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Fenceline Watch is, a community-based organization located in the East End of Houston, Tx dedicated to eradicating multigenerational toxic harm faced by fenceline communities. We thank the Texas Commission on Environmental Quality for the opportunity to submit comments on TCEQ's proposed rule Section 185 Fee for the 2008 Ozone NAAQS - RPN 2023-131-101-AI.

In September 2024, TCEQ sought public input in crafting a proposed rule for an alternative to the 185 fee required by the Clean Air Act for the 2008 Ozone NAAQS standard. Fenceline Watch submitted written comment last fall addressing many of the concerns and inadequacies in the potential 185 fee alternative program that was presented by TCEQ. Unfortunately, the issues highlighted in our comments remain unaddressed by the proposed rule. TCEQ is still moving forward with a proposed rule that fails to address the human health and environmental harms faced by communities directly impacted by industry violators.

a. Deficiencies with the proposed rule

TCEQ's proposed rule for an alternative program for the 185 fee rule has a number of deficiencies including:

- The fee program created by the TCEQ does not collect fees, but rather implements a credit system that feeds into the existing Texas Emissions Reduction Plan (TERP). Fees owed by major sources are offset by vehicle registration surcharges and other fees collected to fund the Texas Emissions Reduction Plan ("TERP"), a program that is also funded by state appropriations. The TERP provides grants to "industries like trucking, farming, and construction" so they may upgrade "to newer, cleaner technology, and retiring outdated pieces of machinery." What this proposed rule does is use tax payer dollars to offset penalties by private industry, creating a system in which industry bad actors that exceed their regulated limits are given credit into a fund that they can then receive funding from to reinvest into their non-compliant facilities.

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- TCEQ cites EPA's final rule published November 16, 2005, in the Federal Register (70 FR 69440) regarding the Maryland portion of the Washington, D.C. severe one-hour ozone nonattainment, specifically surfacing that, TCEQ cites EPA stating:

“further states that a “penalty fee that is based on emissions could have some incidental effect on emissions if sources decrease their emissions to reduce the amount of the per ton monetary penalty. However, the penalty fee does not ensure that any actual emissions reduction will ever occur since every source can pay a penalty rather than achieve actual emissions reductions.”

Yet, the rule still assess a fee, stating: “If revenue generated from TERP is insufficient to fully offset the Area §185 Obligation for the eight-hour ozone nonattainment then the remaining difference would be assessed as a Failure to Attain Fee on a major stationary source or Section 185 Account for the area on a prorated basis. This undermines the rationale for the development of an alternative fee program.

- As highlighted in our previous written comment during the development of the rule Environmental Justice considerations should be evaluated for the proposed action. EPA states that:

“The air agency did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action”

- The proposed rule allows major sources to aggregate baselines by either pollutant or site, determined under “common control” and states TCEQ alternative rule provides flexibility. Specifically, the proposed rule incorrectly claims the act does not address baseline emissions for major sources. The TCEQ wrongly claims that the Act does not address baseline emissions for major sources permitted after the attainment date however, The Act prescribes three possible ways to calculate baseline emissions. Pursuant to the

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Act, baseline emissions must be set at the lower of actual emissions or allowable emissions under a permit, or allowable emissions under the SIP. Therefore, for major sources permitted after the attainment date, the TCEQ must set initial baseline emissions at permitted allowables. For minor sources that existed on the attainment date and later became major sources, the TCEQ must set baseline emissions at permitted allowables under the major source permit. For subsequent years, under both scenarios, the major source's baseline emissions should be the lower of permitted or allowable emissions, like other major sources already subject

b. Worsening climate and resiliency

Additionally, we recommend that TCEQ develop a program to collect fees from major sources of NOx and VOCs and reinvest these funds into where these major sources are cited.

Houston will experience the greatest sea level rise among the 10 most populous coastal cities. Houston is sinking. It is the fastest sinking city. A recent study found that 42% of Houston's land area was sinking about 1/5 inch per year, with 12% sinking more than double the rate, "In the Houston-Galveston area, long-term groundwater mining and oil and gas extraction have resulted in subsidence rates of up to 2 inches (5 cm) per year in certain areas," the report said. Extreme weather events are already impacting our area.

