

From: Cynthia Redwine
Sent: Wednesday, March 18, 2009 10:03 AM
To: kpendlet@tceq.state.tx.us; childers.pat@epa.gov
Subject: Section 185 Rule

March 18, 2009

Via Electronic Mail

Ms. Kathy Pendleton
MC 164
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: Comments on Section 185 Rule

Dear Ms Pendleton,

On behalf of the American Lung Association of the Central States, I provide comments in response to the Texas Commission on Environmental Quality's (TCEQ) request for comments on Section 185 of the Clean Air Act for Severe and Extreme Ozone Nonattainment Areas that Fail to Attain 1-Hour Ozone National Ambient Air Quality Standards by their Attainment Date. Based on the American Lung Association's dedication to public health, we are focused on the most effective way to prevent the lung disease of tomorrow. We believe that the most important element in this fight is clean air.

Baseline:

Per Section 185 (b)(2), the American Lung Association favors calculation of baseline amount as the lower of actual or allowed emissions in the attainment year. Guidance in the definition of "normal capacity", and of source's emissions that are "irregular, cyclical, or otherwise vary significantly" should be provided. Only source emissions defined as "irregular, cyclical, or otherwise vary significantly" should be allowed to consider an alternative to this defined baseline year. Such an approach would place the obligation on sources that have not contributed to the attainment goals since the established attainment date.

The American Lung Association favors separate consideration of penalty fees for each ton of VOC and NOx emitted by sources during the calendar year in excess of the baseline amount. Section 182f states that the plan provisions required under this subpart for major stationary sources of volatile organic compounds shall also apply to major stationary sources of oxides of nitrogen. The emissions of both VOCs and NOx contribute to the area's nonattainment, and should not be aggregated. Treating these pollutants separately also more clearly illustrates the progress that has been made to meet the 1-hour ozone standard.

The American Lung Association favors separate consideration of multiple co-owned disparate facilities in the calculation of penalty fees. As facilities are separately permitted, aggregate calculations of emissions in excess of incongruent baselines would neither penalize those facilities that have done the least to reduce emissions, nor reward those facilities that have done the most to reduce emissions. The TCEQ is obliged to levy these fees in a manner most consistent with protection of public health. Payment of fees results in

economic and social penalties leading to the intended result of Section 185: compliance with the ozone standard. The TCEQ should provide strict and coherent methodology for the calculation of emissions baselines for facilities, with no allowance for deviation from established baselines nor recalculation of emissions inventories.

Fee Usage

As the Clean Air Act does not specify how states may allocate or spend collected fees, the American Lung Association favors the use of collected penalty fees to fund enforcement and compliance, and air monitoring activities within the Houston-Galveston-Brazoria nonattainment area. We urge establishment of a process to ensure consistent, effective, and timely allocation and spending of the collected fees.

Fee Alternative

The American Lung Association believes that assessment of the federally mandated penalty fees are the most appropriate and timely means of achieving ozone emissions reductions. Establishment of an emissions equivalent alternative program will require additional time, personnel, and reviews. Any further delay of progress toward attainment of this health based ozone standard is opposed by the American Lung Association.

Should an alternative fee rule be pursued, the American Lung Association urges consideration of locally based, point-source focused, "not less stringent" programs. The American Lung Association does not favor use of facilities' investments in best available control technology (BACT) or lowest achievable emissions rate (LAER) technologies prior to setting the baseline against Section 185 obligations as reductions to emissions reductions obligations. As the BACT and LAER reductions are required by the State Implementation Plan and the FCAA, they would not meet the "not less stringent" additionality test

The American Lung Association appreciates your consideration. Improving the air we breathe will help keep each of us healthy now and in the future. It is a commodity that we all share and one with which we should all be concerned. We look forward to working with you and others to bring about a rule that helps this region attain this important health-based.

Sincerely,

Cynthia Redwine
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American Lung Association of the Central States

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