EARLY ACTION COMPACT FOR NORTHEAST TEXAS

Background Information

The National Ozone Standards

The Federal Clean Air Act is the comprehensive law that regulates airborne emissions from area, mobile, and stationary sources nationwide. This law authorizes the U.S. Environmental Protection Agency (EPA) to establish National Ambient Air Quality Standards (NAAQS) to protect public health and the environment. The EPA currently has two NAAQS for ozone, the 1-hour peak standard and the 8-hour standard.

Areas formally declared in violation of the NAAQS and adjacent contributing areas are designated "nonattainment areas." Once designated nonattainment, the state must develop and implement a comprehensive plan to clean the air mandating how the area will attain and maintain the standard. This plan and any revisions to it are known as the State Implementation Plan (SIP). Nonattainment areas have been required under the 1-hour ozone standard to meet certain Clean Air Act requirements, which include the following:

- **Transportation Conformity** - Requires a demonstration that regional long-term transportation plans will not negatively impact air quality, or federal transportation funds can be withheld.
- **New Source Review** - Requires a review of certain new or modified industrial operations to minimize air pollution.
- **Rate of Progress Requirements** - A certain percentage of pollutants must be reduced each year.
- **Specific attainment date -** Consequences of failure to reach attainment by the specified date include stricter control measures and the potential for stiff sanctions.
- **10-year maintenance plan -** Includes additional or continuing mandatory programs for 10 years following attainment.

It is anticipated that similar requirements will apply under the 8-hour ozone standard.

The 1-Hour Standard in Northeast Texas

An area must have a monitored hourly peak ozone concentration below 125 parts per billion (ppb) to meet the 1-hour ozone standard. If an area exceeds the standard more than three times in three years, it is subject to a nonattainment designation. The Tyler Metropolitan Statistical Area (MSA) has exceeded the 1-hour standard on only one occasion. This occurred on August 5, 1999. The Longview/Marshall MSA exceeded the 1-hour standard on three occasions in 2000, but has measured no exceedances in 2001 and 2002.

The Flexible Attainment Region (FAR) Agreement

In 1996 the region's leaders created Northeast Texas Air Care (NETAC) to address ozone air quality concerns in Gregg, Harrison, Rusk, Smith, and Upshur Counties. In order to ensure attainment of the 1-hour ozone standard the region's leaders signed an air quality improvement plan called the Flexible Attainment Region (FAR) Agreement in September of 1996. Elected

officials and community leaders in Gregg, Harrison, Rusk, Smith, and Upshur Counties entered into this agreement with EPA and the Texas Natural Resource Conservation Commission, now the Texas Commission on Environmental Quality (TCEQ), to proactively reduce ozone precursor emissions from sources throughout the region. Through the FAR Agreement emissions reductions of 4,250 tons per year of ozone precursors were made SIP enforceable through agreed orders adopted by TNRCC and submitted to EPA.

Early SIP Submittal

EPA did not extend the FAR agreement in 2001 because of the history of ozone exceedances under the FAR. Due to NETAC's commitment to ongoing implementation of control strategies and its aggressive pursuit of science-based air quality studies which has led to the identification of control strategies demonstrating attainment with the 1-hour ozone standard, EPA suggested that NETAC and the commission develop and implement an early SIP. As part of this continuing local effort, NETAC worked with three companies in the Northeast Texas region (Eastman, SWEPCO, and TXU) to obtain enforceable commitments to make further voluntary reductions of nitrogen oxides (NO_x). The photochemical modeling submitted with the SIP revision demonstrates attainment of the 1-hour ozone standard by 2007. The commission adopted the Northeast Texas Early SIP on March 13, 2002.

The 8-Hour Standard in Northeast Texas

During the past several years, air quality planning in the NETAC region has intensified as ozone concentrations have exceeded the value permitted by the 8-hour ozone NAAQS. Due to legal challenges to the new NAAQS and ensuing litigation, EPA has not formally designated any areas of the United States in violation of the 8-hour ozone NAAQS. The 8-hour NAAQS has been upheld by the Supreme Court and EPA anticipates nationwide designation of nonattainment areas in 2004. Based on recent monitoring data, the attainment status of Northeast Texas remains uncertain.