Texas 185 Fees should be used to make vulnerable areas more resilient. The White House has stated that it will begin to phase out FEMA after the 2025 hurricane season, putting more responsibility on states. The goal is for disaster response to be locally led and state-managed:

- The fee should go to repair local infrastructure, clear roadways necessary for both public and private utilities to access critical areas
- Improve disaster resilience - drainage programs
- Coordinate recovery programs

The increasingly worsening climate impacts impacting the State are clear. Below are a few of the most recent weather events impacting the area and state:

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- Hail Storm Permian - May 23, 2025
- The administration approves a major disaster declaration for Texas for flooding from March 26-28, 2025- (Cameron, Hidalgo, Starr, and Willacy County). Assistance was approved for temporary housing, home repairs, and to help individuals with relief
- June 5, 2025- Morton County had a supercell produce tornadoes in the area, snapping power lines
- JUNE 9, 2025- Big Spring, Texas, Canyon, Texas - issued a local disaster declaration
- JUNE 12, 2025- Tornado warning for Hays County, San Marcos, and Kyle
- June 12, 2025- National Weather Service confirmed 8 tornadoes struck Lubbock County with winds as high as 125 Miles per hour

c. Fees collected from the proposed rule and health impacts in non-attainment area

Money collected from the alternative fee program should go to address the health impacts of NOX and VOC pollution in the impacted Houston-Galveston-Brazoria non-attainment area. The Houston-Brazoria-Galveston (HGB) area has not reached compliance with federal Clean Air Act standards; the 2008 ozone standard which have been classified as severe nonattainment, and the 2015 ozone standard in which we are in serious non-attainment. Tropospheric (O₃), or ground-level ozone has been observed to have significant positive associations with increased incidences of cardiovascular and respiratory mortality. Short-term exposure to ground-level ozone has been linked to the exacerbation of asthma, while long-term exposure is shown to increase the probability of developing chronic obstructive pulmonary disease. A 2021 T.H. Chan Harvard School of Public Health study found that long-term exposure to low levels of ozone pollution in the range of 50 ppm led to increased mortality risk. Ground-level ozone pollution caused by volatile organic compounds and oxides of nitrous has been linked to increased emergency room visits for children under 19 and those 65 and older, which EPA identifies as vulnerable populations. It has been established that minority and lower-resourced communities are disproportionately impacted by air pollution and its associated health outcomes; this finding holds true in Houston. The mortality rates of lung and bronchus cancer in Houston show that minority populations, especially black and Hispanic communities, are disproportionately

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impacted by the release of particulate matter from chemical manufacturing and industry when compared to white counterparts.

Our communities along the Houston Ship Channel are disproportionately impacted, As a snapshot of our communities, Magnolia Park ranks as in the 96th percentile for air toxics risk and 94th in proximity to hazardous materials. Manchester ranks in the 97th percentile for both air toxic risk and proximity to hazardous material. Smith Addition ranks in the 97th percentile for air toxic risk and 96th for proximity to hazardous material. Harrisburg ranks 94th for air toxic risk and 96th for proximity to hazardous material. TCEQ's proposed rule alternative 185 fee program fails to address the core goal of the penalty, to provide redress for areas impacted by non-attainment of the 2008 standard. The proposed rule should use penalties collected to provide resources for:

- Childhood asthma clinics
- Air conditioner programs for seniors and the disabled

In addition, the Act makes clear that all major sources are subject to the program for the entire period of nonattainment. The § 185 Fee Program should not allow for inter-precursor or inter-source aggregation as this would be contrary to the Act. Further, the program should be implemented expeditiously and collect fees until the areas' redesignation is final.

Once again, we would like to thank TCEQ for the opportunity to provide formal oral comment on Rule Project No. 2023-131-101-A, the proposed alternative to CAA 185 fee program, and extend Fenceline Watch as a partner moving forward.