

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## ***TERP***

The Texas Emissions Reduction Plan (TERP) was created by SB 5 during the 77th Legislature. The program seeks to obtain voluntary reductions from mobile sources that could not be directly regulated by the state due to federal law. Grants are awarded to fund replacement and retrofits of diesel engines. Money is also available to fund research into promising new diesel engine technologies to get those technologies out into the field more quickly.

TERP is funded by fees assessed on vehicle title transfers, the sale or lease of diesel vehicles, commercial vehicle registrations, and commercial vehicle inspections. In each fiscal year, a portion of these collected fees remains unappropriated to TCEQ to fund TERP grants. These fees cannot be appropriated for any other use outside of TERP. There is a growing unexpended balance of TERP revenue that is growing each year as the amount of fees collected exceeds the amount appropriated to the agency. For example in FY 2005 \$151.1 million in TERP fees were collected and \$129 million was appropriated. The balance of the TERP account currently stands around \$140 million.

With an expansion of TERP funds, the pool of effective eligible projects should expand accordingly. This may require adjusting the current TERP grant guidelines to make the program more attractive as well as continued marketing of the program to the community.

## ***NTRD***

In order to claim credit for emissions reductions from new technologies they must be verified by the EPA. The New Technology Research and Development (NTRD) program within TERP helps fund the testing needed for this verification process.

In the 79th Legislature, the NTRD program was transferred from TCEQ to a non-profit organization based in Houston. The Texas Environmental Research Consortium (TERC) was awarded the contract to administer the program by TCEQ. It was hoped that by transferring the program outside the state bureaucracy to an organization with close ties to the scientific and business communities that the NTRD program would operate more quickly and more responsively, thereby increasing the number of proven clean diesel technologies on the market.

The program was first hindered by a very lengthy contract negotiation between TERC and TCEQ. The main sticking point was the amount of administrative fees TERC would receive from its contract. While the program was under TCEQ it was budgeted \$259,000 for administrative costs, or about 3% of all the program costs. TERC initially requested 17% administrative costs, but the number was negotiated down to 10%. One of the drivers of the higher costs was the executive director of TERC who was being paid around \$300,000 far more than executive directors of large state agencies. He is no longer employed as executive director.

The second sticking point was the employment of a registered lobbyist as executive director of TERC. Section 556.0055 of the Government Code prohibits a group that is receiving state funds from using the funds to pay a registered lobbyist. TERC no longer employs a registered lobbyist at their executive director.



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## ***Challenges***

The state faces a number of extreme obstacles to attaining the federal ozone standards in the required timeframe. The most serious of which is federal preemption of the most substantial sources of NO<sub>x</sub>. The federal government prohibits the state from regulating mobile sources of emissions, such as cars and trucks. In the Houston nonattainment area mobile sources will account for 60% of NO<sub>x</sub> emissions by the required attainment date for the 8-hour ozone standard. In DFW, mobile sources will account for 73% of the NO<sub>x</sub> emissions. Even if the state were to completely shut down all of the area and point sources under its regulation, this would still not generate enough reductions to attain the 8-hour ozone standard by 2009.

We have reached a point where we have achieved substantial reductions from point and area sources at a great cost to the private sector. Controls on industrial sources and power plants in Houston have resulted in 80% NO<sub>x</sub> reductions, 333.5 tons per day. In Dallas, controls on point source and power plants have reduced 504 tons of NO<sub>x</sub> per day. In comparison, federal mobile source measures have reduced 141 tons of NO<sub>x</sub> per day in Dallas and 209 tons per day in Houston.

New federal engine standards will eventually provide substantial air quality benefits. In 2009, a new car will emit 0.037 grams of NO<sub>x</sub> per mile, while a 2000 vehicle will be emitting 1.1 grams per mile. Between 2009 and 2012, fleet turnover is expected reduce 69 tons per day of NO<sub>x</sub> and 19 tons per day of VOCs. However, these new engine standards will not provide enough benefits by the 2009 attainment deadline. The federal standards are simply too late in being implemented. Since they only apply to new engines, it will take a while before there are enough of them on the road to make a substantial difference. In the Houston region in 2009, almost 1 in 3 cars on the road will still be model year 2000 or older. Despite being only one-third of the vehicles on the road these older vehicles will account for two-thirds of all the NO<sub>x</sub> produced by cars.

## ***Recommendations***

- Direct TCEQ to analyze the cost-effectiveness of proposed control measures in the SIP. Currently only projects submitted for TERP grants are required to determine the cost per ton of emissions reduced. We are at the point where we will have to decide amongst a number of very expensive alternatives to further reduce emissions. Policy-makers need to be able to determine which policies are most economically efficient
- Appropriate the entirety of collected TERP fees to the TERP program. There is a growing balance of unexpended funds and a growing need to fund clean diesel projects.
- Urge the EPA to recognize the progress that state has made in meeting the NAAQS, and that the next large round of reductions must come from mobile sources that are under their jurisdiction.

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## ***Testimony***

### **Public Hearing July 12, 2006**

Susana Hildebrand, the director of TCEQ's division of Air Quality Planning and Implementation, provided the Committee with an overview of the agency's efforts to develop SIPs for the HGB, DFW and BPA areas. Her testimony provided specific information on the challenges that the agency faces to meet the 2009/10 attainment dates for moderate areas, such as HGB & DFW. Her presentation provided information on the control measures already in place under the 1 hour SIP and those under consideration for the 8 hour SIP. She also provided information on the trends in the areas that indicate that emissions are being reduced and that monitored levels are falling. An update on the status of the various areas that signed on to an Early Action Compact was also provided.

Rep. Howard expressed concern with the proliferation of "boutique fuels" across the country and requested additional information on the five that are required in Texas. David Schanbacher, TCEQ's Chief Engineer, testified that no new boutique fuels were under consideration at this time.

Rep. Howard also asked about possible control measures for wastewater facilities mentioned in Hildebrand's presentation. She indicated that the review is very preliminary, with staff attempting to quantify the emissions from these sources and verified for Rep. Howard that the agency was only reviewing industrial wastewater facilities.

