

RULE 317. CLEAN AIR ACT NON-ATTAINMENT FEES

(a) Purpose

The purpose of this rule is to satisfy requirements as specified in Sections 182(d), 182(e), 182(f) and 185 of the 1990 amendments to the federal Clean Air Act (CAA) by utilizing a fee equivalency approach applying the principle in Section 172(e) of the CAA.

(b) Definitions

For the purposes of this rule, the following definitions shall apply:

- (1) ATTAINMENT YEAR is the calendar year that the Clean Air Act establishes for the Basin to reach attainment of the federal one-hour ozone standard pursuant to the CAA. Under the Severe 17 area designation, the attainment year is 2007. Under the Extreme area designation, the attainment year is 2010.
- (2) BASELINE EMISSIONS are emissions of VOC, NO_x or both, (including major stationary source fugitive and unpermitted emissions), for which a source qualifies as a major stationary source, calculated using source information as reported to or amended by the District, through the District's Annual Emissions Report (AER) program, as follows:
 - (A) For an existing major stationary source prior to or during the attainment year, the baseline emissions shall be the average amount of the actual emissions, including fugitives and unpermitted emissions, during fiscal years 2005-06 and 2006-07 (emissions not to exceed allowables), and programmatically adjusted to account for regulatory effects between 2006 through 2010, for the South Coast Air Basin. For an existing major stationary source in the Salton Sea Air Basin prior to or during the attainment year the baseline emissions shall be AER emissions as reported to the District or amended by the District for the attainment year (emissions not to exceed allowables).

- (B) For sources that become subject to this rule after the attainment year:
- (i) For a non-RECLAIM major stationary source the baseline emissions shall be the amount of emissions allowed under the applicable implementation plan or the potential to emit (annual emissions including fugitives and emissions from unpermitted equipment).
 - (ii) For an existing RECLAIM source that subsequently qualifies as a major stationary source for the purposes of this rule the baseline emissions shall be the higher of the RTC holdings at the beginning of the year available for use during the same calendar year or actual emissions during the calendar year the source becomes a major stationary source that do not exceed the RTC holdings at the end of the reconciliation period.
 - (iii) For a new RECLAIM source that qualifies as a major stationary source for the purposes of this rule the baseline emissions shall be the higher of RTC holdings purchased at the beginning of the attainment year or the initial calendar year of operation, as applicable, or actual emissions during the calendar year, not to exceed RTC holdings at the end of the reconciliation period.

If a major stationary source is operational for a period of less than one calendar year in the attainment year or later, the allowable emissions or RTC credits or holdings based on subparagraph (b)(2)(B) (i through iii) as applicable, in the attainment year or initial year of operation, (including unpermitted and fugitives) shall be extrapolated over one full calendar year.

- (3) BASIN means either the Riverside county portion of the Salton Sea Air Basin (SSAB) or the South Coast Air Basin (SOCAB). The boundaries of each air basin shall be as defined by California Code of Regulations, Section 60104, Title 17.
- (4) CLEAN AIR ACT NON-ATTAINMENT FEE means the fee that would have been assessed to a major stationary source pursuant to Section 185 of

the 1990 amendments to the Clean Air Act (CAA). The annual VOC (CAA) Non-Attainment Fee (pursuant to Section 185) for a major stationary source of VOC and the Annual NO_x CAA Non-Attainment Fee for, a major stationary source of NO_x (a source may be a major stationary source for either VOC, NO_x or both and subject to the applicable fee) for excess emissions of these air contaminants in accordance with Section 185 (b) of the CAA shall be calculated as follows:

$$\text{Annual CAA Non-Attainment Fee} = \$5,000 \times \text{CPIF} \times [A - (0.8 \times B)]$$

Where:

A is the total amount of emissions actually emitted during the applicable fee assessment year for pollutants included in B, in tons. If A is less than or equal to 80% of B; then there shall be no annual CAA non-attainment fee assessed for the subject year.

B is Baseline Emissions, of VOC, NO_x or both for which a source qualifies as a major stationary source as defined in this rule, in tons.

CPIF is the annual Consumer Price Index (CPI) adjustment factor as defined in this rule.

