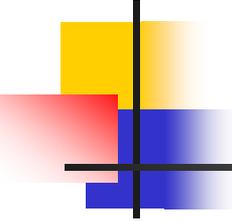


Clean Air Act Section 185

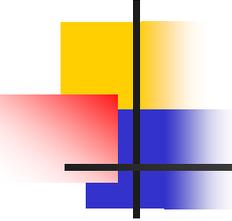
Nonattainment Fees

May 14, 2009
CAAAC



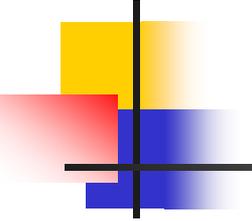
CAA Section 185

- Severe and extreme area SIPs must impose an annually adjusted fee of \$5,000 (now ~ \$9,000) per ton of VOC and NO_x emissions from major stationary sources in areas that fail to attain by the applicable date. The fee applies to the extent the source fails to reduce its emissions by 20 percent from its baseline following the attainment date.
- Section acts as a default or backstop if the state fails to implement stationary source controls.
- Statutory language is brief
- Legislative history confirms penalty nature of the fee, but also directs states to develop “reasonable procedures” for assessment



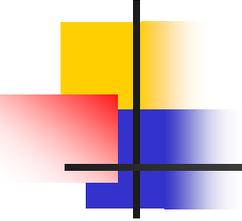
Applicability of Section 185

- States need a section 185 program or they may be able to develop an alternative equivalent program consistent with section 172(e).
- Section 185 doesn't go away when a new ozone NAAQS is promulgated; it applies to all severe and extreme ozone N/A areas even if there is more than one ozone NAAQS in place at the same time, e.g., 1997 and 2008 O₃ NAAQS.
- EPA is required to collect the fees if a state's SIP does not meet the requirements of or if a state is not administering and enforcing section 185.



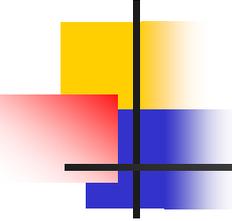
EPA Guidance

- On March 21, 2008, EPA issued “Guidance for 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.”
- Additional draft guidance memorandum developed on alternative programs to section 185.



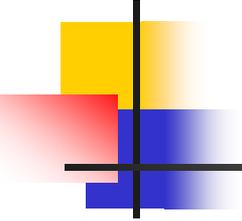
Areas Subject to Section 185 for 1-Hour NAAQS

- 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
- South Coast, CA (extreme) – 11/15/2010
- San Joaquin Valley, CA (extreme) – 11/15/2010



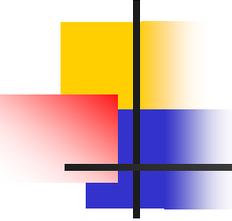
Clean Unit Issue

- The Act encourages expeditious installation of controls.
- Section 185 should not be interpreted as penalizing pre-attainment date actors - sources that fully control their equipment before the attainment deadline.
- To what extent can states recognize LAER, BACT and BARCT in assessing the nonattainment fee?
 - Not differentiating based on the degree of control encourages deferral of controls
 - The only fee-avoidance option for many sources with equipment at LAER or BARCT may be to curtail operations
 - *There was disagreement on this topic*
- States should have the authority to recognize control levels in the assessment of the fee.



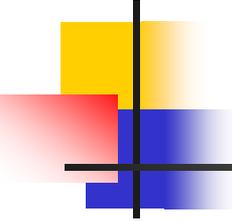
Context – South Coast Example

- Stationary sources now represent a very small percentage of the region's inventory (e.g., <10% VOC) and several are at LAER or BARCT
- The §185 fee would impose ~\$35 million on ~585 major sources including:
 - Fully-controlled (SCR) NG-fired power plants
 - 22 city and county operations (e.g., city water districts, county sanitation districts)
 - 14 hospitals and ambulatory health care services (e.g., City of Hope, Cedars Sinai, UCLA Medical Center, Kaiser Foundation Hospital, US Veterans Administration Medical Center)



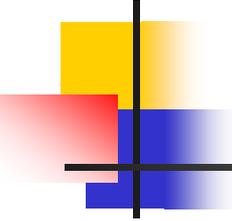
Other Issues

- Baseline
- Facility and NO_x/VOC aggregation
- Credit for control investments at the facility
- Credit for other attainment-related investments in the air basin
- Use of revenues



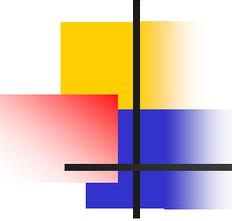
Participants

- BakerBotts (Pam Giblin, Matt Kuryla)
- Caterpillar (John Campbell)
- Clean Energy Group (Chris van Atten)
- Earthjustice (Paul Cort)
- EDF (Elana Craft, Mark Macleod)
- ExxonMobil (Doug Deason)
- LA County Sanitation District (Greg Adams)
- Latham & Watkins (Bob Wyman – Co-Chair)
- NACAA (Bill Becker)
- NRDC (John Walke and Adrian Martinez)
- New Jersey DEP (Danny Wong, Bill O’Sullivan, and Felice Weiner)
- New York DEQ (Rob Sliwinski)
- Oklahoma (Eddie Terrill – Co-Chair)
- Ozone Transport Commission (Anna Garcia)
- San Joaquin Valley APCD (Carlos Garcia)
- Sempra Energy (Lee Wallace)
- SCAQMD (Laki Tisopulos and Barbara Baird)
- Sierra Club (Brandt Mannchen)
- Texas CEQ (Susana Hildebrand, Terry Salem)



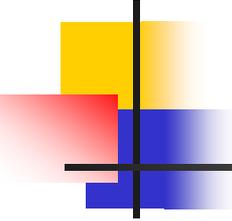
Report

- Policy-oriented
 - Task force did not address legal question of scope of state authority under CAA 185 (*there is disagreement on this subject*)
- Identifies potential areas of state discretion
 - At each state's option
 - States encouraged to tailor their program to their own attainment challenge
- Disputes
 - Extent of state discretion under Act
 - Availability of alternative equivalent program under 172(e)
 - Extent of remaining control options at well-controlled facilities



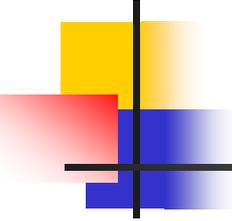
Potential Policy Options Identified

- Facility aggregation (common ownership) (A)
- NOx/VOC aggregation (single site) (B)
- Clean Unit Considerations
 - BACT/LAER (C)
 - BARCT (D)
 - Market-based programs (E)
- Post attainment year investments (F)
- Post attainment year new sources (G)
- Program revenue use (H)
- Equivalent programs (I)
- Program sunset (J)



Question to Agency

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



Next Steps

- EPA
 - Finalize draft guidance
 - Determine scope of state discretion under CAA 185