

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 within the South Coast Air Quality Management District 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) located in the Basin for which the U.S. EPA has made a final finding as described in paragraph (b)(1).
- (3) Except as otherwise provided as exempt in subdivision (e), this rule is applicable to any Major Stationary Source of VOC and/or NO_x located in the Basin during or after the Attainment Year for an Applicable Ozone standard.

(c) Definitions

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

- (1) ACTUAL EMISSIONS means the mass of all emissions of VOC or NO_x at a Major Stationary Source during a calendar year reported to or amended by the Executive Officer through the South Coast AQMD Annual Emission Reporting (AER) Program.
- (2) ACTUAL QUALIFYING EMISSIONS FOR BASELINE means the mass of emissions of VOC or NO_x at a Major Stationary Source used to calculate the Baseline Emissions. The Actual Qualifying Emissions For Baseline are Actual Emissions, excluding emissions that exceed limits specified in the permit(s), plan(s), applicable rules(s), and implementation plan(s), regardless of whether administratively allowed.
- (3) ALTERNATIVE BASELINE EMISSIONS means a Major Stationary Source's VOC or NO_x average annual Actual Emissions for twenty-four consecutive

months within up to the last ten (10) calendar years prior to and including the Attainment Year, excluding emissions that exceed limits specified in the permit(s), plan(s), applicable rules(s), and implementation plan(s), regardless of whether administratively allowed.

- (c) (4) ANNUAL CAA NONATTAINMENT FEE RATE means \$5,000 per ton (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).
- (5) APPLICABLE OZONE STANDARD means either the 1997 8-hour ozone NAAQS or 2008 8-hour ozone NAAQS, as applicable.
- (6) 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.
- (7) ATTAINMENT YEAR means the calendar year containing the Attainment Date.
- (8) BASELINE EMISSIONS means the mass of emissions calculated for VOC and/or NO_x, individually, in tons per year, for the determination of CAA Nonattainment Fee. 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 that began operation as a Major Stationary Source prior to the Attainment Year, the Baseline Emissions are the lower of:
- (i) Actual Qualifying Emissions For Baseline 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 begins operation as a Major Stationary Source during the Attainment Year, the Baseline Emissions are the lower of:
- (i) Emissions during the Attainment Year based on either:
 - (I) Actual Qualifying Emissions For Baseline; or
 - (II) Actual Qualifying Emissions For Baseline adjusted by extrapolating operational data as a Major Stationary Source for the entire Attainment Year, provided the Major Stationary Source demonstrates through operational data

- that emissions differ between operating as a Major Stationary Source and prior to operating as a Major Stationary Source; or
- (c) (8) (B) (ii) The amount of emissions allowed under permit(s), plan(s), applicable rule(s), and implementation plan(s) as a Major Stationary Source in the Attainment Year.
 - (C) For a Major Stationary Source that begins operation as a Major Stationary Source after the Attainment Year, the Baseline Emissions is the lower of:
 - (i) Emissions during the initial year of operating as a Major Stationary Source based on either:
 - (I) Actual Qualifying Emissions For Baseline; or
 - (II) Actual Qualifying Emissions For Baseline adjusted by extrapolating operational data as a Major Stationary Source for the entire Attainment Year, provided the Major Stationary Source demonstrates through operational data that emissions differ between operating as a Major Stationary Source and prior to operating 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 initial calendar year as a Major Stationary Source.
 - (9) 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 are as defined by 40 Code of Federal Regulations (CFR), Section 81.305.
 - (10) CAA NONATTAINMENT FEE means the federally mandated ozone NAAQS nonattainment fee assessed to a Major Stationary Source for excess emissions of VOC and NO_x air contaminants pursuant to Section 185 of the CAA. It is the summation of the annual VOC CAA Nonattainment Fee and the annual NO_x CAA Nonattainment Fee. The fee is assessed only for the pollutant(s) for which the facility qualifies as a Major Stationary Source.
 - (11) EXTENSION YEAR means the year that the U.S. EPA grants, pursuant to Section 181(a)(5) of the CAA and upon the state's request, an extension of the Attainment Date.
 - (12) FEE ASSESSMENT YEAR means the calendar year when emissions occurred for which the CAA Nonattainment Fee are being calculated and assessed under the provisions of this rule for each Applicable Ozone Standard.

