

TRANSCRIPT OF PROCEEDINGS
BEFORE THE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
HOUSTON, TEXAS

IN THE MATTER OF:)
)
PROPOSED REVISIONS TO)
30 TAC CHAPTER 101 AND)
REVISIONS TO THE STATE)
IMPLEMENTATION PLAN)
_____)

PUBLIC HEARING

WEDNESDAY, JANUARY 6, 2010

BE IT REMEMBERED THAT at 2:00 o'clock p.m., on
Wednesday, the 6th day of January, 2010, the
above-entitled matter came on for public hearing at the
Houston-Galveston Area Council, 3555 Timmons, Second
Floor, Room A, Houston, Texas, before KATHY PENDLETON
and DAVID BRYMER; and the following proceedings were
reported by BECKY LANDERS, CSR, RPR, and CRR in and for
the States of Texas and California, a Certified
Shorthand Reporter of:

KENNEDY REPORTING SERVICE, INC.

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P R O C E E D I N G S :

WEDNESDAY, JANUARY 6, 2010

(2:00 o'clock p.m.)

INTRODUCTORY REMARKS

MS. PENDLETON: Good afternoon. I would like to welcome everyone to this public hearing being conducted by the Texas Commission on Environmental Quality.

My name is Kathy Pendleton. I'm with the Air Quality Division. I'd also like to introduce David Brymer, director of the Air Quality Division.

We are here this afternoon to receive oral and/or written comments on proposed rules under 30 Texas Administrative Code 101, General Air Quality Rules, a new subchapter B; Failure to Attain Fee, Sections 101.100 through 101.105, 101.107 through 101.109, 101.112 and 101.114 through 101.122 and corresponding revision to the State implementation plan.

If you intend to present oral comments and have not already signed in at our registration table, please do so now. If you are not familiar with the proposed changes, copies of the Subchapter B proposal from the December 4th, 2009 issue of THE TEXAS REGISTER are available at the registration table.

We also have copies of the hearing

1 notice, so that if anyone is planning to send in written
2 comments or submit comments via the E comment system,
3 you can quickly find the information on how to submit
4 your comments. We will continue to accept written
5 comments on this proposal until Monday, January 11th.

6 This hearing is structured strictly for
7 the receipt of oral and/or written comments. Open
8 discussion during the hearing is not allowed; however,
9 if anyone has any additional questions or comments
10 regarding the proposal, there will be another
11 opportunity after the hearing to have your questions
12 answered.

13 We'll now begin receiving comments in the
14 order in which you've registered. Once I call your
15 name, if you'll please come up to the podium, state your
16 name and who you represent and begin your comments.
17 Thank you.

18 Elena Craft.

19 PRESENTATION ON BEHALF OF
20 THE ENVIRONMENTAL DEFENSE FUND

21 MS. CRAFT: Hi. Elena Craft with
22 Environmental Defense Fund.

23 I realize that there has been some
24 guidance issued for implementation of this fee program,
25 and that may change or alter or add to the program that

1 you-all have -- are putting together; but I think that
2 there are a couple of things that are worth keeping in
3 mind as any changes to the program occur. And one is
4 that we have about 13 percent of adults in the State of
5 Texas who have asthma. We have 13.6 percent of the kids
6 in the state have asthma. That's a total of about
7 3 million people in the State of Texas. It's the number
8 one -- asthma is the number one reason for school
9 absenteeism. We spent \$450 million in hospital fees.
10 We did in 2007.

11 The -- the challenge that we have in the
12 situation here is that we have concentrations of ozone
13 that exacerbate health conditions that more than
14 10 percent of our population have, which is asthma. And
15 I think that it's important to keep in mind that any
16 program that we develop that is supposed to help
17 alleviate and address the ozone concentrations that we
18 have here should be as strong and as formidable and as
19 efficacious as it possibly can be.

20 And so I urge TCQ in the development of
21 the fee-collecting program for this failure to attain
22 our one-hour ozone standard to implement a program that
23 will maximize the benefits to the public and to the
24 public's health. And so to say that in another way, I
25 think that some of the programs and so forth that could

1 be presented as part of the program would not
2 necessarily give us those maximum benefits. And
3 approval of alternative programs, for one, is a
4 situation where it's going to take a lot of time and a
5 lot of resources from TCQ staff to develop these
6 programs. If we follow the guidance that's been issued
7 by E.P.A., it's going to require a notice and comment
8 and rule making to implement these alternative programs.
9 That's money and time that is getting sucked away from
10 what we're really here to benefit, which is public
11 health.

12 I also urge TCQ to proceed cautiously
13 when confusing E.P.A.'s guidance as there are some parts
14 of the guidance that appear to be inconsistent with the
15 statute, with Section 185. We know that emission events
16 from stationary sources generate ozone plumes that raise
17 the design values in our region. And we know that it's
18 only by addressing these emission events that we're
19 going to get where we need to be in terms of a health --
20 in terms of having healthy air in the region.

21 I'd also like to reiterate that within
22 the statute it was marketed as a penalty program. And I
23 think that we should keep that in mind as we move
24 forward on the implementation schedule.

25 That's all. Thanks.

1 MS. PENDLETON: Thank you.

2 Jason Moore.

3 PRESENTATION ON BEHALF OF
4 THE SECTION 185 WORKING GROUP

5 MR. MOORE: Good morning. My name is
6 Jason Moore. I'm with the law firm of Baker & Botts.
7 I'm here on behalf of the Section 185 Working Group,
8 which is composed of 18 companies in the
9 Houston/Galveston/Brazoria area that would be impacted
10 by the proposed Section 185 rule here in Texas.

