

# Section 185 Proposed Rule Overview

## Informational Meeting

Air Quality Division & Office of Legal Services

Hildebrand/Salem/Pendleton

June 12, 2009



# Meeting Agenda

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- Opening Remarks
- Overview of Proposed Rule Language for Section 185 Fees
- Summary from Clean Air Act Advisory (CAAAC) Committee Section 185 Task Force
- Open Discussion
- Closing Remarks



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# Opening Remarks

Susana M. Hildebrand, P.E.  
Director  
Air Quality Division



# Rulemaking Schedule

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- Draft rule to public 6/12/09
- Rule comments from public 6/26/09
- Staff draft 7/30/09
  
- Proposal agenda Nov 2009
- Comment period closes Jan 2010
- Adoption agenda May 2010



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# Overview of Proposed Language

Kathy Pendleton, P.E.  
Air Quality Division



# Proposed Rule Objective

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- Meet the requirements of the Federal Clean Air Act (FCAA) Section 185
- Support Texas' approach for cost effectively reducing ozone in approved State Implementation Plan (SIP)
- Split into two divisions with multiple sections
  - Basic tenets of FCAA Section 185 Fee Rule
  - Equivalent obligations



# Rule Structural Organization

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- 30 Texas Administrative Code (TAC) Chapter 101, General Air Quality Rules
- New Subchapter B: Failure to Attain Fee and Equivalent Alternative Obligation
  - Division 1: Failure to Attain Fee
  - Division 2: Equivalent Obligation



# Division 1: Failure to Attain Fee Rule 30 TAC Section (§) 101.100 Definitions

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- Definitions of terms relative to rule including:
  - Attainment year
  - Attainment date
  - Baseline amount
  - Electric generating units
  - Extension year



## 30 TAC § 101.110 Applicability

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- A major source in a severe or extreme ozone nonattainment area is subject to this rule if the area fails to attain the national standard by the applicable attainment date
- Pollutants considered
  - Section 185 for volatile organic compounds (VOC)
  - Section 182(f) for nitrogen oxides (NO<sub>x</sub>)
- Can be major for either or both VOC and NO<sub>x</sub>



# 30 TAC § 101.115 New Source Exemption

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- Exempt major sources that started operation after attainment date
- Reason: These major sources did not contribute to the baseline



# 30 TAC § 101.120 Baseline Amount Calculation

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- Baseline, once established, is fixed
- It is the lower of:
  - Annual actual emissions reported on the emissions inventory during the attainment year
  - Emissions allowed by the permits that were in effect on the attainment date



# 30 TAC § 101.120 Baseline Amount Calculation

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- EPA allows alternatives for sources that are
  - irregular,
  - cyclic, or
  - otherwise vary from year-to-year
- Similar to Prevention of Significant Deterioration
- Average 24-month consecutive period
  - ten years, or
  - five years for electric generating units



# 30 TAC §101.125 Aggregated Pollutant Baseline Amount

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- Approach supports Texas' SIP
  - One pollutant is more controlled at a site than the other
- The baseline amount for each pollutant may be combined at a site
  - Must remain consistent for fee obligation
- May not use other types of aggregation (e.g., pollutants across sites)
- Use same baseline year or period for both pollutants
- Any future obligation will be based on combined pollutants ***even if the source is no longer major for one pollutant***



# 30 TAC § 101.127 Multiple Site Aggregation of Baseline Amount

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- Supports airshed-specific cap and trade programs in SIP
  - aligns fee obligations with program
- Participants in programs may aggregate on a pollutant basis at multiple sites if:
  - NO<sub>x</sub> emissions are subject to Subchapter H, Division 3
  - VOC emissions are subject to Subchapter H, Division 6
- Calculate baseline amounts for each site prior to aggregating
- Fee obligation remain consistent
- Same baseline period for all sites and pollutants



# 30 TAC § 101.130 Adjustment of Baseline Amount

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- For sources with less than 24 months of operation
  - Sources with insufficient history may amend baseline after 24 months
  - Must complete request within 60 days of completing 24 months of operation
  - May use cyclic period of 24 months



## 30 TAC § 101.140 Failure to Attain Fee Obligation

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- Presents the formula to estimate the fee obligation
- Requires fee to be assessed on actual emissions starting the first year after the attainment year
- Applied to emissions exceeding 80 percent of the approved baseline amount
- For 1990, Section 185 fee rate = \$5,000/ton
- Adjusted by the consumer price index (CPI)
- Due annually on one or both pollutants



## Example: Fee Obligation for a Major Source of VOC

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- Major source emits 500 tons of VOC in 2007 and 420 tons in 2008
  - VOC baseline is 500 tons from 2007
- Adjust baseline to 80% to determine fee basis:  
80% of 500 tons = 400 tons
- First year VOC obligation:  
420 tons – 400 tons = 20 tons
- First year fee rate is \$5,000/ton, adjusted by the rate of change of the CPI: ~\$8126/ton:  
20 x \$8,126 = \$162,520



## 30 TAC § 101.145 Failure to Attain Fee Obligation for Aggregated Pollutant Baseline

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- Sources that aggregated pollutants at a site for baseline must combine actual emissions
- Calculate fee in same manner as 30 TAC § 101.140
- Use combined adjusted baseline
  - 80% of combined VOC and NO<sub>x</sub>
- Obligation remains due on actual emissions from both VOC and NO<sub>x</sub> ***even if the source reduces emissions and is no longer major for one***



## 30 TAC § 101.147 Failure to Attain Fee Obligation for Multiple Site Aggregation

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- Only for sites that opted to combine a pollutant across multiple sites
  - under provisions of 30 TAC § 101.127
- Obligation is kept separate for each pollutant at each site not qualified for aggregation
- Fee is due from both pollutants ***even if one of the sources reduces emissions and is no longer major for one***



## 30 TAC § 101.150 Failure to Attain Fee Payment

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- Will supply the billing details for the fee program
- Due for first full calendar year of emissions following attainment year



# 30 TAC § 101.160 Cessation of Program

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- FCAA Section specifies fee due until “area is redesignated as an attainment area”
- TCEQ additionally includes:
  - Finding of attainment by EPA
  - Three years of quality assured ambient data demonstrating attainment



# 30 TAC §101.170 Exemption from Fee Obligation

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- Rule language from FCAA Section
- No fee due on extension years to the attainment date
  - All SIP obligations have been made
  - No more than one ozone exceedance in a year at each monitor



## DIVISION 2: Equivalent Obligation 30 TAC § 101.200 Eligibility for Equivalent Alternative

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Allows a qualifying major stationary source to request to fulfill a fee obligation with an equivalent obligation



# 30 TAC § 101.210 Equivalent Alternative Obligation

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- Major stationary source may request fulfilling all or part of its obligation on a pollutant specific basis by retiring an equivalent amount of:
  - emissions reduction credits;
  - discrete emission reduction credits;
  - current or banked Highly Reactive Volatile Organic Compound Emissions Cap and Trade (HECT) program allowances; or
  - Mass Emissions Cap and Trade (MECT) program allowances
- Consistency is to be maintained for baseline and obligation
  - if site aggregated pollutants at a site or
  - if single pollutant across aggregated sites



# Questions?

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- Additional information available at:

[www.tceq.state.tx.us/implementation/air/industeipsei/sipsection185.htm](http://www.tceq.state.tx.us/implementation/air/industeipsei/sipsection185.htm)



# Rule Comments

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Due: June 26, 2009

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