- (5) CPIF means the annual consumer price index (CPI) adjustment factor which is equivalent to the cumulative increase in the CPI beginning with the 1989 change in the index up to and including the change in the year prior to the year for which the fees are due. For any calendar year the CPI is the average of the CPI for all-urban consumers published by the Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year or the revision of the CPI which is most consistent with the CPI for calendar year 1989 in accordance with Sections 502(b)(3)(B)(v) and 185(b)(3) of the CAA. Section 185 cross-references the methodology in section 502(b)(3)(B)(v) of the CAA. This method has been interpreted for use in determining permit fees in a 1992 EPA memorandum. (See, Memorandum of October 15, 1992, from Frank Bunyard, "Calculating Fees for Operating Permits.") EPA has used this method to calculate the Part 70 permit fee rate since 1990, and will continue to update the rate every year in September, when the August values are available. The adjusted section 185 fee, then, would be prorated to that adjusted permit fee by multiplying the Part 70 permit fee rate by

200 (\$5000/\$25). Since Section 185 fees are assessed on a calendar year basis, and the inflation factor is applied in September the calendar year fee is determined as a weighted average (8/12 of the fee associated with January to August, and 4/12 of the fee associated with September to December).

- (6) FEE ASSESSMENT YEAR means the year for which CAA fees are being calculated and assessed under the provisions of this rule.
 - (7) MAJOR STATIONARY SOURCE shall, for the purposes of this rule:
 - (A) For a non-RECLAIM source-have the same meaning as in Sections 181(b)(4)(B) and 182(d) of the CAA, or 182 (e) as applicable, or a Major Polluting Facility as defined in Rule 1302(s) – Definition of Terms.
 - (B) For a RECLAIM source-have the same meaning as in paragraph (b)(2) of Rule 3001 – Applicability where the potential to emit for a RECLAIM facility is the higher of:
 - (i) the starting allocation plus non-tradeable credits; or
 - (ii) RECLAIM Trading Credits (RTCs) held in the allocation account after trading.
- RTC's held in the certificate account are not part of the allocation.
- (8) NITROGEN OXIDES (NO_x) means any compound that is an oxide of nitrogen.
 - (9) RECLAIM is the Regional Clean Air Incentives Market established by Regulation XX – Regional Clean Air Incentives Market (RECLAIM) which for the purposes of this rule comprises:
 - (A) Existing RECLAIM sources with a District issued facility identification number during or prior to the attainment date; or
 - (B) New RECLAIM sources with a District issued facility identification number issued after the attainment year; or
 - (C) An existing source with a District issued facility identification number prior to the attainment date that becomes a RECLAIM source during the attainment year which shall be treated as an existing RECLAIM source for the purposes of determining

baseline emissions for the attainment year or the initial year of operation as applicable.

- (10) VOLATILE ORGANIC COMPOUND (VOC) is as defined in Rule 102 – Definitions.

(c) Requirements

(1) Section 172 (e) Fee Equivalency Account

(A) The Executive Officer shall establish and maintain a Section 172(e) fee equivalency account. The equivalency account shall be credited with expenditures from qualified programs that satisfy the following criteria:

- (i) surplus to the State Implementation Program for the federal 1-hour ozone standard and are approved by the AQMD executive officer, Executive Officer of CARB, and the Administrator or Regional Administrator of US EPA Region IX as being surplus to the SIP;
- (ii) designed to result in direct VOC or NO_x reductions in the SCAQMD; or facilitate future VOC or NO_x reductions in the SCAQMD through vehicle/engine fueling infrastructure or advanced technology development efforts for implementation within the next 10 years, or other uses approved by EPA;
- (iii) expenditures occurring only in calendar years subsequent to 2008 from eligible projects;
- (iv) only monies actually expended from qualified programs during a calendar year shall be credited.

(B) Expenditures eligible for the Section 172 (e) fee equivalency account need not actually be held nor disbursed directly by the AQMD provided the underlying programs have been approved by CARB and EPA and tracked pursuant to subdivision (c).

(C) Funds shall be accounted for on a dollar for dollar basis and shall not be discounted due to the passage of time. Funds may be

accumulated in the accounts from year to year if a surplus exists in any given year, and used to offset the calculated Clean Air Act Non-attainment (Section 185) fees as needed.

(D) The Section 172 (e) fee equivalency account may be pre-funded according to the projects listed in Attachment A.

