

RULE 3171 FEDERALLY MANDATED OZONE NONATTAINMENT FEE – 1997 8-HOUR STANDARD (Adopted October 19, 2023)

1.0 Purpose

The purpose of this rule is to satisfy requirements specified in Section 185 and Section 182(f) of the 1990 amendments to the federal Clean Air Act (CAA) by utilizing an alternative fee-equivalency program consistent with the principles of Section 172(e) of the CAA.

2.0 Applicability

2.1 This rule shall become applicable if and when the U.S. Environmental Protection Agency (EPA) has made the finding that the San Joaquin Valley Air Basin has failed to attain the 1997 8-hour Ozone National Ambient Air Quality Standard (NAAQS) by the Attainment Date.

2.2 No source shall be required to remit Federally Mandated Ozone Nonattainment Fees under this rule during any calendar year that is considered an Extension Year for the 1997 8-hour Ozone NAAQS.

2.3 This rule applies to any Major Source of NO_x and/or VOC. The fees required pursuant to this section shall be in addition to permit fees and other fees required under other Rules and Regulations.

2.4 The fees established by this rule shall cease to be applicable when the EPA takes a final action to terminate the anti-backsliding requirement associated with the Section 185 penalty for the revoked 1997 8-hour Ozone NAAQS in the San Joaquin Valley Air Basin (SJVAB).

3.0 Definitions

3.1 Actual Emissions: as defined in Rule 2201 (New and Modified Stationary Source Review Rule).

3.2 Air Pollution Control Officer (APCO): as defined in Rule 1020 (Definitions).

3.3 Attainment Date: the EPA-approved date that the San Joaquin Valley Air Basin must attain the 1997 8-hour Ozone NAAQS. This date is inclusive of any extension years granted by the EPA.

3.4 Attainment Year: the calendar year that contains the Attainment Date.

- 3.5 Baseline Period: for each Major Source, the Baseline Period shall be one of the following periods:
- 3.5.1 The Attainment Year; or
 - 3.5.2 An alternative baseline period reflecting the average of at least two consecutive calendar years within the five year period immediately prior to and including the Attainment Year, if those years are determined by the APCO as more representative of normal source operation.
- 3.6 California Vehicle Code Fees: those fees collected by the California Department of Motor Vehicles to be forwarded to the District as required under Vehicle Code Section 9250.17 and Health and Safety Code Section 40610-40613, which fees are required by Health and Safety Code Section 40612 to be expended on establishing and implementing incentive-based programs, such as the District's Emissions Reductions Incentive Program, to achieve surplus emissions reductions to remediate air pollution harms created by motor vehicles and that are intended to achieve and maintain state and federal ambient air quality standards. These fees shall therefore be used in programs designed to reduce NO_x and VOC emissions in the San Joaquin Valley.
- 3.7 Clean Emissions Unit: an emissions unit that the APCO has determined meets one of the following criteria:
- 3.7.1 The unit is equipped with an emissions control technology with a minimum control efficiency of at least 95% (or at least 85% for lean-burn, internal combustion engines); or
 - 3.7.2 The unit is equipped with emission control technology that meets or exceeds the requirements for achieved-in-practice Best Available Control Technology as accepted by the APCO during the five year period immediately prior to and including the Attainment Year.
- 3.8 Extension Year: the year that the EPA may grant, pursuant to Section 181(a)(5) of the Clean Air Act and upon the state's request, to extend the Attainment Date.
- 3.9 Fee Assessment Year: the calendar year in which emissions occurred for which Federally Mandated Ozone Nonattainment Fees are assessed under Section 5.0 of this rule.
- 3.10 Fee Collection Year: the calendar year in which Federally Mandated Ozone Nonattainment Fees are being invoiced, generally the calendar year following the Fee Assessment Year.

- 3.11 Major Source: as defined in Rule 2201 (New and Modified Stationary Source Review Rule).
- 3.12 NOx: any nitrogen oxide compounds.
- 3.13 VOC: any Volatile Organic Compound, as defined in Rule 1020 (Definitions).

