



TEXAS CHEMICAL COUNCIL



TEXAS OIL & GAS ASSOCIATION

January 14, 2013

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

RE: Rule Project No. 2009-009-101-AI
Proposed Rule; Severe Ozone Nonattainment Area Failure to Attain Fee

Dear Ms. Horn:

On behalf of the Texas Chemical Council (TCC) and the Texas Oil & Gas Association (TxOGA), thank you for the opportunity to submit comments on the proposed rule by the Texas Commission on Environmental Quality (TCEQ), *Severe Ozone Nonattainment Area Failure to Attain Fee*. 37 Tex. Reg. 9468 (Nov. 30, 2012).

TCC is a statewide trade association representing over 70 chemical manufacturers with more than 200 Texas facilities. The Texas chemical 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. TCC member companies manufacture products that improve the quality of life for all Americans.

TxOGA, the largest and oldest petroleum organization in Texas, represents more than 5,000 members of the oil and gas industry. The membership of TxOGA produces in excess of 90 percent of Texas' crude oil and natural gas, operates 100 percent of the state's refining capacity, and is responsible for the vast majority of the state's pipelines. According to the most recent data, the oil and gas industry employs 352,000 Texans, providing payroll and benefits of over \$41 billion in Texas alone. In addition, large associated capital investments by the oil and gas industry generate significant secondary economic benefits for Texas.

At the outset, TCC and TxOGA compliment the agency on the thoroughness and thoughtfulness of the proposed rule. It is very evident that a tremendous amount of work went into drafting the proposal and creating a rule that fairly balances the obligation of sources to pay any fees levied under federal Clean Air Act § 185. As TCEQ well knows, point sources contribute minimally to the ozone problem in the Houston-Galveston-Brazoria (HGB) nonattainment area. However, under the federal Section 185 fee rule, point sources bear the sole burden of paying the fee for the HGB

area's inability to attain the federal 1-hour ozone standard by the attainment deadline, despite the fact that point sources only represent approximately 15% of the overall volatile organic compound (VOC) emissions and 31% of the overall nitrogen oxide (NOx) emissions in the region. In stark contrast, area and mobile sources represent approximately 42% of the VOC emissions and 68% of the NOx emissions in the area (TCEQ Adopted SIP Revision, March 3, 2010, Chapter 3, Table 3-13). Additionally, the impacted point sources have collectively invested billions of dollars in the HGB area in the last 12 years to lower emissions and achieve dramatic air quality improvements in the air shed. TCC and TxOGA recognize and appreciate that TCEQ's proposed rule creatively addresses the disparity of emissions between mobile and point sources, and we support the proposed rule with the following additional specific comments.

- Proposed §101.102: TCC and TxOGA support the creation of the Equivalent Alternative Fee Account, which will reflect equivalency credits based on revenue collected for the Texas Emissions Reduction Plan (TERP) program and the Vehicle Inspection and Maintenance (I/M) program. This concept also appears to be consistent with the Section 185 Fee Rule that the U.S. Environmental Protection Agency (EPA) recently approved for California's South Coast Air Quality Management District (SCAQMD) last month. 77 Fed. Reg. 74,372 (Dec. 14, 2012). A key component of SCAQMD's rule is the establishment of an account to be funded by mobile source emission reduction/infrastructure improvement programs that meet certain eligibility criteria.
- Proposed §101.104(c)(3): we support the proposal to prorate any amount due among the stationary sources obligated to pay the fee, in the event the Fee Equivalency Account balance is calculated to be less than zero.
- Proposed §101.106(a)(2): TCC and TxOGA support the proposal that authorized maintenance, startup and shutdown (MSS) emissions should be used in calculating the total emissions allowed as an option to compute the baseline amount.
- Proposed §101.106(b)(2): TCC and TxOGA support the approach that baseline emissions can be calculated using any 24-consecutive month period within the past 10 years (the "highest 2 in 10" emissions formula). This concept is supported by EPA's own memorandum, "Guidance on Establishing Emissions Baselines under Section 185 of the Clean Air Act (CAA) for Severe and Extreme Ozone Nonattainment Areas that Fail to Attain the 1-Hour Ozone NAAQS by their Attainment Date," William T. Harnett, Director, Air Quality Division, March 21, 2008.
- Proposed §101.107(a): we strongly support TCEQ's proposal to allow aggregation of not only NOx and VOC emissions, but also of multiple sites. Further, the proposed provision to allow both types of aggregation simultaneously is also a key to maximum flexibility that TCC and TxOGA support.
- Proposed §101.107(b)(1): TCC and TxOGA recommend striking the phrase "the same time period" under pollution aggregation section. For those companies that are aggregating multiple sites, the inclusion of this phrase does not make sense as it is

unlikely that a company will choose to use the same 24-consecutive month period for all of its sites that it chooses to aggregate.