Rep. Bonnen expressed concern that the agency regulates only 27% of the emissions in the DFW area (primarily point and area sources) and that the bulk of the emissions (73%) are from sources (mobile – on and off road) that are regulated by the federal government. He stated that the issue in the DFW area was mobile sources and yet the agency/state is limited in what can be done to reduce those emissions. He mentioned that industry has spent lots of money to get reductions of 88% and higher and that it may be more cost effective to seek reductions from mobile sources rather than spending significantly more money for industry to reduce a few more percentages. He asked for additional information on the number of older vehicles that could be removed from the nonattainment areas and the potential impact on NOx emissions. He chastised EPA for not moving forward in a timely manner with control measures that only the federal government can require, yet expecting states to meet the federal attainment deadlines. He also reminded the Members that voluntary actions by industry can only go so far before that industry finds itself in a competitive disadvantage with companies in other states. He commented that all federal pre-empted sources should be treated equally.

Representatives Tracy King and Bonnen requested additional information on speed limits and the SIP credit the state receives for this control measure. Rep. King also asked questions about fugitive emission and how they are addressed. There was a dialogue between Rep. Homer and Hildebrand regarding the amount of controls that Texas has already implemented, particularly on point sources, and the fact that the state is far ahead of others, specifically in addressing the federal CAIR and CAMR requirements.

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Rep. Bonnen asked for a reminder about the various penalties that could be imposed if the state fails to comply with the attainment dates. Hildebrand responded by explaining the “bump up” to a higher nonattainment classification and the potential loss of federal highway funds.

Glenn Shankle, Executive Director of TCEQ, was asked by Chairman Bonnen to provide an update on funding for the NTRD program within TERP. Shankle informed the committee that:

- 15 grants had been issued when TCET was responsible for NTRD in '02
- TCEQ was given the authority for '04 and '05 and issued 64 grants; and
- TERC (Texas Environmental Research Consortium) is now responsible for issuing grants in '06 and '07 and that 3 RFGAs had been published, but no grant awards had yet been made.

Rep. Bonnen also questioned Shankle about the \$300,000 annual salary for the former TERC executive director and asked if he knew of any state employees receiving that level of salary. Rep. Bonnen expressed concern that, in addition to his work with TERC, the former ED had lobbying contracts. Shankle responded to Rep. Bonnen's question if the agency has complete oversight of TERCs activities regarding the NTRD program by stating that with the new ED he expected more oversight and a renewed relationship with TERC.

Steve Simmons, Deputy Executive Director of TxDOT, testified about the requirement that his agency reimburse the TERP Account for TERP revenues deposited to the Texas Mobility Fund. In response to a question from Rep. Bonnen, he indicated that these funds were being used to acquire approximately \$1 billion in bonding authority for TxDOT.

He testified that the agency will begin monthly payments to TERP beginning in October 2008 (FY '09). Those payments will be made through the end of FY '10, as required by HB 2481(79<sup>th</sup> Legislature). He mentioned that the total amount for '09 and '10 that will be reimbursed to TERP will be approximately \$183 million.

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## Appendices

## Existing Dallas/Fort Worth SIP NOx Control Strategies

\*NOx reductions in tons per day (tpd) by 2007

Measure	tpd*	Description	Area(s) Affected
Point source controls	129.1	Reductions from industrial boilers. Reductions from utility boilers	4-county area
East and Central Texas Electric Generating Facility controls	375	Sets emission limits for boilers and turbines	East and Central Texas
East and Central Texas Cement Kiln Controls	10.6	Sets emission limits for cement kilns	East and Central Texas
Vehicle Inspection/Maintenance	54.5	Yearly treadmill-type testing for pre-1996 vehicles and computer checks for 1996 and newer vehicles. <ul style="list-style-type: none"> <li>• Began May 1, 2002 in 4 core counties</li> <li>• Began May 1, 2003 in 5 perimeter counties</li> </ul>	9-county area
Texas Emission Reduction Plan (TERP)	22.2	Provides grant funds for heavy-duty diesel engine replacement/retrofit. Replaces construction restrictions and Tier 2/3 accelerated purchase.	9-county area
Speed Limit Reduction	5.4	This rule reduces all posted speed limits of 65 and 70 mph by 5 mph.	9-county area
Cleaner Diesel	3.5	Requires all diesel for both on-road and non-road use to have a lower aromatic content and a higher cetane number	110 East Texas counties
Airport Ground Support Equipment	6.1	TCEQ agreements with American, Delta, Southwest, DFW International Airport, City of Dallas, and City of Fort Worth.	DFW area airports
California Gasoline Engines	1.8	California standards for non-road large spark-ignition gasoline engines 25 hp and larger.	Statewide
Gas-Fired Water Heaters, Process Heaters and Small Boilers	0.5	Previously adopted statewide rule limiting NOx emissions from these small-scale residential and industrial sources	Statewide
Lean-Burn Rich Burn Engines	1.87	Sets emission limits for gas-fired lean-burn engines  Sets emission limits for gas-fired rich and lean-burn engine	4-county area  9-county area
Portable Fuel Containers Rule	2.79	Establishes new design "no spill" criteria requirements for portable fuel containers sold, offered for sale, manufactured, and/or distributed in Texas.	Statewide
Energy Efficiency	.72	Implementation of International Residential Code and International Energy Conservation Code	Statewide
VMEP	3.9	Thirteen voluntary measures administered by the NCTCOG (see separate summary for details).	4-county area to 12-county area (vary by program)
Transportation Control Measures	4.7	Various transportation control measures.	4-county area
Federal On-Road Measures	93	The EPA has implemented a series of strategies for on-road vehicles. Some of these include Federal Phase II RFG, Tier 2 vehicle emission standards, low sulfur gasoline, National Low Emission Vehicle standards, and heavy-duty diesel standards.	Nationwide
Federal Non-Road Measures	48	The EPA has implemented a series of strategies for non-road sources. Some of these include recreational marine standards, diesel engine standards and locomotive standards.	Nationwide
<b>Total</b>	<b>763.68</b>		

- "4-county area" or "core counties" refer to Collin, Dallas, Denton, and Tarrant counties.
- "9 county area" refers to the above counties plus Ellis, Johnson, Kaufman, Parker, and Rockwall counties. These are also known as the "5 perimeter counties."
- "12-county area" refers to all the above counties plus Henderson, Hood, and Hunt counties.

