

Texas Natural Resource Conservation Commission

INTEROFFICE MEMORANDUM

To: Commissioners' Work Session Date: April 16, 1998

From: Beverly Hartsock, Deputy Director
Office of Policy and Regulatory Development

Subject: **Docket No. 98-0425-RUL.** Consideration of a petition for rulemaking, filed by the Texas Association of Business and Chambers of Commerce (TABCC), the Texas Chemical Council (TCC), and the Texas Oil & Gas Association (TxOGA), to adopt amendments to 30 TAC Chapter 101, Section 101.27(c)(1), concerning Emissions Fees. The petitioner proposes to amend the section to change the rate charged per ton of emissions from \$26 to \$20. If granted, the agency would initiate rulemaking proceedings in accordance with the Administrative Procedure Act. (Paul Henry/Steve Ortiz) (Rule Log No. 98017-101-AI)

Issue

The Texas Association of Business and Chambers of Commerce (TABCC), the Texas Chemical Council (TCC), and the Texas Oil & Gas Association (TxOGA) have submitted a petition for rulemaking to amend 30 TAC §101.27(c)(1).

The petitioners seek to amend §101.27(c)(1) to change the rate charged per ton of emissions from \$26 to \$20. If the petition is granted, as written, the subsequent rulemaking would reduce the amount of emissions fees paid by major sources that are subject to the Title V, federal operating permits program, and reduce the revenues paid into the Clean Air Account (Fund 151).

The TABCC, TCC, and TxOGA are concerned about the Clean Air Account balances that are not being appropriated to the agency, and therefore, submitted a petition for rulemaking to reduce the emissions fee rates paid by the regulated industries into Fund 151. They state that there is more money being collected than is necessary to administer the program and propose that the federally authorized emissions fee be lowered from \$26 per ton to \$20 per ton. The petitioners point out that under Section 502 of the Federal Clean Air Act, this adjustment is allowed as long as sufficient funds remain to administer the federal operating permits program. They conclude that given the historic and current appropriation levels for this program, a reduction in the fee is justified.

Background and Current Practice

Section 502(b)(3) of the Federal Clean Air Act Amendments of 1990 (FCAAA) and 40 CFR Part 70, Federal Operating Permits (Part 70), §70.9, Fee Determination and Certification, require sources subject to the federal operating permit program to pay an annual fee, or the equivalent over some other period, that is sufficient to cover the costs required to develop and administer the permit program requirements. All major sources as defined in the FCAAA, Title V and the emissions fee rule (30 TAC §101.27) are affected. This includes predominately industry, but also some local government facilities, state facilities, federal facilities, and universities. Part 70, §70.9(b) requires

states to establish fee schedules that will result in the collection and retention of revenues sufficient to cover the permit program costs, which can include, but are not limited to, the costs of the following:

Preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;

Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or revision or renewal;

General administrative costs of running the permit program including the supporting and tracking of permit applications, compliance certification, and related data entry;

Implementing and enforcing the terms of any Part 70 permit (not including any court costs or other costs associated with an enforcement action) including adequate resources to determine which sources are subject to the program;

Emissions and ambient monitoring;

Modeling, analyses, or demonstrations;

Preparing inventories and tracking emissions; and

Providing direct and indirect support to sources under the Small Business Stationary Source Technical and Environmental Compliance Assistance Program.

In accordance with FCAAA §502(b)(3)(B)(i) and Part 70, §70.9(b)(2)(i), the EPA will presume that a state's fee schedule is sufficient to cover the costs of the permit program if it would result in the collection and retention of an annual amount not less than \$25 per ton as adjusted by the Consumer Price Index (CPI) from an August 31, 1989 basis. The EPA expects the \$25 rate to be adjusted every year as necessary to collect an equivalent amount of revenue and increase that revenue by the percentage, if any, by which the CPI is increased. As long as a state is charging a fee that meets this presumptive minimum, as adjusted by the CPI, then the state fee schedule is presumed to meet the requirements of Title V and Part 70. A state can charge less than the presumptive minimum if the state prepares and submits to EPA a comprehensive demonstration that the fee collected will result in revenues sufficient to cover the costs of the permit program.

