



TEXAS CHEMICAL COUNCIL

1402 Nueces Street • Austin, Texas 78701-1586 • (512) 646-6400 • Fax (512) 646-6420

June 26, 2009

Ms. Kathy Pendleton P.E.
Texas Commission on Environmental Quality, MC 164
P.O. Box 13087
Austin, Texas 78711-3087

Re: TCC Comments on TCEQ's Draft Failure to Attain (Section 185) Rule Language

Dear Ms. Pendleton:

The Texas Chemical Council (TCC) appreciates the opportunity to comment on the draft rule language to implement Sections 185 and 182(f) of the federal Clean Air Act (CAA).

TCC is a statewide trade association representing approximately 77 chemical manufacturers at over 200 Texas facilities. Our industry has invested more than \$50 billion in physical assets in the State and pays over \$1 billion annually in state and local taxes. TCC's members provide approximately 70,000 direct jobs and over 400,000 indirect jobs to Texans across the State.

The CAA 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 (VOCs) and nitrogen oxides (NO_x) 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. TCC supports the main principles set forth in the Texas Commission on Environmental Quality's (TCEQ) draft rule language, as well as the inclusion of Equivalent Alternative Obligations.

TCC appreciates TCEQ's willingness to seek input as this issue progresses, and our members are eager to provide any assistance that may be needed. There are several aspects of the proposed rule that TCC members support, such as:

- Allowing a multi-year baseline period consistent with the Environmental Protection Agency's (EPA) guidance establishing a high-2 year-in-10 year baseline as an acceptable method for determining the Section 185 baseline. Furthermore, TCC agrees that businesses, such as those in the petrochemical industry, are influenced by the business cycle and, therefore, have emissions that are irregular, cyclical and otherwise varied qualifying our businesses to use this approach to calculate the baseline amount.
- Allowing sources to aggregate NO_x and VOC emissions in baseline determinations.
- The ability for major stationary sources who are obligated to pay a fee to be eligible to fulfill the fee obligation with an equivalent alternative obligation.

While TCC supports the overall principles within the draft rule language, we request that TCEQ consider making the following changes to the proposal:

- Section 101.100(3) Definitions. *Attainment Year*: For the 1997 8-hour ozone standard, the attainment year should be 2019. EPA's implementation rules may require attainment to be demonstrated in the ozone season before June 15, 2019, but the attainment year is 2019.
- Section 101.100(5) Definitions. *Electrical Utility Steam Generating Units*: TCEQ should use the definition contained in the Nonattainment and Prevention of Significant Deterioration Review Definitions at 30 TAC 116.12(13), which is provided below:
“...any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is included in determining the electrical energy output capacity of the affected facility.”
As proposed, the definition would cover any unit that generates any amount of electrical energy for compensation and would pull certain sources into a 5 year look back period.
- Section 101.115 New Source Exemption: This rule does not acknowledge the control technology implemented by the industries beyond the rule requirements. For example, an existing major source might add a new unit after the attainment date and should not be penalized since the new emissions unit would have to meet BACT in order to get authorization for construction. The current proposed rule is not considering this case.

Proposed Change:

Change section 101.100 Definitions to add a definition for emissions unit.

Change section 101.115 Exemptions as follows:

- (a) For any major source meeting the applicability requirements of §101.110, any new emission unit that was not in operation on or before the attainment date is exempt from the requirements of this subchapter.
- Section 101.120 Baseline Amount Calculation: Paragraph (a) should be slightly revised to properly reflect the options that are available for determining the baseline amount as shown below.
 - (a) For purposes of this section, the baseline amount shall be computed as the lower of (1) or (2) or by using paragraph (3) below:

(1) total amount of actual emissions in the attainment year;

(2) total emissions allowed under the permit applicable to the source in the attainment year;

(3) total emissions as calculated under subsection (b) of this section.

- Section 101.120(d) Baseline Amount Reporting: TCC would like to see the time period allowed for submitting the baseline amount emissions report increased from 90 days to 180 days to allow facilities to conduct the potentially complex analyses involved where emissions fluctuate and the high 24 months in 10 years evaluation must be performed. For these same reasons, TCC also suggests that the time period allowed for submitting the baseline amount be revised to 180 days in Sections 101.125(c) and 101.127(d) of the draft proposed rule.
- Section 101.125 Aggregated Pollutant Baseline Amount: While TCC appreciates the ability to aggregate emissions for VOC and NO_x or to aggregate emissions for sites under common ownership, TCC recommends removal of the restriction in section 101.125(b) on using both the site and the pollutant aggregation methodology at the same time. TCC does not believe there is adequate justification for such a restriction. Also, the reference citation to section 101.126 in paragraph (b) of 101.125 is incorrect; the current draft rule does not have a section 101.126.
- Section 101.127(b) Multiple Site Aggregation Baseline Amount: There are a number of facilities in the Houston-Galveston-Brazoria (HGB) nonattainment area that have VOC emissions, but do not have emissions of 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 101.127(c) Multiple Site Aggregation Baseline Amount: TCC recommends removal of the restriction in section 101.127(c) on using both the site and the pollutant aggregation methodology at the same time. TCC does not believe there is adequate justification for such a restriction.
- Section 101.127(g) Multiple Site Aggregation Baseline Amount: TCC would like to see a provision added for the appropriate time period to use for both sites in the site aggregation method in the event that one of the sites was not operating during the time period selected for the other site. Even though one site may not have been in operation at that time, TCC recommends using the permitted amount for the non-operating site during the time period pre-operation, in the event it is needed for site aggregation.
- Section 101.150 Failure to Attain Fee Payment: In paragraph (b) of this section, the fee will be due within 30 days of the invoice date. However, in many cases, the fees will be potentially very large and payment within 30 days may pose an unnecessary hardship for some facilities, especially smaller companies with large payments due. TCC therefore recommends changing the payment date to within 90 days of receiving the invoice.

- Section 101.160 Cessation of Program: TCC suggests TCEQ consider suspending Section 185 fees after one year of “clean” data¹ and then terminating Section 185 fees or equivalent obligations upon three years of “clean” data.
- Section 101.210 Equivalent Alternative Obligations: TCC believes Equivalent Alternatives should include 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. TCC also feels that any capital dollars that are invested to reduce emissions beyond the current regulatory requirements should also be considered as an Equivalent Alternative.

Thank you for your consideration of these comments. If you have any questions, please do not hesitate to contact me at (512) 646-6404 or by email at mmcmullen@txchemcouncil.org.

Sincerely,



Mike McMullen
Director of Regulatory Affairs
Texas Chemical Council

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.