- (c) (13) MAJOR STATIONARY SOURCE means a facility that emits or has the potential to emit VOC and/or NO_x emissions equal to or greater than the applicable major stationary source threshold, specified in CAA Sections 182(d), 182(e), or 182(f). The following types of emissions are not considered in determining whether a facility emits or has the potential to emit equal to or greater than the applicable major stationary source threshold:
- (A) Fugitive Emissions of VOC or NO_x, unless the source belongs to one of the categories listed in paragraph 2 of the definition of major source in 40 CFR Part 70, Section 70.2.
 - (B) Emissions from the following on-road and off-road mobile equipment:
 - (i) Motor vehicle or vehicle as defined by the California Vehicle Code as it exists on [Date of Rule Adoption].
 - (ii) Marine vessel as defined by Health and Safety Code Section 39037.1 as it exists on [Date of Rule Adoption].
 - (iii) A motor vehicle or a marine vessel that uses one internal combustion engine to propel the motor vehicle or marine vessel, and the same engine to operate other equipment mounted on the motor vehicle or marine vessel.
 - (iv) Equipment that is mounted on a vehicle, motor vehicle or marine vessel if such equipment does not emit air contaminants.
 - (v) Asphalt pavement heaters (which are any mobile equipment used for the purposes of road maintenance and new road construction).
 - (vi) Mobile day tankers that only carry fuel oil with an organic vapor pressure of 5 mm Hg (0.1 psi) absolute or less at 21.1 °C (70 °F).
 - (C) Off-site emissions from portable equipment permitted to operate at various locations.
 - (D) Emissions from non-road engines, as defined by 40 CFR Part 1039, Section 1039.801.
- (14) NITROGEN OXIDES (NO_x) means the sum of nitric oxides and nitrogen dioxides calculated as nitrogen dioxide.
- (15) VOLATILE ORGANIC COMPOUNDS (VOC) means the sum of any VOC as defined by Rule 102 – Definition of Terms.

(d) Requirements

(1) Fee Assessment

The Executive Officer will assess the CAA Nonattainment Fee for each Applicable Ozone Standard:

(A) Beginning the calendar year after the Attainment Year for a:

- (i) Major Stationary Source that began operating as a Major Stationary Source prior to the Attainment Year; or
- (ii) Major Stationary Source that begins operating as a Major Stationary Source 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 begins operating as a Major Stationary Source 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 assessed per ton of Actual Emissions of VOC and/or NOx during the Fee Assessment Year that exceed 80% of the Baseline Emissions or Alternative Baseline Emissions. For each Major Stationary Source existing during the Fee Assessment Year, the CAA Nonattainment Fee shall be calculated as follows:

VOC CAA Nonattainment Fee =

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

NOx CAA Nonattainment Fee =

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

CAA Nonattainment Fee =

$$\text{NOx CAA Nonattainment Fee} + \text{VOC CAA Nonattainment Fee}$$

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 NOx:

- 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).
- (d) (3) Annual Reporting and Payment
- (A) The owner or operator of a Major Stationary Source shall report all Actual Emissions annually.
- (B) The owner or operator of a Major Stationary Source existing during the Fee Assessment Year shall, for each applicable Fee Assessment Year, which includes the years following the Attainment Year and 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 Fee, determined pursuant to paragraph (d)(2), regardless of whether the owner or operator received an invoice from the Executive Officer.
- (4) Payment Due Date
- (A) If Executive Officer has issued an invoice for CAA Nonattainment Fee for a Fee Assessment Year, the owner or operator of a Major Stationary Source existing during the Fee Assessment Year shall submit full payment for:
- (i) The invoice amount that includes the CAA Nonattainment Fee for the initial Fee Assessment Year for the Applicable Ozone Standard, no later than 365 days from the date the invoice is issued by the Executive Officer; and
 - (ii) Any other invoice amount except for the invoice amount described in clause (d)(4)(A)(i), 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.
- (B) If the Executive Officer has not issued an invoice for the CAA Nonattainment Fee for a Fee Assessment Year, the owner or operator of a Major Stationary Source existing during the Fee Assessment Year shall submit payment and the calculations used to determine the amount of payment, determined pursuant to paragraph (d)(2), for the applicable CAA

Nonattainment Fee for the Fee Assessment Year no later than December 15th of the second year following either:

- (d) (4) (B) (i) The calendar year the U.S. EPA makes a final finding that a Basin has failed to attain the Applicable Ozone Standard; or
- (ii) The Fee Assessment Year for the Applicable Ozone Standard, whichever is later.

(5) Failure to Pay Fees

If one-hundred twenty (120) days have elapsed since the payment due date and all CAA Nonattainment Fees have not been paid in full, the Executive Officer has the authority to take action to revoke all Permits to Operate for equipment issued to the owner or operator at the Major Stationary Source, as authorized in California Health and Safety Code Section 42307.

(6) Process of Challenging Rule Applicability

(A) No later than 90 days after a notice issued by the Executive Officer specifying a facility is subject to this rule for VOC and/or NO_x for an Applicable Ozone Standard, the owner or operator of a facility that elects to challenge the applicability shall provide evidence to the Executive Officer to demonstrate that the facility does not meet the definition of a Major Stationary Source.

(B) No later than 90 days before the payment due date of the CAA Nonattainment Fee for the initial Fee Assessment Year for the Applicable Ozone Standard, unless the owner or operator is notified that additional time is needed to investigate, the Executive Officer will:

- (i) Review the evidence submitted in subparagraph (d)(6)(A) and other available data; and
- (ii) Notify the owner or operator the final decision regarding the challenge submitted, pursuant to subparagraph (d)(6)(A), that the facility is subject to this rule or the facility is not subject to this rule.

