SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Draft Staff Report
Proposed Rule 317.1 – Clean Air Act Nonattainment Fees for 8-Hour Ozone Standards
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EXECUTIVE SUMMARY

Section 185 was included in the 1990 amendments to the federal Clean Air Act (CAA) as a backstop provision for areas that are classified as "severe" or "extreme" and do not attain the national ambient air quality standards (NAAQS or standards) for ozone by their assigned attainment dates. Both volatile organic compounds (VOC) and nitrogen oxides (NOx) are precursors of ozone. Section 185 requires that major stationary sources of VOC and/or NOx in those nonattainment areas either reduce their emissions by 20% from a baseline amount or pay a CAA nonattainment fee. If a major stationary source does not reduce emissions below 20% from a baseline amount, a nonattainment fee will be assessed annually for each excess ton of VOC and for each excess ton of NOx emissions above their respective 80% thresholds. The fee would be collected from all major stationary sources for each calendar year beginning after the attainment date and shall continue until the area is redesignated as an attainment area for that ozone standard. Additionally, the United States Environmental Protection Agency (U.S. EPA) is required to collect the fees if the state implementation plan (SIP) does not meet the requirements or if a state is not administering and enforcing CAA section 185. As such, South Coast AQMD is required to promulgate a rule to fulfill the obligations of CAA section 185.

The objective of Proposed Rule 317.1 – Clean Air Act Nonattainment Fees for 8-Hour Ozone Standards (PR 317.1) is to implement CAA section 185 until the U.S. EPA declares that the nonattainment area is in attainment with the federal 8-hour standard for ozone. PR 317.1 establishes the regulatory pathway necessary to comply with the requirements of the CAA section 185 for the 1997 and 2008 8-hour ozone standards. The provisions of PR 317.1 would address when and how the CAA nonattainment fees would be assessed and collected.

CHAPTER 1 – BACKGROUND

INTRODUCTION

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1.1. INTRODUCTION

The 1990 amendments to the federal Clean Air Act (CAA) require the United States Environmental Protection Agency (U.S. EPA) to establish national ambient air quality standards (NAAQS or standards) for various air pollutants to be protective of human health and the environment. The CAA requires the U.S. EPA to designate areas across the nation as meeting (attainment) or not meeting (nonattainment) the standard.[1] As shown in Figure 1-1, areas not meeting the ozone standards are designated as nonattainment areas and are classified (e.g., "extreme," "severe," "serious," "moderate," or "marginal") based on their exceedance level for each standard.

Figure 1-1
U.S. EPA Nonattainment Area Designations

In 1979, the U.S. EPA approved a 1-hour ozone standard (120 ppb) that was replaced in 1997 with a more stringent 8-hour ozone standard (80 ppb). The U.S. EPA subsequently revoked the 1-hour standard entirely effective June 15, 2005. The 8-hour ozone standard was subsequently lowered to 75 ppb in 2008 and to 70 ppb in 2015. The U.S. EPA subsequently revoked the 1997 8-hour ozone standard (80 ppb), effective April 6, 2015, as it was inadequate for protecting public health, but the U.S. EPA still requires adherence due to anti-backsliding measures.

Even though, pursuant to 40 CFR 51.1105(d), CAA sections 181(b)(2) and 179(c) no longer obligate the U.S. EPA to determine whether an area has attained the revoked 1997 8-hour ozone standard by the area's attainment date, the U.S. EPA is still required to determine whether an area has attained a revoked standard by the area's attainment date. The purpose of U.S. EPA determination is to address the applicable requirements for nonattainment contingency measures and CAA section 185 fee programs, such as that of PR 317.1, solely for anti-backsliding purposes.[2, 3] For a revoked standard, an area may submit a request for redesignation accompanied by a maintenance plan, at which point the U.S. EPA would perform a "functional redesignation."

The jurisdiction of the South Coast AQMD covers (Figure 1-2) an area of approximately 10,743 square miles, consisting of the South Coast Air Basin, and the Riverside County portions of the Salton Sea Air Basin (SSAB, also referred to as Coachella Valley Planning Area or Coachella Valley) and the Mojave Desert Air Basin (MDAB). The boundaries of each air basin are defined in 40 Code of Federal Regulations Section 81.305.[4] The South Coast Air Basin, which is a sub-region of the South Coast AQMD's jurisdiction, is bounded by the Pacific Ocean to the west and the San Gabriel, San Bernardino, and San Jacinto mountains to the north and east. It includes all

[1] U.S. EPA. (2023, November 28). *Learn About Ozone Designations*. https://www.epa.gov/ozone-designations/learn-about-ozone-designations#process.
[2] 40 CFR 51.1105(d). https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-51/subpart-AA.
[3] CAA. (2023, November 29). *Part D - Plan Requirements for Nonattainment Areas*. https://www.epa.gov/clean-air-act-overview/clean-air-act-title-i-air-pollution-prevention-and-control-parts-through-d#id.
[4] U.S. EPA. *40 Code of Federal Regulations Section 81.305*. https://www.govinfo.gov/content/pkg/CFR-2014-title40-vol18/pdf/CFR-2014-title40-vol18-sec81-305.pdf.

of Orange County and major portions of Los Angeles, Riverside, and San Bernardino counties. The Coachella Valley (Riverside County portion of the SSAB) is a federal nonattainment area that is part of a sub-region of Riverside County in the SSAB that is bounded by the San Jacinto Mountains to the west and the eastern boundary of the Coachella Valley. The Riverside County portion of the MDAB within the South Coast AQMD jurisdiction is bounded by the eastern boundary of the Coachella Valley in the west and spans eastward to the Palo Verde Valley. The SSAB and MDAB were previously included in a single large basin called the Southeast Desert Air Basin (SEDAB).

