

January 14, 2013

Attn: Charlotte Horn, MC205
Office of Legal Services
Texas Commission on Environmental Quality
P. O. Box 13087
Austin TX 78711-3087

***RE: Comment on Texas Commission on Environmental Quality
Chapter 101 – General Air Quality Rules
Rule Project No. 2009-009-101-AI,
Proposed Rule; Severe Ozone Nonattainment Area Failure to Attain Fee***

Occidental Chemical Corporation, on behalf of itself and its affiliated chemical manufacturing company, Oxy Vinyls, LP (collectively, “OCC”), is pleased to submit comments on the above-referenced proposed rule. OCC manufactures a variety of organic and inorganic chemicals at seven manufacturing locations in Texas. Five of these sites are located in the HGB area, an ozone non-attainment area that has been subject to ever more restrictive emission controls for VOCs and NOx over several decades. Consequently, these manufacturing sites will be impacted by the proposed penalty fees.

OCC is a member of the Texas Chemical Council (“TCC”) and fully endorses comments being submitted by TCC. In addition, OCC wishes to comment on several items that are of particular importance to our operations.

OCC filed comments on the 2009 version of this proposed rule and is most appreciative that TCEQ has incorporated as much flexibility as allowed by EPA guidelines and the federal Clean Air Act (“CAA”). OCC has invested millions of dollars in our facilities over that last decade to lower NOx and VOC emissions so the HGB area can reach attainment status for ozone. The fact is that mobile sources account for the largest portion of the emissions of NOx and VOC in the HGB area, and this proposal rightfully provides several options for funding the punitive fee program. Several additional comments are as follows:

Delegation to TCEQ

OCC supports TCEQ incorporating specific regulations into the Texas SIP to implement the CAA Section 185 Fee program. OCC understands that if TCEQ does not exercise its authority to collect Section 185 fees, as required by the CAA, EPA will do so. OCC fully supports implementation of this fee program by TCEQ in place of EPA. TCEQ is most aware of what improvements are needed to reach attainment with the ozone NAAQS. TCEQ’s proposed rule will allow for creative financing options and assure that the monies collected from Texas industry will remain within the state to benefit Texas residents.



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Alternatives to Revenue Generation

OCC fully supports TCEQ's conclusion that it would not be appropriate to go back in time to 2008 to attempt to collect historic fees pursuant to a rule that did not exist. In addition, OCC fully supports TCEQ's proposal in **Section 101.102, Equivalent Alternative Fee**, for using revenue generated from the Texas Emission Reduction Plan (TERP) and the Inspection and Maintenance (I&M) program as a source of funds to satisfy the Section 185 fee requirements.

Baseline Calculations

OCC supports the revisions to Section **101.106, Baseline Amount Calculation**, which allows for the baseline to be calculated as the lower of the total amount of baseline emissions or the total authorized emissions (e.g., as authorized by NSR permits and Permits by Rule), including various options for incorporating MSS emissions.

OCC also supports including the important option to use the highest two year average in the last ten year period. This will allow companies to take natural business cycle variations into account without unfairly penalizing some companies. OCC believes this is consistent with federal statutory language and past PSD permit practices. Section 185(b)(2) of the CAA provides that the baseline amount must be calculated as the lower of actual emissions or allowable emissions during the attainment year, or, alternatively for sources with irregular emissions, the lower of actual emissions or allowable limits calculated over more than one year. This interpretation is consistent with EPA guidance issued on January 05, 2010 indicating that previous March 21, 2008 EPA Prevention of Significant Deterioration guidance states that baseline average actual emissions can be based on actual operational data for a 24 month period in the preceding ten years. Clearly, the EPA continues to believe that it is appropriate for states to use the PSD formula of 2-in-10 for sources with irregular emissions driven by economic business cycles.