4.0 Exemptions

- 4.1 Except for the requirements of Section 7.3, any unit that is a Clean Emissions Unit for NOx shall not be subject to the NOx fee requirements of this rule.
- 4.2 Except for the requirements of Section 7.3, any unit that is a Clean Emissions Unit for VOC shall not be subject to the VOC fee requirements of this rule.

5.0 Fee Requirements

- 5.1 Beginning the second year after the Attainment Year, the APCO shall assess annual Federally Mandated Ozone Nonattainment Fees for emissions in the previous calendar year. The fees shall be determined, pursuant to Section 5.2, using Baseline Period emissions and Fee Assessment Year emissions.
 - 5.1.1 The Federally Mandated Ozone Nonattainment Fees shall be invoiced on May 1 of the Fee Collection Year.
 - 5.1.2 Each agency or person shall remit the assessed Federally Mandated Ozone Nonattainment Fees to the District on or before June 30 of the Fee Collection Year.
 - 5.1.3 If all Federally Mandated Ozone Nonattainment Fees due have not been paid by June 30 of the Fee Collection Year, the fees shall be increased in accordance with the schedule provided in Rule 3010 Section 11.0 (Late Fees). Nonpayment of the increased fees by July 30 may result in suspension of the facility's Permit(s) to Operate.
- 5.2 Each major source of NOx or VOC will be assessed an annual fee payable to the District. The fee shall be the sum of the NOx Fee and the VOC Fee, which shall be calculated as follows, in accordance with Section 185 (b) of the federal Clean Air Act.

$$\text{NOx Fee (in \$)} = [A - (0.8 \times B)] \times C$$

$$\text{VOC Fee (in \$)} = [D - (0.8 \times E)] \times C$$

Where:

- A = The total amount of NO_x emissions actually emitted from permitted emissions units at a Major NO_x Source during the applicable Fee Assessment Year, in tons per year.
- B = The actual average annual emissions of NO_x during the baseline period, or the average annual emissions allowed by the facility's permit during the baseline period, whichever is lower, in tons per year. B shall be set equal to zero (0) if the unit was not permitted during the baseline period, except for units replaced since the baseline period, B shall represent the emissions during the baseline period of the unit replaced.
- C = The fee rate of \$5,000 per ton of pollutant, in 1990 dollars, adjusted by the U.S. City Average Consumer Price Index for all-urban consumers, in accordance with Section 502(b)(3)(B)(v) of the federal Clean Air Act.
- D = The total amount of VOC emissions actually emitted from permitted emissions units at a Major VOC Source during the applicable Fee Assessment Year, in tons per year.
- E = The actual average annual emissions of VOC during the baseline period, or the average annual emissions allowed by the facility's permit during the baseline period, whichever is lower, in tons per year. E shall be set equal to zero (0) if the unit was not permitted during the baseline period, except for units replaced since the baseline period, E shall represent the emissions during the baseline period of the unit replaced.

5.3 In the equation for the NO_x Fee in Section 5.2, if A is less than or equal to 80% of B, the fee assessment for NO_x shall be set to zero.

5.4 In the equation for the VOC Fee in Section 5.2, if D is less than or equal to 80% of E, the fee assessment for VOC shall be set to zero.

6.0 Emissions Reporting

6.1 All major sources subject to this rule must provide baseline period actual emissions information within 60 days of the District's request, or by the due date of the initial annual emissions statement required under Section 6.2, whichever is earlier. This information must include all necessary baseline period actual emissions data for VOC and NO_x from each permitted emissions unit, and justification of any proposed alternative baseline period.

