

Federal Clean Air Act Section 185 Fees
Informal Comments prepared by Texas Chemical Council

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Background

The Federal Clean Air Act (FCAA), in Section 185, requires each state to impose a requirement for the assessment and collection of a fee for major stationary sources of volatile organic compounds (VOC) and nitrogen oxides (NOX) located in a severe or extreme nonattainment area if the area fails to attain the National Ambient Air Quality Standard (NAAQS) for ozone by the applicable attainment date. Texas Chemical Council (TCC) offers these informal suggestions related to this federal statutory requirement and potential alternatives the Texas Commission on Environmental Quality (TCEQ) should consider for a fee-based system.

Furthermore, TCC expects to submit additional, formal comments at rule proposal.

Comments

TCC encourages the agency to consider the following guiding principles when developing any rulemaking related to Section 185:

- Allow a multi-year baseline period consistent with EPA's guidance establishing a NSR-like high-2 year-in-10 baseline as an acceptable method for determining the Section 185 baseline.
- Allow sources to aggregate NO_x and VOC emissions in baseline determinations.
- Provide consideration for multiple co-owned sites consistent with existing cap and trade programs.
- Allow new sources that are well-controlled by having installed BACT/LAER to count those investments towards their Section 185 fee obligation or be otherwise exempted from fee obligations.
- Establish Section 185 equivalent obligations and allow such things as actual NO_x or VOC emission reduction commitments, retirement of emission reduction or discrete emission reduction credits, funding of Supplemental Environmental Projects, funding of Texas Emission Reduction Projects, or other methods to offset fees in lieu of payment.
- Credit expenditures made after the 1-hr ozone attainment date to reduce VOC or NO_x emissions to a site's Section 185 fee obligation. If expenses are greater than the Section 185 emission fee, apply the excess credit to a future year emission fee.

- Ensure that Section 185 fees are directed toward activities that actually contribute to improved air quality and ozone attainment.
- Suspend Section 185 fees after one year of “clean” data¹. Terminate Section 185 fees or equivalent obligations upon three years of “clean” data.

¹ “Clean” data is defined as monitored ozone levels in the affected area that exceed the revoked 1-hour ozone standard one or fewer times at each monitor.