

SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT

DRAFT STAFF REPORT

Proposed Adoption of Rule 3172 (Federally Mandated Ozone Nonattainment Fee – 2008 8-Hour Ozone Standard) and Rule 3173 (Federally Mandated Ozone Nonattainment Fee – 2015 8-Hour Ozone Standard)

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I. BACKGROUND

The federal Clean Air Act (CAA) requires the United States Environmental Protection Agency (EPA) to set National Ambient Air Quality Standards (NAAQS) in order to protect public health and the environment. Each area of the nation with measured ambient air quality levels exceeding a NAAQS must be designated by EPA as a “Nonattainment Area” for that standard. Depending on the severity and persistence of the air quality challenge in an area, each nonattainment area is classified by EPA as Marginal, Moderate, Serious, Severe, or Extreme.

In July 2012, the San Joaquin Valley Air Basin (hereinafter referred to as the “Valley”) was reclassified by EPA as Extreme nonattainment of the 2008 8-Hour ozone NAAQS, which was set by EPA at 75 parts per billion (ppb). Furthermore, in August 2018, the Valley was reclassified by EPA as Extreme nonattainment of the 2015 8-Hour ozone NAAQS, which was set by EPA at 70 parts per billion (ppb). Because of these reclassifications, the Valley became subject to the requirements of CAA Section 185, which mandates that “Severe” or “Extreme” ozone nonattainment areas adopt rules that require federal major stationary sources of oxides of nitrogen (NOx) and/or volatile organic compounds (VOC) to pay ozone nonattainment fees in the event the area fails to reach attainment with each ozone NAAQS by the specified attainment date. Affected stationary sources would be required to pay these fees on an annual basis until the area reaches attainment of the ozone NAAQS.

The District previously adopted District Rules 3170 (Federally Mandated Ozone Nonattainment Fee) and 3171 (Federally Mandated Ozone Nonattainment Fee - 1997 8-Hour Standard) to implement the federal CAA Section 185 mandated fees for the revoked 1979 1-Hour and revoked 1997 8-Hour Ozone NAAQS, respectively.

The District is now proposing to adopt District Rule 3172 (Federally Mandated Ozone Nonattainment Fee - 2008 8-Hour Standard) in order to implement the CAA Section 185 mandated fees for the 2008 8-Hour Ozone NAAQS, which has an attainment deadline of July 20, 2032, and District Rule 3173 (Federally Mandated Ozone Nonattainment Fee - 2015 8-Hour Standard) in order to implement the CAA Section 185 mandated fees for the 2015 8-Hour Ozone NAAQS, which has an attainment deadline of August 3, 2038.

Considerable progress has been made in reducing the Valley's maximum 2008 and 2015 8-Hour Ozone NAAQS design values. Since EPA promulgated the 2008 8-hour ozone standard, exceedances have been reduced from 127 days over the standard in 2008 to only 74 days of exceedances in 2022. Similarly, since EPA promulgated the 2015 8-hour ozone standard, exceedances of the 2015 8-hour ozone standard have been reduced from 149 days over the standard in 2015 to only 102 days of exceedances in 2022. Notwithstanding this progress, the District must adopt rules to implement CAA Section 185 requirements for each standard in the event the area does not reach attainment for these standards by the respective attainment deadlines.

The requirements of District Rule 3172 would only become applicable if the District fails to attain the 2008 8-hour ozone NAAQS by July 20, 2032. Likewise, the requirements of District Rule 3173 would only become applicable if the District fails to attain the 2015 8-hour ozone NAAQS by August 3, 2038.