## Voluntary Mobile Emission Reduction Programs (VMEP) in the DFW SIP

Measure	Description	NOx Reduction (tpd)
Tier II Locomotive Engines	Only Tier II locomotive engines in the DFW area by 2005.	0 – 0.3
Non-Road Ozone Season Reductions	Survey work, public outreach and possibly some funding towards encouraging deferring emission causing activities until after 10 am during ozone season. Actual daily emission reductions are minimal so no credit is taken.	-
Sustainable Development	Program to favor sustainable development in each stage of the transportation planning, programming and construction process. Benefits are not quantified or claimed as of the most recent SIP revision.	-
Public Education Campaign/Ozone Season Fare Reduction	Public education campaign conducted by the North Texas Clean Air Coalition (NTCAC). Ozone action day announcements are made by NCTCOG throughout the region.	0.15
Alternative Fuel Program	NCTCOG provides up to 80% the incremental cost of an alternative fueled vehicle (AFV).	0.18
Employee Trip Reduction	Employers in the region with over 100 employees reduce employee commute vehicle trips through implementation of programs including vanpools, telecommuting, flexible work hours, transit pass subsidies, bicycling and other strategies.	0.53
Off-Road Heavy Duty Diesel Engine Retrofits	NCTCOG to survey and encourage the voluntary retrofit of diesel engines for non-road equipment in the 4-county region.	-
Vehicle Retirement Program/Vehicle Maintenance	Use of subsidies and direct acquisitions to remove high emission vehicles from the road.	0.77
<b>Total</b>		<b>1.63 – 4.63</b>

## Existing Houston-Galveston-Brazoria SIP Control Strategies

Updated 8/8/2006

Measure	Description	Area(s) Affected	NOx tpd Reduction	VOC tpd Reduction
<b>POINT SOURCE MEASURES</b>				
Point Source NOx	80% reduction from existing industrial sources and utility power plants, implemented through a cap and trade program. Affects utility boilers, gas turbines, heaters and furnaces, stationary IC engines, and industrial boilers.	8-county area	333.5	0
Emissions Bank and Trade /Mass Emission Cap and Trade (MECT)	NOx trading program for HGB area	8-county area	See above. The point source NOx controls and the MECT were credited together.	0
HRVOC Requirements	Affects fugitive, cooling tower, and vent gas control and flares, and establishes an annual emissions cap with a cap and trade program and a short-term, 1200 lb/hr not to exceed limit for each site in Harris County.	8-county area	0	116
<b>AREA/NON-ROAD MEASURES</b>				
Federal Area/Non-Road Measures	The EPA has implemented a series of strategies for area and non-road sources. Some of these include the gas engine rule and marine recreational engine standards.	Nationwide	8	
Texas Emission Reduction Plan (TERP) (See also on-road TERP reductions)	Provides grant funds for heavy-duty diesel engine replacement/retrofit. Replaces construction restrictions and Tier 2/3 accelerated purchase	8-county area	35.9	2.1
Airport Ground Support Equipment	Agreements with Continental Airlines, Southwest Airlines, and City of Houston.	Houston airports	2.4	3.1
California Gasoline Engines	California standards for non-road gasoline engines 25 hp and larger.	Statewide	0.4	3.9
Stationary Diesel Engines	Prohibits testing and maintenance between 6am-noon and establishes standards for new/modified engines.	8-county area	1.0	0.0
Gas-Fired Heaters and Small Boilers	Previously adopted statewide rule limiting NOx emissions from these small-scale residential and industrial sources.	Statewide	0.5	0
VOC Control Measures	Additional control technology requirements for batch processes, bakeries, and offset lithographic printers.	8-county area	*Estimates for these control measures are accounted for in the emission inventory.	
Texas Low Emission Diesel (TxLED)	Requires all diesel for both on-road and non-road use to have a lower aromatic content and a higher cetane number.	110 East Texas counties	2.6	0.5
VMEP	Voluntary measures administered by the HGAC (see separate summary for details.)	8-county area	3.4	0.2

