

Kathryn Guerra

Attached are Public Citizen's comments on Rule Project Number 2023-131-101-AI.



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June 18, 2025

VIA ELECTRONIC SUBMISSION

<https://tceq.commentinput.com/>

**Texas Commission on Environmental Quality**

Texas Register Team - MC 205

General Law Division

Office of Legal Services

TCEQ

P.O. Box 13087

Austin, TX 78711-3087

RE: Public Comments on the Proposed TCEQ Section 185 (Failure to Attain) Penalty Fee Program for the 2008 Eight-Hour Ozone Standard (Rule Project Number 2023-131-101-AI)

The TCEQ's proposed Section 185 Fee Program, specifically, the Alternative Fee Program, as the agency is proposing, accomplishes nothing and fails its only goal – to improve the air quality in the Dallas-Fort Worth and Houston-Galveston-Brazoria non-attainment areas that communities not only badly need, but that the federal Clean Air Act requires.

Congress established the National Ambient Air Quality Standard to protect public health. This program, if implemented as Congress intended, is a tool to bring severe and extreme non-attainment areas into compliance. Instead, the TCEQ is proposing a paper game – utilizing publicly-funded TERP money from mobile sources of emissions to offset or pro-rate the penalties of private corporations and industry.

The TERP program was created nearly 25 years ago. While TERP has proven a cost-effective means to reduce pollution from mobile sources, Texas hasn't reduced ozone precursor pollution enough to reach attainment of ozone standards. The TERP program alone has not and will not cause attainment status. While the TCEQ proposes imaginary solutions on paper, Texans are suffering from real-world air quality and public health problems.

During the informal question and answer session of the June 12, 2025, public hearing, TCEQ staff asserted to participants that the agency does not interpret the purpose or goal of the Clean Air Act Section 185 Failure to Attain Fee rules to be to improve air quality or reach attainment status. This intentional misinterpretation of the Act is the basis of TCEQ's failure to propose a program that both assesses and collects a fee against major stationary sources, as required. The proposal intentionally violates the Federal Clean Air Act's directive and puts the state at risk for not only losing delegation of the program, but also the millions of dollars that the TCEQ projects it would create.



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For the duration of the public meeting, the TCEQ displayed an informational slide that incorrectly stated in Spanish that the written comment deadline was June 31. The correct written comment deadline of June 18 was provided in English. The TCEQ must do more to ensure that it complies with Title VI requirements to provide accurate and timely access to information on rulemaking and public comment opportunities.

The TCEQ's Alternative Fee Proposal will not improve the air quality of either region, as it allocates no new funds for air quality programs, nor does it disincentivize large stationary polluters from continuing to pollute Texas' air. The proposal is yet another clear example of the TCEQ serving the interest of industry over the health of our people.

We also oppose the agency's proposal to form baseline values on aggregation of precursor emissions, as it would allow industry to exceed the threshold of one pollutant but avoid penalty fees by balancing it against the lower levels of another pollutant.

Texans deserve clean air. It is the TCEQ's responsibility to ensure they have it. We will not accept this plan to excuse large polluters from their Clean Air Act obligations and we demand that the agency implement the Section 185 Fee program as Congress intended – by assessing and collecting a penalty fee against major stationary sources of NOx and VOC emissions.

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