



January 10, 2013

Kathy Pendleton, P.E.
MC 164
Rule Project Manager, Air Quality Division
Texas Commission on Environmental Quality
P.O. Box 13087 Austin, TX 78711-3087

Re: Federal Clean Air Act Section 185 Failure to Attain Fee – TCEQ Rule Project Number 2009-009-101-AI

Dear Ms. Pendleton:

I am writing on behalf of the Greater Houston Partnership (GHP) regarding the Texas Commission on Environmental Quality's (TCEQ) proposed Section 185 Failure to Attain Fee rule. As the primary voice for Houston's business community, GHP advocates on behalf of its members regarding the development of environmental regulation and legislation for our 10-county region.

GHP members are proud of the air quality improvements achieved in the Houston-Galveston-Brazoria (HGB) ozone nonattainment area. Our region has seen dramatic reductions in ozone and other pollutants, due in large part to substantial investments by our members in effective emission reduction strategies. GHP supports continued air quality improvement through incentives and free markets, rather than new regulatory mandates, fees or taxes.

GHP understands that the proposed rule is aimed at implementing Section 185 of the Federal Clean Air Act by imposing penalty fees for failing to attain the revoked one-hour National Ambient Air Quality Standard for ozone. TCEQ's memo estimates that the major stationary source fee obligation could be as high as \$90 million for the first year. GHP is greatly concerned by the disproportionate impact that this penalty fee will have on our region, despite our clear and sustained progress on air quality goals. The disproportionate impacts are especially evident when the current air emission contributions in the HGB area are taken into account. For example, the most recent HGB air shed emissions inventory (TCEQ Adopted SIP Revision March 3, 2010, Chapter 3, Table 3-13) indicates that point sources only represent approximately 15 percent of the overall volatile organic compounds (VOC) emissions and 31 percent of the nitrogen oxides (NOx) emissions; whereas, area and mobile Sources represent 42 percent of the VOC inventory and 68 percent of the NOx inventory. Despite these statistics, point sources are

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saddled with the entire Section 185 fee obligation. Based on precedent in other states, GHP understands that this fee obligation may be wholly or partially offset by funds generated by other programs intended to improve air quality in the nonattainment area. GHP fully supports this approach and encourages TCEQ to follow through on its proposal to use funds generated by the Low Income Repair Assistance Program (LIRAP) and Motor Vehicle Emissions Inspection/Maintenance (I/M) fees to offset the fee burden on industry.

To the extent that any fee program must be imposed pursuant to Section 185, GHP supports TCEQ's proposal to incorporate the maximum flexibility consistent with the Clean Air Act and U.S. Environmental Protection Agency guidance. To that end, GHP is particularly supportive of four aspects of the proposed rule, which are outlined below.

I. The program should allow baseline calculation flexibility as allowed by the statute and EPA guidance.

Major stationary sources should have the option to use a multi-year baseline, consistent with the NSR reform rules, including emissions that were permitted after the attainment year. A multi-year baseline is expressly allowed by the Clean Air Act and EPA guidance from 2008.

II. Any Section 185 rule should maximize the use of fee alternatives.

Given the magnitude of the potential economic impact of the proposed rule, any fee program should build in cost-effective alternatives for satisfying the fee obligation. GHP supports TCEQ's proposal to include SEPs and retirement of Emission Reduction Credits, Discrete Emission Reduction Credits, HECT allowances, and MECT allowances as alternatives to direct payment of fees.

III. Any program should allow affected sources to group multiple sites, emission types (VOC or NOx), or both, for purposes of determining the total emissions on which fees are to be assessed.

GHP supports TCEQ's proposal to allow site and ozone precursor aggregation for determining the total emissions on which the fee obligation is to be established. This approach is consistent with EPA guidance and SIP approval actions in other parts of the country.

We urge TCEQ to integrate the full range of flexibility allowed by the Clean Air Act. GHP opposes any constraints on cost-effective alternatives for satisfying the Section 185 fee obligation. Maximizing the availability of fee alternatives would reduce the economic impact of

the rule on area businesses, while still providing the cost-effective tools to improve the region's air quality. Indeed, in many instances the fee alternatives will have a more lasting positive impact towards improving the environment.

IV. Any program should allow the fees promptly to terminate based on attainment.

Any fee program premised on the region's ozone nonattainment should provide for prompt termination based on attainment. Our region is nearing attainment of the ozone standards that could result in fees, and the impact of exceptional events and international emissions on our region's air quality has not been fully explored. GHP supports provisions allowing prompt termination in the event of attainment, taking into account the effect of exceptional events and international emissions.

In sum, to the extent any Section 185 fee rule is necessary, GHP urges TCEQ to allow maximum flexibility to enable sites to pursue alternative ways of satisfying the fee obligation – and improving the area's air quality – while still preserving the region's economic vitality.

Thank you for the opportunity to comment on this issue.

Sincerely,



Robert W. Harvey
President & CEO
Greater Houston Partnership

Cc: Anthony Chase, Chairman, GHP
David McClanahan, Vice Chair, GHP
David Dickson, Chair, GHP Energy & Environment Advisory Committee
Tracy Hester, Vice-Chair, GHP Energy & Environment Advisory Committee
Rebecca Rentz, Chair, GHP Clean Air Subcommittee
Judy Bigon, Vice-Chair, GHP Clean Air Subcommittee
Lilyanne McClean, Senior Vice President, GHP Public Policy and Communications