

El Dorado Nitrogen, L.P.

January 22, 2010

Devon Ryan, MC 205
Offices of Legal Services
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: Rule Project: 2009-009-101-EN, 34 Tex. Reg. 8644 (Dec. 4, 2009), "Failure to Attain Fee" Rule Proposal

Dear Ms. Ryan,

El Dorado Nitrogen, L.P. ("EDNLP"), is operator of a 65-percent nitric acid production facility in Baytown, Texas. EDNLP operates as a 'fence-line company' within the Bayer chemical complex. The nitric acid production facility, which is authorized under Air Permit Number 33987, was started up in 1999, and has been in continuous operation since that time. The site is within the geographic scope of the proposed rules requiring "penalty fees" for sources operating in the Houston-Galveston ozone nonattainment area.

During the design phase of the project, members of the EDNLP management and design team made a conscious decision to voluntarily incorporate a highly efficient emissions control system (specifically, Selective Catalytic Reduction, or "SCR") to ensure very low emissions of NOx from the process. At that time, the Best Available Control Technology limit for such plants was 3.0 lbs per ton of nitric acid produced. The EDNLP air permit allows for maximum emissions of 71 tons NOx per year, which equates to maximum emissions of less than 0.3 lbs NOx per ton. In part, the decision to install beyond BACT design was based on our recognition of the severity of Houston's ozone nonattainment situation, and an expectation that each business in the area should go the extra mile, or one day would be required to do so. Unfortunately, our proactive efforts may prove to be the good deed that gets punished, while our competitors—who avoided the capital and ongoing costs of SCR for 10 years—now can spend their money on capital improvements instead of "penalty fees."

Under the proposed rules, there is currently no provision to give credit to those facilities which voluntarily acted to ensure very low NOx emissions well in advance of the 2007 Attainment Date. Because EDNLP made the extra effort ahead of the

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game, the Company now has limited options for further reducing its NOx emissions. EDNLP clearly did its part to work toward reaching the attainment goals set forth by the Agency, and believes it should be granted an exemption to the Failure to Attain Fee being proposed.

EDNLP respectfully requests that the Rule Language be modified to include an exemption provision. We recommend a petitioning process whereby a company could submit to the Agency its emissions records to document the excellence initiatives adopted and implemented in advance of and through the attainment year, such that early and sustained reductions can be credited as an alternative and equivalent program as allowed by EPA guidance.

In addition, we note that the Houston area appears to have come into compliance with the one-hour ozone standard. EDNLP believes that this should eliminate TCEQ's obligation to enact any fee related to failure to attain.

Your consideration is greatly appreciated.

Sincerely,



Anne O. Rendon
President of the General Partner
Of El Dorado Nitrogen, L.P.

Cc: John Carver, VP Safety & Environmental Compliance