11 I'm going to make some broad comments, if
12 you will. I have a feeling some folks in the crowd may
13 have some more specific comments on sections in the
14 proposed rule.

15 I would urge the agency to keep in mind
16 the substantial progress this area has made toward ozone
17 goals. In fact, you just heard mention of some recent
18 guidance. I'd also like to bring the agency's attention
19 to Tuesday's FEDERAL REGISTER in which the E.P.A.
20 signaled a final action finding the -- that California
21 has failed to promulgate its Section 185 programs for
22 three nonattainment areas. More importantly, E.P.A. in
23 that FEDERAL REGISTER, explicitly said it was not going
24 to issue such findings for other areas, including
25 specifically Houston, that have attained the one-hour or

1 eight-hour ozone standard.

2 Also, on Tuesday, as was previously
3 noted, E.P.A. issued some guidance in which E.P.A.
4 explicitly said that if an area meets or is attaining
5 the one-hour and/or eight-hour standard that no
6 Section 185 fee program is necessary. So when you take
7 the significant progress toward ozone goals in this
8 area, which is due in large part to substantial
9 investments that regulated entities have made in this
10 area, combined with E.P.A.'s signal that the Houston
11 area current available data suggests that the Houston
12 area may have attained the eight-hour standard and that,
13 if so, no Section 185 fee program is necessary, we would
14 urge the agency to consider this. And we would suggest
15 that a Section 185 program is unnecessary and may be
16 premature at this time.

17 I also as an aside want to say you had
18 mentioned, Kathy, that the comment deadline is this
19 Monday, January 11th. Given the recent activity, both
20 the final action related to California and the guidance
21 that came through late yesterday, we have requested a
22 two-week extension to that comment deadline to give both
23 the agency and the general public an opportunity to --
24 to evaluate and analyze the -- the impacts that -- that
25 this -- these new actions have.

1 If -- if the rule must be promulgated,
2 the group urges maximum flexibility in satisfying any
3 fee obligation. The fiscal note to the rule states that
4 in the first year alone the economic impact could be
5 between 73 million and 124 million; this at a time of
6 historic economic difficulties.

7 There are -- as the proposed rule is
8 currently structured there are several limitations on
9 use of alternatives for satisfying the fee obligation.
10 Let me back up a little bit and say we -- we very much
11 applaud the -- the inclusion of alternatives for
12 satisfying the fee obligation that also would result in
13 further air quality improvements and other improvements
14 in this area rather than sending, you know, money
15 directly to Austin.

16 Part of the restrictions that -- that --
17 that we've noted is it appears that if sources choose
18 to -- to aggregate either the sites or -- or precursor
19 pollutants, they would be restricted from using the
20 alternatives that are listed in the rule. And we don't
21 see any basis for that either in the Clean Air Act or in
22 any E.P.A. guidance.

23 We also note that there was a restriction
24 on the ability to partially satisfy the -- the -- the
25 fee obligation using the alternatives. I would suggest

1 to you that the guidance that was issued yesterday
2 supports the notion that entities should be allowed to
3 partially satisfy a fee obligation using fee
4 alternatives.

5 I would also note that the way the
6 proposed rule is currently structured, it appears to
7 assess fees retroactively starting with 2008. I've
8 mentioned the significant physical impact this could
9 have on area businesses. For that reason and other
10 reasons, we believe that the rule should be prospective
11 only, especially considering everything I've talked
12 about; the improvements, the fact that current available
13 data seems to suggest that the area has attained the
14 eight-hour standard. It is also -- retroactive
15 imposition of penalty fees is also legally questionable.

16 Lastly, I would like to urge, as the
17 rule's structured right now, the proposed rule, there is
18 no exception for extenuating circumstances as you might
19 find in the MECT rules. Of course, this area has
20 suffered some -- some tremendous impacts from hurricanes
21 and other adverse weather conditions in recent years.
22 And it seems to us only fair that there be some
23 provision built in so that regulated entities are not
24 penalized for emissions that result from extenuating
25 circumstances beyond their control.

1 Lastly, I'll end with this: In reviewing
2 the -- the guidance that was released by E.P.A.
3 yesterday, it does appear that this notion that a
4 Section 185 fee program is not necessary in light of
5 current available data showing that an area has attained
6 a one-hour or eight-hour standard is actually entirely
7 consistent with both the plain language of the Clean Air
8 Act implementing regulations and E.P.A. guidance.

9 That's all I have. Thank you.

10 MS. PENDLETON: Thank you.

11 Is there anyone else who would like to
12 provide comments at this time?

13 (No response.)

14 MS. PENDLETON: All right. We appreciate
15 your comments, and we thank you for coming. If there
16 are no further comments, this hearing is now closed.

17 Thank you very much.

18 (Hearing closed: 2:22 p.m.)

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1 C E R T I F I C A T E

2 THE STATE OF TEXAS)

3 COUNTY OF HARRIS)

4 I, BECKY LANDERS, a Certified Shorthand
5 Reporter in and for the States of Texas and California,
6 do hereby certify that the above-mentioned matter
7 occurred as hereinbefore set out.

8 I FURTHER CERTIFY THAT the proceedings of such
9 were reported by me or under my supervision, later
10 reduced to typewritten form under my supervision and
11 control and that the foregoing pages are a full, true
12 and correct transcript of the original notes.

13 I FURTHER CERTIFY THAT the proceedings lasted
14 approximately 15 minutes.

15 IN WITNESS WHEREOF, I have hereunto set my
16 hand and seal this 7th day of January, 2010.

17

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BECKY LANDERS, CSR, RPR, CRR
Texas CSR No. 627
Expiration Date: 12/31/2010
California CSR No. 7956
Expiration Date: 6/30/2010

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