Compliance with the 8-hour ozone standard is determined by averaging three years of the fourth highest 8-hour ozone levels in an area. This number, called the design value, must be lower than 85 parts per billion (ppb) to meet the standard. The Longview/Marshall MSA design value is 95 ppb averaging 1999, 2000, and 2001 and 86 ppb averaging 2000, 2001, and 2002. The Tyler MSA design value is 88 ppb averaging 1999, 2000, and 2001 and 84 ppb averaging 2000, 2001, and 2002. Each year this design value will change slightly. Despite annual fluctuations in the design value, elected officials and the citizens of the region understand that long-term air quality will not improve without a concerted emission-reduction effort. The Early Action Compact (EAC) is the region's response.

Protocol for Early Action Compacts

EPA Region 6 endorsed the TCEQ Protocol for Early Action Compacts (EAC Protocol) on June 19, 2002. It establishes a two-step process that offers a more expeditious time line for achieving

clean air than expected under EPA's 8-hour implementation rulemaking. The EAC Protocol allows a region to enter into a memorandum of agreement (MOA) by December 31, 2002, committing to develop and implement a detailed technical plan to reach attainment by 2007.
The principles of the EAC Protocol to be executed by Local, State and EPA officials are:

- Early planning, implementation, and emission reductions leading to expeditious attainment and maintenance of the 8-hour ozone standard;
- Local control of the measures to be employed, with broad-based public input;
- State support to ensure technical integrity of the early action plan;
- Formal incorporation of the early action plan into the SIP;
- Deferral of the effective date of nonattainment designation and related requirements so long as all terms and milestones are met; and
- Safeguards to return areas to traditional SIP requirements should terms and/or milestones be unfulfilled, with appropriate credit given for emission reduction measures implemented.

The Northeast Texas Area Response

The region is volunteering to participate in the EAC Protocol process to expedite air cleanup for future public health and welfare. The Northeast Texas area response has two components:

1. The Early Action Compact (EAC) – The EAC is a Memorandum of Agreement to prepare and implement the Clean Air Action Plan. More specifically, the EAC sets measurable, enforceable milestones for developing and implementing the Clean Air Action Plan.
2. The Clean Air Action Plan (CAAP) – The CAAP serves as the region's official air quality improvement plan, with quantified emission reduction measures. The CAAP will include all necessary elements of a comprehensive air quality plan, (like the plans in Dallas or Houston), but will be tailored to local needs and driven by local decisions. Moreover, the CAAP will be incorporated into the formal SIP and the region will be legally required to carry out this plan just as in nonattainment areas. For example, development of the CAAP will require the same scientific diligence and undergo the same scrutiny as the nonattainment areas' SIPs, so that the emission reduction strategies selected will be adequate to ensure the region stays in attainment of the 8-hour standard.

EAC Protocol Versus Traditional Nonattainment

A major advantage of the region's participation in the EAC Protocol is the flexibility afforded to the signatories in selecting emission reduction measures and programs that are best suited to local needs and circumstances. Recognizing the varied socioeconomic and emissions characteristics within the region, not all measures can or should be implemented by every entity.

The primary differences between the process outlined in the EAC Protocol and the traditional nonattainment area process are:

- EAC Protocol is designed to achieve clean air sooner than expected under the traditional nonattainment process[1].
- EAC Protocol allows for more local control in selecting emission-reduction measures.
- EAC Protocol provides for deferral of the effective date of nonattainment designation and related requirements, as long as EAC terms and milestones are met. This would alleviate any stigma associated with a nonattainment designation.

Should any milestones be missed in designing or implementing the CAAP, the region would automatically revert to the traditional nonattainment requirements, with appropriate credit given for emission reduction strategies already implemented.

EAC Protocol Versus FAR and Early SIP

The EAC Protocol specifically addresses the 8-hour standard and will build on the emission reduction strategies developed under the FAR Agreement and the Northeast Texas Early SIP Submittal. However, the strategies needed to attain the 8-hour standard could affect more people than those outlined in the FAR Agreement and Early SIP Submittal, since the 8-hour standard is generally more difficult to achieve.