(2) Calculation of the CAA Non-Attainment (Section 185) Fee Obligation

By August 1, 2012, and continuing annually thereafter, the Executive Officer shall calculate the applicable prior calendar year CAA Non-Attainment (Section 185) fees for each major source in the South Coast AQMD pursuant to paragraph (b) and then aggregate such fees for the entire universe of major stationary sources in the District that would otherwise be subject to Section 185.

(3) Annual Demonstration of Equivalency

Beginning August 1, 2012, and continuing annually thereafter, the Executive Officer shall complete an equivalency demonstration to show that adequate funding was available in the equivalency account for the prior calendar year to meet the CAA Non-Attainment (Section 185) fee obligation calculated pursuant to paragraph (c)(2). Any surplus funding available in the fee equivalency account will be carried forward to the following assessment year. The annual determination of equivalency shall be made according to the following equation:

$$B_{i-1} + D_{i-1} - F_{i-1} = B_i > 0$$

Where,

B_{i-1} is the Section 172 (e) fee equivalency account balance at the beginning of the prior calendar year $i-1$

D_{i-1} is the funds deposited (credited) into the Section 172 (e) fee equivalency account during the prior calendar year ($i-1$)

F_{i-1} is the Section 185 fees calculated for all major stationary sources for prior calendar year calculated pursuant to paragraph (c) (2), and

B_i is the Section 172 (e) fee equivalency account balance at the end of calendar year $i-1$, which is carried forward as the beginning balance for the following year i .

(4) Annual Preliminary Determination of Equivalency

Beginning July 1, 2012, and continuing annually thereafter, the Executive Officer shall complete a preliminary determination of equivalency to determine whether adequate funding is expected to be available in the Section 172 (e) fee equivalency account to meet the CAA Non-Attainment (Section 185) fee obligation for the current calendar year according to the following equation:

$$B_i + D_i > 110\% \times F_{i-1}$$

Where,

B_i is the Section 172 (e) Fee Equivalency Account balance at the beginning of the current calendar year i

D_i is the funds expected to be deposited (credited) into Section 172 (e) Fee Equivalency Account in current calendar year i , and

F_{i-1} is the Section 185 fees calculated pursuant to paragraph (c) (2) for the prior calendar year ($i-1$) being used as surrogate Section 185 fee estimate for the current year.

(5) Reporting Requirements

Beginning no later than September 3, 2012, and continuing annually thereafter, the EO shall file a report with CARB and US EPA that includes all of the following:

- (A) A listing of all facilities subject to Section 185 and their calculated prior calendar year fee obligation,
- (B) The aggregate amount of prior calendar year CAA Non-Attainment (Section 185) fees obligation calculated pursuant to paragraph (c)(2),
- (C) The Section 172 (e) fee equivalency account beginning balance,
- (D) The amount of any surplus funding carried over to the subsequent calendar year,
- (E) A listing of all programs, program descriptions, description of funding, certification of eligibility for each program, and associated expenditures that were credited into the Section 172 (e) fee equivalency account during the prior calendar year and those expected to be credited during the current year,

- (F) The results of the equivalency demonstration and preliminary determination of equivalency conducted pursuant to paragraph (c)(3) and (c)(4).

(6) Backstop Provision for Failure to Achieve Equivalency

In the event the annual determination of equivalency conducted for the prior year pursuant to paragraph (c)(3) shows a deficit ($B_i < 0$) or the preliminary determination of equivalency conducted for the current year pursuant to paragraph (c)(4) shows that adequate funding to meet the estimated Section 185 fees for the current year may not be available, then the EO shall within 90 days submit to the Governing Board a back-stop rule for adoption that would require the Executive Officer to collect and/or track adequate fees for any shortfall. The Governing Board shall act on a backstop rule no later than 120 days from the funding inadequacy finding.

The backstop rule, to the extent applicable to major stationary sources of VOC and/or NO_x, shall include the following baseline elements which owners or operators may request in writing:

(A) Alternative Baseline Period

Emissions from an alternative baseline period reflecting the average of two consecutive years within the last ten (10) years prior to and including the attainment year may be substituted for baseline emissions from the attainment year subject to the following analysis:

- (i) Annual emission data for the ten (10) years preceding and including the attainment year; and
- (ii) Analysis of adopted local, state, and federal rules or regulations that would have restricted the source's ability to either operate or emit a particular pollutant, had they been in effect during the consecutive two (2) years selected; and/or;
- (iii) Adjusted annual emissions considering the impact of subparagraphs (ii) above; and

(iv) Certification, in writing, by the highest-ranking executive on site that the source's emissions are irregular, cyclical, or otherwise vary significantly from year to year.