Figure 1-2
Regions in South Coast AQMD's Jurisdiction

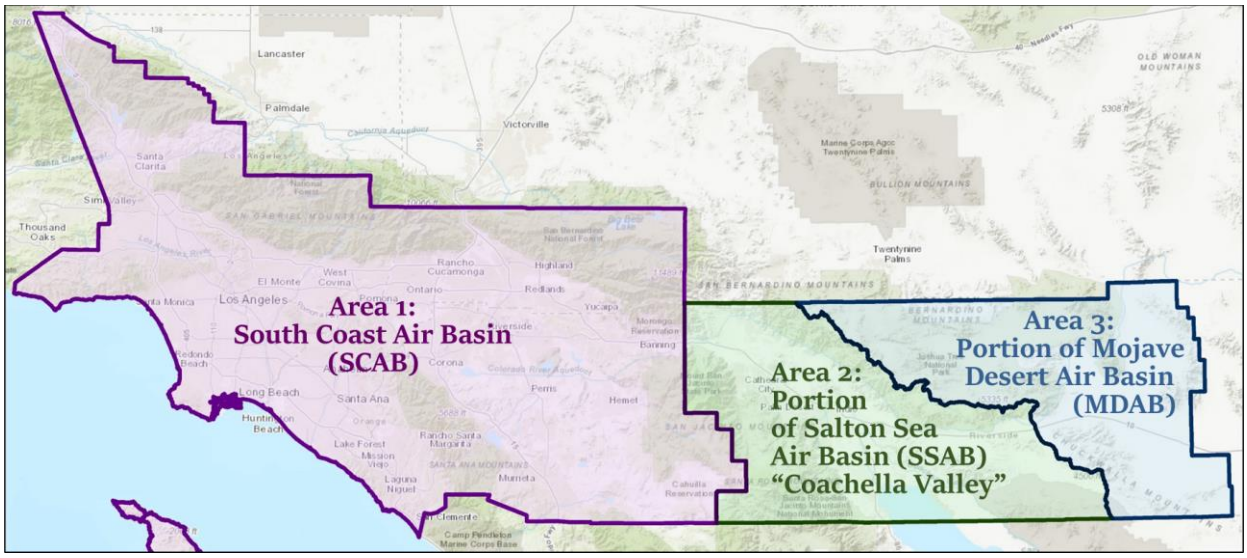


Table 1-1 shows the four U.S. EPA promulgated NAAQS for ozone as well as the attainment status and attainment deadline for each region in the South Coast AQMD's jurisdiction. As the Riverside County portion of the MDAB is not classified as nonattainment for the 8-hour ozone standards, it is excluded from Table 1-1.[5, 6, 7] For the 8-hour ozone standards, the South Coast Air Basin and Coachella Valley have been classified as "extreme" nonattainment for the 1997, 2008, and 2015 standards. As an "extreme" ozone nonattainment area for the 1997 8-hour ozone standard, the attainment deadline is June 15, 2024.

[5] U.S. EPA. (2024, February 29). Green Book. *8-Hour Ozone (1997) Designated Area/State Information with Design Values - NAAQS Revoked*. https://www3.epa.gov/airquality/greenbook/gbtcw.html.

[6] U.S. EPA. (2024, February 29). Green Book. *8-Hour Ozone (2008) Designated Area/State Information with Design Values*. https://www3.epa.gov/airquality/greenbook/hbtcw.html.

[7] U.S. EPA. (2024, February 29). Green Book. 8-Hour Ozone (2015) Designated Area/State Information with Design Values. https://www3.epa.gov/airquality/greenbook/jbtcw.html.

Table 1-1
U.S. EPA Ozone NAAQS Attainment Classifications

NAAQS Year	Averaging Time	NAAQS Concentration (ppb)	Revoked Effective	Region [1]	Attainment Status	Attainment Deadline
1979	1-Hour	120	06/15/2005	SCAB	Extreme Nonattainment	12/31/2022
				Coachella Valley	Attainment [2]	11/15/2007
1997	8-Hour	80	04/06/2015	SCAB	Extreme Nonattainment	06/15/2024
				Coachella Valley	Extreme Nonattainment	06/15/2024
2008	8-Hour	75	N/A	SCAB	Extreme Nonattainment	07/20/2032
				Coachella Valley	Extreme Nonattainment	07/20/2032
2015	8-Hour	70	N/A	SCAB	Extreme Nonattainment	08/03/2038
				Coachella Valley	Extreme Nonattainment [3]	08/03/2038 [3]

