

# Janet Greenberg

Rule Project No. 2023-131-101-AI  
Proposed New 30 TAC §§101.700 - 101.718  
RE: FCAA Section 185 Fee Rule

Thank you for the opportunity to provide comments regarding this proposed regulation. Our comments regard sources that are NOT major for VOC or NO<sub>x</sub> under the current definitions (e.g., potential to emit 25 TPY of VOC or NO<sub>x</sub>, in a severe nonattainment area), as well as future sources that could be minor sources in a moderate nonattainment area and become major (based on the site's Potential to Emit) if the area becomes classified as severe.

First, we presume that the form APD-Cert submitted in STEERS is valid for documenting both permitted/registered and non-registered PBR emissions, to certify that a site's Potential to Emit is below major source thresholds for VOC and/or NO<sub>x</sub>.

Next, we request that TCEQ allow the Emissions Inventory Non-applicability Letter to serve as a site's documented emissions in lieu of a full point source emissions inventory. A major source site could fall below the 10 TPY EI reporting threshold in 30 TAC 101.10 and submit a TCEQ non-applicability letter in lieu of a full detailed point-source emissions inventory.

Regarding some specific text in the proposed regulation (each proposed text is followed by a comment paragraph):

§101.701. Applicability. (a) The provisions of this subchapter will become applicable in an area classified as severe or extreme under the 2008 eight-hour ozone National Ambient Air Quality Standard (NAAQS or standard) when the U.S. Environmental Protection Agency (EPA) determines that the area has failed to attain the standard by its applicable severe or extreme attainment date.

What if the governor requests such a classification, as has occurred in the past for the HGB nonattainment area? Will the proposed rule apply only if EPA determines that the area has actually failed to attain the standard?

The major stationary source's fixed baseline amount is proposed to be calculated as the lower of the baseline emissions or total annual authorized emissions during the baseline year; the baseline amount must be adjusted downward to account for unauthorized emissions and/or emissions limitations in effect as of December 31 of the baseline year or timeframe used to determine the baseline amount. The major stationary source's baseline emissions are defined as the annual routine emissions reported to the TCEQ point source emissions inventory (emissions inventory) according to 30 TAC §101.10, excluding emissions not authorized by permit or rule, such as emissions from emissions events and scheduled or unscheduled maintenance, startup, and shutdown (MSS) activities. The major stationary source's authorized emissions include emissions allowed under any EPA or TCEQ-enforceable measure or document, such as rules, regulations, permits, orders of the commission, and/or court orders.

We suggest that "annual routine emissions reported to the TCEQ point source emissions inventory" be expanded to include those sites reporting using TCEQ's non-applicability form, in which they can state and certify their annual VOC and NOx emissions are each below 10 TPY, without requiring the submission of a detailed point-source EI. This could be very important for these sites to be able to use their actual certified emissions as their baseline rather than having to rely on the total emissions authorized by their permits or APD-CERT.

#### §101.706, Baseline Amount for New Major Stationary Sources

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The commission proposes that these new major stationary sources use their first year (12 consecutive months) operating as a major stationary source to determine the baseline amount or aggregated baseline amount. The baseline amount must be the lower of the baseline emissions during the first year of operation as a major source or the total annual authorized emissions during the first year of operation as a major source.

We approve of this proposal, that a site that becomes a major source (either by increased emissions or by a classification change) be allowed to use their actual emissions OR total authorized emissions as their baseline.

#### §101.708, Adjustment of Baseline Amount for Major Sources with Less than 24 Months of Operation

Major stationary sources with less than 24 months of consecutive operation as of December 31 of the baseline year or that began operation after the baseline year would not have sufficient data to initially determine if emissions are irregular, cyclical, or otherwise vary significantly from year to year to establish baseline emissions. The provisions of this proposed new section are intended to allow a major source with less than 24 months of consecutive operation an opportunity to adjust the established baseline amount after establishing the emissions history. After completing 24 months of consecutive operations, the major stationary source may request that the baseline amount be adjusted using the average rate during the first 24 months of consecutive operation for the baseline emissions.

We approve of this proposal, that a site newly regulated by this program be allowed to adjust their baseline emissions after 24 months of consecutive operations.

#### §101.709, Adjustment of Baseline Amount for New Construction

This proposed new section would allow an existing major stationary source to adjust its baseline amount to account for new construction authorized in a nonattainment permit issued under Chapter 116, Subchapter B, Division 5.

What about for sites with non-NNSR permits? Will they also be allowed this baseline adjustment?

Actual = All quantifiable emissions of VOC and/or NOX from the major stationary source or Section 185 Account; as recorded in the annual emissions inventory for the fee assessment year.

We request that it be made clear that "recorded in the annual emissions inventory" includes TCEQ's non-applicability letter, with total sitewide VOC and NOx tallied, reported, and certified in the letter.

Thank you for your consideration of our comments.

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