



TEXAS OIL & GAS ASSOCIATION



April 30, 2010

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

Re: Request for Determination of Termination of Clean Air Act Section 185 Fee Obligation

Dear Ms. Pendleton:

Founded in 1922, the Texas Association of Business (TAB) is a broad-based, bipartisan organization representing more than 3,000 small and large Texas employers and 200 local chambers of commerce.

The Texas Oil and Gas Association (TxOGA) is the largest and oldest petroleum organization in Texas, representing over 4,000 members. The membership of TxOGA produces in excess of 92 percent of Texas' crude oil and natural gas, operates nearly 100 percent of the state's refining capacity, and is responsible for the vast majority of the state's pipelines.

Our organizations are providing the following comments on the proposal by the Commission to submit to the Environmental Protection Agency a request for a determination to terminate the obligation for imposition of a Section 185 fee program. The Texas Association of Business and the Texas Oil and Gas Association fully support this submission.

On November 18, 2009, the Commissioners approved the publication of, and requested public comment on, proposed new 30 TAC Chapter 101, Subchapter B, relating to Failure to Attain Fee. This rule would implement a program under which penalties would be assessed against major air emission sources in the Houston-Galveston-Brazoria ozone nonattainment area for the failure of the area to attain the federal one-hour national ambient ozone standard by the applicable attainment date, consistent with Section 185 of the federal Clean Air Act.

Subsequent to this proposal, EPA, on January 5, 2010, issued a decision document entitled "Guidance on Developing Fee Programs Required by Clean Air Act Section 185 for the 1-hour Ozone NAAQS." EPA's new guidance makes clear that if a nonattainment area otherwise subject to Section 185 is attaining either the one-hour or the 1997 eight-hour ozone NAAQS, based on permanent and enforceable emissions reductions, the area is not obligated to be covered by a Section 185 fee program. The 2009 eight-hour ozone design value for the HGB area clearly demonstrates that both the earlier one-hour and currently-applicable eight-hour ozone standards are being attained. Based on EPA's guidance, the decision by the Commission to seek a determination from EPA that the program obligation can be terminated is completely appropriate.

The purpose of Section 185 is to penalize emission sources where those sources have failed to make the reductions in ozone precursor emissions necessary to achieve attainment of an ozone standard. It is not to penalize businesses in nonattainment areas for simply being in business and operating emission sources consistent with federal and state permits and the State Implementation Plan. EPA's new guidance provides appropriate flexibility in fee programs, including the ability to incorporate fees from mobile sources, acknowledge the contributions made by the best controlled sources and recognize alternatives to fees that provide equivalent reductions to achieve the real goal of Section 185 – attainment of the ozone standard. More fundamentally, however, the guidance recognizes what should be obvious – if an area is already attaining the ozone standard, the imposition of a monetary penalty to promote attainment becomes meaningless and illogical.

The fact that the HGB area is meeting the current ozone standard is in great part the direct result of the billions of dollars of investment by major sources in the area in pollution controls and the unprecedented emission reductions from these investments. Today, by far the largest sources of ozone precursors in the HGB area are mobile and area sources, not major point sources. The Section 185 fee program under consideration would have assessed penalties against the very sources that have made the largest contributions to air quality improvements in the HGB area and divert significant financial resources from those businesses that will continue to be called on to make further reductions in the future.

TAB and TXOGA fully support both the TCEQ's request that EPA determine that a Section 185 fee program is not required to be implemented for the Houston-Galveston-Brazoria area and EPA's affirmative response. Thank you for the opportunity to comment and please contact us if you have questions concerning our position.

Sincerely,



Debbie Mamula Hastings
Vice President for Environmental Affairs
Texas Oil & Gas Association



Stephen Minick
Vice President, Governmental Affairs
Texas Association of Business