EAC Protocol Timeline

The Northeast Texas EAC is designed to enable a local, proactive approach to ensuring attainment of the 8-hour ozone NAAQS, and so protect human health. Using the EAC Protocol, the region would implement emission reduction measures not later than 2005 that are directed at attaining the 8-hour standard by 2007. This allows for a significantly earlier start than waiting for formal EPA nonattainment designation and it gives the local area more flexibility in choosing which emission reduction strategies to implement in order to achieve attainment of the 8-hour ozone NAAQS.

The Area Encompassed by the EAC

The area encompassed by the EAC includes the Longview/Marshall MSA, the Tyler MSA and rural areas located in Gregg, Harrison, Rusk, and Smith, Upshur Counties. This is the same area encompassed by the FAR Agreement. The signing of this EAC by any party does not create a presumption or represent an agreement regarding the designation of attainment status for all or part of Northeast Texas or the appropriate boundaries for purposes of designation of the Northeast Texas area under the 8-hour ozone standard.

Signatories and Their Responsibilities

The individuals representing the entities that will sign this EAC are: the County Judges for Gregg, Harrison, Rusk, Smith, and Upshur Counties; the mayors for the cities of Gilmer, Henderson, Kilgore, Longview, Marshall, and Tyler; the Executive Director of the East Texas Council of Governments; and authorized signatories from EPA and TCEQ. The local entities

[1] Under the traditional nonattainment process, emissions reduction strategies may not be entirely implemented before 2007. Under the EAC Protocol, emissions reduction strategies will be fully implemented by 2005.

whose representatives support and sign the EAC are committed to holding primary responsibility for the development and implementation of the CAAP, and for maintaining communication with all parties. These commitments by local agencies are enumerated in the following Memorandum of Agreement, along with the commitments of TCEQ and EPA.

Conditions for Modification or Early Termination

This agreement may be modified or terminated at any time by mutual consent of all signatory parties before formal incorporation into the SIP in 2004. Before the CAAP is adopted into the SIP, any signatory party may withdraw from the agreement. If a party's withdrawal from the agreement prevents remaining signatories from satisfying any of the terms and milestones of the original agreement, the agreement will be void and, and the area will be designated (or redesignated if necessary) according to EPA's 8-hour ozone implementation guidelines. Once the CAAP is incorporated into the SIP, modification involves a more complicated process in which the SIP is revised and resubmitted to EPA.

Early Action Compact for Northeast Texas

Memorandum of Agreement

This Early Action Compact (EAC) is a Memorandum of Agreement between the local governments representing Gregg, Harrison, Rusk, Smith, and Upshur counties, the cities of Gilmer, Henderson, Kilgore, Longview, Marshall, and Tyler and the East Texas Council of Governments, all operating through Northeast Texas Air Care (NETAC), (collectively, the local governments), the Texas Commission on Environmental Quality (TCEQ) and the United States Environmental Protection Agency (EPA). It is for the express purpose of developing and implementing a Clean Air Action Plan (CAAP) that will reduce ground-level ozone concentrations throughout the five-county NETAC area to comply with the 8-hour ozone standard by December 31, 2007, and maintain the standard beyond that date. Failure to meet these obligations results in immediate reversion to the traditional nonattainment process.

I. General Provisions

A. The signatory parties commit to develop, implement and maintain the CAAP according to EPA Protocol for Early Action Compacts issued June 19, 2002, (as revised per letter from Gregg A. Cooke, EPA Region 6 Administrator to Robert Huston, TCEQ Chairman, dated October 18, 2002), and adhere to all terms and conditions stated in the guidelines. See Appendix A for EPA Protocol for Early Action Compacts Designed to Achieve and Maintain the 8-Hour Ozone Standard.

B. If the region does not meet all the terms of the EAC, including meeting agreed-upon milestones, then it will forfeit its participation and and will be designated (or redesignated if necessary) according to EPA's 8-hour ozone implementation guidelines.

