

# Federal Clean Air Act (FCAA) Section 185 Rulemaking

## Informational Meeting

Air Quality Division, Emissions Assessment Section

Kathy Pendleton, P.E.





# Meeting Agenda

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- Opening Remarks
- FCAA Section 185 Background & EPA Guidance Regarding Baseline Calculation
- Overview of Issues and Alternative Equivalent Programs
- Rulemaking Schedule
- Discussion
- Closing Remarks



## What is the Section 185 Fee Provision?

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- Applies to nonattainment areas classified severe or extreme
- Requires major stationary sources of VOC (and NO<sub>x</sub>) to pay a fee to the State for failure to attain
- If the State does not collect fees that are due, then EPA must collect the fees, and can collect interest.



# When Does Fee Begin & End?

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- Begin fee obligation calendar year after attainment date
  - One-hour ozone NAAQS Attainment Date
    - 11-15-2007
  - 1997 Eight-hour ozone NAAQS Attainment Date
    - 06-15-2019
- Fee continues until area is designated attainment (or some other time, identified in future EPA rulemaking)



# Section 185 Fee Specifics

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- Penalty fee statutorily set at \$5000 per ton, adjusted by Consumer Price Index, in excess of 80% of “baseline amount”
  - Obligation due for emissions each calendar year beginning after attainment date
  - \$8,126 per ton in 2008
- Baseline amount is the lower of:
  - Actual emissions or
  - Amount allowed under permit applicable for attainment year; OR
  - Environmental Protection Agency (EPA) guidance alternative where source emissions are irregular, cyclical, or otherwise vary significantly from year to year



# EPA Guidance on Baseline

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- EPA guidance memo (Harnett, 3/21/2008) on alternative method to calculate baseline amount allows method used in Prevention of Significant Deterioration (PSD) program
  - Average actual annual emissions from 24 consecutive months within previous 10 years (“2 in 10”)
  - Utilities must use 5-year cycle



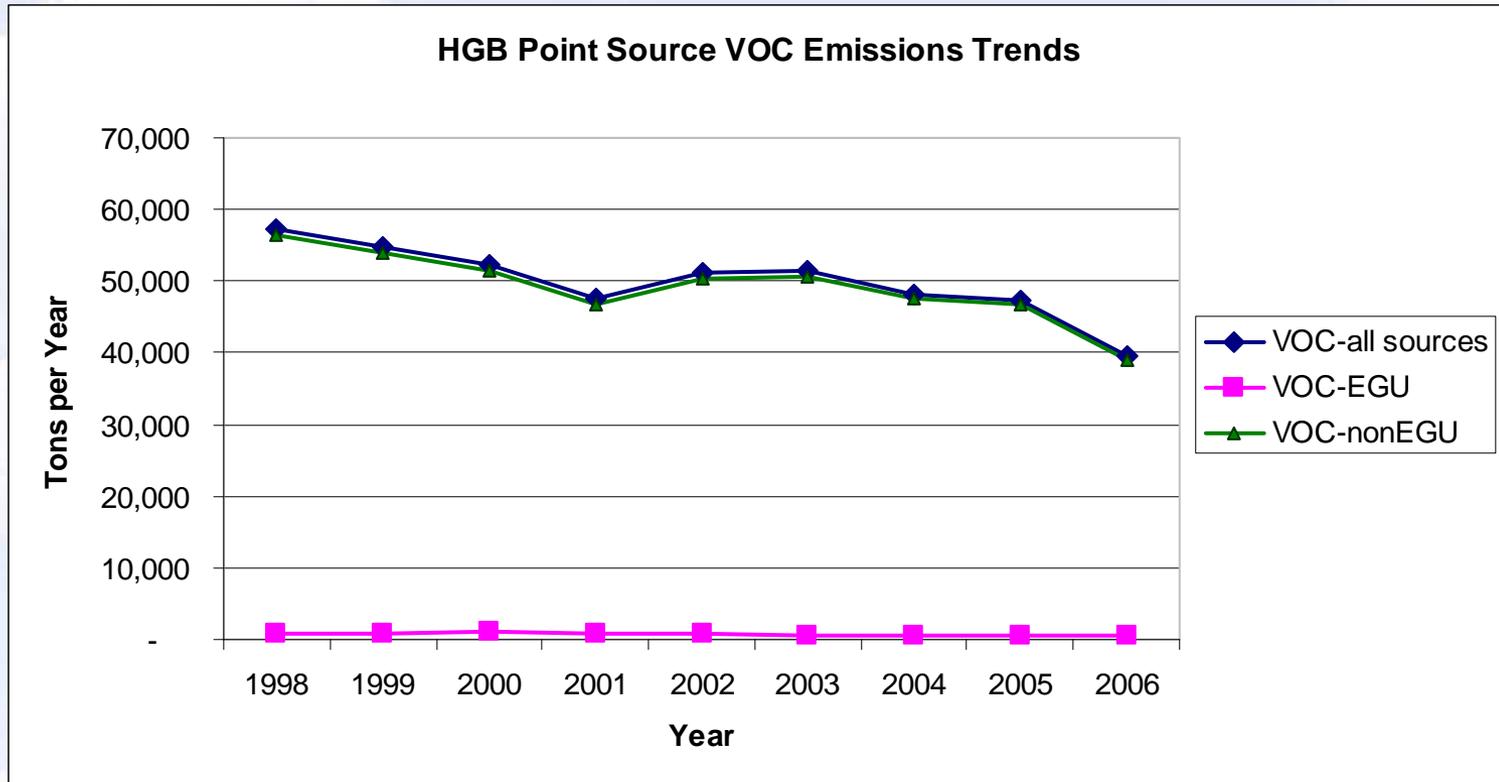
# Why Now?

