

# SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT

## DRAFT STAFF REPORT

### Proposed Adoption of Rule 3171 (Federally Mandated Ozone Nonattainment Fee - 1997 8-Hour Standard)

July 20, 2023

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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. Furthermore, 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 June 2010, the San Joaquin Valley Air Basin (hereinafter referred to as the “Valley”) was reclassified by EPA as Extreme nonattainment of the 1997 8-Hour Ozone NAAQS<sup>1</sup>, which was set by EPA at 84 parts per billion (ppb). Because of this reclassification, the Valley became subject to the requirements of CAA Section 185. Section 185 mandates that “Severe” or “Extreme” ozone nonattainment areas adopt a rule that requires federal major stationary sources of oxides of nitrogen (NO<sub>x</sub>) and/or volatile organic compounds (VOC) to pay ozone nonattainment fees in the event the area fails to reach attainment 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 standard. In April 2015, the EPA revoked the 1997 8-Hour Ozone NAAQS. Despite this revocation, the Section 185 fee requirements are still mandated to meet CAA anti-backsliding requirements. Consequently, a Section 185 fee rule is now required for the 1997 8-Hour Ozone NAAQS as we approach the attainment date. Because the 1997

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<sup>1</sup> EPA. Designation of Areas for Air Quality Planning Purposes; California; San Joaquin Valley, South Coast Air Basin, Coachella Valley, and Sacramento Metro 8-Hour Ozone Nonattainment Areas; Reclassification (75 FR 24409). Retrieved from: <https://www.govinfo.gov/content/pkg/FR-2010-05-05/pdf/2010-9599.pdf>

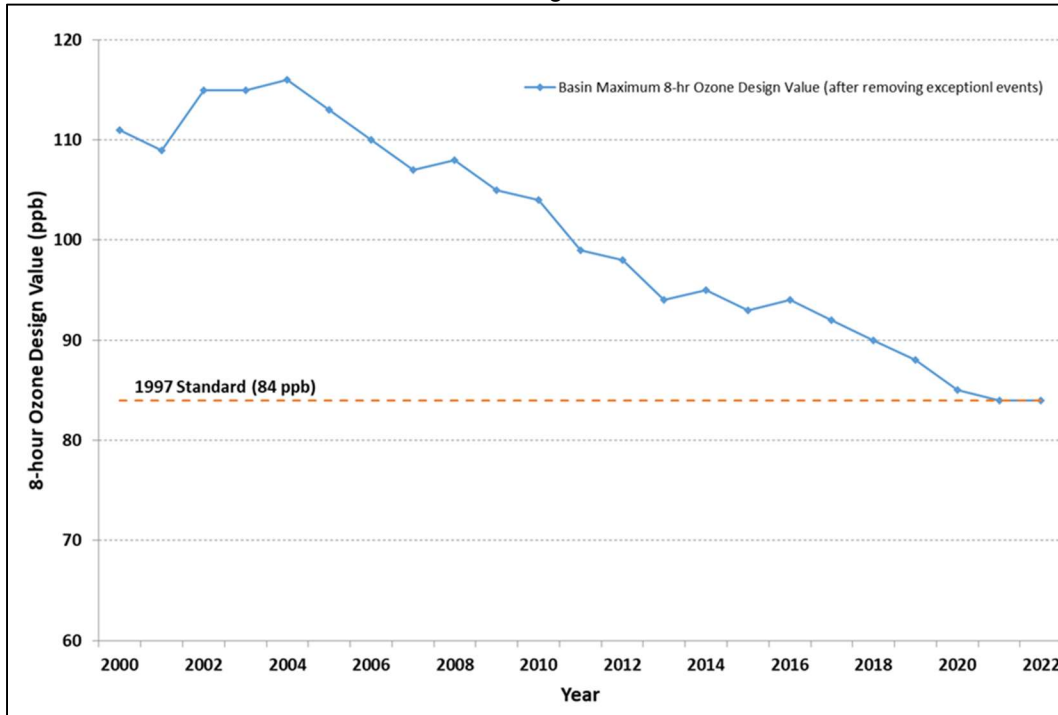
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standard is revoked, the CAA and EPA guidance allow for an alternative program to satisfy the anti-backsliding requirements for Section 185 fees.

The District previously adopted an alternative program under District Rule 3170 (*Federally Mandated Ozone Nonattainment Fee*) on May 19, 2011, to implement the Section 185 mandated fees for the revoked 1979 1-Hour Ozone NAAQS. The District has since attained the 1979 1-Hour Ozone NAAQS and recently submitted a Maintenance Plan along with a request to re-designate the Valley to attainment of the 1-Hour Ozone NAAQS and terminate all associated anti-backsliding provisions, including the Section 185 fee obligations.