The presumptive minimum fee as of August 31, 1997, is \$32.27 per ton. Currently under 30 TAC §101.27(c)(1), the TNRCC charges an emissions fee of \$26 per ton for affected sources. Although this fee is below the \$32.27 level, it meets the conditions of the presumptive norm in Title V and Part 70 because the TNRCC includes emissions from carbon monoxide (CO) in its fee basis. The CO-adjusted presumptive level for TNRCC is \$26.01 for FY1998.

The emissions fee is one of several fees including air permit fees, stationary source inspection fees, and vehicle safety inspection fees, deposited to the Clean Air Account which contribute to any balances in the fund. The emissions fee has generated over \$39 million this fiscal year and total air fee revenues are projected to exceed \$76 million. The Clean Air Account began FY1998 with a balance of over \$14 million which accumulated over time.

In response to the FCAAA, the agency developed revenue streams to fund the large increases in expenditures that were anticipated. This specifically included the emissions fee and the vehicle safety inspection fee. These revenue programs were implemented in advance of program needs in order to assure that the funding mechanisms were viable and to meet EPA's requirement for a presumptive level of funding for the Title V activities. Delays in Title V delegation and associated staffing, legislated budget reductions, and cost savings realized in various areas led to appropriations to the agency not being fully utilized. However, due to declining revenues and potential new program costs, these fund balances are expected to decline over time.

Apart from dollars which are currently budgeted, there are several potential pressures on air funds in the future. Rider 17 of the TNRCC appropriations in Article VI of House Bill 1, 75th Legislature (the General Appropriations Act of 1998-99), provides \$1,605,000 in funding for local government planning organizations to assist in air quality planning efforts in the near nonattainment areas. A provision of that rider would fund an additional \$1 million out of revenues collected for the biennium which exceed the Comptroller's Biennial Revenue Estimate of \$150.77 million for the Clean Air Account. Current revenue projections for the biennium (\$151.96 million) show that any reductions in the fee rate would jeopardize this additional funding. Other future pressures include associated funding for new and expanded programs related to the new federally mandated air quality standards and the voluntary permitting of grandfathered facilities (CARE program).

The permitting of grandfathered facilities and the associated voluntary emissions reductions will adversely impact emissions fee revenue. This may necessitate an increase in the fee rate if a substantial balance does not exist in the fund. The tonnage basis of the emissions fee has been declining every year. Over the past three fiscal years, the average rate of decline is over 5% per year. A substantial portion of this reduction is from a combination of emissions reductions and accounts dropping below fee thresholds. These reductions would be even greater without the revenue generated by a successful program identifying affected accounts and auditing both fee submittals and emissions inventories. The impact of these audits is expected to level out as accounts become more aware of fee and inventory procedures. At the same time, an increasing percentage of accounts are leaving the system. A 5% per year reduction in emissions is assumed throughout this review. It is possible that the reductions could be higher and thus depress revenue further.

Question

When determining the appropriate emissions fee rate, several issues need to be considered. These include Rider 17 for this biennium, analysis of biennial appropriations and associated revenue, and a review of the impact of various fee rates on future fund balances. The impacts of fee rate reductions on these issues are presented in the attached tables. For these analyses, the following assumptions are made:

1. Current appropriations levels are maintained.
2. Program costs remain constant.
3. No new program initiatives are undertaken (such as to address the new air standards or permitting of grandfathered facilities).
4. No new information technology costs are incurred.
5. Emission reductions do not significantly exceed 5% per year.

Any new requirements are expected to place a significant additional demand on agency resources.

Any reduction in the emissions fee rate will have the following impacts:

- A temporary reduction in fees assessed to the fee payers.
- Inability to fully fund Rider 17.
- A need to raise the fee rate earlier than would otherwise occur.
- Future requests for appropriations will have to be based on the premise of a fee increase.
- Future fee increases will be exacerbated by program cost increases.
- Reducing the fee below the current rate would make it lower than EPA's presumptive minimum in Part 70 and could raise issues regarding the operating permit program approval.
- Would not allow stable budgeting for fee payers.

Agency Contacts

Paul Henry, Air Quality Planning & Assessment, 239-1526

Susan Owen, Legal Services, 239-0576

Steve Ortiz, Air Policy & Regulations, 239-2008

Steve Minick, Strategic Planning & Appropriations, 239-0214

Matthew Johnson, Budget and Planning, 239-0228

Lisa Martin, Texas Register Team, 239-1966