TCEQ guidanceⁱ indicates that once the baseline years are selected, downward adjustments must be made to reflect any non-compliant emissions and to reflect the most currently enforceable emission limitations, which were in place during the attainment year. Page 5 of this TCEQ guidance has some examples of how to calculate baseline emissions (e.g., Examples 6 and 7). However, this information, along with available EPA PSD guidance, is not totally clear on how to make these adjustments, so additional guidance is necessary in order for regulated entities to be able to easily establish a proper baseline. For example, a larger site may want to use a baseline period of 2002 and 2003 based on emissions inventory ("EI") emissions totals and may consequently need to factor in many permit and rule changes. Given the significant turnover in personnel at OCC facilities that has taken place over the last ten year period, records beyond the normal five year record retention period may not be available, making the necessary adjustments to the baseline emissions very difficult, at best. Detailed instructions with adequate examples on how to make the baseline adjustments should accompany the forms to be published by the Director. Any simplifications to the process of doing baseline estimates would be beneficial to both TCEQ and regulated entities.



NOx and VOC across both Single and Multiple Sites

OCC strongly supports the multiple options proposed in this rule. The allowance for aggregation of NOx and VOC across both single and multiple sites in **Section 101.107, Aggregated Baseline Amount**, for fee calculations can allow a substantial fee reduction. Since the penalty amount is the same dollar amount for VOC and NOx, offsets across multiple sites are reasonable. To keep the accounting of the NOx and VOC separate, the fee calculation forms can have separate calculations for NOx and VOC, if necessary where credits or reduction projects are used to lower the fees.

Review of historic OCC Emission Inventory data for our five plants indicates that different high 2-in-10 yr periods exist for all five of our plants. Therefore, the cycle for the highest NOx and VOC do not necessarily match up. Therefore, OCC believes **Section 101.107(b)(1)** should be removed as an unnecessary restriction on aggregation.

Well-Controlled Sources

Page 5 of the above referenced January 5, 2010 EPA guidance reiterates that states have an option of exempting or reducing fees for well-controlled sources. Individual sources which have recently installed BACT or LAER controls should be allowed some relief. OCC recommends that these sources be exempted from the fee program for a minimum of ten years following installation of BACT or LAER controls. For example, our Deer Park facility moved one of its turbines to our Battleground location and reduced existing emissions by adding a Selective Catalytic Reduction control device to reduce NOx emissions. This control device currently operates in the 2 to 3 ppm NOx concentration range. Technology to further reduce NOx below these levels is not readily available almost ten years later. One objective of the federal Section 185 Fee program is to lower NOx and VOC emissions as quickly as possible and industry should not have to pay fees for sources that have already installed the best possible control technology and where there are no practical ways to further reduce emissions.

Change in Ownership/Control of Emission Units

Based on OCC experience, changes of ownership are difficult periods with many activities for both the buyer and the seller to accomplish. Therefore, it is suggested that the 90 day period for the required baseline adjustment report be extended to 180 days after a site changes ownership.

Compliance Schedule

Section 101.117(d) requires payment of fees within 30 days of receiving the invoice. This period should be extended to 60 days, as it is difficult for large companies to administratively process payments in less than 60 days.

Summary

OCC strongly supports the implementation of this program by TCEQ as opposed to the EPA. In addition, OCC supports the creative thinking that has gone into this proposal to maximize flexibility in calculating the proposed Section 185 fee assessments. The best option is for the HGB area to be classified as attainment so these rule provisions do not need to take effect.



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However, failing that, baseline calculations can be done according to the proposed rule and existing TCEQ and EPA guidance documents. Additional clarifying instructions on how to adjust the Emission Inventory baseline values are needed along with the implementation forms. OCC supports the option of aggregation of NOx and VOC across multiple sites with minimal restrictions to simplify the fee calculation. Finally, sources controlled by BACT or LAER controls should be exempt from paying a fee for a specified time period, such as ten years. The current proposed rule with a few minor changes will result in fair and consistent fee assessments.

Thank you for your consideration and the opportunity to offer these comments. Should you have any questions or require further information, please contact me by phone at (972) 404-3209.

Very truly yours,

OCCIDENTAL CHEMICAL CORPORATION



Barry Christensen
Manager, Air Quality

ⁱ TCEQ Air Permits Division November, 2008 Reviewer Reference Guide – APDG 5881 “Federal New Source Review Permits (FNSR Permits).”