The District is now proposing to adopt District Rule 3171 (*Federally Mandated Ozone Nonattainment Fee – 1997 8-Hour Standard*) in order to implement the Section 185 mandated fees for the 1997 8-Hour Ozone NAAQS, which has an attainment deadline of June 15, 2024. Considerable progress has been made in reducing the Valley’s maximum 1997 8-Hour Ozone NAAQS design value, from as high as 116 ppb in the early 2000s to only 85 ppb in 2022 after removing exceptional events from extreme wildfire smoke (see Figure 1). Currently, the Valley is on the verge of attaining the 1997 8-Hour Ozone NAAQS. Notwithstanding this progress, the District must adopt a rule to implement CAA Section 185 requirements in the event the area does not reach attainment for this standard by the attainment deadline. Since the 1997 8-hour ozone standard has been revoked, District Rule 3171 will use the same alternate program that has been approved by EPA and implemented under District Rule 3170.

Figure 1 – Trend of SJV Maximum 8-hour Ozone Design Value



## II. DISCUSSION OF SECTION 185 ALTERNATIVE FEE-EQUIVALENT PROGRAM

When Section 185 was enacted in 1990 by the United States Congress, it was intended to serve as a compelling incentive for stationary sources to install additional controls to reduce emissions and expedite attainment. Given today's circumstances, however, these fees will not have the intended impact in the San Joaquin Valley. 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 Standard*<sup>2</sup> and the *2022 Plan for the 2015 8-Hour Ozone Standard*<sup>3</sup>, both of which include extensive evaluations of NO<sub>x</sub> 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, more than 80 percent of the Valley's NO<sub>x</sub> emissions, the leading contributor to Valley's ozone and particulate challenges, come from mobile sources within the geographic boundaries of the District, but outside of the District's regulatory jurisdiction. Therefore, in order to recognize the proportional distribution of responsibility, District Rule 3171 will satisfy the requirements of Section 185 of the CAA through an alternative program, which will collect the required fees from both mobile sources and from major stationary sources. The specific details of Rule 3171's alternative program will be discussed below.

### A. EPA Section 185 Alternative Program Guidance

Consistent with EPA's prior approval of District Rule 3170, EPA has determined that alternative programs are acceptable for revoked standards if, through notice-and-comment rulemaking, the program is demonstrated to be consistent with the principles of CAA Section 172(e). EPA has identified three possible types of alternative programs that could satisfy the Section 185 requirement: (i) those that achieve the same emission reductions, (ii) those that raise the same amount of revenue and establish a process where the revenues would be used to pay for emission reductions that will further improve ozone air quality; and (iii) those that would be equivalent through a combination of both emission reductions and revenues.

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<sup>2</sup> EPA. Clean Air Plans; 2008 8-Hour Nonattainment Area Requirements; San Joaquin Valley, California (84 FR 3302). Retrieved from: <https://www.govinfo.gov/content/pkg/FR-2019-02-12/pdf/2019-01686.pdf>

<sup>3</sup> SJVAPCD. *2022 Plan for the 2015 8-Hour Ozone Standard*. Retrieved from: <https://ww2.valleyair.org/media/q55posm0/0000-2022-plan-for-the-2015-8-hour-ozone-standard.pdf>

EPA clearly demonstrates through their past actions that such alternative programs may shift the fee burden from the specific set of major stationary sources that are otherwise required to pay fees according to Section 185, to other non-major sources of emissions, including owners/operators of mobile sources. EPA acknowledges that Section 185 is not strategic in imposing emissions fees on all major stationary sources, including already well-controlled sources that have few, if any, options for avoiding fees by achieving additional reductions.

## **B. Implementing an Alternative Program**

EPA's Section 185 guidance allows for an alternative 185 fee program that is, consistent with Section 172 (e) of the act, 'not less stringent', but the guidance does not provide a template or provide a pre-approved alternative program model when utilizing the federal CAA's equivalency program under Section 172(e). In fact, EPA makes it clear that a case-by-case approval will be a part of EPA's review, as will a formal public notice-and-comment federal rulemaking process. Therefore, it is critical to carefully consider relevant issues and questions and design a program that would be legally defensible and would have optimum chance for EPA approval.