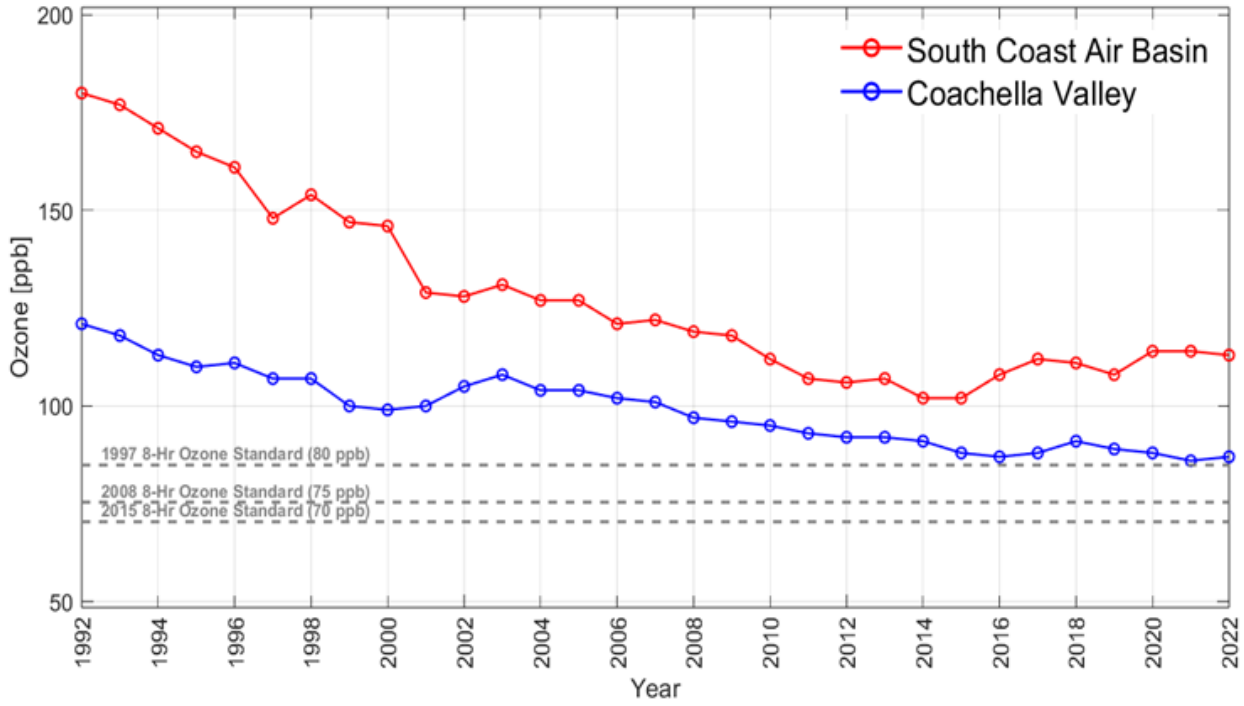
[1] South Coast AQMD portion of MDAB is designated as unclassifiable.
[2] U.S. EPA. (04/15/2015). Finding of Attainment in *80 FR 20166*. https://www.govinfo.gov/content/pkg/FR-2015-04-15/pdf/2015-08582.pdf.
[3] Voluntary reclassification to "extreme" nonattainment is pending U.S. EPA approval and would allow 5 more years to attain the standard.

1.2. OZONE TRENDS AND EMISSIONS SOURCES

1.2.1. Ozone Trends

Despite improvements in cleaner technology and strict regulations that have reduced ozone levels since their peak in the mid-twentieth century, ozone levels have remained high over the past decade. This trend is due to the changes in climate and other weather conditions such as the increase in hot stagnant days that can lead to the formation of ozone that have been experienced in recent years. Although the Coachella Valley has reached attainment with the 1-hour ozone standard, the Coachella Valley and SCAB have not yet reached attainment with any of the three 8-hour standards (Figure 1-3). Attainment with the 1997 8-hour standard is due by June 15, 2024 and current ozone concentrations impart that the South Coast AQMD will not be able to meet this deadline. Overall, air quality has improved and continued emissions reductions will be needed to further reduce ozone.

Figure 1-3
8-Hour Ozone Design Values[1]



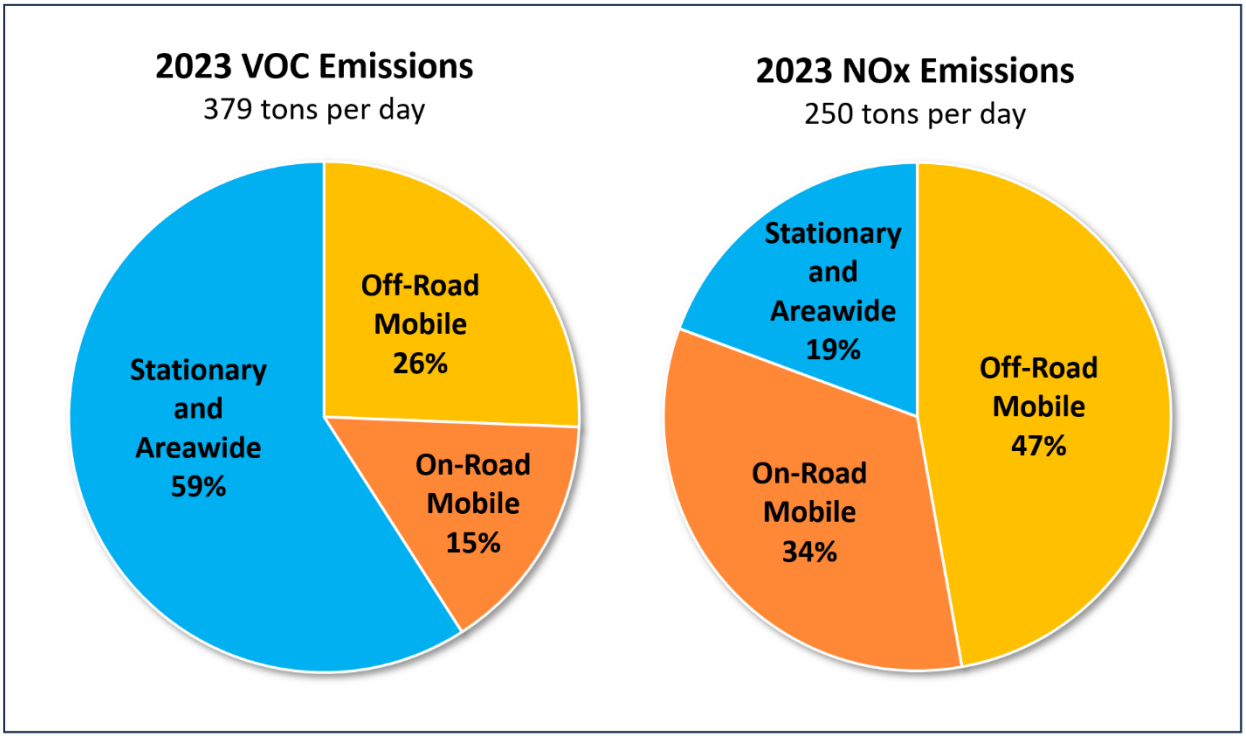
[1] Annual 4th highest 8-hour average concentration, averaged over 3 years.