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- *South Coast v. EPA* vacated EPA's rule allowing areas to not implement the fee
  - HGB one-hour ozone SIP acknowledged a need for a fee program, but did not include rules, because there was no guidance regarding how to implement
- Severe and Extreme Areas must submit SIP revisions for the 1997 eight-hour ozone standard
- EPA future rulemaking or guidance
- Federal Clean Air Act Advisory Committee Discussion Regarding Equivalent Alternatives



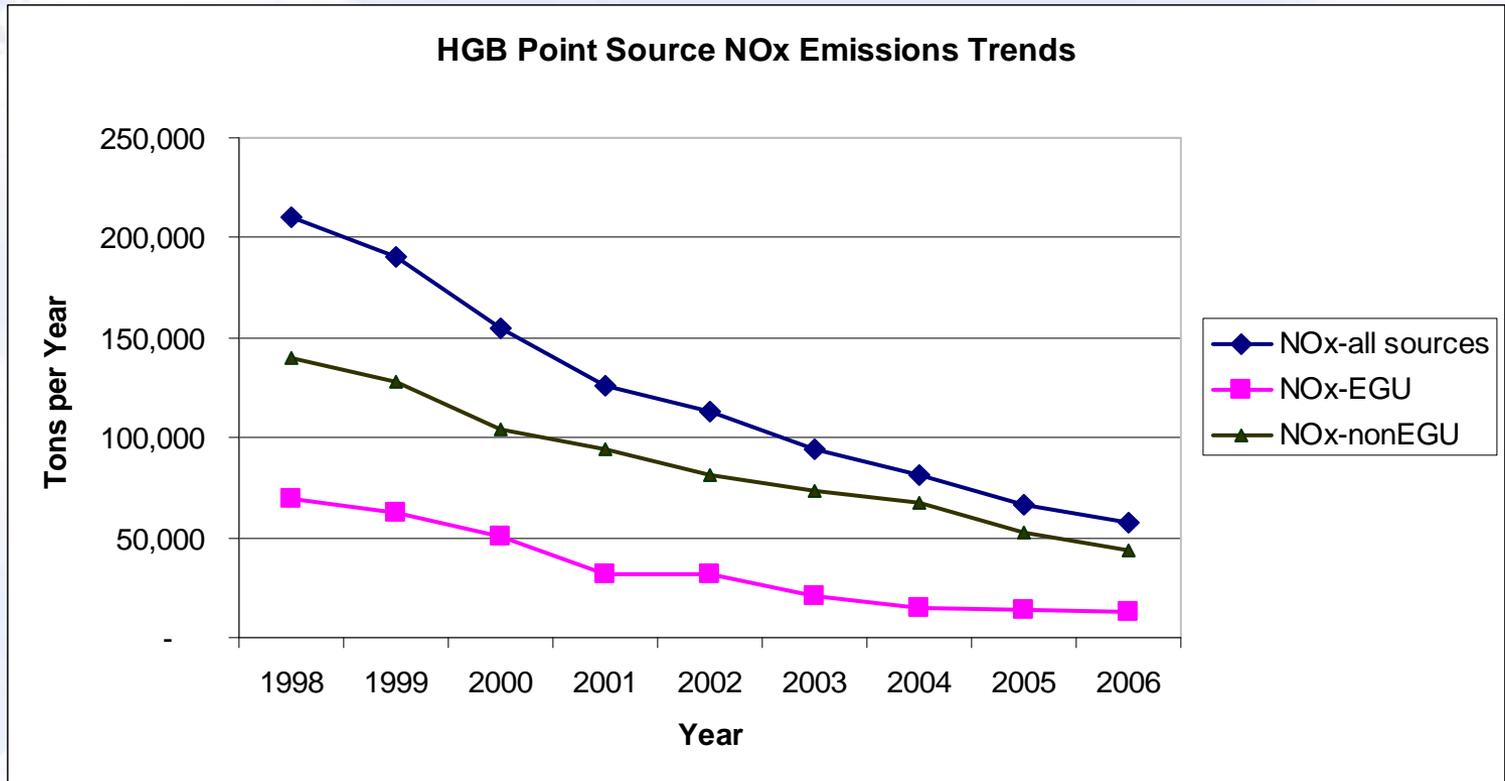
# Actual VOC Emissions Trend



Note: EGU is Electric Generating Utility



# Actual NO<sub>x</sub> Emissions Trend



Note: EGU is Electric Generating Utility



# Issues

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- Baseline calculation
  - What year(s) should be considered?
  - Fixed or sliding baseline?
  - Who calculates and verifies?
- New source baseline calculation (may not have historic emissions)
- Alternatives to fee-based Program
- Aggregation of precursors or sites
- Revisions to historic actual emissions
- Future EPA anti-backsliding rulemaking or guidance
- Transition to new standards



# Alternative Equivalent Program Options

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- Federal Clean Air Act Advisory Group is reviewing potential options for equivalent programs for the 1-hour ozone NAAQS
  - <http://www.epa.gov/air/caaac/185.html>
- Commission is inviting comments / suggestions for alternative equivalent program
