



April 30, 2010

Kathy Pendleton, P.E.
Air Quality Division
MC164
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087



Re: Clean Air Act Section 185 Termination Determination

Dear Ms. Pendleton:

The Texas Commission on Environmental Quality ("TCEQ") has invited public comment on its proposed "Request for Determination Regarding Termination of the One-Hour Ozone Section 185 Fee Obligation" (the "TD Request"). The TD Request demonstrates that the Houston-Galveston-Brazoria area ("HGB") is attaining the currently applicable 1997 8-hour ozone standard of 84 ppb based on permanent and enforceable emissions reductions, and that the State of Texas is not obligated to establish a nonattainment penalty fee program under Section 185 of the federal Clean Air Act relating to the transition from the revoked 1-hour ozone standard to the current 8-hour standard. These comments are provided on behalf of the Section 185 Working Group (the "Group").¹ The Group appreciates the opportunity to comment on the proposed TD Request.

The Group strongly supports the TD Request. The HGB area is attaining the 84 ppb ozone standard. Since 2002, ozone levels in HGB have steadily decreased and, as of 2009, are compliant with the 84 ppb standard. The measured ozone levels reflect quality-assured data from an extensive monitoring network and have been achieved by substantial investments by the regulated community in control measures that have resulted in real, permanent and enforceable reductions in ozone precursor emissions. Imposing a penalty fee program for nonattainment of the revoked 1-hour ozone standard when the HGB area has attained the more stringent 1997 8-hour standard would be inequitable and ineffective.

The lower ozone levels in HGB are not an anomaly. HGB's falling ozone design values are independent of economic and meteorological conditions. Ozone levels in HGB are explained by the permanent and enforceable emissions reduction measures, including those outlined in Attachment E to the proposed TD Request. The majority of emissions reductions have come from industrial sources that would be penalized under a Section 185 fee program:

¹ The Group is composed of 18 companies, including Albemarle, BASF, BP, Chevron, Chevron Phillips Chemical, Dow, DuPont, Entergy Texas, Enterprise Products, Exxon Mobil, Kinder Morgan, LyondellBasell, Magellan, Marathon Petroleum Company, NRG Texas, Shell, TPC Group, and Valero.

since 2001, regulated entities in HGB have spent over \$3 billion on clean air technologies, and point sources accounted for less than 25% of HGB's 2008 NO_x and VOC emissions.²

As the TD Request notes, the largest contributors to VOC and NO_x emissions in 2008 were from the area source and mobile source categories, respectively. TCEQ's 2009 proposed Attainment Demonstration for HGB shows that further expected emissions reductions through 2018 are overwhelmingly attributable to the mobile source sector.³

These facts—that HGB is attaining the 84 ppb standard as a result of permanent and enforceable emissions reductions—satisfy the recent U.S. Environmental Protection Agency ("EPA") guidance to states on options for satisfying anti-backsliding requirements with respect to the revoked one-hour ozone standard: "EPA believes that for an area that we determine is attaining either the 1-hour or 1997 8-hour ozone NAAQS, based on permanent and enforceable emissions reductions, the area would no longer be obligated to submit a fee program SIP revision to satisfy the anti-backsliding requirements associated with the transition from the 1-hour standard to the 1997 8-hour standard."⁴ The TD Request appropriately calls for an affirmative determination by EPA that a Section 185 fee program is not required as an anti-backsliding measure in HGB.

We appreciate the opportunity to present these comments. Please call me or Jason Moore at 713.229.1723 if you have questions about the foregoing.

Sincerely,



Matthew L. Kuryla

² See Table D-6 in the TD Request (showing 2008 annual emissions by source category).

³ Rule Project Number 2009-017-SIP-NR; *see* tbl. ES-1. While NO_x emissions from point sources are expected to fall by about 10 tons per day (TPD), NO_x emissions from mobile sources are expected to fall by nearly 200 TPD. VOC and CO emissions from point sources are expected to rise by approximately 50%. VOC emissions from mobile sources are expected to fall by more than 30%, and CO emissions, by more than 10%. Emissions of NO_x, VOCs, and CO from area sources are expected to rise.

⁴ Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air division Directors, Regions I-X, regarding Guidance on Developing Fee Programs Required by Clean Air Act Section 185 for the 1-hour Ozone NAAQS (Jan. 5, 2010).