- 6.2 All major sources subject to this rule must provide annual emission statements that report actual emissions of VOC and NO_x for the prior calendar year from each permitted emissions unit. Such statements shall be submitted in accordance with the format established by the District before March 31 of each year.
- 6.3 Operators of a clean emissions unit must distinguish in their annual emission statements which units are claimed as clean emissions units, and include a justification of that claim. Referencing of an applicable District-published Clean Unit Determination suffices for such justification.

7.0 Fee Equivalency Demonstration System

7.1 Actual Emission Tracking System

The APCO shall implement a system for tracking all information necessary to make an annual demonstration that the sum of fees collected under this rule, plus all California vehicle code fees collected, is equal to or greater than the total penalty fee that would be collected under a direct implementation of the federal ozone nonattainment fee, codified in Section 185 of the federal Clean Air Act, including, but not limited to, the following:

- 7.1.1 All baseline period calculations, including documentation of any approved alternative baseline period,
- 7.1.2 All emissions data reported in the annual emissions statements required under this rule,
- 7.1.3 The identification and justification of any clean emissions unit exempted from paying a fee under this rule,
- 7.1.4 The NO_x and VOC emissions and corresponding fee amount excluded from payment based on the clean emissions unit determination.

7.2 Annual Fee Equivalency Demonstration Report

On or before November 1 of each year, the APCO shall prepare an Annual Fee Equivalency Demonstration Report.

7.2.1 The report shall document:

- 7.2.1.1 The total fees collected under this rule that have not been reported in a prior Annual Fee Equivalency Demonstration Report, and

- 7.2.1.2 The total California vehicle code fees collected that have not been used to demonstrate equivalency in a prior Annual Fee Equivalency Demonstration Report.
- 7.2.1.3 The total Section 185 fees that would be collected under a direct implementation of the federal ozone nonattainment fee, codified in Section 185 of the federal Clean Air Act. For the purposes of this report, the fee that would have been collected under a direct implementation of Section 185 shall be calculated using the fee calculations of Section 5.0 of this rule, without regard for Clean Emission Unit status, and the Attainment Year shall be used as the baseline period.
- 7.2.2 The report shall demonstrate whether the sum of the total Rule 3171 fees identified under Section 7.2.1.1, plus the total California vehicle code fees identified under Section 7.2.1.2, is equal to or greater than the total penalty fee that would be collected under a direct implementation of Section 185 of the federal Clean Air Act.
- 7.2.3 The report shall be made available to the public and mailed to the federal EPA no later than November 1 of each billing year.

7.3 Remedy for Fee Collection Shortfall

- 7.3.1 If the Annual Fee Equivalency Demonstration Report required by Section 7.2 demonstrates a shortfall in total fees collected compared to the fees that would have been collected under a direct implementation of the Section 185 penalty fee requirement, the District shall assess and invoice, within 90 days following the demonstration of the shortfall, sufficient fees to recover the entire amount of the shortfall.
 - 7.3.1.1 The shortfall fee described in Section 7.3.1 shall be collected from major sources of NO_x or VOC for the Fee Assessment Year for which there was a shortfall in fee collection, and shall be assessed on an emissions-weighted basis.
 - 7.3.1.2 The emissions-weighted basis for the shortfall fee shall be calculated per Section 5.0 (Fee Requirements) during the respective Fee Assessment Year.
 - 7.3.1.3 Emissions from units for which the fee that would have been collected under a direct implementation of Section 185 was already paid under this rule for the respective Fee Assessment Year shall not be included in the emissions-weighting described above.

7.3.1.4 Within 270 days of demonstrating a shortfall in an annual fee equivalency demonstration report, a shortfall remedy report shall be submitted to EPA demonstrating the implementation of this section and that the remedy was successful in collecting sufficient fees to recover the entire amount of the shortfall.

7.3.2 If all fees due from an individual Major Source under this section have not been paid by within 60 days of the invoice date, the fee shall be increased in accordance with the schedule provided in Rule 3010 Section 11.0 (Late Fees). Nonpayment of the increased fees within 90 days of the original invoice date may result in suspension of the facility's Permit(s) to Operate.