1.2.2. Emissions Sources of Ozone

Unlike most other air pollutants, ground level ozone is not emitted directly into the atmosphere, but formed by the reaction of ozone precursors, nitrogen oxides (NOx) and volatile organic compounds (VOC), in the presence of sunlight. Figure 1-4 illustrates the calendar year 2023 emissions inventory for VOC and NOx. It shows that 59% of the VOC emissions originate from stationary and area sources while 41% of the VOC emissions originate from mobile sources. Additionally, 19% of the NOx emissions originate from stationary and area sources while 81% of the NOx emissions originate from mobile sources. To attain the 8-hour ozone standards, the 2022 Air Quality Management Plan (AQMP) demonstrates that the primary pollutants that must be controlled are NOx.[8] Although mobile sources are responsible for more than 80% of the of smog-forming pollution, the majority of South Coast AQMD's regulatory authority is for stationary sources with only limited authority to control mobile sources.

[8] South Coast Air Quality Management District. (2022, December 2). *2022 Air Quality Management Plan*, Pgs. ES-4 and 2-47. https://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2022-air-quality-management-plan/final-2022-aqmp/final-2022-aqmp.pdf?sfvrsn=16.

Figure 1-4
Source Contributions for Ozone Precursors



1.3. CLEAN AIR ACT SECTION 185 NONATTAINMENT FEES REQUIREMENTS

CAA section 185 requires each major stationary source of VOC and/or NOx, that is located in "severe" or "extreme" ozone nonattainment area where the area has failed to attain the NAAQS by the applicable attainment date, to either reduce their emissions by 20% from a baseline amount or pay a fee.[9] CAA nonattainment fees only apply to major stationary sources of NOx and/or VOC. A fee will only apply to a major stationary source of that particular pollutant. If a major stationary source is not a major stationary source of VOC or NOx, no CAA nonattainment fees will be required.

Major stationary sources are defined in CAA sections 182(d), or 182(e), and 182(f), as applicable.[10] Within South Coast AQMD's jurisdiction a major stationary source is any facility which emits or has the potential to emit the following amounts or more:

[9] CAA. Part D - Plan Requirements for Nonattainment Areas. *Section 185 [Section 7511d] Enforcement for Severe and Extreme ozone nonattainment areas for failure to attain*. https://www.govinfo.gov/content/pkg/USCODE-2013-title42/html/USCODE-2013-title42-chap85-subchapI-partD-subpart2-sec7511d.htm.

[10] CAA. (2023, November 29). Part D - Plan Requirements for Nonattainment Areas. https://www.epa.gov/clean-air-act-overview/clean-air-act-title-i-air-pollution-prevention-and-control-parts-through-d#id.

Table 1–2
Major Stationary Source Emissions Thresholds for VOC and NOx

Pollutant	SCAB (tons/year)	Riverside County Portion	
		SSAB (tons/year)	MDAB (tons/year)
Volatile Organic Compounds or Hydrocarbons (VOC)	10	10	100
Nitrogen Oxides (NOx)	10	10	100

The CAA section 185 nonattainment fees will be calculated separately for each standard the area has failed to attain. The fee shall be collected for each calendar year beginning after the attainment date and shall continue until the area is redesignated as an attainment area for that ozone standard. The fee does not go away when an ozone standard is revoked or a new ozone standard is promulgated. Additionally, the U.S. EPA is required to collect the fees if the state implementation plan (SIP) does not meet the requirements or if a state is not administering and enforcing CAA section 185.

1.3.1. Baseline Emissions

Pursuant to CAA section 185, a source's baseline emissions must be the lower of the amount of actual or allowable emissions under the permit applicable to the source (or if no permit has been issued for the attainment year, the amount of emissions allowed under the applicable implementation plan) during the attainment year. A facility will have separate facility baseline emissions for each applicable pollutant, VOC and/or NOx, for each of the applicable ozone standards the area has failed to attain.

1.3.2. Alternative Baseline Emissions

The CAA requires that the fee obligation be generally derived using a baseline amount based on applicable source emissions information in the attainment year. In some cases, the baseline emissions amount determined based on emissions in the attainment year may not be considered representative of the source's normal operating conditions and would not be appropriate for purposes of setting the CAA section 185 fee. In cases where a source's annual emissions are "irregular, cyclical, or otherwise vary significantly from year to year" the CAA provides that the U.S. EPA may issue guidance providing an acceptable alternative methodology for calculating an alternative baseline emissions amount.

On March 21, 2008, the U.S. EPA issued a memorandum outlining guidance for establishing alternative emissions baselines for areas that fail to attain the 1-hour ozone NAAQS by their attainment deadline.[11,12] The alternative methodology should provide an alternative baseline more

[11] For background on the 1-hour standard, its revocation and relationship to the section 185 fee provisions, see the following documents: 40 CFR 50.9(b); 69 FR 23951 at 23968 (April 30, 2004); 70 FR 44470 (August 3, 2005); and South Coast Air Quality Management Dist. v. EPA, 472 F.3d 882 (D.C. Cir. 2006).

[12] U.S. EPA. (2028, March 21). *Guidance on Establishing Emissions Baselines under Section 185 of the Clean Air Act (CAA) for Severe and Extreme Ozone Nonattainment Areas that Fail to Attain the 1-Hour Ozone NAAQ by their Attainment Memorandum*. https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/20080321_harnett_emissions_basline_185.pdf.

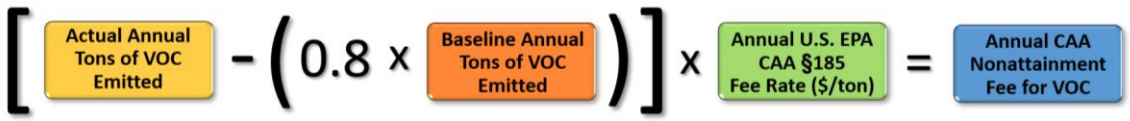
representative of a source's normal operations.[13] This alternative method is provided for States to use at their discretion and the adequacy of given source operating data for the selected time period is to be determined on a case-by-case basis by the reviewing authority.

