

RULE 3170 FEDERALLY MANDATED OZONE NONATTAINMENT FEE (Adopted May 16, 2002; Amended July 17, 2003; Amended May 19, 2011)

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

This rule applies to any major source of NO_x 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. The fees established by this rule shall cease to be applicable when the San Joaquin Valley Air Basin (SJVAB) has met the revoked federal one-hour ambient air quality standard for ozone.

For the purposes of this rule, the San Joaquin Valley Air Basin shall have met the revoked federal one-hour ambient air quality standard for ozone upon EPA's determination, through notice-and-comment rulemaking, of concurrence with a demonstration by the APCO and the California Air Resources Board that the average number of days per calendar year with maximum hourly average concentration above 0.12 ppm is less than or equal to one (1), for each monitor. To make this demonstration, the APCO will, using all available quality assured monitoring data, calculate at each monitor the average number of days over the standard per year during a three-year period according to the procedures found in 40 CFR Part 50 Appendix H, and show that the improvement in air quality is due to permanent and enforceable emissions reductions.

3.0 Definitions

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

3.2 Baseline Period: for each major source, the Baseline Period shall be one of the following periods:

3.2.1 Calendar year 2010; or

3.2.2 An alternative baseline period reflecting the average of at least two consecutive years within 2006 through 2010, if those years are determined by the APCO as more representative of normal source operation.

- 3.3 Billing Year: the year in which a particular Rule 3170 fee is invoiced, generally the year following the fee assessment basis year.
- 3.4 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 NOx and VOC emissions in the San Joaquin Valley.
- 3.5 Clean Emissions Unit: an emissions unit that the APCO has determined meets one of the following criteria:
 - 3.5.1 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
 - 3.5.2 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 period from 2006 through 2010.
- 3.6 Fee Assessment Basis Year: the year in which emissions occurred for which fees are assessed under Section 5.0 of this rule.
- 3.7 Major Source: as defined in Rule 2201 (New and Modified Stationary Source Review Rule).
- 3.8 NOx: any nitrogen oxide compounds.
- 3.9 VOC: any Volatile Organic Compound, as defined in Rule 1020 (Definitions).
- 4.0 Exemptions
 - 4.1 Any unit that is a clean emissions unit for NOx shall not be subject to the NOx fee requirements of this rule.
 - 4.2 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 Each major source of NO_x or VOC will be assessed an annual fee payable to the District. The fee shall be the sum of the NO_x Fee and the VOC Fee, which shall be calculated as follows, in accordance with Section 185 (b) of the federal Clean Air Act.

$$\text{NO}_x \text{ Fee (in \$)} = [A - (0.8 \times B)] \times C$$

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

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 basis 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 basis 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.
- 5.2 In the equation for NO_x Fee in Section 5.1, if A is less than or equal to 80% of B, the fee assessment for NO_x shall be set to zero.
- 5.3 In the equation for VOC Fee in Section 5.1, if D is less than or equal to 80% of E, the fee assessment for VOC shall be set to zero.

- 5.4 By May 1, 2012, and each May 1 thereafter, the APCO shall assess a fee on each agency or person subject to this rule for emissions in the previous calendar year. The assessed fee shall be calculated in accordance with Section 5.1.
- 5.5 By June 30, 2012, and each June 30 thereafter, each agency or person shall remit the assessed fee to the District.
- 5.6 If all fees due have not been paid by June 30, the fee 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.

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 NOx 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 NOx 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 Section 185 shall be calculated using the fee calculations of Section 5.1 through 5.3 of this rule, and calendar year 2010 shall be used as the baseline period.

7.2.2 The report shall demonstrate whether the sum of the total Rule 3170 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 any Annual Fee Equivalency Demonstration Report 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 which a fee was calculated according to Section 5.1 through 5.3 for the fee assessment basis 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 based on the emissions for which a fee was calculated per Section 5.1 through 5.3 during the respective fee assessment basis year.

7.3.1.3 Emissions from units for which a fee was already paid under this rule for the respective fee assessment basis 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 facility 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.