Under Section 185 of the CAA, only stationary sources are subjected to the nonattainment penalty fees. A direct implementation does not recognize the proportional distribution of responsibility for the remaining ozone challenges in the Valley, especially in areas such as the San Joaquin Valley where stationary sources are already subject to the toughest air regulations in the nation. Since 1980, NO<sub>x</sub> emissions from stationary sources in San Joaquin Valley have been reduced by 93 percent. Mobile source emissions have been reduced by 75 percent during the same period. Today, however, more than 80 percent of the Valley's NO<sub>x</sub> emissions, the leading contributor to Valley's ozone and particulate exceedances, comes from mobile sources within the geographic boundaries of the District but outside of the District's regulatory jurisdiction. Under the alternative options provided in the EPA's guidance memorandum, the District can craft an equivalent program that to the extent possible would recognize this proportional distribution using mobile source-based revenues.

The fee-equivalent alternative program that District staff is proposing in Rule 3171 consists of three main components:

- District Rule 3171 will be used to collect 185 fees from major stationary sources with units that do not meet the requirements of a "Clean Emissions Unit";
- Motor vehicle fees will be used to supplement the Section 185 fees collected under Rule 3171; and
- Rule 3171 will contain a fee tracking and reporting system to verify that this overall program meets the Section 185 fee obligation.

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### a. Rule 3171

The proposed rule will collect fees for emissions from equipment at major sources of NO<sub>x</sub> and VOC with units that are not equipped with an emission control technology that meets or exceeds the requirements for achieved-in-practice Best Available Control Technology, or equivalent, as accepted by the District during the five-year period immediately prior to and including the Attainment Year.

### b. Motor Vehicle Registration Fee

In 2008, the Governor signed Assembly Bill (AB) 2522 (Arambula), which added California Health and Safety Code Sections 40610 - 40613 and allowed the District to increase the amount of motor vehicle registration fees by an amount up to \$30 per motor vehicle per year. On October 21, 2010, the District Governing Board approved a motor vehicle fee of \$12 per vehicle registered in the San Joaquin Valley to be used in an alternative program to satisfy the requirements of Section 185 of the federal Clean Air Act in lieu of imposition of nonattainment penalties strictly on Valley businesses. In 2022, AB 2836 (Garcia) was signed by the Governor, and it extended the authorization under AB 2522 for the District to assess and collect these motor vehicle registration fees through fiscal year 2033-34.

These motor vehicle fees were a new source of revenue assessed by the District Governing Board for the purpose of addressing any shortfall in Section 185 fees created by implementing the District's intent to provide well-controlled units with an exemption from the fees. These revenues will be used to fund incentive-based programs to reduce mobile source emissions as provided under California Health and Safety Code Sections 44223 and 44225 to help expedite attainment and maintenance of state and federal ambient air quality standards. The resulting distribution of funding of the equivalent Section 185 program is roughly commensurate with each sector's contribution to the ozone precursor inventory in the Valley, with the stationary source contribution being roughly 20% in terms of both emissions and revenue, and mobile sources making up the balance.

This revenue source, at \$12 per vehicle registered in the San Joaquin Valley, is sized to adequately address any shortfall in revenues created by the District's proposed "clean emissions unit" exemption, including a cushion that is intended to address any shortcomings in the District's estimates of Section 185 fees. The District has estimated that a direct application of Section 185 in the San Joaquin Valley would result in approximately \$22 million in revenues. However, because the basis of these fees will be a comparison of actual emissions during a particular year to 80% of the emissions during 2024, and neither of those emissions numbers are currently known, the District had to make assumptions based on the latest known emissions inventory information, generally 2021 and 2022 data. In addition, more

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units will be replaced and retrofitted because of the District's aggressive control measure development and attrition.

In sum, these unknowns provide some uncertainty in the District's estimations, particularly over the multiple years that this fee is expected to be in place. However, the anticipated revenue of approximately \$36 million dollars<sup>4</sup> (based on at least 3 million registered motor vehicles in the San Joaquin Valley at \$12 per vehicle) should be sufficient to cover all but the most dire estimation shortcomings.

### c. Fee Equivalency Tracking System

Finally, the District is proposing a fee equivalency tracking system to demonstrate, on an annual basis, that the combined revenue streams from Rule 3171 and the motor vehicle fees are equivalent to the revenue that would have resulted from a straight application of Section 185. The District will demonstrate on an annual basis that our alternative program collects no less fee revenue than a direct fee assessment under Section 185.

The following are the District's commitments to establish and administer the tracking system:

- Actual Emission Tracking System

The APCO will implement a system for tracking all information necessary to demonstrate that the sum of fees collected under this rule plus motor vehicle fees to be collected during the billing year is equal to or greater than the total fee that would be collected under a direct application of the federal ozone nonattainment fee, codified in Section 185 of the federal CAA.