The U.S. EPA has not issued alternative baseline guidance for the 8-hour ozone standards.

1.3.3. Fee Determination

The fee collected shall be the annual CAA section 185 fee rate for each major stationary source of VOC and/or NOx per ton of applicable VOC and/or NOx emitted by the source during the calendar year in excess of 80 percent of the baseline amount for that pollutant. In 1990, the fee rate was set as $5,000. The fee rate must be annually adjusted beginning in the year after 1990 for inflation based on the consumer price index (CPI) for the most recent calendar year on an annual basis.[14] The annual U.S. EPA fee rates are published annually in the *Clean Air Act Section 185 Fee Rates Memorandum*, and is $11,922 for calendar year 2023.[15]

Figure 1-5
Example Calculation of Annual CAA Section 185 Fee Amount for a Major Stationary Source of VOC Emissions for the 1997 8-Hour Ozone Standard



Hypothetical Facility Calculation for VOCs

- 2024 Baseline Annual Tons of VOCs = 15.00
- 2025 Annual Tons of VOCs = 13.00
- 2025 Annual U.S. EPA CAA §185 Fee Rate = $11,922.00/ton

Annual CAA Nonattainment Fee for VOC = [13.00 – (0.8 x 15.00)] x $11,922.00/ton = $11,922.00

The example in Figure 1-5 is for the annual CAA nonattainment fee for VOC from a hypothetical major stationary source of VOC emissions that was subject to the rule prior to the attainment year for the 1997 8-hour ozone standard. The annual CAA nonattainment fee rate used in the calculation should be for the year in which the actual emissions occurred. If the annual actual emissions of VOC emissions in tons are less than or equal to 80% of the baseline emissions of VOC emissions in tons, there shall be no VOC CAA nonattainment fee assessed for the fee assessment year. If a major stationary source is not a major stationary source for NOx emissions, there shall be no assessment of the CAA Nonattainment Fee for NOx emissions. The same methodology would be used to calculate the annual CAA nonattainment fee for NOx emissions. The total annual CAA nonattainment fees for a major stationary source of both VOC and NOx would be the summation

[13] The U.S. EPA guidance in Footnote 12 provides a discussion regarding normal conditions.
[14] See http://www.bls.gov/cpi/ which provides a tool for calculating adjustments based on the CPl.
[15] U.S. EPA. (2023, October 12). *U.S. EPA Clean Air Act Section 185 Fee Rates Memorandum*. https://www.epa.gov/system/files/documents/2023-10/memorandum_sec-185-penalty-fees-for-year-2023_10-12-2023.pdf.

of the annual CAA nonattainment fee for VOC emissions and the annual CAA nonattainment fee for NOx emissions.

The CAA nonattainment fees decrease as emissions decrease from the baseline emissions. The CAA nonattainment fees for a major stationary source of VOC or NOx would not be assessed for the fee assessment year or would cease for the applicable standard, in the following scenarios.:

CAA nonattainment fees would not be assessed for a fee assessment year when:

- Emissions are reduced by 20% from the baseline for the fee assessment year

CAA nonattainment fees would cease for the applicable standards when:

- Facility is no longer classified as a major stationary source of emissions,
- Area is redesignated as an attainment area for the ozone NAAQS, or
- U.S. EPA approves of an air district rule for CAA section 172(e) fee equivalency and the air district has adequate equivalency funds.

1.3.4. Alternative CAA Section 172(e) Fee Equivalency Approach

CAA section 172(e) requires the promulgation of requirements for an area which has not attained a relaxed standard. Such requirements shall provide for controls which are not less stringent than the controls applicable to areas designated nonattainment before such relaxation.[16] U.S. EPA issued a memorandum in 2010 noting that section 172(e) of the CAA allows for programs that are "not less stringent" than the section 185 program.[17] Fee equivalent and emissions equivalent programs were identified as possible approaches under a section 172(e) construct. Fee equivalency may be approvable under the 172(e) concept if the program "clearly raises at least as much revenue as otherwise required Section 185 fee program [and] if the proceeds are spent to pay for emissions reductions" that will further improve ozone air quality. As the goal of the fee equivalency approach is to achieve further reductions to attain the standard, it should not rely on emissions reductions which are already obligated through an applicable SIP and should only include emissions reductions which are surplus to all applicable SIPs.

1.4. IMPLEMENTATION OF CLEAN AIR ACT SECTION 185 NONATTAINMENT FEES REQUIREMENTS

1.4.1. Equivalency Approach for 1979 1-Hour Ozone Standard

The existing Rule 317 implements an alternative program to the section 185 fee program for the 1979 1-hour ozone standard. South Coast AQMD continues to submit *Rule 317 Fee Assessment Reconciliation Reports* for failure to demonstrate attainment with this standard by the prior statutory attainment deadline of 11/15/2010. The South Coast AQMD's aggregate CAA nonattainment fees for all major stationary sources has been fully offset by the fee equivalency account. The South Coast AQMD fee equivalency account consists of funds for emissions reductions projects that are surplus to any SIP obligations for the 1979 1-hour ozone standard. In

[16] CAA. Part D - Plan Requirements for Nonattainment Areas. *Section 172 [Section* 7502] *Nonattainment plan provisions in general*. https://www.govinfo.gov/content/pkg/USCODE-2013-title42/html/USCODE-2013-title42-chap85-subchapI-partD-subpart1-sec7502.htm.

[17] U.S. EPA. (2010, January 5). *Guidance on Developing Fee Programs Required by Clean Air Act Section 185 for the 1-Hour Ozone NAAQS Memorandum*. https://www.epa.gov/sites/default/files/2015-09/documents/1hour_ozone_nonattainment_guidance.pdf.

the event that the fee obligation is not fully offset, a backstop provision triggers adoption of a new rule for this standard. Rule 317 has been approved into the California's SIP.