- Proposed §101.109(b): TCC and TxOGA recommend that TCEQ lengthen the deadline from 90 calendar days to 180 calendar days for the submission of data required when a site changes ownership or control of emission units.
- Proposed §101.110: TCC and TxOGA believe that the proposed rule should allow an exclusion for new emissions units as new units installed in the HGB nonattainment area after the attainment date undergo a rigorous Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER) analysis process, a thorough impacts analysis and already have state-of-the-art controls. Furthermore, a new source obtaining a nonattainment New Source Review (NNSR) permit is required to offset its VOC and/or NO_x emissions at a ratio of 1.3 to 1. That 0.3 portion is retired, theoretically improving the air quality of the area. That retired 0.3 portion exceeds the amount of emissions (20%) that the fee would be based on, so in essence, new sources have already paid their fee via the 0.3 offset.

In the alternative, should TCEQ opt to include new sources in the rule, TCC and TxOGA request that TCEQ consider that many new sources are not fully and/or consistently operational within the first year, and establishing a baseline that first year would create a disadvantage to that source. We propose one of the following approaches to address this potential problem for new sources: 1) the rule should require that the baseline represent a full year of data associated with only normal operations, or 2) the rule should allow the source to establish a baseline after the first two full years of actual operations and compare the permit limits (rather than actuals) in those first two years (similar to how new sources are handled in NSR permitting).

Finally, under proposed §101.110, subsection (c) poses a concern for TCC and TxOGA members. In the case where a site is utilizing a piece of equipment more often than in the past as part of a new project, this condition would not allow that site to take advantage of any permitting efforts associated with that additional utilization of the existing equipment. One example is a flare or a heater that has unused capacity and a project's ability to utilize that capacity as part of the new project, even if that project (with the additional utilization of existing sources) is being permitted under a NNSR permit. It appears that under the proposed rule, the site would be penalized in the fee calculation for utilizing that extra capacity as part of a project. TCC and TxOGA request clarification on this provision and our interpretation of it.

- Proposed §101.116(b): TCC and TxOGA strongly support the proposal that the first payment of any fee levied is due and is calculated using the actual emissions from the emissions inventory for the calendar year preceding the adoption of the rule. As EPA recently recognized in its final rule determining that Baltimore is now in attainment with the 1-hour ozone standard, the retroactive collection of fees dating back to the HGB region's failure to attain date (2007) "would likely impose large costs on the states, ... even though they were not on notice at the time." 77 Fed. Reg. 34,810, 34, 815 (June 12,

2012). Even EPA agreed in the Baltimore notice that “giving retroactive effect to EPA’s determination of failure to attain the standard... would be unreasonable, and... would only make the situation worse.” Id. at 34,816.

- Proposed §101.118(b): TCC and TxOGA also strongly support the ability of the Executive Director to place the fee collection in abeyance in the event that an attainment demonstration with the 1-hour ozone standard is submitted to EPA for approval. In the Baltimore notice, EPA stated that, “EPA’s determination that the area has been attaining the 1-hour ozone standard since 2008, and continues to attain the standard, provides independent and sufficient grounds for concluding that the 1-hour contingency measure anti-backsliding requirement is satisfied. No additional reductions from contingency measures – or any other measures – are needed to bring about attainment of the 1-hour ozone standard or reasonable progress toward that attainment, which has already been achieved.” Id. at 34,816. Accordingly, it follows that EPA should approve a rule which allows the Executive Director to place the fees in abeyance once an attainment demonstration has been sent to EPA for approval since the fee will no longer apply from the attainment date.

Thank you for your consideration of these comments. If you have any questions, please do not hesitate to contact TCC or TxOGA representatives at the contact information listed below.

Yours respectfully,



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