

January 19, 2010

Devon Ryan, MC 205, Office of Legal Services,
Texas Commission on Environmental Quality,
P.O. Box 13087, Austin, Texas 78711-3087

Re: Rule Project Number 2009-009-101-EN
Praxair, Inc. Comments on TCEQ's Failure to Attain (Section 185) Rule Language

Dear Mr. Ryan:

Praxair, Inc. (Praxair) appreciates the opportunity to comment on the proposed rule language to implement Sections 185 and 182(f) of the federal Clean Air Act (CAA).

Praxair, Inc. (NYSE:PX) is a global, Fortune 300 company that supplies atmospheric, process and specialty gases, high-performance coatings, and related services and technologies to a wide diversity of customers. Praxair is the largest industrial gases company in North and South America with large operations in Texas area.

While Praxair supports the overall principles within the proposed rule language, we request the TCEQ consider making the attached changes to the proposed rule.

Thank you for your consideration of these comments. If you have any questions, please do not hesitate to contact Mrs. Kiranmai Valluri at (281) 478-1564 or by email at kiranmai_valluri@praxair.com.

Sincerely,

Gary Williamson, CSP
Safety & Environmental Services Manager
Praxair, Inc. – NAIG South Region

Praxair's Comments on Proposed Rule 30 TAC 101.101-122

- **Section 101.100 Definitions. Baseline Amount:** Current definition is not considering flexibility proposed in later parts of this rule.

Proposed Change:

The actual or permitted emissions calculated in tons using data submitted to and approved by the commission as described in 30 TAC 101.103, 105, and 107.

- **Section 101.102 New Source Exemption:** This rule is penalizing all industries equally without acknowledging the control technology implemented by the industries beyond the rule requirements. Need to add definition for source or unit. For example an existing major source might add a new unit after the attainment date. The current proposed rule is not considering this case.

Proposed Change:

Change section to 101.102 Exemptions

- (a) Any major source meeting the applicability requirements of §101.101, any new emission unit that was not in operation on or before the attainment date is exempt from the requirements of this subchapter.

Add following exemption: (b) Any emission unit at a major source that has control technologies at or beyond applicable rule requirements is exempt from the requirements of this subchapter.

- **Section 101.103 Baseline Amount Calculation:** TCEQ has proposed using the actual emissions in the attainment year as the baseline amount without providing any justification based on existing or previously established protocols by either EPA or TCEQ for NSR permitting or SIP development. Praxair believes that the baseline would be more appropriately based upon permitted emissions, not actual emissions. Companies who have or will lower their emissions when compared to their permitted amount - whether that is because they have installed new technology or because they have reduced the capacity utilization of their facility - should not be penalized for the area's non-attainment as much of those who have not lowered their emissions at all from permitted levels. The rule does not consider or address the units that began operation in 2007. Baseline amount calculations should also take considerations of amendments, acquisitions, and any additional unit.

Proposed Change:

- (a) For purpose of this section, the baseline amount shall be computed as following.

(1) Total emissions allowed under the permit issued based on current BACT for NO_x and VOC (March 2003 – TCEQ Memo) to the source; or

(2) Total emissions as calculated under subsection (b) of this section.

Add Section (f) The TCEQ retains the authority to set the baseline for a particular facility higher than would otherwise be determined in above section (a) on a case by case basis if the facility can demonstrate a supportive reason(s) why due to circumstances not addressed by this regulation.

- Section 101.105(b) Multiple Site Aggregation Amount: There are a number of facilities in the Houston-Galveston-Brazoria (HGB) nonattainment area that have VOC emissions, but do not emit highly reactive VOCs (HRVOCs). Since the fees are targeted towards all VOCs (not just HRVOCs), TCEQ should remove this restriction from the "Multiple Site Aggregation Baseline Amount" section.
- Section 101.109 Adjustment of Baseline Amount for Sources with less than 24 months of operation at attainment date: See previous comments on 30 TAC 101.103. The rule does not take into consideration sources which may not have operated for 24 months consecutively. For example a unit went into operation in 2004 and could not operate for 24 months due to low customer demand and/or for reasons beyond control of operator. Provision should be included in the rule to calculate the baseline amount using any single 24 consecutive operating months.
- Section 101.116 Failure to Attain Fee Payment: The fee payment structure is not clear as to how fees would be paid for reporting year (RY) 2008 and RY 2009 emissions.