

January 25, 2010

Transmitted Via E-Mail

Kathy Pendleton, P.E.  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087  
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RE: Proposed Nonattainment Fee Rule; TCEQ Docket No. 2009-1400-RUL

Dear Ms. Pendleton,

LyondellBasell Industries (LyondellBasell) appreciates the opportunity to provide comments on the proposed “Severe Ozone Nonattainment Area Failure to Attain Fee” rule, which seeks to establish a fee program equivalent to that set forth in Section 185 of the federal Clean Air Act.

LyondellBasell is a global leader in polyolefins technology, production and marketing; a pioneer in propylene oxide and derivatives production; and a significant producer of olefins, fuels and refined products. Our products are building blocks for countless goods and products that people use every day, such as food packaging, household furnishings, detergents, cosmetics, automotive parts, construction and home-building materials, paints and coatings and many other applications. LyondellBasell operates eight manufacturing facilities in the Houston, Galveston, Brazoria (HGB) area.

LyondellBasell supports, in full, the comments submitted by the “Section 185 Working Group” as well as the “Texas Chemical Council” (TCC). In particular, LyondellBasell would like to highlight the following points:

- Based on ambient monitoring data from 2007, 2008, and 2009 it appears the HGB area has met the current 8-hour (84 ppbv) ozone standard. In light of this progress, and consistent with recent U.S. Environmental Protection Agency (EPA) guidance, there is no need for a Section 185 fee program at this time and we would urge the Commission to consider the alternatives to finalizing the rule. These alternatives include the submittal of a notice to EPA to terminate the Section 185 Fee program and proposed rule based on the 8-hour attainment status of the HGB area.



- If the Commission does choose to adopt a fee program, it should incorporate the full amount of flexibility discussed in the EPA guidance document released on January 5, 2010. This flexibility includes:
  - EPA suggestion that “States could develop programs that shift the fee burden from the specific set of major stationary sources that are otherwise required to pay fees according to section 185, to other non-major sources of emissions, including owners/operators of mobile sources...EPA recognizes that section 185 is not strategic in imposing emissions fees on all major stationary sources, including already well-controlled sources that have few, if any, options for avoiding fees by achieving additional reductions. States can be more strategic by crafting alternative programs that exempt or reduce the fee obligation on well-controlled sources, and assign the required fees to less well-controlled sources as an incentive for those sources to further reduce emissions of ozone-forming pollutants.”
  - Point sources in the HGB area have already implemented emissions reduction programs that have contributed to the progress such as: 80% NO<sub>x</sub> Control, episodic emissions reductions, implementation of the HRVOC Rule, federal Cleaner Gasoline, Texas Low Emission Diesel, and use of infrared VOC imaging cameras.
  - Allow regulated entities to satisfy any Section 185 fee obligation by implementing alternate projects or technologies that result in quantifiable, permanent, and enforceable emissions reductions. Examples of use of alternate technologies that can result in detection of emissions and emissions reductions are the infrared VOC imaging camera and the Differential Absorption Lidar (DIAL).
- If the Commission does choose to adopt a fee program, the rule language should be structured in a way to limit the triggering of the fees unless required to do so by EPA action or language.
- LyondellBasell supports the following principles as proposed in the TCEQ rule:
  - Allowing a multi-year baseline period consistent with the EPA guidance establishing a “high 2-in-10” year baseline as an acceptable method for determining the Section 185 Fees baseline. LyondellBasell also agrees that businesses, as specified by EPA in its March 21, 2008 guidance, such as those in the refining and petrochemical industry, are influenced by the



business cycle and, therefore, have emissions that are irregular, cyclical and otherwise varied qualifying our businesses to use this approach to calculate the baseline amount.

- Allowing sources to aggregate NO<sub>x</sub> and VOC emissions in baseline determinations
- The ability for major stationary sources who are obligated to pay a fee to be eligible to fulfill the fee obligation with an equivalent alternative obligation

Thank you for consideration of these comments. If you should have any questions or need further information, please contact me at 713-209-7013.

Sincerely,

Rohit Sharma  
Environmental Issues Manager  
LyondellBasell Industries