

**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 (VOCs) and/or oxides of nitrogen (NOx) pursuant to Section 185 of the federal CAA.

(c) Definitions

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

- (1) ACTUAL EMISSIONS means the mass of emissions of NOx 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 NOx 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 VOCs and/or NOx emissions, for which a source qualifies as a Major Stationary Source. Baseline Emissions 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 air 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 VOCs and NO<sub>x</sub> air contaminants pursuant to Section 185 of the 1990 amendments to the CAA. It is the summation of the annual VOCs CAA Nonattainment Fee and the NO<sub>x</sub> 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.
- (12) FEE COLLECTION YEAR means a calendar year in which the CAA Nonattainment Fees are being invoiced, generally the calendar year following the Fee Assessment Year.
- (13) MAJOR STATIONARY SOURCE means a Major Polluting Facility as defined in Rule 1302(s) – Definition of Terms.
- (14) NITROGEN OXIDES (NO<sub>x</sub>) means any compound that is an oxide of nitrogen.
- (15) VOLATILE ORGANIC COMPOUND (VOC) means the same as defined in Rule 102 – Definitions.

## (d) Requirements

## (1) Fee Assessment

The Executive Officer shall annually assess, for each Applicable Ozone Standard, the CAA Nonattainment Fees beginning the second year after the Attainment Year, for emissions in the previous calendar year (the Fee Assessment Year) pursuant to paragraph (d)(2).

## (2) Fee Determination

Beginning the calendar year after the applicable Attainment Year, the CAA Nonattainment Fee shall be the Annual CAA Nonattainment Fee Rate per ton of VOCs and/or NO<sub>x</sub> Emissions 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:

VOCs CAA Nonattainment Fees =

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

NO<sub>x</sub> CAA Nonattainment Fees =

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

CAA Nonattainment Fees =

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

Where:

- For a Major Stationary Source of VOCs:
  - $A_V$  = Actual Emissions of VOCs 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 VOCs CAA Nonattainment Fee assessed for the Fee Assessment Year.
  - $B_V$  = Baseline Emissions or Alternative Baseline Emissions for VOCs (in tons per year).
- For a Major Stationary Source of NO<sub>x</sub>:
  - $A_N$  = Actual Emissions of NO<sub>x</sub> 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<sub>x</sub> CAA Nonattainment Fee assessed for the Fee Assessment Year.
  - $B_N$  = Baseline Emissions or Alternative Baseline Emissions for NO<sub>x</sub> (in tons per year).

- (3) **Annual Reporting and Payment**  
A Major Stationary Source of NO<sub>x</sub> and/or VOC shall annually report for all Actual Emissions and pay the appropriate CAA Nonattainment Fees for all Actual Emissions pursuant to (d)(2).
- (4) **Payment Due Date**  
No later than the seventy-fifth (75<sup>th</sup>) day following October 1, unless a later date is specified by the Executive Officer, a Major Stationary Source shall submit payment of the amount invoiced.
- (5) **Responsibility of Fee Payment**  
Emission reports and CAA Nonattainment Fee payment submittals are the responsibility of the owner/operator regardless of whether the owner/operator was notified.
- (6) **Failure to Pay Fees**  
If one hundred twenty (120) days have elapsed since the invoice 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.
- (7) **Alternative Baseline Emissions**  
If a Major Stationary Source elects to use an Alternative Baseline Emissions to determine the CAA Nonattainment Fee, the following requirements shall be met:
  - (A) The U.S. EPA issued guidance authorizing an alternative methodology for calculation of a Major Stationary Source's Baseline Emissions pursuant to CAA Section 185(b)(3) that is consistent with the methodology specified in clauses (d)(7)(B)(i)-(iii) and requirements specified in subparagraphs (d)(7)(C) and (d)(7)(D);
  - (B) 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 a Basin has failed to attain the Applicable Ozone Standard by the applicable Attainment Date, whichever is later, the Major Stationary Source submits to the Executive Officer the following:
    - (i) Total permitted, regulated, fugitive, and unregulated emissions, not to exceed emissions allowed through the permit(s), plan(s), applicable rule(s), and implementation plan(s), for each of the ten (10) calendar years preceding and including the Attainment Year;

- (ii) For a Major Stationary Source without an electrical steam generating unit(s), identification of the two consecutive years within the last ten (10) calendar years prior to and including the Attainment Year selected and 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 these two years represent typical operations;
- (iii) For a Major Stationary Source with an electrical steam generating unit(s), identification of the two consecutive years within the last five calendar years prior to and including the Attainment Year selected and 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 these two years 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 two years selected;
- (v) The average annual emissions of the two years, as identified in clause (d)(7)(B)(ii) or (iii), 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)(7)(B)(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;
- (C) The Executive Officer has authorized a Major Stationary Source to use this Alternative Baseline Emissions methodology; and
- (D) The Major Stationary Source was a Major Stationary Source during the entirety of the Attainment Year.

(e) Exemptions

(1) Extension Year

No Major Stationary Source shall be required to remit CAA Nonattainment Fees under this rule during any calendar year that is considered an extension year for the 1997 8-hour ozone NAAQS or 2008 8-hour ozone NAAQS.

(2) Cessation of Fees

No Major Stationary Source shall be required to remit CAA Nonattainment Fees for a given ozone standard once the Basin has been redesignated by U.S. EPA to attainment for that Applicable Ozone Standard or, for a revoked standard, if U.S. EPA has terminated the anti-backsliding requirement associated with the CAA Nonattainment Fees for the applicable standard. The CAA Nonattainment Fees will cease in the same calendar year as the redesignation or termination.