(C) The owner or operator of a facility that challenges rule applicability pursuant to subparagraph (d)(6)(A) shall:

- (i) Remain subject to the rule unless and until the Executive Officer notifies the owner or operator that the facility is not subject to this rule; and
- (ii) Not be eligible to challenge rule applicability for VOC and/or NO_x for the Applicable Ozone Standard pursuant to subparagraph

(d)(6)(A), after the Executive Officer notifies the owner or operator that the facility is subject to this rule, pursuant to clause (d)(6)(B)(ii).

- (d) (7) Process of Challenging Baseline Emissions
 - (A) No later than 90 days after a notice issued by the Executive Officer specifying a Major Stationary Source’s assigned Baseline Emissions for VOC and/or NOx for an Applicable Ozone Standard, the owner or operator of the Major Stationary Source that elects to challenge the assigned Baseline Emissions shall provide evidence to the Executive Officer that supports adjustment of the assigned Baseline Emissions.
 - (B) No later than 90 days before the payment due date of the CAA Nonattainment Fee for the initial Fee Assessment Year for the Applicable Ozone Standard, unless the owner or operator is notified that additional time is needed to investigate, the Executive Officer will:
 - (i) Review the evidence submitted in subparagraph (d)(7)(A) and other available data; and
 - (ii) Notify the owner or operator the final decision regarding the challenge submitted, pursuant to subparagraph (d)(7)(A), to either retain the assigned Baseline Emissions or revise the Baseline Emissions.
 - (C) The owner or operator of a Major Stationary Source that challenges the Major Stationary Source’s assigned Baseline Emissions pursuant to subparagraph (d)(7)(A) shall:
 - (i) Remain subject to the applicable CAA Nonattainment Fee pursuant to paragraph (d)(2) using the assigned Baseline Emissions unless and until the Executive Officer provides notification for a revised Baseline Emission; and
 - (ii) Not be eligible to challenge the assigned Baseline Emissions for VOC and/or NOx for the Applicable Ozone Standard, pursuant to subparagraph (d)(7)(A), after the Executive Officer notifies the owner or operator of the determination that the assigned Baseline Emissions is retained or revised, pursuant to clause (d)(7)(B)(ii).
- (8) Alternative Baseline Emissions

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

- (d) (8) (A) The 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 criteria 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 180 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 Qualifying Emissions For Baseline, for each of the relevant ten (10) calendar years preceding and including the Attainment Year;
 - (ii) Identification of the twenty-four consecutive months when Actual Qualifying Emissions For Baseline represent typical operations:
 - (I) 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; or
 - (II) 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 or, with justification, the relevant five (5) calendar years prior to the aforementioned calendar years;
 - (iii) An analysis demonstrating that the Actual Qualifying Emissions For Baseline from the average of the twenty-four consecutive 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;

- (d) (8) (C) (v) The average Actual Qualifying Emissions For Baseline of the twenty-four months, identified in clause (d)(8)(C)(ii), 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 referenced in subparagraph (d)(8)(A); and
- (D) The Executive Officer has provided a written approval of the Alternative Baseline Emissions Request based on evaluation of the information provided by the Major Stationary Source.
- (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 rate equivalent to the applicable Plan Evaluation Fee for a Non-Title V Facility or Title V Facility, pursuant to Rule 306 – Plan Fees.
 - (B) No later than 60 days from the date the invoice is issued by the Executive Officer for the evaluation of the Alternative Baseline Emission Request, the owner or operator of a Major Stationary source shall submit full payment for the amount invoiced.
- (e) Exemptions
 - (1) Extension Year

The owner or operator of a Major Stationary Source shall not be required to remit the CAA Nonattainment Fee 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 the CAA Nonattainment Fee for an Applicable Ozone Standard once the Basin has been redesignated by the U.S. EPA to attainment for that Applicable Ozone Standard or, for a revoked Applicable Ozone Standard, if the U.S. EPA has terminated the anti-backsliding requirement associated with the CAA Nonattainment Fee for the Applicable Ozone Standard. The CAA Nonattainment Fee will cease in the same calendar year as the redesignation or termination.
 - (3) Enforceable Limitation through a Rule 317.1 Exclusion Plan

The owner or operator of a Major Stationary Source that elects to take a federally enforceable limitation such that the facility no longer meets the definition of a Major Stationary Source shall:

- (e) (3) (A) Submit a Rule 317.1 Exclusion Plan and pay fees specified in Rule 306 – Plan Fees;
- (B) Beginning the Fee Assessment Year after the calendar year in which the Executive Officer approves the Rule 317.1 Exclusion Plan, not be required to remit the applicable CAA Nonattainment Fee; and
- (C) Remit the applicable CAA Nonattainment Fee, pursuant to this rule, for all Fee Assessment Years for the Applicable Ozone Standard beginning the calendar year of exceedance of the emission limitation, if the emission limitation specified in the Rule 317.1 Exclusion Plan is exceeded.