1.4.2. Consideration of Equivalency Approach for 1997 Ozone Standard

The 2016 AQMP outlined the attainment strategies for the 1997 8-hour ozone standard, and it relied heavily on incentives to successfully achieve the emissions reductions needed to reach attainment with the 8-hour ozone NAAQS. CAA section 182(e)(5) emissions reductions account for a substantial portion of the NOx emissions reductions (approximately 200 tons per day) needed to reach attainment with the 8-hour ozone NAAQS. With such substantial emissions reduction obligations, adequate funding to utilize the fee equivalency approach to generate surplus emissions reductions for the 1997 8-hour standard is not available.

1.4.3. Consideration of Equivalency Approach for 2008 and 2015 Ozone Standard

The 2008 and 2015 8-hour ozone standards have not been revoked by the U.S. EPA. Consequently, the U.S. EPA would not allow use of this alternative approach for these standards and requires adherence to CAA section 185 though fee collection.

1.4.4. CAA Section 185 Compliance Pathway for 1997 and 2008 Ozone Standards

For the 1997 8-hour ozone standard, which is a revoked standard, the fee equivalency approach is allowed, but adequate funding to utilize the fee equivalency approach is not available. For the 2008 8-hour ozone standard, which is not a revoked standard, the South Coast AQMD may not utilize a fee equivalency approach. Consequently, CAA nonattainment fee collection is proposed for both of these 8-hour ozone standards. The summary of the ozone NAAQS and an overview of the compliance pathway is provided in Table 1-3.

Table 1-3
Ozone NAAQS Nonattainment Fee Summary and Compliance Pathway Overview

		Rule 317 – Clean Air Act Non-Attainment Fees	PR 317.1 – Clean Air Act Nonattainment Fees for 8-Hour Ozone Standards		TBD
		1979 Standard (revoked)	1997 Standard (revoked)	2008 Standard	2015 Standard
Section 185 Due Date		12/31/2000	Not Established	07/20/2022	08/03/2028
Baseline Year for Existing Major Stationary Source	South Coast	Fiscal Years 2005-06 and 2006-07	2024	2032	2038
	Coachella Valley	2007 [1]	2024	2032	2038 [2]
Calendar Year Nonattainment Fees Begin	South Coast	2011	2025	2033	2039
	Coachella Valley	2008[1]	2025	2033	2039 [2]
U.S. EPA Currently Allows District to Utilize CAA §172(e) Fee Equivalency Approach		Yes	Yes	No	No
South Coast AQMD Currently has Emissions Reductions Surplus to Applicable SIP		Yes	No	Not Applicable	Not Applicable

[1] U.S. EPA. (2015, April 15). Finding of Attainment in *80 FR 20166*. https://www.govinfo.gov/content/pkg/FR-2015-04-15/pdf/2015-08582.pdf.
[2] Voluntary reclassification to "extreme" nonattainment is pending U.S. EPA approval.

1.5. TITLE V PERMIT PROGRAM

Title V is a federal program designed to standardize air quality permits and the permitting process for any facility which emits, or has the potential to emit (PTE) of, a criteria pollutant or hazardous air pollutant at levels equal to or greater than the major source thresholds. South Coast AQMD uses U.S. EPA's definition of a major source (40 CFR Part 70, Section 70.2), which excludes certain emissions from being considered in the facility's PTE. In South Coast AQMD, this is implemented through Regulation XXX – Title V Permits, which issues federally enforceable permits to facilities required to be in the Title V permitting program. The South Coast AQMD Title V Program universe consists of approximately 320 facilities. These facilities are considered major sources of one or more pollutants described below:

- VOC
- NOx
- Oxides of sulfur (SOx)
- Carbon monoxide (CO)
- Particulate matter 10 micrometers or less in diameter (PM10)
- Single hazardous air pollutant
- Combination of hazardous air pollutants

While the Title V permit program is a good starting point in determining the facilities affected by PR 317.1, it is important to note that not all facilities in the Title V permit program are considered Major Stationary Sources, for purposes of PR 317.1, and not all Major Stationary Sources as defined in PR 317.1 have Title V permits. More details are provided in Chapter 2 when discussing the definition of a Major Stationary Source.

1.6. USE OF FUNDS

PR 317.1 is being developed to set the regulatory framework for collection of CAA nonattainment fees for the 1997 and 2008 ozone standards. The CAA does not provide direction on how these CAA nonattainment fees may be used. Throughout the rule development process, stakeholders have proposed some considerations for the use of funds that include, but are not limited to:

- Implementation and administration of PR 317.1
- Emission reduction projects for:
  - Environmental justice areas located near the major stationary sources,
  - AB 617 areas,
  - Residential sources,
  - Mobile sources, and
  - Stationary source facilities.

Overall, the CAA nonattainment fees collected by the South Coast AQMD would support South Coast AQMD's efforts to improve air quality. Staff anticipates:

- Substantial resources will be needed to properly implement PR 317.1,
- Significant uncertainty in the amount of the future fees the South Coast AQMD will receive and an inability to commit funds which are not guaranteed,

- The fees would not be potentially assessed until calendar year 2026 (for annual emissions in 2025) the 1997 8-hour ozone standard and calendar year 2034 (for annual emissions in 2033) for the 2008 8-hour ozone standard,
- Readily available technologies will continue to advance, and
- South Coast AQMD emissions reductions strategies will continuously be evolving.

For the aforementioned reasons, guidance on the spending of these potential funds would be determined in the future though a public process that would be separate from this rulemaking.

1.7. NEED FOR RULEMAKING

As shown in Table 1-3, a compliance deadline for rule development addressing the CAA nonattainment fees was not established for the revoked 1997 8-hour ozone standard, but a deadline of July 20, 2022 was established for the 2008 8-hour ozone standard. As the attainment deadline for the 1997 8-hour ozone standard is June 15, 2024, the CAA nonattainment fees for the standard will need to be assessed as early as calendar year 2026. Consequently, it is necessary to promptly adopt a rule demonstrating compliance with section 185 of the CAA for these two ozone standards.

