

RULE 317.1 CLEAN AIR ACT NONATTAINMENT FEES FOR 8-HOUR OZONE STANDARDS

(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) for the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) and the 2008 8-hour ozone NAAQS.

(b) Applicability

- (1) This rule shall become applicable if and when the U.S. Environmental Protection Agency (EPA) makes a final finding that a Basin has failed to attain the 1997 8-hour ozone NAAQS or the 2008 8-hour ozone NAAQS by the applicable Attainment Date.
- (2) Except as otherwise provided as exempt in subdivision (e), this rule is applicable to any Major Stationary Source of Volatile Organic Compounds (VOC) and/or Nitrogen Oxides (NO_x).

(c) Definitions

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

- (1) ACTUAL EMISSIONS means the mass of emissions of NO_x or VOCs, which are emitted by a Major Stationary Source to the atmosphere during a calendar year, reported to or amended by the Executive Officer, through the South Coast AQMD's Annual Emissions Report (AER) program and shall include, but not be limited to the following:
 - (i) Permitted emissions;
 - (ii) Regulated emissions;
 - (iii) Fugitive emissions; and
 - (iv) Unregulated emissions
- (2) ALTERNATIVE BASELINE EMISSIONS means a Major Stationary Source's VOCs or NO_x average annual Actual Emissions for two consecutive years within up to the last ten (10) calendar years prior to and including the Attainment Year, not to exceed emissions allowed through the permit(s), plan(s), applicable rules(s), and implementation plan(s).

- (3) ANNUAL CAA NONATTAINMENT FEE RATE means \$5,000 (in 1990 dollars), adjusted for inflation annually, beginning in the year after 1990, by the percent change in consumer price index (CPI), if any, pursuant to CAA Sections 185(b)(3) and 502(b)(3)(B)(v). The Annual CAA Nonattainment Fee Rate is published annually for each calendar year in a memorandum by the U.S. EPA.
- (4) APPLICABLE OZONE STANDARD means either the 1997 8-hour ozone NAAQS or 2008 8-hour ozone NAAQS, as applicable.
- (5) ATTAINMENT DATE means the U.S. EPA approved date, established pursuant to the CAA, by which a Basin must attain a federal NAAQS. Where no such U.S. EPA approval exists, the date of the Basin's maximum statutory attainment date for that standard.
- (6) ATTAINMENT YEAR means the calendar year containing the Attainment Date.
- (7) BASELINE EMISSIONS means a Major Stationary Source's VOC and/or NO_x emissions, for which a source qualifies as a Major Stationary Source. Baseline Emissions for VOC and/or NO_x are calculated separately for each Applicable Ozone Standard, and as follows:
 - (A) For a Major Stationary Source which was a Major Stationary Source during the entirety of the Attainment Year, the Baseline Emissions is the lower of:
 - (i) The Actual Emissions, not to exceed emissions allowed through the permit(s), plan(s), applicable rule(s), and implementation plan(s), during the Attainment Year or
 - (ii) The amount of emissions allowed under permit(s), plan(s), applicable rule(s), and implementation plan(s) during the Attainment Year.
 - (B) For a Major Stationary Source that becomes subject to this rule during the Attainment Year, the Baseline Emissions is the lower of:
 - (i) The Actual Emissions, not to exceed emissions allowed through the permit(s), plan(s), applicable rule(s), and implementation plan(s), for the operational period as a Major Stationary Source in the Attainment Year, extrapolated over the entire Attainment Year or
 - (ii) The amount of emissions allowed under permit(s), plan(s), applicable rule(s), and implementation plan(s) for the operational period as a Major Stationary Source in the Attainment Year, extrapolated over the entire Attainment Year.
 - (C) For a Major Stationary Source that becomes subject to this rule after the Attainment Year, the Baseline Emissions is the lower of:

