

**United States Environmental Protection Agency  
Clean Air Act Advisory Committee**

May 15, 2009

The Honorable Elizabeth Craig  
Acting Assistant Administrator  
Office of Air and Radiation  
U.S. EPA  
Ariel Rios North  
1200 Pennsylvania Avenue, N.W.  
Mail Code 6101A  
Washington, DC 20460

Re: Clean Air Act Sections 185 and 172(e)

Dear Assistant Administrator Craig:

At the May 14, 2009 meeting of the US EPA Clean Air Act Advisory Committee, on a unanimous vote, the Committee resolved to urge the Agency to provide prompt guidance to the States regarding the following question arising under the Clean Air Act:

*Is it legally permissible under either section 185 or 172(e) for a State to exercise the discretion identified in Options A-J?*

The Clean Air Act Section 185 Task Force, a work group established under the Clean Air Act Advisory Committee, identified ten areas (A-J) of potential state discretion. These options are listed in the attachment to this letter. The Committee took no position on the reasonableness or legal permissibility of any option.

As several States are in the process of developing their section 185 nonattainment fee programs, time is of the essence in providing appropriate legal and policy guidance.

Thank you sincerely,

Co-Chairs of the Section 185 Task Force:

Eddie Terrill  
Director  
Department of Environmental Quality  
Air Quality Division  
707 North Robinson  
Oklahoma City, OK 73101-1677

Robert A. Wyman  
Latham & Watkins LLP  
355 South Grand Avenue  
Los Angeles, CA  
90071