

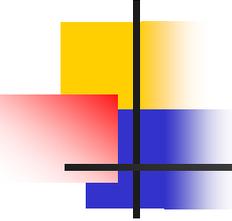
Clean Air Act Advisory Committee

Section 185 Work Group Close Out

October 6-7, 2009

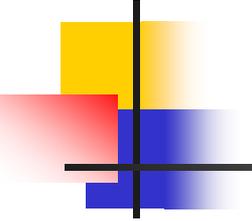
Kimber Scavo

Arlington, Virginia



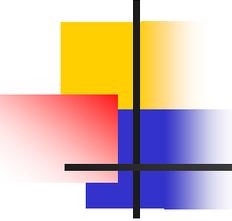
CAAAC Section 185 Task Force

- CAAAC Task Force convened in early 2009 to discuss section 185 program implementation.
- On May 15, 2009, the Task Force identified 10 areas of potential state discretion and asked if they were legally permissible under either section 185 or section 172(e) of the CAA.
- The Task Force urged EPA to issue prompt guidance on alternative options to section 185.



Review of CAA Section 185

- Section 185 applies as an obligation for severe and extreme ozone nonattainment areas that fail to attain by their attainment date.
- Major stationary sources of VOC and NO_x in such an area are subject to fees (\$5,000 per ton adjusted for inflation) for emissions that are above 80 percent of the attainment year emissions baseline.
- Fees accrue for “each calendar year beginning after the attainment date” and continue “until the area is redesignated as an attainment area for ozone.”
- EPA is required to collect the fees if a state’s SIP does not meet the requirements of section 185, or if a state is not administering and enforcing a section 185 SIP.



Review of CAA Section 185

- The due date for states to submit section 185 fee program SIPs was 12/31/2000 for the 1-hour NAAQS and 6/15/2014 for the 1997 8-hour ozone NAAQS.
- D.C. Circuit Court opinion (*South Coast v. EPA, December 23, 2006*) identifies section 185 fees as a control requirement that must be implemented by former 1-hour ozone severe and extreme areas to prevent backsliding per CAA section 172(e).
- EPA released “Guidance on Establishing Emissions Baselines under Section 185 of the CAA for Severe and Extreme Ozone Nonattainment Areas that Fail to Attain the 1-hour Ozone NAAQS by their Attainment Date” on March 21, 2008.
 - Addresses alternative baseline calculation for when a source’s emissions are cyclical, irregular, or otherwise vary from year to year.

Areas required to implement a section 185 fee program because of failure to attain the 1-hour NAAQS by the statutory attainment date...

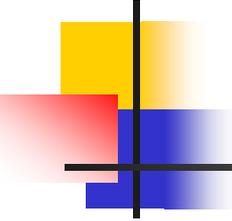
<u>Area</u>	<u>Attainment Date</u>
Baltimore, MD (severe 15)	11/15/2005
Baton Rouge, LA (severe 15)	11/15/2005
Sacramento, CA (severe 15)*	11/15/2005
New York, NY-NJ-CT (severe 17)	11/15/2007
Houston, TX (severe 17)	11/15/2007
Southeast Desert, CA (severe 17)	11/15/2007
Coachella Valley, CA (severe 17)*	11/15/2007

Areas that may need to implement ...

<u>Area</u>	<u>Attainment Date</u>
LA South Coast, CA (extreme)	11/15/2010
San Joaquin Valley, CA (extreme)*	11/15/2010

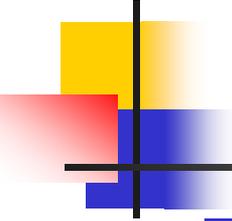
*These areas have adopted full or partial section 185 programs.

Task Force List of Options: Areas of Potential State Discretion

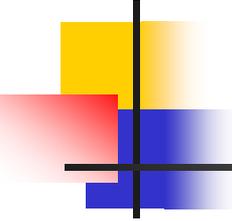


- Aggregation of emissions among commonly-owned facilities
- Aggregation of VOC and NO_x emissions.
- Consideration of pre-attainment year or attainment year installation of BACT or LAER
- Consideration of pre-attainment year or attainment year installation of retrofit controls

Task Force List of Options: Areas of Potential State Discretion (cont.)

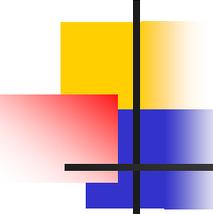


- Consideration of market-based programs
- Credit sources for post-attainment year emissions-reducing or air quality investments
- Post-attainment year new sources
- Use of program revenues
- Equivalent programs
- Program Sunset



Response to Task Force

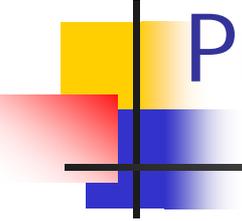
- EPA does not believe that many of the points raised by the Task Force would be approvable under section 185.
- Formal letter will be sent to the CAAAC with our response at the time EPA releases the guidance memo.



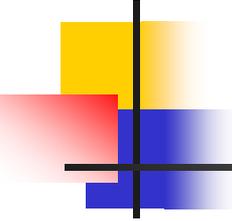
Guidance on Developing Fee Programs Required by Section 185

- EPA is close to releasing the guidance memo.
- The guidance addresses the following topics:
 - Applicability of section 185 to former 1-hour ozone NAAQS nonattainment areas
 - Applies to all severe and extreme ozone nonattainment areas, e.g., 1-hour and 1997 8-hour ozone areas
 - Summary of section 185 requirements

Guidance on Developing Fee Programs (cont.)



- The guidance addresses (cont.):
 - When the fees begin to apply
 - For 1-hour severe-15 areas, the fees began in 2006.
 - For 1-hour severe-17 areas, the fees began in 2008.
 - When the section 185 fee obligation ends
 - Section 172(e) and alternatives to section 185 fee programs
 - Inflation adjustment for Section 185 Fees
 - Response to CAAAC Task Force Options



Questions

- Questions on section 185 can be submitted in writing to:
gerth.denise@epa.gov.