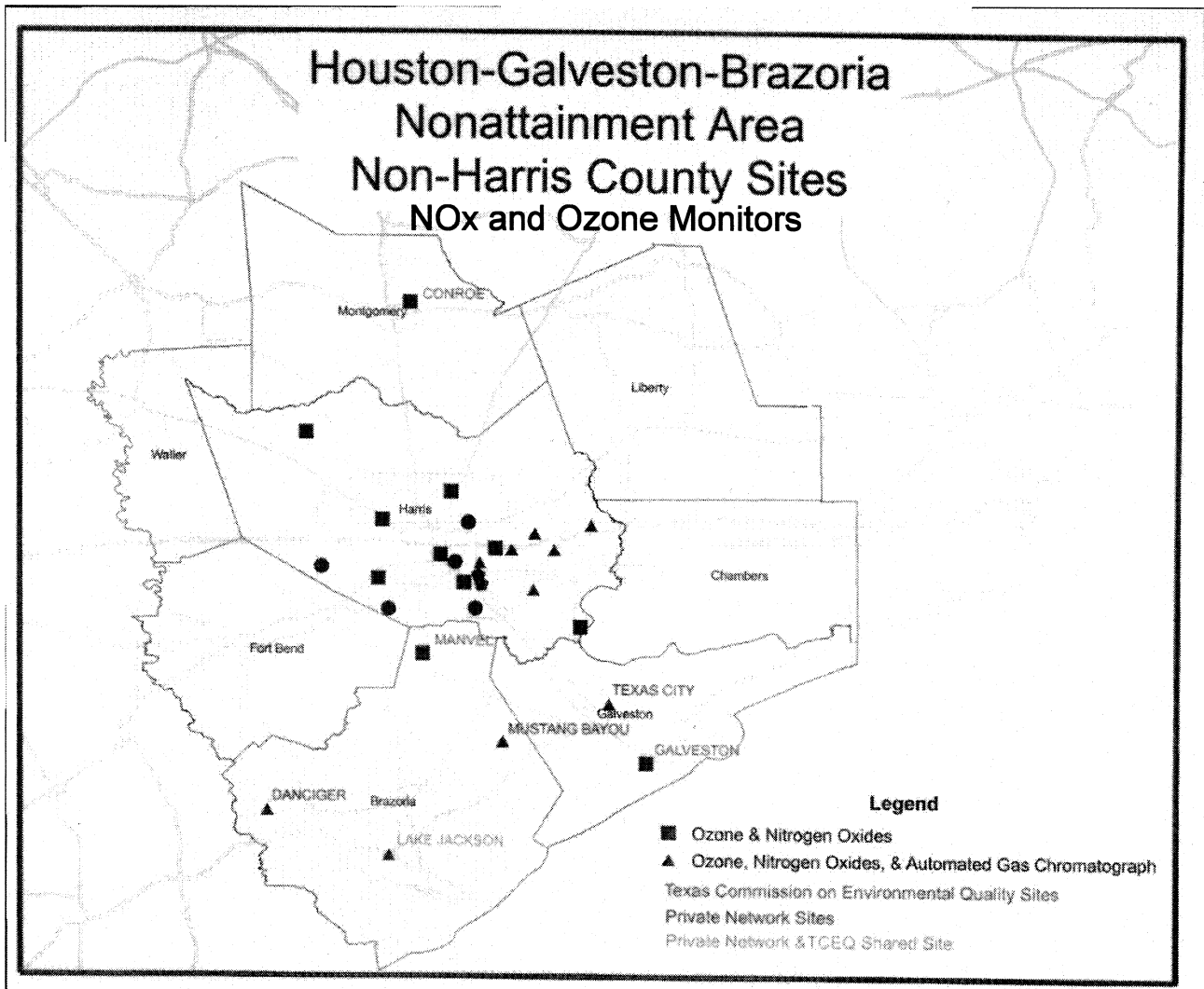
<b>ON-ROAD MEASURES</b>				
Federal On-Road Measures	The EPA has implemented a series of strategies for on-road vehicles. Some of these include Tier I/II vehicle standards, low sulfur diesel standards, National Low Emission Vehicle standards, and reformulated gasoline	Nationwide	201	
Texas Emission Reduction Plan (TERP) (See also area/non-road TERP reductions)	Provides grant funds for heavy-duty diesel engine replacement/retrofit. Replaces construction restrictions and Tier 2/3 accelerated purchase	8-county area	3	0
Vehicle Inspection/ Maintenance	Yearly treadmill-type testing for pre-1996 vehicles and computer checks for 1996 and newer vehicles. -Begin May 1, 2002 in Harris County. -Begin May 1, 2003 in Brazoria, Fort Bend, Galveston, Montgomery Counties.	5-county area	14.43	12.81
Speed Limit Reduction	Speed limits remain at 5 mph below what was posted before May 1, 2002, where speeds were 65 mph or higher.	8-county area	4.16	-0.23
Texas Low Emission Diesel (TxLED)	Requires all diesel for both on-road and non-road use to have a lower aromatic content and a higher cetane number.	110 East Texas counties	5.94	0
VMEP	Voluntary measures administered by the HGAC (see separate summary for details.)	8-county area	3.60	0.60
Transportation Control Measures	Various measures in HGAC's long range transportation plan.	8-county area	0.47	0.77
<b>OTHER</b>				
Portable Fuel Containers Rule	Establishes new design "no spill" criteria requirements for portable fuel containers sold, offered for sale, manufactured, and/or distributed in Texas.	Statewide	0.0	2.9
Voluntary Energy Efficiency/Renewable Energy	SB 5 and 7 have encouraged energy efficiency and renewable energy projects. Specific credit is difficult to assign in HGB due to the MECT program.	Statewide	Took 3.57 tpd in Dec 2000 SIP. Subsequent SIPS include a qualitative description only.	0



