SUMMIT
NEXT GEN

June 18, 2025
Ms. Gwen Rico
Office of Legal Services
Texas Commission on Environmental Quality
PO Box 13087
Austin, Texas 78711-3087

RE: Comments on Proposed Section 185 Fee Regulations
Rule Project Number 2023-131-101-AI

Dear Ms. Gwen Rico:

This letter is intended to provide comments on the proposed regulations for Section 185 fees in Title 30 Texas Administrative Code (30 TAC) Chapter 101, Rule Project Number 2023-131-101-AI.

The proposed Summit Next Gen facility in Harris County would be negatively impacted by the unfair treatment of new major sources under the proposed Section 185 fee program, as written. Therefore, we respectfully submit two comments addressing the proposed approach to regulating new major sources under the program.

Our first comment focuses on the calculation of baseline emissions for new major stationary sources. As proposed, the regulation would permanently establish a baseline emission rate based upon the first full year of actual operations. In the preamble this is clarified to indicate the first 365 days of operations. "For example, a major stationary source of VOC emissions begins operating on February 4, 2028, and the baseline amounts are determined using the February 4, 2028, through February 4, 2029, timeframe."

In practice, a new major stationary source is a complex set of many emission units and mechanical devices, all of which are being put into service for the first time simultaneously. The initial startup and shakedown process for a new major stationary source can take months with multiple interruptions and is often conducted at significantly reduced rates. Permit conditions and new source regulations have historically recognized this fact by allowing up to 180 days after startup of a new source before testing is required so a process unit can approach full operating rates. It often requires most or all of this time to reach full operating rates for a single emission unit, and whole operating facilities often require more than this amount of time to reach normal operating rates. Including this initial startup period in a baseline for future fees is not representative of actual long-term operations of the new facility and not reasonably comparable to a baseline established at an existing major stationary source that has operated routinely for many years.

As an alternative baseline for new major stationary sources, Summit Next Gen proposes that the rule allow the source to use any of several alternative baseline periods:

- Any consecutive 12-month period during the first 24 months of operation;
- The 12-month period starting when the unit has achieved 90% of design operating rate averaged over 30 consecutive days; or
- The 12-month period starting one year after start of operation of the new major source.

Any of these periods would be more representative of normal operations and more comparable to the baseline for existing sources.

Note that while proposed section 101.708 does allow for new stationary sources to adjust the initial baseline emission rate, it does not address concerns with the startup and shakedown period. As written, this section requires new sources to use the average of actual emissions over the first 24 months of operation which includes unrepresentative, low-rate or intermittent-rate startup and shakedown operations. These unrepresentative periods should be removed from the baseline to ensure new major stationary sources achieve the statutory intent of using a representative baseline period.

Our second comment deals with the necessity of including new major stationary sources in the Section 185 fee program. Facilities can become new major stationary sources through a variety of means, including small incremental increases in emissions that successfully avoid nonattainment new source review and offsets. However, new major stationary sources that have been fully offset by retiring emission reduction credits at 1.3:1 or greater ratios have already made contributions of greater than 20% net emission reductions to the nonattainment area. They have also typically installed lowest achievable emission rate (LAER) controls, limiting their ability to generate further emission reductions. This effectively establishes a punishing, long-term cost based upon unattainable goals for new operating facilities. Having already contributed to reaching attainment, these new sources that have been fully offset should be exempt from the Section 185 fee program. Summit Next Gen would like to propose that emissions from individual emission units that have been fully offset by emission reduction credits should be excluded from the calculations for both baseline emissions and actual emissions.

Thank you for your attention to this matter. If you have any questions or would like to discuss these comments in greater detail, please feel free to contact me.

Sincerely,

Robert Halpin

Robert Halpin
Chief Executive Officer
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