To that end, Rule 3171 will require that each applicable major source of NOx and VOC emissions submit annual emission statements that detail the emissions from each of their permitted units and indicate those identified as clean emissions units. The District will also verify the basis of the source's determination that the unit qualifies as a clean emissions unit.

The District will then determine the annual amount of NOx and VOC emissions generated from each permitted unit, including clean units, for the reporting year in question, and then calculate the corresponding 185 fee amount as if Section 185 were strictly applied, using the Attainment Year as the baseline period, regardless of the use of alternative baseline periods by any stationary sources.

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<sup>4</sup> SJVAPCD, "Rule 3170 Annual Fee Equivalency Demonstration Report, Fee Assessment Basis Year 2021," October 31, 2022. Retrieved from: [http://www.valleyair.org/busind/pto/annual\\_fee\\_report/2021-Annual-Report-Final.pdf](http://www.valleyair.org/busind/pto/annual_fee_report/2021-Annual-Report-Final.pdf)

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These tracking requirements have been added to the proposed Rule 3171, as section 7.1.

- Annual Fee Equivalency Demonstration Report

On or before November 1 of each billing year, the APCO will prepare an Annual Section 185 Fee Equivalency Demonstration Report. The report will include:

- the sum of emissions of NO<sub>x</sub> and VOC from all major sources of those pollutants for the appropriate reporting period;
- the sum of emissions of NO<sub>x</sub> and VOC from clean units at those sources;
- the total fees collected under Rule 3171 for the billing year; and
- the total fees collected under the motor vehicle fee program.

The report shall demonstrate that the sum of fees collected under Rule 3171, plus motor vehicle fees collected, is equal to or greater than the total penalty fee that would be collected under a direct application of the federal ozone nonattainment fee, codified in Section 185 of the federal CAA. The report shall be made available to the public and mailed to Region IX of the federal EPA no later than November 1 of each billing year.

These reporting requirements have been added to the proposed Rule 3171, as section 7.2.

- Fee Shortfall Backstop Provisions

Rule 3171 will implement an alternate fee program that will collect fees from motor vehicles as well as from stationary sources, which collectively will generate fees equivalent to those that would have been collected under a direct implementation of Section 185.

EPA requires that fee-equivalency programs such as that implemented in Rule 3171 also contain provisions for making up any shortfall in fees collected. In other words, a remedy must be in place in the rule to take effect if the sum of the Rule 3171 fees from stationary sources, plus the motor vehicle fees collected as noted above, were not sufficient in any given year to be considered equivalent to those that would have been collected under a direct implementation of Section 185.

The shortfall remedy requirements, which have been added to the proposed Rule 3171 as section 7.3, are provided below:

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<sub>x</sub> 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 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.

The remedy outlined above is the same as is currently implemented in Rule 3170, which was previously determined by EPA to be an approvable "fee-equivalent" program.



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### C. Emission Reductions Benefitting Environmental Justice and Disadvantaged Communities

As mentioned earlier, Section 185 of the CAA requires major stationary sources of NOx and/or VOC emissions in “Severe” or “Extreme” ozone nonattainment areas to pay ozone nonattainment fees in the event the area fails to reach attainment by the specified attainment date. However, Section 185 only requires collection of these nonattainment fees; it does not specify how these fees should be spent or even that these fees be spent on emission reductions.

Consistent with the District’s goals of advancing attainment and improving public health, the District will use the fees collected from the proposed alternate program in District Rule 3171 to fund surplus emission reductions throughout the San Joaquin Valley, with an emphasis on clean-air projects resulting in emission reductions in and around disadvantaged communities.

The use of these Rule 3171 funds will be similar to the existing District program that is approved by EPA and implemented under District Rule 3170. Rule 3170 implementation and collection of motor vehicle fees began in 2011. The funds collected have been utilized on clean air projects under the District grants and incentives programs identified in the table below. The vast majority (72%) of these funds have been utilized in Environmental Justice (EJ) and Disadvantaged Communities (DAC) directly benefitting these communities by reducing air pollution impacts<sup>5</sup>. Under Rule 3171, the District plans to utilize the funds from the proposed alternate program in the same fashion.