### Voluntary Mobile Emission Reduction Programs (VMEP) for the HGB SIP

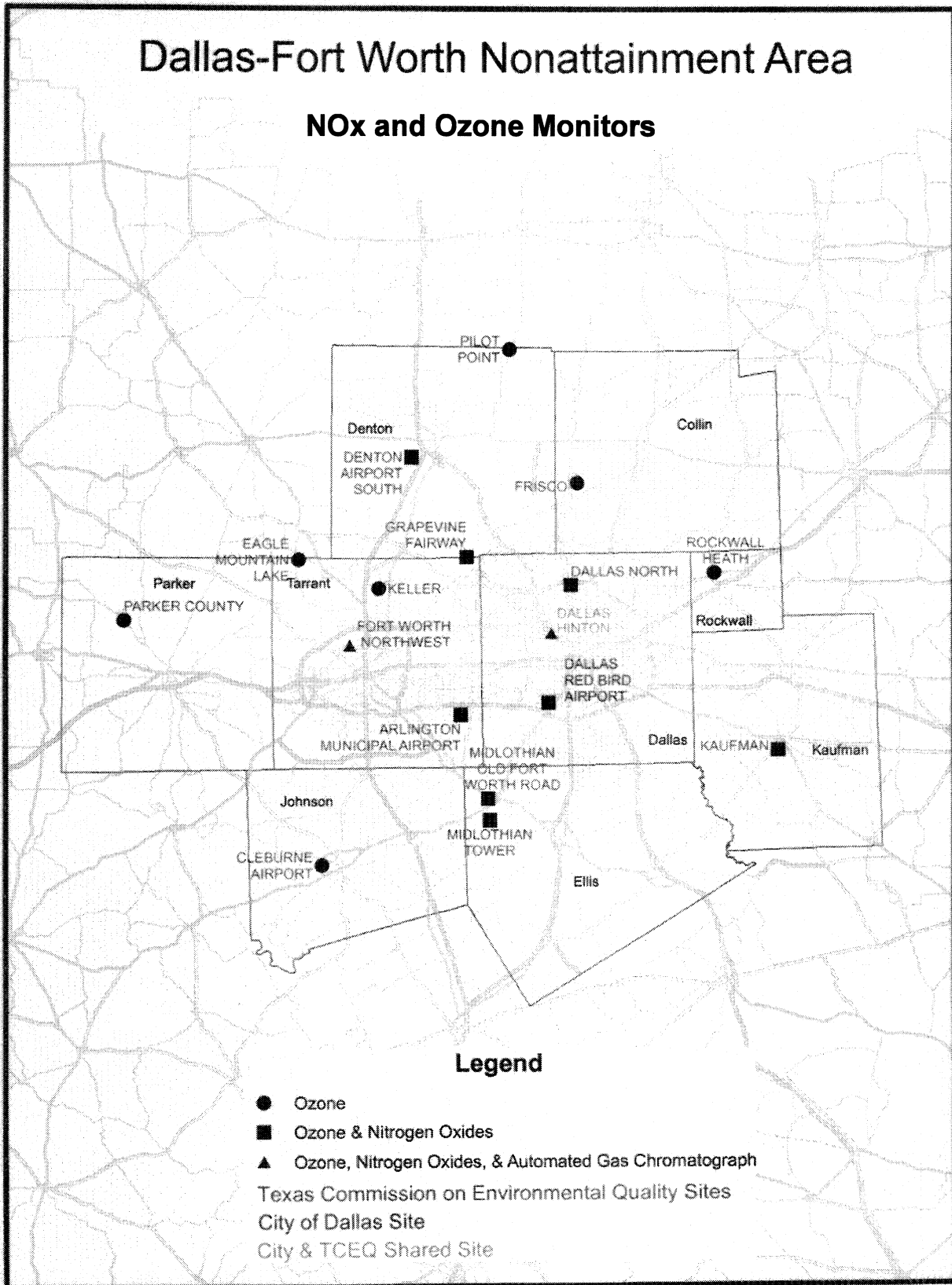
Measure	Description	Nox Reduction in 2007	VOC Reduction in 2007
Vehicle Scrappage	Emission reductions through H-GAC administered LIRAP to repair or replace high emitting vehicles.	0.11	0.10
Smoking Vehicle/ Clean Air Action	TCEQ program - Marketing and advertising by H-GAC	0.05	0.04
Clean Cities/ Vehicle Program	Public and private heavy-duty engine/vehicle replacement/retrofit	3.0	0.20
Commute Solutions	Van pools, additional transit, alternative commuting, and other initiatives	0.30	0.40
Regional Computerized Traffic Signal System	Average speed on local streets increased by 21%.	0.03	0.03
Locomotives	MOA	2.0	0.10
Commercial Marine	Tugs/Tows - MOA Ferries - MOA	1.1 / 0.4	0.0
<b>Total Emission Reduction</b>		<b>7.0 tpd</b>	<b>0.8 tpd</b>

