



January 14, 2013

BY FAX

Charlotte Horn  
MC 205  
Office of Legal Services  
Texas Commission on Environmental Quality  
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Austin, TX 78711-3087  
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**Re: Proposed Failure to Attain Fee Rule  
TCEQ Rule Project Number 2009-009-101-AI  
Comments of Magellan Terminals Holdings, L.P.**

Dear Ms. Horn:

Magellan Midstream Partners, L.P. (Magellan) respectfully submits the following comments on the Texas Commission on Environmental Quality's ("TCEQ's") proposed Clean Air Act Section 185, "Failure to Attain Fee" rule.

Magellan owns and operates two petroleum products terminals in the Houston area. The terminals are stationary sources within the Houston-Galveston-Brazoria ozone nonattainment area, and would be subject to the proposed rule.

Magellan endorses and incorporates by reference the comments submitted on this matter by the Section 185 Working Group. However, we are commenting separately to request greater clarity on the status of permitted and rule-compliant storage tank floating roof landing emissions in the Failure to Attain Fee program. In the event that fees are imposed, Magellan supports the approach that TCEQ has proposed, but recommends targeted rule language changes to further improve the rule's clarity.

***Roof Landing Emissions Should be Included in Magellan's Baseline***

TCEQ has proposed to allow a source owner or operator to include in its baseline certain emissions authorized after the Houston area's ozone attainment date of November 15, 2007. Proposed section 101.108(a)(1)(B)(i) would allow a source owner or operator to include in its baseline emissions authorized by a permit issued by the adoption date (expected to be in April 2013) and for which the permit application was administratively complete by December 31, 2007. We support this feature of the proposal.

As with other operators, Magellan was unable to obtain permit authorization for its Galena Park terminal's roof landing emissions before the attainment date. TCEQ's first guidance to the regulated community (including to Magellan) on roof landing emissions was not issued until December of 2006. See Memorandum from Dan Eden, Deputy Director, Office of Permitting, Remediation, and Registration, TCEQ, *et al.*, to Interested Parties, Subject: Air Emissions During Tank Floating Roof Landings (Dec. 5, 2006).<sup>1</sup> Magellan applied for permit authorization for the Galena Park terminal's roof landing emissions on March 9, 2007, and the application was declared administratively complete on March 30, 2007. TCEQ issued the permit amendment on June 12, 2009. Thus, TCEQ's current proposal to allow emissions authorized by a permit application that was administratively complete by December 31, 2007 is important to ensure that the roof landing emissions authorized by the June 12, 2009 permit amendment are included in Magellan's baseline.

Including roof landing emissions in the baseline is consistent with their status under TCEQ regulations and the State Implementation Plan ("SIP") in 2007. Although roof landing emissions generally were not yet included in TCEQ-issued permits at the time, floating roof landings were allowed under 30 Tex. Admin. Code § 115.112. Section 115.112 allows roof landing emissions by prescribing control requirements for VOC storage tanks that include a requirement for a floating roof to remain floating on the liquid surface except under specified circumstances. TCEQ's preamble to its 2007 amendments to section 115.112 also clearly indicated that compliant roof landings were legally permissible:

Adopted § 115.112(d)(2)(H) limits the circumstances under which tank landings are allowed . . . . Tank landings for the purpose of inventory control (also known as convenience landings) would not be allowed unless vapors are routed to a control device during the time that the roof is landed, or landing emissions are within an emissions limit or cap established under a 30 TAC Chapter 116 permit. Convenience landings would also be allowed if sitewide landing emissions are less than 25 tpy.

32 Tex. Reg. at 3180 (emphasis added)[full cite with initial page and date]. Section 115.112 has been approved by EPA into the Texas SIP. See 75 Fed. Reg. 15,348 (Mar. 29, 2010).

Further, including roof landing emissions in the baseline is consistent with TCEQ's proposed treatment of other types of emissions authorized after the attainment year. For example, TCEQ has proposed to allow emissions from new major sources and certain new units at existing sources to be included in a baseline, and for all emissions permitted as planned maintenance, startup, or shutdown activities to be included in a baseline. These emissions, as with roof landing emissions, could not reasonably have been permitted by the attainment date. However, Magellan did report roof landing emissions for the Galena Park Terminal to the TCEQ as part of its annual emissions inventory starting in 2003.

<sup>1</sup> [http://www.tceq.state.tx.us/assets/public/permitting/air/memos/tank\\_landing\\_final.pdf](http://www.tceq.state.tx.us/assets/public/permitting/air/memos/tank_landing_final.pdf)

### ***Additional Baseline Flexibility***

Magellan also supports TCEQ's proposed section 101.107, which would allow sources subject to the Failure to Attain Fee to develop a baseline of both NOx and VOC emissions, for more than one site under common control, or both. These features of the proposal will help to reward companies that "over-control" emissions at some facilities or of some pollutants, to create headroom within the existing Failure to Attain Fee baseline for future growth. Flexibility of this nature will also be important to help allow for economic progress even while the Houston area meets any applicable penalty fee requirements under federal law.

We believe that TCEQ intended to allow use of a combined NOx and VOC and/or multiple site baseline in conjunction with the alternative baseline provision discussed above that would apply to Magellan's roof landing emissions (and for maintenance, startup, and shutdown emissions from numerous sources subject to the rule). Proposed section 101.107(a) should clarify this option, with a change such as the following:

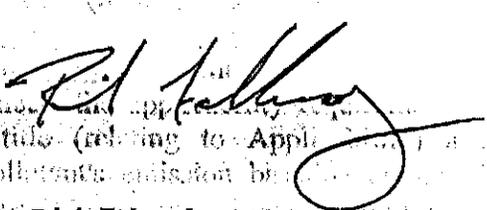
(a) Aggregation. Notwithstanding the requirements of §101.106 of this title (relating to Baseline Amount Calculation) and §101.108 of this title (relating to Alternative Baseline Amount), a major stationary source of emissions that meets the applicability requirements of §101.101 of this title (relating to Applicability) after calculating each pollutant's emission baseline amount in accordance with this subchapter may choose to combine . . .

This change or one to the same effect would make clear that section 101.107-- which allows a multiple site and/or combined NOx and VOC baseline--modifies both provisions of the proposal that relate to determining baseline, including the alternate baseline formula in proposed section 101.108.

### ***Conclusion***

Magellan requests that TCEQ clarify in the rule language and/or preamble that permitted and rule-compliant roof landing emissions will be included in Section 185 baselines. Magellan appreciates the opportunity to comment on the proposed rule, and appreciates your consideration of these comments. Please do not hesitate to contact me if you have questions.

Sincerely,

  
Rick Fahrenkrog