C. Before formal adoption into the SIP, this agreement may be modified or terminated by mutual consent of all signatory parties, or any party may withdraw from the agreement. The local government signatories will approve the CAAP before it is submitted to TCEQ for inclusion in the SIP. Once the CAAP is incorporated into the SIP, any modifications will be treated as SIP revisions.

D. The date on which all parties have signed the EAC is the start date of the agreement's term and the agreement remains in effect until December 31, 2007.

II. Local Government Responsibilities

The local governments agree to develop and implement a CAAP that by December 31, 2007 will demonstrate attainment of the 8-hour ozone standard and maintenance until at least 2012. The local governments will develop this plan in coordination with TCEQ, EPA, stakeholders and the public. The CAAP will include a process to monitor and maintain long-term compliance with the

standard. Local emission reduction strategies being considered for inclusion into the CAAP will be identified and described by June 16, 2003. The CAAP will be submitted to TCEQ and EPA for review by January 31, 2004, and finalized by March 31, 2004, for inclusion in the SIP by December 31, 2004.

In the event a development or issue arises that may impact performance or progress toward milestones (including if a milestone will be or has been missed and/or if a termination or modification has been requested), the East Texas Council of Governments (ETCOG) or the signatory party responsible will notify all other signatories as soon as possible.

Milestones and Reporting

1. Milestones

EAC/CAAP Milestones	
June 16, 2003	Potential local emission reduction strategies identified and described
November 30, 2003	Initial modeling emissions inventory completed
	Conceptual modeling completed
	Base case modeling completed
December 31, 2003	Future year emissions inventory modeling completed
	Emissions inventory comparison and analysis completed
	Future case modeling Completed
January 31, 2004	Attainment maintenance analysis completed
	Schedule for development of further episodes completed
	One or more modeled control cases completed
	Local emission reduction strategies selected
	Submission of preliminary CAAP to TCEQ and EPA
March 31, 2004	Final revisions to modeled control cases completed
	Final revisions to local emission reduction strategies completed
	Final revisions to attainment maintenance analysis completed
	Submission of final CAAP to TCEQ and EPA
December 31, 2004	CAAP incorporated into the SIP; SIP adopted by TCEQ
December 31, 2005	Local emission reduction strategies implemented no later than this date
December 31, 2007	Attainment of the 8-hour standard

2. Reporting

   In order to facilitate self-evaluation and communication with EPA, TCEQ, stakeholders, and the public, the region will assess and report progress towards milestones in a regular, public process, at least every six months, beginning in June 2003.

Emissions Inventories

1. An initial modeling emissions inventory will be developed by November 30, 2003. This inventory will include:
   a. Emissions modeling data for a 1999 or later episode that is representative of a typical ozone season exceedance and meets EPA episode selection guidance;
   b. MOBILE6 data with link based Travel Demand Model (TDM) mobile data in urban areas;

c. NONROAD model data adjusted for local equipment populations and usage rates;
d. Area source data, based on local survey data, when possible.

2. A 2007 future year modeling emissions inventory will be developed by December 31, 2003. This inventory will sufficiently account for projected future growth in ozone precursor emissions through 2007, particularly from stationary, non-road and on-road mobile sources

3. One further episode inventory will also be developed to represent the variety of situations that typically contribute to ozone production in the area and to include the most recent emissions modeling methods and data. Additional inventories will be contingent upon legislative appropriations or other funding. Selection of specific episode inventories will be partially determined by the conceptual model, which reflects an analysis of meteorological conditions typical of high ozone events.
   a. The conceptual model will be updated by November 30, 2003.
   b. A schedule for the development of further episode inventories will be completed by January 31, 2004.

4. Emissions inventories will be compared and analyzed for trends in emission sources over time. The emissions inventory comparison and analysis will be completed by December 31, 2003.