# Air Monitor Maps



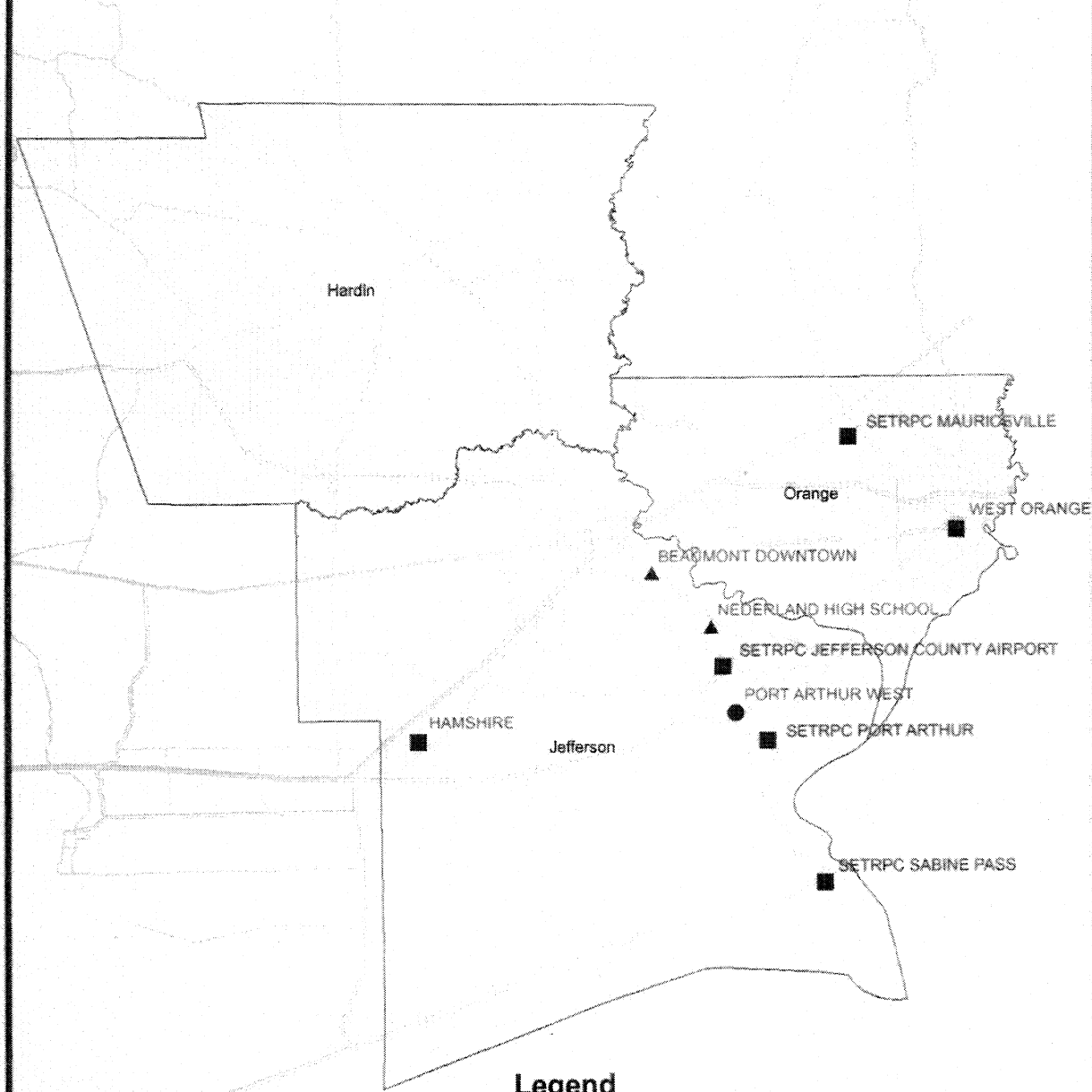
# Dallas-Fort Worth Nonattainment Area

## NOx and Ozone Monitors



# Beaumont-Port Arthur Nonattainment Area

## NOx and Ozone Monitors



### Legend

- Ozone
- Ozone & Nitrogen Oxides
- ▲ Ozone, Nitrogen Oxides, & Automated Gas Chromatograph

Texas Commission On Environmental Quality Sites  
Southeast Texas Regional Planning Commission Sites

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## Permitting

Interim Charge 2 - Consider ways to streamline the permitting process, including but not limited to improving the effectiveness and efficiency of public notice provisions and expanding the use of the Internet for permit applications and renewals.

Interim Charge 3 - Evaluate environmental enforcement to determine if a streamlined permitting process would provide more resources for enforcement; whether more enforcement leads to more compliance; if stronger incentives for high performers would be effective; and if improvement can be made to the compliance history program.

### Technology at the TCEQ

The TCEQ has a number of programs to use technology to improve the speed and efficiency of the permitting process, including permit applications, reporting of environmental data, and payment of fees. These systems also promise to take the knowledge and information which formerly had been very difficult for the public to access and make it instantly accessible to any interested person. Currently the agency has a permit application tracking system which allows the public up-to-date status of all permit applications filed with the agency.

The agency is beginning to develop a system to allow an applicant to submit all parts of the application electronically. For simple permits this will allow the entire permit process from application, to payment, to issuance of the final permit to take only a few minutes. For more complex permits the ability to submit supporting documents online will decrease mail and processing lag times. It will also make it easier for information to flow within the agency as documents can be emailed back and forth rather than waiting on paper copies to be delivered by courier.

The agency plans to have stormwater general permits and certain air permits by rule automated by the end of the year. The next phase of the project will address dry cleaner registration, underground storage tank registration and construction notification, and additional air permits by rule. These are planned to be online in 2007.

The TCEQ is conducting a pilot project with Sherwin Alumina to submit a complex land application permit completely electronically with no paper copies of documents. The facility near Corpus Christi is seeking a permit to apply sludge to revegetate bauxite tailings. Their previous land application permit took two years for approval. Permit application materials are available on the company's website ([www.sherwinalumina.com](http://www.sherwinalumina.com)). They are accessible from every public library in the area of the facility. The electronic documents can be shared much more easily within the agency than the old paper copies.

Sherwin Alumina has been pleased by the agency's willingness to innovate. They have identified a number of areas that still impede the process. Some documents still need to be submitted in hard copies, including certain signatures, maps, and notification of nearby landowners. The

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agency is working to identify which of the impediments to electronic permitting are statutory. Some of the legal barriers flow from federal rules.

The agency is also participating in the Governor's business portal project that will provide a central website to collect permit application information from new retail, construction, and child/elderly care businesses. The goal is to integrate the Governor's business portal directly into the agency's e-permitting system.

Reporting of environmental information to the TCEQ can now also be done online. Certain permit holders are required to regularly report environmental data to the agency. For over three years the State of Texas Environmental Electronic Reporting System (STEERS) has allowed users to submit this data. The system has 4,200 active users and has processed 97,000 transactions. A new component of STEERS currently under development will allow the submittal of Discharge Monitoring Reports (DMRs). DMRs are required on a monthly basis from most facilities holding water quality permits. There are 3,800 permitted water quality facilities in the state. Each year, the agency receives over 50,000 DMRs on paper. The agency is working with the EPA and 11 other states to develop a system for reporting this information electronically.

Most fees are now payable online. Since the electronic payment system went online in September 2005, the agency has received over \$2 million and processed 870 transaction per month.

## **Public Notice**

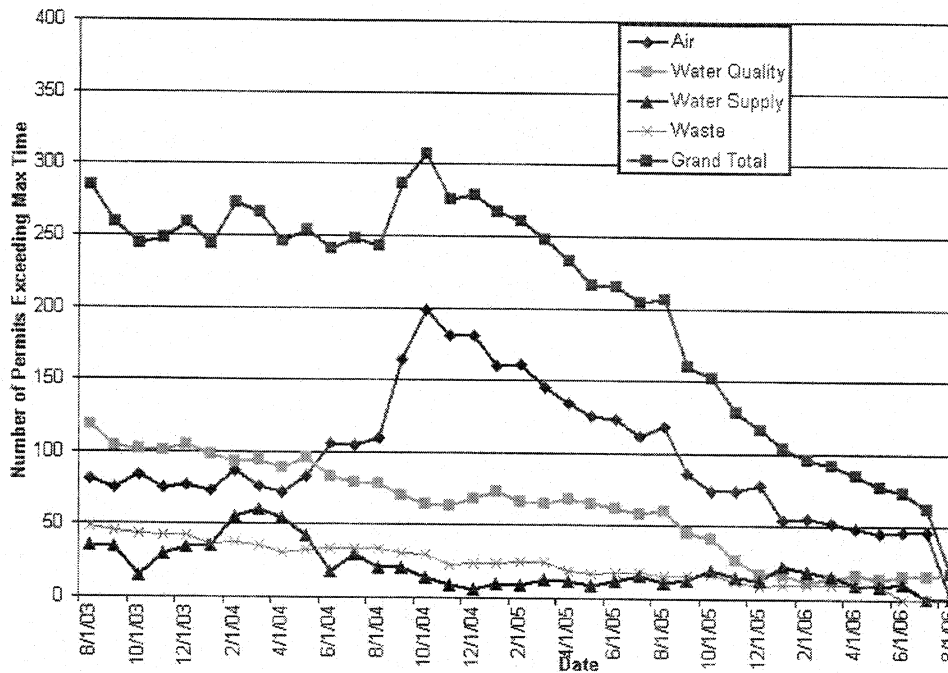
Most environmental permits are required to have some type of public notice. The timeline for notice varies with each permit as well as the method of notice. The result is an intricate web of regulations. We have no systematic way of knowing how well the public is being served by these provisions. We lack a clear understanding of how most people learn about permit applications in their area and what they choose to do with the information if they do find out. Anecdotally, we know that a great deal of ill will comes from the feeling that a permit applicant snuck past local residents. Even if the applicant has complied with the law, many residents may not become aware until construction begins on a project. House Bill 801 in 1999 made a number of reforms to the public notice provisions. This did make many of the rules more uniform across permits.

