



# Dallas-Fort Worth (DFW) Technical Information Meeting

## Section 185 Fee

August 24, 2022

# Section 185 Fee Requirements

- The EPA proposed to reclassify DFW to severe nonattainment for the 2008 eight-hour ozone National Ambient Air Quality Standard (NAAQS) in April 2022.
- The federal Clean Air Act (FCAA) requires a penalty fee to be imposed if an area fails to meet its severe or extreme attainment date.
- The fee applies to major sources of nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC) in the ozone nonattainment area.
  - Point sources such as power plants and cement plants.

# Section 185 Fee Requirements (cont.)

- The fee is required each year after the missed attainment date until the area is redesignated as attainment by the United States Environmental Protection Agency (EPA).
- If the state does not impose the fee, the EPA will impose the fee with interest.
  - The revenue is not returned to the state.

## Section 185 Fee Requirements (cont.)

- The baseline amount is the lower of actual ozone precursor emissions (NO<sub>x</sub> and/or VOC) or permit allowable in the scheduled attainment year.
- The fee rate is \$5,000 per ton of NO<sub>x</sub> and VOC over a baseline amount and is adjusted by inflation, using the Consumer Price Index.
- For calendar year (CY) 2021, the [EPA-published fee rate](#) was \$10,663.33 per ton.

# FCAA Section 185 Fee Rule Does Not Address Important Issues

- Baseline amounts for the following:
  - New major sources after the attainment date
  - Minor sources that existed on the attainment date but later became major
  - Equipment sold or transferred between companies
  - Aggregation of NO<sub>x</sub> and VOC in a baseline determination
- Period between the state submitting a redesignation request and maintenance (RDM) state implementation plan (SIP) revision and the EPA formally redesignating the area to attainment
- Revoked standards

# Section 185 Fee History

- Since DFW has not been classified as severe under an ozone NAAQS, a Section 185 Fee program has not been required.
- A Section 185 Fee program was required for the Houston-Galveston-Brazoria (HGB) nonattainment area under the **revoked** one-hour ozone NAAQS.
  - HGB has attained the one-hour NAAQS since 2013.



# Section 185 Fee History: HGB and the One-Hour Ozone NAAQS

- The TCEQ Section 185 fee developed for HGB under the one-hour standard provided flexibilities in fee assessment.
  - Texas Administrative Code Chapter 101, Subchapter B
- Based on these approved flexibilities, the TCEQ assessed the Section 185 fee and HGB meet the fee obligation.
- **Since the one-hour ozone NAAQS has been revoked**, the EPA approved these flexibilities as an “equivalent alternative program” allowed under FCAA Section 172(e).

# DFW Section 185 Fee: 2008 Eight-Hour Ozone NAAQS Dates

- **2020: Serious Nonattainment Year**
  - DFW did not attain by the end of 2020 to meet the July 20, 2021 serious attainment date.
- **April 13, 2022: EPA Proposed Severe Reclassification**
  - The EPA proposed to reclassify DFW to severe for the 2008 eight-hour ozone NAAQS.
- **Date to be Determined: 185 Fee Due Date to the EPA**
  - The EPA is proposing 18 months from the effective date of the reclassification to submit the Section 185 fee program and severe SIP revisions.



# DFW Section 185 Fee: 2008 Eight-Hour Ozone NAAQS Dates

- **2026 Severe Attainment Year**

- Attainment would be required by the end of 2026 to meet the July 20, 2027 severe attainment date.
- The design value will be based on 2024, 2025, and 2026 monitoring data.

- **2028: Fee Potentially Imposed**

- If DFW does not meet the severe attainment date, Section 185 fees could be imposed as soon as 2028.
- The fee is collected until the EPA redesignates the area as attainment.
  - A clean data determination must be certified for three years of monitoring data.
  - The TCEQ must develop, propose, and adopt the RDM SIP.
  - The EPA must propose and approve both the RDM SIP and redesignating the area to attainment.

# Section 185 Fee: 2008 Eight-Hour Ozone NAAQS

- The EPA has indicated alternative program flexibilities afforded under the revoked one-hour ozone NAAQS will potentially not be allowed for the 2008 eight-hour ozone NAAQS.
- Based on the conventional fee (no flexibilities), the estimated Section 185 fee obligation for DFW could be as much as \$45 million in 2028.
- We will be asking for stakeholder input.

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