In addition, the U.S. EPA is required to collect the fees if the SIP does not meet the requirements or if a state is not administering and enforcing CAA section 185. If the U.S. EPA makes a finding, disapproval, or determination of a failure to submit certain state implementation plans required for the ozone NAAQS, a federal sanction clock timeline is triggered. Pursuant to CAA section 179, if U.S. EPA has not affirmatively determined that the state has made a complete submission for the areas within 18 months from the effective date of the U.S. EPA making a finding of failure, disapproval, or determination, the U.S. EPA is to implement a "first sanction" which may be either 1 or 2 below:

1) Increased offset ratio:

   The ratio of emissions reductions to increased emissions shall be at least 2 to 1 for a new or modified source or emissions unit for which a permit is required.

2) Highway sanctions:

   The highway funding sanction will apply in accordance with CAA section 179(b)(1).

If the U.S. EPA has not affirmatively determined that the state has made a complete submission for the areas within 6 months from the "first sanction" being imposed, U.S. EPA is to impose the remaining sanction and may withhold "all or part of the grants for support of air pollution planning and control programs."[18] The CAA section 110(c) requires that no later than 24 months (2 years) after the effective date of the U.S. EPA making a finding of failure to submit or a disapproval, the U.S. EPA must promulgate a federal implementation plan (FIP).

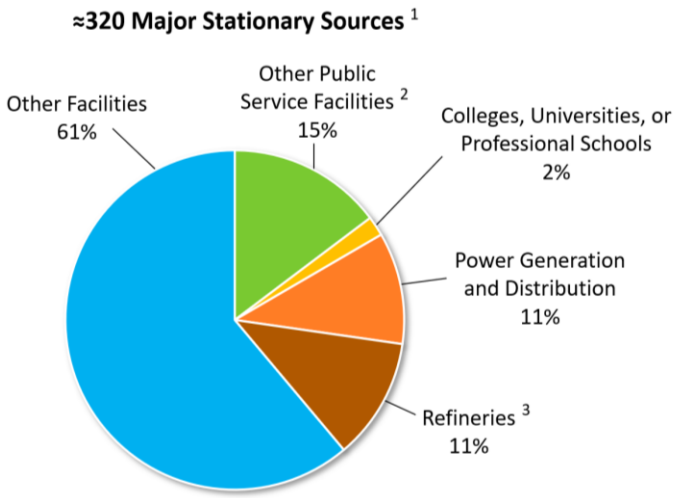
Rulemaking is needed to comply with the requirements of the CAA section 185 for the 1997 and 2008 8-hour ozone NAAQS. PR 317.1 provides a compliance pathway to meet such requirements, and will be submitted into the SIP to fulfill the CAA obligations.

[18] CAA. Part D - Plan Requirements for Nonattainment Areas. *Section 179 (a) [Section 7509] Sanctions and Consequences of Failure to Attain for State Failure*. https://www.govinfo.gov/content/pkg/USCODE-2013-title42/html/USCODE-2013-title42-chap85-subchapI-partD-subpart1-sec7509.htm.

1.8. AFFECTED INDUSTRIES/FACILITIES

As a conservative approach to identify potentially impacted facilities, all Title V Program facilities are assumed to be major stationary sources of VOC and NOx and subject to this rule. Based on the South Coast AQMD permit database, staff estimates that there are approximately 320 major stationary sources in the South Coast AQMD's jurisdiction that would potentially be affected by PR 317.1. Additionally, based on an assessment of the most recent available AER data (2021) there are an additional 14 facilities that reported emitting more than 10 tons of VOC and/or NOx, but are not part of the Title V program. Some of these were fugitive emissions, which may be excluded for purposes of determining applicability for PR 317.1. A preliminary assessment identified that out of the 14 facilities, 2 facilities may still meet the definition of Major Stationary Source under PR 317.1 after excluding fugitive emissions. The number of facilities that would be impacted by this rule would be due to amount emitted in 2024 and beyond. As the amount emitted vary from year to year, these 2 facilities were not included in the Draft Socioeconomic Impact Assessment. The potentially impacted facilities have been identified either through the Title V permitting program or AER data and are included in Appendix A. Staff performed an assessment to determine if any of the Title V facilities qualify as a small business, as defined in Rule 102 – Definition of Terms, and determined that none of these facilities meet the criteria of a small business.[19] Title V permitting program facilities have been categorized by industry and are presented in Figure 1-6 below.

Figure 1-6
Projected Calendar Year 2025 Title V Facility Universe



[1] As only those facilities that are a major stationary source of VOC and/or NOx will be potentially impacted by PR 317.1, staff estimates that the number of facilities impacted will be fewer than the estimate provided in this PR 317.1 Staff Report.
[2] Public service facilities include general medical and surgical hospitals; sewage treatment; solid waste landfill; water supply and irrigation systems; natural gas distribution; regulation and administration of communications, electric, gas, and other utilities; and other general government support.
[3] Refinery industries include petroleum refineries, petroleum bulk stations and terminals, pipeline transportation of refined petroleum products, and petroleum and petroleum products merchant wholesalers (except bulk stations and terminals).

[19] South Coast AQMD. (2020, January 10). *Rule 102 – Definition of Terms*. https://www.aqmd.gov/docs/default-source/rule-book/reg-i/rule-102-definition-of-terms.pdf?sfvrsn=4.

1.9. PUBLIC PROCESS

The development of PR 317.1 has been a regional, multi-agency effort that includes South Coast AQMD, CARB, and the U.S. EPA. A PR 317.1 Working Group was formed to provide the public and stakeholders an opportunity to discuss important details about the proposed rule and provide staff with input during the rule development process. The Working Group is composed of a wide range of representatives from businesses, environmental groups, public agencies, and consultants.