It is hoped that increased availability of permit documents online will allow more residents access to the information and more rapidly diffuse this information throughout the community. It is hoped that those that are paying attention can more easily educate and mobilize others.

## **Permit Timeframes**

The TCEQ has made a number of strides in streamlining the technical review of permit applications and the issuance of permits. The Permit Timeframe Reduction Project has decreased the number of permit applications that exceed the agency's targets. Of all uncontested permits, 78% were issued within the agency's targets. The amount exceeding the target has been steadily declining over the past few years.

## Uncontested Permits All Divisions



What is not reflected in this graph is contested permits. Once a permit enters the contested case process the time and cost needed to get a permit increase dramatically. Often in this process, the real concerns of affected parties get pushed aside by those who only wish to stop a project.

According to the agency and industry, the largest administrative barrier to increased permitting speeds is staff turnover. There is a vast amount of specialized knowledge needed to review a permit that can only be gained on the job. Permit engineers become familiar with the process as well as the individual permit. However, it is precisely this training when then makes them attractive to private sector employers. Turnover among permit engineers has ranged from 19% to 25% annually, most of these left to pursue higher paying jobs in the private sector. Each time a permit engineer leaves the agency there is a lapse during which the new permit engineer must be brought up to speed on the permit application. The agency has a number of systems in place to minimize this disruption, including mentoring of new permit engineers and a process for transferring an application from one engineer to the next so that a minimum of information is lost.

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## **Recommendations**

- To promote the use of electronic permitting and reporting systems, decrease application fees for applicants who use them.
- Remove statutory barriers to submittal of electronic versions of documents.
- Increase retention of permit engineers through improved pay and incentives.
- Streamline the contested case hearing process so that the legitimate concerns of affected parties can be resolved within the agency before resorting to the contested case process.
- Make public notice provisions more uniform, especially newspaper notices.



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## Testimony

### Public Hearing April 25, 2006

Dan Eden, Deputy Director for the Office of Permitting, Remediation and Registration testified on the TCEQ's recent efforts to streamline the permitting process and the use of available electronic technologies to improve efficiencies to the process. Eden informed the Members of the efforts over the last four years by the agency to establish and meet targeted permit timeframes and to address the backlog that had been created. He mentioned the evolving use of General and Standard Permits to streamline the process for those applications that involved minor facilities. He testified about the efforts to place applications for these permits on line for viewing by both the applicant and the general public. Eden also advised the staff of the agency's effort to develop a system that would allow for a fully automated process to secure administrative completeness for an application, as well as an automated system that would review, approve, issue an authorization and allow for payment for applications that do not require a technical review. These efforts are on-going, though final development is not yet on-line.

When asked by Rep. Bonnen if it is possible to know how many people utilize this feature, he responded that the number of hits is available, though who, where, etc... is not available.

Rep. Howard asked if an applicant or the public can determine by viewing the application on line, when the permit may be issued. Eden explained that the information provided when the application was filed and where in the process it was at that particular time. He indicated that by knowing the general timeframe for issuance of such a permit, a general idea about when it would be issued could be determined.

Asked by Rep. Smith what permits take only 120 days at the agency, Eden testified that PBRs are often issued within 60 days and Standard Permits approximately 120 days.

Eden also discussed the agency's e-pay system, responding to Rep. Bonnen's questions that the maximum payment allowed at this time is \$500. The types of applications that have been utilizing this system are renewals of occupational licenses.

He also testified about the agency's efforts to work with the Governor's office to assist in economic development projects that have been prioritized by the state. These efforts include discussions with the applicant prior to submitting an application and assigning senior staff to review application. The overall timeframe for these applications have been approximately 5 ½ months. There were also comments about the Governor's Executive Order regarding the permitting of electric generating facilities and that these timeframes can be accelerated.

Finally, Eden mentioned that the agency has established several systems that allow for electronic submission of various required reports.

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Rep. Bonnen stated his interest in utilizing technology to assist the general public in finding information on permit applications, as well as to simplify the filing of an application. Rep. Homer reiterated Rep. Bonnen's statement that the new electronic systems can not make it harder for the public or the applicant.

Eden provided initial information on the electronic submittal pilot project (Sherwin Alumina) with an application that is fairly complex and complicated. The agency is working closely with the applicant to determine how best to proceed with establishing electronic submission of applications. Additional information concerning this project was provided in testimony by the applicant (see summary of other testimony below).

Stephanie Bergeron Perdue, acting deputy director for the Office of Legal Services provided background information on the various requirements for public notice. She outlined the different requirements, depending first whether an application is or is not subject to HB 801 from the 76th Session. Perdue provided information on the when notice is required, the various options provided for public notice, who must be noticed and how the agency is required to respond to any comments received during the comment period. She also attempted to provide the Committee with some of the challenges, subtleties and variations connected with public notice, dependent on the type of permit application. This testimony elicited comments from Rep. Bonnen about the complexity of the notice provisions and the need for uniformity.