- (i) The Actual Emissions for the operational period in the initial calendar year of operation as a Major Stationary Source, not to exceed emissions allowed through the permit(s), plan(s), applicable rule(s), and implementation plan(s), extrapolated over the entire initial year of operation as a Major Stationary Source or
 - (ii) The amount of emissions allowed under permit(s), plan(s), applicable rule(s), and implementation plan(s), for the facility for the operational period in the initial calendar year as a Major Stationary Source, extrapolated over the entire initial year as a Major Stationary Source.
 - (8) BASIN means either the South Coast Air Basin or Riverside County portion of the Salton Sea Air Basin (Coachella Valley). The boundaries of each Basin shall be as defined by 40 Code of Federal Regulations, Section 81.305.
 - (9) CAA NONATTAINMENT FEE means the federally mandated ozone NAAQS nonattainment fee assessed to a Major Stationary Source for excess emissions of VOC and NOx air contaminants pursuant to Section 185 of the CAA. It is the summation of the annual VOC CAA Nonattainment Fee and the annual NOx CAA Nonattainment Fee.
 - (10) EXTENSION YEAR means the year that the U.S. EPA may grant, pursuant to Section 181(a)(5) of the CAA and upon the state's request, an extension of the Attainment Date.
 - (11) FEE ASSESSMENT YEAR means the calendar year in which emissions occurred for which the CAA Nonattainment Fees are being calculated and assessed under the provisions of this rule for each Applicable Ozone Standard.
 - (12) MAJOR STATIONARY SOURCE means a Major Stationary Source as defined in CAA sections 182(d), 182(e), 182(f) and 185 and is required to operate under the authority of a Title V Program facility permit.
 - (13) NITROGEN OXIDES (NOx) means the sum of nitric oxides and nitrogen dioxides emitted, calculated as nitrogen dioxide.
 - (14) VOLATILE ORGANIC COMPOUNDS (VOC) means the sum of any volatile compound of carbon, excluding methane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonate, and exempt compounds.
- (d) Requirements
- (1) Fee Assessment
The Executive Officer shall assess the CAA Nonattainment Fees for each Applicable Ozone Standard:

- (A) Beginning the calendar year after the Attainment Year for a:
- (i) Major Stationary Source which was a Major Stationary Source during the entirety of the Attainment Year; or
 - (ii) Major Stationary Source that becomes subject to this rule during the Attainment Year; or
- (B) Beginning the calendar year after the calendar year used to establish Baseline Emissions for a Major Stationary Source that becomes subject to this rule after the Attainment Year.
- (2) Fee Determination

Beginning the calendar year after the applicable Attainment Year, the CAA Nonattainment Fee shall be the Annual CAA Nonattainment Fee Rate for the applicable Fee Assessment Year per ton of Actual Emissions of VOC and/or NO_x during the Fee Assessment Year that exceed 80% of the Baseline Emissions or Alternative Baseline Emissions. For each Major Stationary Source, the CAA Nonattainment Fee shall be calculated as follows:

VOC CAA Nonattainment Fees =

$$\text{Annual CAA Nonattainment Fee Rate} \times [A_V - (0.8 \times B_V)]$$

NO_x CAA Nonattainment Fees =

$$\text{Annual CAA Nonattainment Fee Rate} \times [A_N - (0.8 \times B_N)]$$

CAA Nonattainment Fees =

$$\text{NO}_x \text{ CAA Nonattainment Fees} + \text{VOC CAA Nonattainment Fees}$$

Where:

- For a Major Stationary Source of VOC:
 - A_V = Actual Emissions of VOC for the applicable Fee Assessment Year (in tons per year). If A_V is less than or equal to 80% of B_V , there shall be no VOC CAA Nonattainment Fee assessed for the Fee Assessment Year.
 - B_V = Baseline Emissions or Alternative Baseline Emissions for VOC (in tons per year).
- For a Major Stationary Source of NO_x:
 - A_N = Actual Emissions of NO_x for the applicable Fee Assessment Year (in tons per year). If A_N is less than or equal to 80% of B_N , there shall be no NO_x CAA Nonattainment Fee assessed for the Fee Assessment Year.
 - B_N = Baseline Emissions or Alternative Baseline Emissions for NO_x (in tons per year).

(3) Annual Reporting and Payment

- (A) The owner or operator of a Major Stationary Source shall annually report all Actual Emissions, regardless of whether the owner or operator received notice from the Executive Officer.
- (B) The owner or operator of a Major Stationary Source shall, for each applicable Fee Assessment Year, which includes the years prior to the U.S. EPA making a final finding that a Basin has failed to attain the Applicable Ozone standard, pay the appropriate CAA Nonattainment Fees, determined pursuant to paragraph (d)(2), regardless of whether the owner or operator received notice from the Executive Officer.

(4) Payment Due Date

Unless a later date, not to exceed 365 days from the applicable due date, is specified by the Executive Officer, the owner or operator of a Major Stationary Source, regardless of whether the owner or operator received notice from the Executive Officer, shall submit full payment for:

- (A) The invoice that includes the CAA Nonattainment Fee for the initial Fee Assessment Year for the Applicable Ozone Standard for the Major Stationary Source, no later than 365 days from the date the invoice is issued by the Executive Officer; and
- (B) An invoice subsequent to the first invoice that included the CAA Nonattainment Fee for the initial Fee Assessment Year for the Applicable Ozone Standard for the Major Stationary Source, either:
 - (i) No later than December 15th of the year the invoice is issued by the Executive Officer; or
 - (ii) No later than 75 days from the date the invoice is issued by the Executive Officer, whichever is later.