(B) Multi-Site Aggregation

Major stationary sources within a single non-attainment region, under common ownership and control, and that comport with the Federal definition of major stationary source for multi-site aggregation, may aggregate multi-site baseline and future year emissions.

(C) Regulation III – Fees credit

Each major stationary source paying Clean Air Act Non-attainment Section 185 fees pursuant to the backstop rule adopted pursuant to paragraph (c) (6) shall receive a credit for their fees paid for annual operating fees and annual operating emissions fees during the preceding calendar year. In no case, shall the credit exceed the Clean Air Act Non-attainment Section 185 fees due, or exceed the otherwise applicable annual operating fees and annual operating emissions fees.

(d) Severability

If any provision of this rule is held by a USEPA or CARB, finding or decision or a court decision to be invalid, such finding or decision will not affect the validity of the remainder of this rule and major stationary sources shall be subject to and must comply with the provisions contained in the remainder of this rule.

(e) Termination

This rule shall become inoperative and have no further effect or further operation upon a determination by the Administrator or Regional Administrator of the US EPA that in a given year the air basin is in attainment with the federal one-hour ozone standard, or upon approval by EPA of a replacement program, such as a state-wide program adopted by CARB.

(f) The Executive Officer shall submit Rule 317 for inclusion into the SIP by CARB and U.S. EPA within 14 days of adoption.

ATTACHMENT A – LIST OF PROGRAMS PRE- FUNDING SECTION 172 (e) FEE EQUIVALENCY ACCOUNT*

Name	Date of Award	Initial Year of Expenditure	One-time/ Ongoing*	Expenditure
U.S. EPA DERA				
<i>School Bus Retrofit</i>	6/5/2009	2010	One-time	\$870,000
School Bus Replacement	6/30/2010	2011	One-time	\$1,065,465
U.S. EPA DERA Earmark				
<i>LNG Truck Replacement</i>	5/2/2008	2009/2010	One-time	\$5,000,000
<i>LNG Truck Replacement</i>	11/6/2009	2010/2011	One-time	\$7,500,000
Crane, Shore Power, Off Road	4/21/2010	2011/2012	One-time	\$5,000,000
U.S. EPA Emerging Technologies				
Truck Retrofits/SCRT	4/28/2009	2010	One-time	\$900,000
Truck Retrofits-SCRT (ARRA)	8/31/2009	2011	One-time	\$2,000,000
Truck Retrofits-SCCRT (ARRA)	8/31/2009	2011	One-time	\$2,000,000
U.S. DOE Clean Cities				
<i>ARRA-LNG Truck Replacement</i>	11/6/2009	2010	One-time	\$7,900,000
New LNG Station Ontario, CA	3/12/2010	2010/2011	One-time	\$150,000
UPS Ontario-Las Vegas LNG.... (ARRA)	12/18/2009	2010/2011	One-time	\$5,591,611
AB2766				

Name	Date of Award	Initial Year of Expenditure	One-time/Ongoing*	Expenditure
<i>Local Governments**</i>		FY 2008/2009	Continuous	\$14,000,000
<i>MSRC**</i>		2009 – 2010 (2 yrs.)	Continuous	\$24,000,000
ARB AB118 Program				
Hybrid Truck and Bus Voucher Incentive Project (HVIP)		2010	One-time	\$9,200,000
Clean Vehicle Rebate Program (CVRP)		2010	One-time	\$117,000
Lawn Mower		2010	One-time	\$816,000
California Energy Commission Funding				
LNG Truck Replacement	7/9/2010	2011	One-time	\$5,142,000
NG Infrastructure: South Coast Air Basin	5/17/2010	2011	One-time	\$2,900,000
SCAQMD Clean Fuels Program				
		2009 – 2010 (2 yrs.)	Continuous	\$16,000,000
Grand Total				\$110,152,076

*: Pending CARB and USEPA approval

** : Based reported expenditures by local governments and MSRC that were spent in VOC/NOx emission reduction related projects.

(Funding sources marked “continuous” indicate expected annual funding unless indicated otherwise.)