Perdue confirmed Rep. Bonnen's comment that a State Representative or Senator can request a public meeting on an application. She also responded to Rep. Smith's question that a public meeting can be held, even if a Representative or Senator does not make the request, if the agency determines that there is sufficient public interest. Rep. King mentioned that a public meeting was recently held in his area with Honda and was very impressed with the agency's effort at this meeting. Rep. Smith asked if the public is allowed to contact the permit engineer that is working on a specific application, which they are. He also expressed concern that if a group of people decides to take turns "bombarding" the engineer with questions, this could be a waste of state dollars. Rep. Bonnen mentioned several concerns regarding the disparate types of newspaper notice that can be required, depending on the type of application. He stated that uniformity is needed and that any changes would need to not be cumbersome to the applicant, but provide the public with notice in the most appropriate venue. Rep. Smith discussed the possibility of allowing notice via the internet and why the need for so many differing notice requirements. A comment echoed by Rep. Bonnen, who also stated that providing public notice at the front end could help address community concerns.

Tom Ballou from Sherwin Alumina provided information to the Committee regarding their experience, to date, as the pilot project for the electronic submission of a permit application that was fairly complex and lengthy. He testified about the agency's overall willingness to provide an electronic process. He complimented the agency's executive management for their support of these efforts, testifying that it is this support that is driving the efforts of the on line staff to work with the company to develop a process that will work best for all parties. He indicated that the company is hopeful that the process will eventually provide efficiencies, though they recognize that as the pilot, their specific permit application may take longer simply because of the need to learn how best to develop and refine the process. He testified that some of the permits the

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company had previously applied for took up to two years for issuance. He testified about some of the issues that had, at this point had been addressed:

- ability to provide electronic payment; efforts to address signature requirements
- providing hard copy of certain maps, but allowing engineering plans to be submitted electronically
- allowing the submission of the information on a CD.

Ballou also mentioned the needs of the agency's Chief Clerk for paper copies as it related to public notice. He felt that at this time, portions of this process can be handled electronically (notification that public notice is now timely, confirmation from newspaper of public notice) but others may not be (certified mailings to adjacent landowners).

Rep. Bonnen asked that Ballou, as well as the agency, inform the Committee if statutory changes are needed to ensure the development of electronic submission of applications. He also stated that these efforts should open up the process for the public, providing them information that could make them more comfortable about the proposed activities in their area.

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**Public Hearing**  
**July 12, 2006**

Dan Eden presented responses to the questions submitted by the committee concerning improvements to the agency's permitting process.

Rep. Bonnen asked Eden to provide the committee, when appropriate for the agency to do so, with possible statutory changes to address any language that may hinder the agency's ability to develop a more efficient permitting process.

Rep. Kuempel asked Eden if the agency had encountered any problems in developing standard and general permits. He responded that very few issues had surfaced, though there had been some concern expressed about a potential reduction in public participation in individual general or standard permits. He told the Committee that the agency addressed those concerns by developing standard/general permit that are as equally protective as individual permits and in some instances the requirements may be slightly more stringent.

In response to questions from Rep. Homer, Eden told the committee that the standard/general permits were for new authorizations, they have a five year renewal requirement and that some of these permits did allow for public comment and public meetings, such as those for concrete batch plants.

Rep. Bonnen questioned Eden about issues raised by external interests that the agency assists applicants in preparing their applications, rather than denying or rejecting them. Eden mentioned that one of the issues that delay the permit process is that some applications are of poor quality. He mentioned the agency's efforts to ask applicants to meet with staff prior to submitting their application to discuss what is needed by the agency to conduct the appropriate review. Eden went on to state several other issues that potentially extend the time needed to review a permit:

- staffing issues, there is some amount of turnover of permit engineers, though the agency's permit managers are working to minimize those impacts...he also testified that the assignment of a new permit engineer does not necessarily re-start the clock;
- significant public interest – Rep. Bonnen stated that this is more a legislative rather than an agency issue;
- other state or federal agencies must review permit application; and
- complex policy issues.

Eden also mentioned that agency management meets frequently with trade associations to discuss the permitting process.

In response to Rep. Kuempel's question, Eden stated that the e-permit pilot was still on target and that though there had been several issues to resolve, such as placing the entire application on line, those had been addressed and the process was moving forward. The Committee indicated that they would request an update early next year.

Rep. Howard asked questions about whether the agency is a necessary party to a contested case hearing (CCH) and was reminded that legislation adopted as part of the TCEQ's sunset review

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limits the agency's participation. Eden testified that the agency's permit engineers are often called as witnesses to a contested case hearing.

Matt Baker testified about the various agency programs established to promote compliance.

He informed the Committee that involvement in the Clean Texas program was increasing and that though the Regulatory Flexibility program was being used on a limited basis, its use was also increasing.

Rep. Bonnen asked for an update on the convenience switches (mercury) program established by HB 2793. Baker responded that approximately 45% to 50% of those contacted had responded affirmatively to obtain buckets to collect the switches. He indicated that the agency would have specific information on the response from the interested parties when the November reporting was due to the agency. Rep. Bonnen stated that a voluntary program can be killed if parties do not participate and industries and others must take note.

Mike Meroney from Huntsman and testifying on behalf of the Texas Chemical Council acknowledged to the Committee that the TCEQ was making efforts to improve the permitting process. However, he said that the TCC members did have some concerns:

- often times permit engineers are replaced during the permit process requiring a complete new review by the new permit engineer;
- applicants are limited in making changes to the permit application while the review is being conducted, other wise the process has to begin all over again;
- the process is too slow and does not consider that the applicant is responding to continually changing market situations; and
- permit requirements and decisions are based on memos, guidance and other documents that are not always readily available or known to the applicant.

Representatives Bonnen, Homer and Kuempel all asked about the level of changes being made and if the process does start from square one each time. Meroney indicated that it was their understanding that most changes required a new review. Several Members stated that companies should meet regularly with TCEQ management to address these issues. Rep. Bonnen also indicated that the change in permit engineers is more than likely the result of companies hiring the staff at a much higher salary than can be offered by the agency.