Modeling

1. Base case modeling will be completed by November 30, 2003 and future case modeling will be completed by December 31, 2003. One or more modeled control cases will be completed by January 31, 2004, with final revisions completed by March 31, 2004. All modeling:
   a. Will meet EPA guidance for photochemical modeling in effect at the time of model development.
   b. Will be carefully documented;
   c. Will sufficiently account for projected future growth in ozone precursor emissions;
   d. Will be accomplished with technical support and review by TCEQ and concurrently reviewed by EPA;
   e. Will be used to determine the effectiveness of NOx and/or VOC reductions. The control case(s) will be used to determine the relative effectiveness of different emission reduction strategies and to aid in the selection of appropriate emission reduction strategies.

D. Emission Reduction Strategies

1. All adopted Federal and State emission reduction strategies that have been or will be implemented by the December 31, 2007 attainment date will be included in base, future and control case modeling.

2. Additional local emission reduction strategies under consideration for inclusion in the CAAP will be identified and described by June 16, 2003.
3. Local emission reduction strategies needed to demonstrate attainment for the Northeast Texas area by December 31, 2007 will be selected by January 31, 2004, with final revisions completed by March 31, 2004. The selected local strategies will be implemented as expeditiously as practicable, but no later than December 31, 2005.
4. Local emission reduction strategies will be specific, quantified, permanent and enforceable. The strategies will also include specific implementation dates and detailed documentation and reporting processes.
5. Voluntary strategies can play a supporting role in the CAAP. If emission reductions from voluntary strategies are quantified and credit is taken for them in the CAAP, those emission reductions will be enforceable. Additional strategies must be implemented to meet those quantified reduction requirements if quantified voluntary strategies fail. This is true for all quantified emission reductions.
6. Local emission reduction strategies will be designed and developed by the community with stakeholder participation. (Local emission reduction strategies will be "implemented" through the SIP. This may take the form of agreed orders, or other enforceable mechanisms.)
7. Local emission reduction strategies will be incorporated by the state into the SIP. In the event that the region desires to add, delete or substitute strategies after SIP submittal, the region will request a modification to the CAAP and the SIP.

E. Maintenance for Growth

1. The CAAP will include a component to address emissions growth at least five years beyond December 31, 2007, ensuring that the area will remain in attainment of the 8-hour standard during that period. Attainment maintenance analysis will be completed by January 31, 2004, with final revisions completed by March 31, 2004. The analysis will employ one or more of the following or any other appropriate techniques necessary to make such a demonstration:
   a. Modeling analysis showing ozone levels below the 8-hour standard in 2012;
   b. An annual review of growth (especially mobile and stationary source) to ensure emission reduction strategies and growth assumptions are adequate;
   c. Identification and quantification of federal, state, and/or local measures indicating sufficient reductions to offset growth estimates.

2. A continuing planning process that includes modeling updates and modeling assumption verification (particularly growth assumptions) will be conducted concurrent with the tracking and reporting process for the CAAP. This update and verification will be an ongoing process between the signatories, stakeholders and the public. Modeling updates and planning processes must consider and evaluate:

a. All relevant actual new point sources;
b. Impacts from potential new source growth; and
c. Future transportation patterns and their impact on air quality in a manner that is consistent with the most current adopted Long Range Transportation Plan and most current trend and projections of local motor vehicle emissions.

3. If the review of emissions growth in conjunction with the continuing planning process demonstrates that adopted emission reduction strategies are inadequate to address growth in emissions, additional measures will be added to the CAAP.

4. In the event that the continuing planning process identifies the need to add, delete, or substitute emission reduction strategies after the CAAP has been incorporated into the SIP, the local area will initiate, and TCEQ will facilitate a SIP revision to accommodate changes.

F. Public Involvement

1. Public involvement will be conducted in all stages of planning by the signatory parties, with assistance from one or more of the following: Northeast Texas Air Care and East Texas Council of Governments. Outreach may include one or more of the following techniques: public meetings and presentations, stakeholder meetings, websites, print advertising and radio.
2. Public education programs will be used to raise awareness regarding issues, opportunities for involvement in the planning process, implementation of emission reduction strategies, and any other issues important to the area.
3. Interested stakeholders will be involved in the planning process as early as possible. Planning meetings will be open to the public, with posted meeting times and locations. CAAP drafts will be publicly available, and the drafting process will have sufficient opportunities for comment from all interested stakeholders.
4. Public comment on the proposed final CAAP will follow the normal SIP revision process as implemented by the State.
5. Semi-annual reports detailing, at a minimum, progress toward milestones, will be publicly presented and publicly available.