- Comments should include justification for suggested alternative and must justify why equivalent to a fee-based program



# EPA: Potential Alternative Program Concepts

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- Baseline year
- Equivalent Fee Program
- Emissions Equivalent Alternative Program
  - Obtain & demonstrate emission reductions equal to or greater than fee program
- Equivalent or better air quality improvement
  - Modeling location of emission reductions
- Local trading programs
  - Retiring emissions credits



# Potential Alternative Program Concepts

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- Ability to fund Supplemental Environmental Projects (SEP)
- Combining precursors (VOC plus NO<sub>x</sub>)
- Site aggregation
- Others?



# Rulemaking Approach

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- Fee-based approach required by Section 185
- Allow flexibility for emissions-based alternatives
  - Alternatives identified from commenters, staff or EPA
- Flexible enough to allow EPA to approve all or part of new rule



# Rulemaking Schedule

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- Informational meeting (Houston) 3/04/09
- **Comments from public 3/18/09**
- Draft rule to public 4/15/09
- **Rule Comments from public 5/01/09**
- Staff draft 6/01/09



# Comments

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## Mail to:

Kathy Pendleton, P.E.

Texas Commission on Environmental Quality, M.C. 164

P.O. Box 13087

Austin, TX 78711-3087

## E-mail:

[kpendlet@tceq.state.tx.us](mailto:kpendlet@tceq.state.tx.us)