

January 25, 2010

Kathy Pendleton, P.E.
Texas Commission on Environmental Quality
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Austin, TX 78711-3087
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**Re: Proposed Nonattainment Fee Rule
TCEQ Docket No. 2009-009-101-EN**

Dear Ms. Pendleton:

The Texas Commission on Environmental Quality (“TCEQ”) has invited public comment on its proposed “Severe Ozone Nonattainment Area Failure to Attain Fee” rule (the “Proposed Rule”), which seeks to establish a fee program equivalent to that set forth in Section 185 of the federal Clean Air Act (“CAA”). These comments are provided on behalf of Albemarle Corporation (“Albemarle”).

Albemarle Corporation, headquartered in Baton Rouge, Louisiana, is a leading producer of specialty chemicals for consumer electronics; transportation and industrial products; pharmaceuticals; agricultural products; construction and packaging materials. The company's three business segments, Polymer Solutions, Catalysts and Fine Chemicals serve customers in nearly 100 countries, generating annual revenue of approximately \$2.4 billion. Learn more about Albemarle at www.albemarle.com.

Albemarle’s specialty chemical manufacturing facility located in Harris County is subject to the Highly-Reactive Volatile Organic Compound (HRVOC) Emissions Cap and Trade (HECT) program.

COMMENT: The use of current or banked Highly-Reactive Volatile Organic Compound (HRVOC) Emissions Cap and Trade (HECT) program allowances as an

Equivalent Alternative Obligation should only be allowed for sites that are not exempt from the HECT Program.

REASONING: Regulated entities whose potential to emit HRVOC is less than 10 tons per year, or who are located outside of Harris County, are exempt from the HECT program regardless of their VOC emissions. A site could be a major source, have significant VOC emissions, and yet have no HRVOC emissions. It would be inappropriate for such a site to obtain HECT allowances and use them to satisfy a Nonattainment fee obligation.

Similarly, a site could be a major source, have significant VOC emissions, and be located outside of Harris County. It would be inappropriate for such a site to obtain HECT allowances and use them to satisfy a Nonattainment fee obligation.

The proposed rule language allows an owner or operator of a VOC-emitting stationary source (regardless of its location and whether it is subject to the HRVOC Emissions Cap and Trade program) to purchase and then relinquish HECT allowances as an Equivalent Alternative Obligation. The use of HECT allowances as part of an alternative obligation should only be available for sites that are obligated to participate in the HECT program. To do otherwise could negatively impact the integrity and effectiveness of the HECT program. With respect to air quality in the HGB ozone Nonattainment area, a ton of VOC emissions is not equivalent to a ton of HRVOC emissions. Additionally, a ton of HRVOC emissions outside of Harris County is not equivalent to a ton of HRVOC emissions within Harris County.

Suggested Rule Language: **§101.121 Equivalent Alternative Obligation.**

(a) The owner and/or operator of a regulated entity that is a major stationary source subject to this subchapter may submit a request to fulfill its Failure to Attain Fee Obligation by substituting emission reductions, on a volatile organic compounds (VOC) or nitrogen oxides (NO_x) specific basis, in an amount equivalent to the tons on which the Failure to Attain Fee has been assessed by relinquishing an equivalent amount of either:

(1) emissions reduction credits;

(2) discrete emission reduction credits;

~~(3) current or banked Highly Reactive Volatile Organic Compound (HRVOC) Emissions Cap and Trade (HECT) program allowances; or~~

~~(4) (3) current or banked Mass Emissions Cap and Trade (MECT)~~

program allowances.

~~(b) The multiple site aggregation baseline amount calculation is subject to approval by the executive director.~~ The owner and/or operator of a regulated entity that is both a major stationary source subject to this subchapter and is also subject to Subchapter H, Division 6 of this chapter (relating to Highly-Reactive Volatile Organic Compound Emissions Cap and Trade Program) may submit a request to fulfill its Failure to Attain Fee Obligation by relinquishing an equivalent amount of current or banked Highly-Reactive Volatile Organic Compound (HRVOC) Emissions Cap and Trade (HECT) program allowances.

Thank you for the opportunity to submit these comments.

Albemarle Corporation