III. The Texas Commission on Environmental Quality

The state, represented by TCEQ, will provide support to areas throughout the planning and implementation process, including:

1. Technical assistance in the development of emission inventories, modeling process, trend analysis and quantification and comparison of emission reduction strategies;
2. Necessary information on all Federal and State adopted emission reduction strategies which affect the area;
3. Critical third party review of emissions inventory, modeling, and self-evaluation work;

4. Technical and strategic assistance, as appropriate, in the selection and implementation of emission reduction strategies;
5. Technical and planning assistance in developing and implementing processes to address the impact of emissions growth beyond the attainment date;
6. Maintenance of monitors and reporting and analysis of monitoring data;
7. Support for public education efforts;
8. Coordinate communication between local areas and EPA to facilitate continuing EPA review of local work;
9. Expeditious review of the locally developed CAAP, and if deemed adequate, propose modification of the SIP to adopt the CAAP;
10. Adoption of emission reduction strategies into the SIP as expeditiously as possible. The final complete SIP revision must be completed, adopted, and submitted by the state to EPA by 2004. The SIP revision will include a demonstration that the area will attain the 8-hour ozone standard by December 31, 2007.

IV. The Environmental Protection Agency

1. The EPA will provide technical assistance to the state and local area in the development of the early action plan.
2. The EPA will move quickly to review and approve completed plans by no later than nine months after submission of the SIP revision by the state.
3. When EPA makes its initial 8-hour ozone NAAQS designations, EPA will defer the effective date of nonattainment designation and related requirements for participating areas that fail to meet the 8-hour ozone standard as long as all terms and milestones of the compact are being met, including submission of the early action SIP revision by 2004.
4. Provided that the monitors in the area reflect attainment by December 31, 2007, EPA will move expeditiously to designate the area as attainment and impose no additional requirements.
5. If at any time the area does not meet all the terms of this compact, including meeting agreed-upon milestones, then it will forfeit its participation and be designated (or redesignated if necessary) according to EPA's 8-hour ozone implementation guidelines. The state will then submit a revised SIP for areas designated nonattainment according to the Clean Air Act (CAA) and available guidance on implementation of the 8-hour ozone standard. The EPA will offer such an area no delays, exemptions or other favorable treatment because of its previous participation in this program, but will provide appropriate credit for emission reduction measures implemented.
6. If the area violates the standard as of December 31, 2007, and the area has had the effective date of its nonattainment designation deferred, EPA will take action to withdraw the deferred effective date and the area's nonattainment designation will become effective soon after. The state will then submit a revised attainment demonstration SIP revision according to the Clean Air Act (CAA) and EPA's 8-hour implementation rule, unless the 8-hour implementation schedule requires SIPs from 8-hour nonattainment

areas before December 31, 2008. In that event, a revised attainment demonstration SIP revision for the participating area will be due as soon as possible but no later than December 31, 2008. In no event will EPA extend the attainment date for the area beyond that required by the CAA and/or EPA's 8-hour implementation rule.

7. The region will not be allowed to renew this EAC after December 31, 2007, or to initiate a new compact if it has previously forfeited its participation.

Signed and approved this 20th day of December, 2002

Mayor, City of Gilmer

Gregg County Judge
NETAC Co-Chair

Mayor, City of Henderson

Harrison County Judge

Mayor, City of Kilgore

Rusk County Judge

Mayor, City of Longview
NETAC Co-Chair

Smith County Judge

Mayor, City of Marshall

Upshur County Judge

Mayor, City of Tyler

East Texas Council of Governments

Gregg A. Cooke
Administrator, Region 6,
U.S. Environmental Protection Agency

Robert J. Huston
Chair, Texas Commission on
Environmental Quality