

APPENDIX G

History of the Early Action Compact



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

June 19, 2002

Mr. Robert J. Huston  
Chairman  
Texas Natural Resource  
Conservation Commission  
P.O. Box 13087  
Austin, TX 78711-13087

Dear Mr. Huston:

We thank you and your staff at the Texas Natural Resource Conservation Commission (TNRCC) for your efforts to prepare and to submit the *Protocol for Early Action Compacts Designed to Achieve and Maintain the 8-Hour Ozone Standard*. We understand that this initiative has taken an immense amount of time, and we appreciate the TNRCC's efforts to work closely with us on initiatives to improve air quality.

The Environmental Protection Agency (EPA) endorses the principles proposed in the 8-hour Ozone Protocol. We have circulated the Protocol to numerous organizations both externally and internally to EPA and have incorporated a few comments which we discussed. The final Protocol document, as approved, is enclosed. We recognize that actions to carry out the Protocol need to begin as soon as possible in order to assure that the program is an early action program. We, therefore, encourage the TNRCC, as well as other State Agencies, in our Region to engage your eligible local communities in the development of the 8-hour Compact. Upon the completion of a Compact agreement that meets the requirements of the Protocol, the EPA will honor the commitments as outlined in the Protocol.

The TNRCC has created an original means to achieve air quality benefits, and we commend your leadership and support your efforts as you move to improve air quality in Texas. Should you have any questions, please feel free to call me at your convenience.

Sincerely yours,

A handwritten signature in cursive script that reads "Gregg B. Cooke".

Gregg B. Cooke  
Regional Administrator

Enclosure

cc: Governor Rick Perry  
Mr. R. B. "Ralph" Marquez, Commissioner, TNRCC

**PROTOCOL FOR EARLY ACTION COMPACTS  
DESIGNED TO ACHIEVE AND MAINTAIN THE 8-HOUR OZONE STANDARD**

***Purpose of Compact***

Early voluntary 8-hour air quality plans can be developed through a Compact between Local, State and the Environmental Protection Agency (EPA) officials for areas that are in attainment (including no monitored violations) of the 1-hour ozone standard but approach or monitor exceedances of the 8-hour standard. These early action plans will include all necessary elements of a comprehensive air quality plan, but will be tailored to local needs and driven by local decisions. The Early Action Compact is designed to develop and implement control strategies, account for growth, and achieve and maintain the 8-hour ozone standard. This approach will offer a more expeditious time line for achieving emission reductions than the EPA's expected 8-hour implementation rulemaking, while providing "fail-safe" provisions for the area to revert to the traditional State Implementation Plan (SIP) process if specific milestones are not met. Early Action Compacts should complement any existing Ozone Flex Agreements.

The principles of the tri-party Early Action Compact to be executed by Local, State and the 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 Compact terms and milestones are met; and
- Safeguards to return areas to traditional SIP requirements should Compact terms and/or milestones be unfulfilled, with appropriate credit given for emission reduction measures implemented.

**Compact Requirements**

The Compact will address the following components:

**A. Milestones and Reporting**

- In order to facilitate self-evaluation and communication with the EPA, TNRCC and stakeholders, the Early Action Compact must include clearly measurable milestones for the development and implementation of the plan. Local areas will assess and report their progress against milestones in a regular, public process, at least every six months. Milestones will include, at a minimum:
  - Completion of emissions inventories and modeling;
  - Adoption of control strategies that demonstrate attainment;
  - Completion and adoption of the early action SIP revision;
  - Attainment not later than December 31, 2007;
  - Post-attainment demonstration and plan updates as outlined in Section E;