II. DISCUSSION OF SECTION 185 FEE PROGRAM

With the mature air pollution control programs that are in place in the Valley, businesses have made significant investments and installed advanced controls at their facilities. This has been shown through the 2016 Ozone Plan for the 2008 8-Hour Ozone Standard¹ and the 2022 Plan for the 2015 8-Hour Ozone Standard², both of which include extensive evaluations of NOx and VOC stationary source regulations that demonstrate the District has adopted all feasible measures to control emissions from sources under its regulatory jurisdiction. Quite simply, major stationary sources are already being required to implement the most stringent emission control technologies available, and at cost-effectiveness levels far in excess of the prescribed Section 185 fee levels. Furthermore, approximately 80 percent of the Valley's NOx emissions, the

¹ EPA. Clean Air Plans; 2008 8-Hour Nonattainment Area Requirements; San Joaquin Valley, California (84 FR 3302): <https://www.govinfo.gov/content/pkg/FR-2019-02-12/pdf/2019-01686.pdf>

² SJVAPCD. 2022 Plan for the 2015 8-Hour Ozone Standard: <https://ww2.valleyair.org/media/q55posm0/0000-2022-plan-for-the-2015-8-hour-ozone-standard.pdf>

leading contributor to Valley's ozone and particulate challenges, come from mobile sources in the Valley, which are outside of the District's regulatory jurisdiction. Although the Valley's ozone attainment challenges are primary due to mobile sources outside the District's regulatory jurisdiction, the District must implement this fee collection program on stationary sources as required under the CAA. Rules 3172 and 3173 are summarized below.

Program Implementation

Under Section 185 of the CAA, major stationary sources of NO_x and/or VOC would be subject to these federal nonattainment penalty fees. Implementation of Rule 3172 and/or 3173 is only necessary in the scenario that the District fails attainment for the 2008 8-hr ozone standard in 2032 and/or the 2015 8-hr ozone standard in 2038. If implementation is necessary, the programs would be a direct implementation of the CAA Section 185 and consist of the following main components:

- Collect and maintain baseline actual and ongoing annual actual emissions for all major stationary sources,
- Collect CAA Section 185 fees on an annual basis from major stationary sources for actual emissions more than 80% of their baseline actual emissions,
- Implement a fee tracking and reporting system to verify that the programs meet the CAA Section 185 fee obligation, and
- Submit annual reports to EPA verifying the fee program meets CAA Section 185 requirements.

The federal CAA does not allow for an alternate fee-equivalency program in lieu of a direct implementation of fee assessment under Section 185 of the CAA for the 2008 and 2015 8-Hour ozone NAAQS. Consistent with CAA Section 172(e) and EPA guidance, alternative programs are only acceptable for revoked standards. Since neither the 2008 nor the 2015 8-Hour ozone standards have been revoked, neither District Rules 3172 nor 3173 can implement an alternate fee-program similar to that implemented in the previously-adopted District Rules 3170 and 3171. Therefore, District Rules 3172 and 3173 require a direct implementation of the required fee assessment under Section 185 of the CAA.

III. PROPOSED RULE 3172 REQUIREMENTS

A. Applicability

Section 2.0 of the proposed rules contains the following applicability requirements:

- 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

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(SJVAB) has failed to attain the 2008 8-hour Ozone National Ambient Air Quality Standard (NAAQS) by the Attainment Date.

- 2.2 No source shall be required to remit Federally Mandate Ozone Nonattainment Fees under this rule during any calendar year that is considered an Extension Year for the 2008 8-hour Ozone NAAQS.
- 2.3 This rule applies to any Major Source of oxides of nitrogen (NO_x) and/or volatile organic compounds (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 redesignate the SJVAB as an attainment area for the 2008 8-hour Ozone NAAQS.

B. Definitions:

Section 3.0 of the proposed rule lists the following definitions:

Attainment Date: the EPA-approved date that the San Joaquin Valley Air Basin must attain the 2008 8-hour Ozone NAAQS. This date is inclusive of any extension years granted by the EPA.

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

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.

C. Fee Requirements:

Section 5.0 lists the following 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 Fee Assessment Year). The fees shall be determined, pursuant to Section 5.2, using Baseline 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

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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 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.
- 5.2 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.
- NO_x Fee (in \$) = $[A - (0.8 \times B)] \times C$
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 NO_x Baseline Emissions.
- 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 VOC Baseline Emissions.
- 5.3 In the equation for NO_x Fee above, 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 VOC Fee above, if D is less than or equal to 80% of E, the fee assessment for VOC shall be set to zero.