(5) Failure to Pay Fees

If one-hundred twenty (120) days have elapsed since the invoice due date and all CAA Nonattainment Fees have not been paid in full, the Executive Officer may take action to revoke all Permits to Operate for equipment on the premises, as authorized in California Health and Safety Code Section 42307.

(6) Notice of Rule Applicability

No later than 60 days after a notice is issued by the Executive Officer that the facility is a Major Stationary Source subject to this rule, the owner or operator of a Major Stationary Source shall confirm or contest the Major Stationary Source's rule applicability.

(7) Notice of Baseline Emissions

No later than 60 days after a notice is issued by the Executive Officer specifying the Baseline Emissions for the Major Stationary Source, the owner or operator of a Major Stationary Source shall confirm or contest the assigned Baseline Emissions.

(8) Alternative Baseline Emissions

If the owner or operator of a Major Stationary Source requests to use an Alternative Baseline Emissions to determine the CAA Nonattainment Fee, the following requirements shall be met:

- (A) U.S. EPA has issued guidance authorizing an alternative methodology for calculation of a Major Stationary Source's Baseline Emissions, pursuant to CAA Section 185(b)(2) for the Applicable Ozone Standard, that is consistent with the methodology specified in subparagraph (d)(8)(C) and requirements specified in subparagraphs (d)(8)(B) and (d)(8)(D).
- (B) The Major Stationary Source was a Major Stationary Source during the entirety of the Attainment Year;
- (C) No later than 120 days after the end of the Attainment Year or no later than 120 days after the U.S. EPA makes a final finding that the Basin has failed to attain the Applicable Ozone Standard by the applicable Attainment Date, whichever is later, the owner or operator of a Major Stationary Source submits to the Executive Officer an Alternative Baseline Emissions Request that contains the following:
 - (i) An Alternative Baseline Emissions Report including Actual Emissions, not to exceed emissions allowed through the permit(s), plan(s), applicable rule(s), and implementation plan(s), for each of the relevant ten (10) calendar years preceding and including the Attainment Year;
 - (ii) Identification of the twenty-four consecutive months representing typical operations:
 - (a) For a Major Stationary Source without an electrical steam generating unit(s), within the last relevant ten (10) calendar years prior to and including the Attainment Year selected; or
 - (b) For a Major Stationary Source with an electrical steam generating unit(s), within the last relevant five (5) calendar years prior to and including the Attainment Year selected or, with justification, the relevant five (5) calendar years prior to the aforementioned calendar years;

- (iii) An analysis demonstrating that the Actual Emissions, not to exceed emissions allowed through the permit(s), plan(s), applicable rules(s), and implementation plan(s), from the average of the twenty-four months, identified pursuant to clause (d)(8)(C)(ii), represent typical operations;
 - (iv) 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 twenty-four months selected;
 - (v) The average annual emissions of the twenty-four months, identified in clause (d)(8)(C)(ii), not to exceed emissions allowed through the permit(s), plan(s), applicable rules(s), and implementation plan(s), considering the impacts identified in clause (d)(8)(C)(iv);
 - (vi) 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; and
 - (vii) Any other information as required by the U.S. EPA guidance; and
 - (D) The Executive Officer has authorized a Major Stationary Source to use this Alternative Baseline Emissions.
- (9) Alternative Baseline Emissions Request Payment
 - (A) The owner or operator of a Major Stationary Source electing to submit an Alternative Baseline Emissions Request, pursuant to subparagraph (d)(8)(c), shall pay an hourly staff evaluation rate of \$209.31, unless Regulation III - Fees assigns a fee amount associated with evaluating the Alternative Baseline Emissions Request that shall be paid in lieu of this rate.
 - (B) The owner or operator of a Major Stationary Source shall submit full payment of the amount invoiced no later than 60 days from receiving the invoice for evaluation of the Alternative Baseline Emissions Request.
- (e) Exemptions
 - (1) Extension Year

The owner or operator of a Major Stationary Source shall not be required to remit CAA Nonattainment Fees under this rule during any calendar year that is considered a Basin's Extension Year for the Applicable Ozone Standard.
 - (2) Cessation of Fees

The owner or operator of a Major Stationary Source shall not be required to remit CAA Nonattainment Fees for an Applicable Ozone Standard once the Basin has been redesignated by U.S. EPA to attainment for that Applicable Ozone Standard or, for a revoked Applicable Ozone Standard, if U.S. EPA has terminated the anti-backsliding requirement associated with the CAA Nonattainment Fees for the Applicable Ozone Standard. The CAA Nonattainment Fees will cease in the same calendar year as the redesignation or termination.