<b>Grants and Incentive Programs Utilizing AB 2522 Fees</b>
Off-Road Diesel Equipment Replacement (ag tractors, construction, etc.)
Heavy-Duty Diesel Truck Replacement and Transition
Public Agency Light-Duty Clean Vehicle Fleet Transition
Tune-In Tune-Up High Polluting Vehicle Repair Program
Drive Clean Light Duty Vehicle Rebate Program
Electric Vehicle Charging Infrastructure
School Bus Replacement and Retrofit
Alternative Fuel Infrastructure in Support of Clean Vehicle Technologies
Advanced Clean Transit and Transportation Projects
Replacement of Switcher and Line-Haul Locomotives
Sustainable Community and Community Improvement VMT Reduction Projects
Technology Advancement Projects for Innovative Clean Air Demonstrations

<sup>5</sup> CARB, “2022 Report to the California Legislature on the San Joaquin Valley Air Pollution Control District’s Use of AB 2522 Motor Vehicle Fees to Achieve and Maintain Ambient Air Quality Standards,” February 2023. Retrieved from: [https://ww2.arb.ca.gov/sites/default/files/2023-02/2022%20AB%202522%20Report\\_ADA.pdf](https://ww2.arb.ca.gov/sites/default/files/2023-02/2022%20AB%202522%20Report_ADA.pdf)

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Commercial Lawn & Garden Zero-Emission Equipment Replacement
Transit Pass Subsidy Program to Reduce Transit Cost for Riders
Van Pool Voucher Program to Reduce Van Pool Cost for Riders
Bicycle Infrastructure Development (Bicycle Paths/Lanes)
Alternate Fuel Mechanic Vocational Training Program

Over the past decade, the District has worked collaboratively with the District's Environmental Justice Advisory Group (EJAG) to incorporate their recommendations and funding priorities related to the expenditure of these funds. Through a formal process that includes the opportunity for public input, EJAG has provided recommendations to the District for focus areas for funding. These focus areas are identified in the table above. Through the annual budget process, the District has incorporated these priorities into approved incentive spending plans.

### III. PROPOSED RULE 3171 REQUIREMENTS

#### A. Applicability

Section 2.0 of the proposed rule 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 has failed to attain the 1997 8-hour Ozone National Ambient Air Quality Standard (NAAQS) (84 ppb) 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 1997 8-hour Ozone NAAQS.
- 2.3 This rule applies to any major source of NO<sub>x</sub> 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.

#### 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 1997 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.

**Clean Emissions Unit:** an emissions unit that the APCO has determined meets one of the following criteria:

- *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*
- *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.*

**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. Exemptions:**

Section 4.0 lists the following exemptions for “clean emissions units”:

- *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.*
- *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.*

**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 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 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

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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<sub>x</sub> or VOC will be assessed an annual fee payable to the District. The fee shall be the sum of the NO<sub>x</sub> Fee and the VOC Fee, which shall be calculated as follows, in accordance with Section 185 (b) of the federal Clean Air Act.

$$\begin{aligned}\text{NO}_x \text{ Fee (in \$)} &= [A - (0.8 \times B)] \times C \\ \text{VOC Fee (in \$)} &= [D - (0.8 \times E)] \times C\end{aligned}$$

Where:

- A = The total amount of NO<sub>x</sub> emissions actually emitted from permitted emissions units at a major NO<sub>x</sub> source during the applicable Fee Assessment Year, in tons per year.
- B = The actual average annual emissions of NO<sub>x</sub> 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<sub>x</sub> Fee above, if A is less than or equal to 80% of B, the fee assessment for NO<sub>x</sub> shall be set to zero.

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

#### **IV. RULE DEVELOPMENT PROCESS**

As part of the rule development process, the District conducted a public workshop on June 27, 2023, to present, discuss, and take comments on the proposed rulemaking. The District published the draft rule for public review prior to the workshop to provide opportunity for public comment on the draft proposed rule. No comments were received during the public comment period following the workshop.

The proposed rule was published for 30-day public review and comment on July 17, 2023, prior to the public hearing to consider the adoption of the rule by the District Governing Board.

#### **V. COST EFFECTIVENESS AND SOCIOECONOMIC IMPACT ANALYSIS**

Pursuant to 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 draft amendments do not add BARCT requirements and therefore are not subject to the cost effectiveness analysis mandate.

Additionally, state law requires the District to analyze the socioeconomic impacts of any proposed rule amendment that significantly affects air quality or strengthens an emission limitation. The draft rule will have neither effect. Therefore, the rule is not subject to the socioeconomic analysis mandate.

#### **VI. RULE CONSISTENCY ANALYSIS**

Pursuant to CH&SC Section 40727.2 (g) a rule consistency analysis of the draft rule is not required.

#### **VII. 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

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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.