IV. PROPOSED RULE 3173 REQUIREMENTS

A. Applicability

Section 2.0 of the proposed rules contains the following applicability requirements:

- 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 (SJVAB) has failed to attain the 2015 8-hour Ozone National Ambient Air Quality Standard (NAAQS) by the Attainment Date.
- 2.2 No source shall be required to remit Federally Mandate Ozone Nonattainment Fees under this rule during any calendar year that is considered an Extension Year for the 2015 8-hour Ozone NAAQS.
- 2.3 This rule applies to any Major Source of oxides of nitrogen (NO_x) and/or volatile organic compounds (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 redesignate the SJVAB as an attainment area for the 2015 8-hour Ozone NAAQS.

B. Definitions:

Section 3.0 of the proposed rule lists the following definitions:

Attainment Date: the EPA-approved dates that the San Joaquin Valley Air Basin must attain the 2015 8-hour Ozone NAAQS. This date is inclusive of any extension years granted by the EPA.

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

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.

C. Fee Requirements:

Section 5.0 lists the following 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

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previous calendar year (the Fee Assessment Year). The fees shall be determined, pursuant to Section 5.2, using Baseline 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 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.
- 5.2 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 Year, in tons per year.
- B = The NO_x Baseline Emissions.
- 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 VOC Baseline Emissions.

- 5.3 In the equation for NO_x Fee above, 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 VOC Fee above, if D is less than or equal to 80% of E, the fee assessment for VOC shall be set to zero.

V. RULE DEVELOPMENT PROCESS

The District conducted a public process for developing proposed Rules 3172 and 3173. Information about public meetings was shared with members of the public, affected sources and other interested stakeholders. Workshop announcements and public notices were provided in both English and Spanish, and interpretation services were made available upon request.

As part of the rule development process, the District conducted a public workshop on October 27, 2023, to present, discuss, and take comments on the proposed rulemaking. The District published the draft rules for public review prior to the workshop to provide opportunity for public comment on the draft proposed rules.

Throughout the rule development process, District staff solicited feedback and comments from the public. No comments were received from the public, affected sources, or interested parties during the public outreach and workshop process, the comment period following the workshop, or the comment period following the public hearing notification.

The proposed rules were published for 30-day public review and comment on November 15, 2023, prior to the public hearing to consider the adoption of the rule by the District Governing Board.

VI. COST EFFECTIVENESS AND SOCIOECONOMIC IMPACT ANALYSIS

Pursuant to California Health and Safety Code (CH&SC) Section 40920.6(a), the District is required to analyze the cost effectiveness of new rules or rule amendments that implement Best Available Retrofit Control Technology (BARCT). The proposed rules do not add BARCT requirements and therefore are not subject to the cost effectiveness analysis mandate.

Additionally, pursuant to CH&SC Section 40728.5, the District is required to analyze the socioeconomic impacts of any proposed amendment or adoption of a rule that significantly affects air quality or emission limitations. The proposed rules will have neither effect and are mandated by federal law. Therefore, these rules are not subject to the socioeconomic analysis mandate.

VII. RULE CONSISTENCY ANALYSIS

Pursuant to CH&SC Section 40727.2 (g) a rule consistency analysis of the proposed rules is not required because the proposed rules do not strengthen emission limits or impose more stringent monitoring, reporting, or recordkeeping requirements.

VIII. ENVIRONMENTAL ASSESSMENT

According to Section 15061 (b)(3) of the CEQA Guidelines, a project is exempt from CEQA if, “(t)he activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.” As such, substantial evidence supports the District’s assessment that this rule making project will not have any significant adverse effects on the environment.

Furthermore, this rule adoption is an action taken by a regulatory agency, the San Joaquin Valley Air Pollution Control District, as authorized by state law to assure the maintenance, restoration, enhancement, or protection of air quality in the San Joaquin Valley where the regulatory process involves procedures for protection of air quality. CEQA Guidelines §15308 (Actions by Regulatory Agencies for Protection of the Environment), provides a categorical exemption for “actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environmental degradation are not included in this exemption.” No construction activities or relaxation of standards are included in this rule adoption project.

Therefore, for the above reasons, this rule adoption project is exempt from CEQA. Pursuant to Section 15062 of the CEQA Guidelines, District staff will file a Notice of Exemption upon Governing Board approval.