Office of the Chancellor

January 19, 2010

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

Dear Mr. Ryan:

We are writing regarding the Texas Commission on Environmental Quality's ("TCEQ") proposed Section 185 Failure to Attain Fee rule (Rule Project Number 2009-009-101-EN).

San Jacinto College serves the east side of Harris County and has been active with our industry leaders as they have worked towards achieving air quality improvements. Our area has seen dramatic reductions in ozone and other pollutants, due in large part to substantial investments by local industry in effective emissions reduction strategies. We support continued air quality improvement through incentives and free markets, rather than new regulatory mandates, fees or taxes.

We understand that the proposed rule is aimed at implementing Section 185 of the Federal Clean Air Act, by imposing penalty fees for failing to attain the revoked one-hour National Ambient Air Quality Standard for ozone. The fiscal impact of this proposed rule could cost area businesses up to $125 million in the first year alone. This fiscal impact includes only the amount of direct fees and does not address the true economic impact of this proposed rule. A new fee obligation of this magnitude would direct scarce local industry resources away from job-creating investments, and will have compounding effects that will have a substantially greater impact on the local economic vitality.

To the extent that any fee program must be imposed pursuant to Section 185, we urge the Commission to incorporate the maximum flexibility consistent with the Clean Air Act and U.S. Environmental Protection Agency ("EPA") guidance. To that end, we are concerned with several specific aspects of the proposed rule. Three of those key concerns are outlined below.

I. Any Section 185 rule should only be applied prospectively.

The proposed rule calls for fees to be applied retroactively starting with 2008, the year after the 2007 attainment date for the revoked one-hour standard. This retroactive fee application is problematic because:

- It is too late for sites to implement control strategies or make operational changes in time to affect the Section 185 fees owed for 2008 and 2009 emissions, and possibly even too late to make changes in time to affect 2010 emissions.
- It is too late for sources to account for such fees in their budgeting process.

As noted above, the resulting fees would have a substantial economic impact on area businesses, and we question the fairness of imposing fees on these businesses without giving them advance notice or an opportunity to reduce their fee obligation.

We strongly urge the Commission to assess Section 185 fees prospectively only.

II. Any Section 185 rule should maximize the use of fee alternatives.

Given the magnitude of the potential economic impact of the proposed rule, any fee program should build in cost-effective alternatives for satisfying the fee obligation. Examples of such alternatives include allowing sources to retire emissions credits or fund emissions reduction programs in lieu of paying a monetary fee.

The proposed rule does contain several alternatives for satisfying the fee obligation, but constrains their use such that many of the companies in our area would not be able to use them.

Maximizing the availability of fee alternatives would reduce the economic impact of the rule on area businesses and industry, while still providing cost-effective tools to improve the region's air quality. In many instances the fee alternatives will have a more lasting positive impact towards improving the environment.

III. Any Section 185 rule should include full availability of a multi-year baseline period for all participating sources.

The proposed rule allows sources to compute their baseline emissions by relying on emissions in the highest two consecutive years out of the preceding ten years (five years for electric generating units) "if the regulated entity's emissions are irregular, cyclical, or otherwise vary significant from year to year." Such language suggests that the multi-year baseline option may be available only upon a site-specific review of irregularity or cyclicality.

Consistent with EPA's programmatic approach for multi-year baselines, sources should not be required to demonstrate irregularity or cyclicality on an individual, site-specific basis to take advantage of the multi-year baseline option. Any fee program should incorporate the flexibility for the use of a national business cycle, as provided in EPA's rules and guidance.

In summary, we are greatly concerned by the disproportionate impact that this proposal will have on our region, our local communities, and our current and future students. We urge the Commission to allow maximum flexibility to enable sites to pursue alternative ways of satisfying the fee obligation—and improving the area's air quality—while still preserving the region's economic vitality.

Thank you for the opportunity to comment on this issue.

Very truly,

Brenda Hellyer

Brenda Hellyer, Ed.D.

Chancellor

Marie Flickinger

Marie Flickinger

Board of Trustee, Chair

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