- In the absence of achieving milestones, including attaining the 8-hour ozone standard on or before December 31, 2007, the area will be deemed in violation of the Compact and will be subject to the full planning requirements under applicable Clean Air Act (CAA) standard SIP processes including requirements defined as part of the EPA's 8-hour implementation rulemaking. Such an area will be subject to the same requirements and deadlines which would have been effective under the CAA and the EPA's 8-hour designation rulemaking had it not participated in this program, with no preferential delays or exemptions from the EPA. However, the area will receive appropriate credit in the standard SIP process for all emission reductions from measures implemented in this program.
- If the area has had a nonattainment designation deferred and the area does not reach attainment of the standard by December 31, 2007, then the nonattainment designation will be effective immediately. If the EPA's implementation schedule also requires SIP's from areas on or before December 31, 2007, then a SIP revision demonstrating attainment by the new attainment date will be due for the nonattainment area no later than December 31, 2008. The EPA will offer areas no extensions or delays of the applicable attainment date.

#### B. Emissions Inventory

- Modeling emissions inventories using the most current tools available will be completed for at least one recent episode in order to support the early action plan. Emission inventories must include:
  - 1999 or later episode reflective of a typical ozone season exceedance that meets the EPA episode selection guidance to ensure that representative meteorological regimes are considered;
  - MOBILE6 data with link based Travel Demand Model (TDM) mobile data in urban areas;
  - NONROAD model data adjusted for local equipment populations and usage rates;
  - Area source databased when possible on local survey data.
- Further episode inventories will also be developed over time to fully represent the variety of situations that typically contribute to ozone production in the area and to include the most recent developments.
- Emission inventories will be compared and analyzed for trends in emission sources over time. This will improve an area's understanding of the trends in emissions in their community and will aid in verification of the accuracy of the inventories.

#### C. Modeling

- Emission inventories will be used to develop SIP quality modeling episodes that perform within the EPA's accepted margin of accuracy, including a base case and future case on or before December 31, 2007. Therefore, inventories must sufficiently account for projected future growth in ozone precursor emissions, particularly from stationary, non-road, and on-road mobile sources.

- Local area must carefully document modeling approach, and work will be supported and reviewed by the State and concurrently reviewed by the EPA.
- Quantifiable emission reduction measures will be integrated into the future case to produce one or more control cases. These control cases will be used to indicate the relative effectiveness of different measures and aid in selecting appropriate measures.
- Prior to plan implementation the control strategies should be determined based on model results from a control case episode that shows achievement of the 8-hour ozone standard on or before December 31, 2007 through implementation of the control strategies.
- Communities will continue to develop other episodes as necessary to fully represent the variety of situations that typically contribute to ozone production in the area and to support the plan with the most current information and tools. Other episodes may also indicate necessary revisions to ensure that sufficient emission reduction measures are selected and implemented to continue to achieve target ozone concentration levels.

#### D. Control Strategies

- After all adopted Federal and State controls that have been or will be implemented by the attainment date of December 31, 2007, are accounted for in the modeling, the local area will identify additional local controls, as necessary, to demonstrate attainment of the 8-hour standard on or before December 31, 2007. These local controls will be specific, quantified, permanent and enforceable control strategies. All controls will include specific implementation dates, as well as detailed documentation and reporting processes.
- Controls will be implemented as soon as practicable, but not later than December 31, 2005.
- Controls will be designed and implemented by the community with full stakeholder participation.
- All control measures will be incorporated by the state into the State Implementation Plan and submitted to the EPA for review and approval. In the event that areas wish to add or substitute measures after SIP submittal, plan modifications will be treated as SIP revisions and facilitated by the state.

#### E. Maintenance for Growth

- The plan must include a component to address emissions growth at least 5 years beyond December 31, 2007, ensuring that the area will remain in attainment of the 8-hour standard during that period. This future attainment maintenance analysis may employ one or more of the following or any other appropriate techniques necessary to make such a demonstration:
  - Modeling analysis showing ozone levels below the 8-hour standard in 2012;
  - An annual review of growth (especially mobile and stationary source) to ensure control measures and growth assumptions are adequate;
  - Identification and quantification of federal, state, and/or local measures indicating sufficient reductions to offset growth estimates.
- The plan must also detail a continuing planning process that includes

modeling updates and modeling assumption verification (particularly growth assumptions). Modeling updates and planning processes must consider and evaluate:

- all relevant actual new point sources;
  - impacts from potential new source growth; and
  - future transportation patterns and their impact on air quality in a manner that is consistent with the most current adopted Long Term Transportation Plan and most current trend and projections of local motor vehicle emissions.
- If the review of growth demonstrates that adopted control measures are inadequate to address growth in emissions, additional measures will be added to the plan. Local planning processes should prepare for this possibility.

#### F. Public Involvement

- Public involvement will be conducted in all stages of the planning and implementation process.
- Public education programs will be used to raise awareness regarding issues, opportunities for involvement in the planning process, implementation of control strategies, and any other issues important to the area.
- 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. Plan drafts will be publicly available, and the drafting process will have sufficient opportunities for comment from all interested stakeholders.
- Public comment on the proposed final plan will follow the normal SIP revision process as implemented by the State.
- Semi-annual reports detailing, at a minimum, progress toward milestones, will be publicly presented and publicly available.

#### *Local, State and the EPA Commitments*

##### Local Areas

Local areas hold primary responsibility for the development and implementation of the plan, as well as for maintaining communication with all parties, including:

- Drawing up the Compact, which embodies the requirements described in Sections A-F, including a time line for milestones.
- Completing and signing by all parties of the Early Action Compact no later than December 31, 2002.
- Completing and adopting the early action plan as part of the SIP no later than December 31, 2004.
- Notifying parties as soon as possible of issues and developments, which may impact performance and progress toward milestones.
- Notifying parties as soon as possible if Compact milestones will be missed or have been missed.
- Notifying parties as soon as possible if Compact modification/termination is to be requested.

### State

The state will assist in the drafting of the Early Action Compact and will provide support to areas throughout the planning and implementation process, including:

- Technical assistance in the development of emission inventories, modeling process, trend analysis and quantification and comparison of control measures;
- Necessary information on all Federal and State adopted emission reduction measures which affect the area;
- Critical third party review of emissions inventory, modeling, and self-evaluation work;
- Technical and strategic assistance, as appropriate, in the selection and implementation of control strategies;
- Technical and planning assistance in developing and implementing processes to address the impact of emissions growth beyond the attainment date;
- Maintenance of monitors and reporting and analysis of monitoring data;
- Support for public education efforts;
- Coordinate communication between local areas and the EPA to facilitate continuing the EPA review of local work;
- Expedient review of the locally developed plan, and if deemed adequate, propose modification of the SIP to adopt the early action plan;
- Adoption of control measures into the SIP as expeditiously as possible. The final complete SIP revision must be completed, adopted, and submitted by the state to the EPA by 2004.

### EPA

The EPA will recognize the local area's and State's commitment to voluntarily adopt an early, substantive, enforceable and scientifically-based attainment plan with early implementation of control measures by becoming a party to the Early Action Compact developed in conformance with this protocol.

- The EPA will provide technical assistance to the state and local area in the development of the early action plan.
- 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.
- When the EPA's 8-hour implementation guidelines call for designations, the 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.
- Provided that the monitors in the area reflect attainment by December 31, 2007, the EPA will move expeditiously to designate the area as attainment and impose no additional requirements.
- 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 re-designated if necessary) according to the EPA's 8-hour ozone implementation guidelines. The EPA will offer such an area no delays, exemptions or other favorable treatment because of its previous participation in this program.
- If the area violates the standard as of December 31, 2007, and the area has had a nonattainment designation deferred, the area will be designated nonattainment. The state will then submit a revised attainment demonstration SIP revision according to the CAA and the EPA's 8-hour implementation rule, unless the 8-hour implementation schedule

requires SIP's 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 the EPA extend the attainment date for the area beyond that required by the CAA and/or the EPA's 8-hour implementation rule.

- No area will be allowed to renew their Early Action Compact after December 31, 2007, or initiate a new compact if it has previously forfeited its participation.