Staff has held two (2) Working Group Meetings conducted in a virtual format using Zoom. The meetings were held on November 7, 2023 and February 7, 2024. Staff also met with interested stakeholders to discuss the proposed rule. A Public Consultation Meeting was held on April 3, 2024 to present PR 317.1 and receive public comments. Written comments relating to PR 317.1 were accepted through April 17, 2024. The comments and responses to these comments are located in Appendix B – Responses to Comments of this Staff Report. PR 317.1 was also presented at the Stationary Source Committee held on April 19, 2024 and scheduled to be held on May 17, 2024.

The public hearing to consider adoption of PR 317.1 is scheduled for Friday, June 7, 2024, at 9 a.m. (subject to change) in the auditorium at the South Coast AQMD's Diamond Bar Headquarters and via a Zoom link that will be available in the June 7, 2024 Governing Board agenda, which will be released no later than 72 hours prior to the Public Hearing.

CHAPTER 2 - SUMMARY OF PROPOSED RULE 317.1

OVERVIEW OF PR 317.1

PROPOSED RULE 317.1

2.1. OVERVIEW OF PR 317.1

The objective of this rule is to implement CAA section 185 until the U.S. EPA declares that the nonattainment area is in attainment with the federal 8-hour standard for ozone. PR 317.1 accomplishes this by incorporating the requirements of CAA section 185 to establish the regulatory pathway necessary to comply with these requirements for the 1997 and 2008 8-hour ozone standards.

PR 317.1 would apply to a major stationary source of VOC and/or NOx and would become applicable if and when the U.S. EPA makes a final finding that a Basin has failed to attain the 1997 8-hour ozone standard or the 2008 8-hour ozone standard by attainment deadlines of June 15, 2024 (1997 standard) and July 20, 2032 (2008 standard). For the reasons specified in Chapter 1 within section "1.4.4. CAA Section 185 Compliance Pathway for 1997 and 2008 Ozone Standards" of this PR 317.1 Staff Report CAA nonattainment fee collection is proposed for both of these 8-hour ozone standards.

Pursuant to CAA section 185, if an applicable Major Stationary Source does not reduce emissions below 20% from their Baseline Emissions, a CAA Nonattainment Fee will be assessed annually for each excess ton of VOC and for each excess ton of NOx emissions above 80% of their Baseline Emissions. PR 317.1 includes the following subdivision rule structure for when and how the CAA Nonattainment Fees would be assessed and collected:

(a) Purpose
(b) Applicability
(c) Definitions
(d) Requirements
(e) Exemptions

In the event the U.S. EPA modifies the guidance for CAA section 185 (e.g., no longer requiring fee equivalency programs to be surplus to the applicable SIP, allowing fee equivalency for unrevoked standards, etc.), the South Coast AQMD may open PR 317.1 for amendment.

2.2. PROPOSED RULE 317.1

2.2.1. Purpose – Subdivision (a)

The purpose of PR 317.1 is to meet the CAA requirements for areas which are classified as "severe" or "extreme" that have failed to meet the federal 1997 or 2008 8-hour ozone standards until the U.S. EPA declares that the nonattainment area is in attainment with the applicable 8-hour ozone standard.

2.2.2. Applicability – Subdivision (b)

This rule shall become applicable to any Major Stationary Source of VOC and/or NOx in the Basin if and when the U.S. EPA makes a final finding that the Basin has failed to attain the 1997 or 2008 8-hour ozone NAAQS by the applicable Attainment Dates of June 15, 2024 (1997 standard) and July 20, 2032 (2008 standard). Additional information on U.S. EPA's determination on whether an area has attained the revoked 1997 8-hour ozone standard is located in the "1.1. Introduction" section of Chapter 1 of this PR 317.1 Staff Report. Further discussion and explanation of a Major Stationary Source is found later in the definition of a Major Stationary Source.

If the CAA Nonattainment Fee obligations for the 1997 and the 2008 8-hour ozone standards are in effect at the same time, a CAA Nonattainment Fee would be assessed for each 8-hour ozone standard.

2.2.3. Definitions – Subdivision (c)

PR 317.1 includes definitions for specific terms. These terms will be capitalized when they appear in the rule for easy identification of a defined term. Some of the definitions are based on definitions from existing South Coast AQMD rules with slight modifications, while other definitions are unique to PR 317.1. For certain key definitions, additional clarification is provided in this chapter below or in the specific provision where the definition is used. Please refer to PR 317.1 subdivision (c) for definitions used in the proposed rule.

- ACTUAL EMISSIONS

Actual Emissions are emissions at the Major Stationary Source which are required to be reported through the South Coast AQMD's Annual Emissions Reporting (AER) program pursuant to Rule 301 – Permitting and Associated Fees (Rule 301) paragraph (e)(2).[20, 21, 22] The VOC and NOx emissions reported in the AER program will be used to determine the Major Stationary Source's Actual Emissions for the respective calendar year. As described later under the definition of Major Stationary Source, a facility's Actual Emissions might include more emissions than those to be considered when determining PR 317.1 applicability. Annual Emissions should be reported pursuant to "South Coast Air Quality Management District. Annual Emissions Reporting, Reporting Tool - Frequently Asked Questions."[23] In anticipation of implementing PR 317.1, the Annual Emission Reporting Tool – Frequently Asked Questions will be updated prior to the initial Fee Assessment Year to incorporate the changes, including, but not limited to:

- List any additional emission categories that would be required to be reported from sources at the Major Stationary Source (e.g. portable equipment registered under the Statewide Portable Equipment Registration Program (PERP), clean air solvents, architectural coatings, and emissions from charbroilers and deep fat fryers operating by restaurants and eatery establishment directly servicing consumers)
- Clarification regarding the portion of emissions that would be required to be reported for a specified emission category for Major Stationary Sources.

Additional emissions categories or an additional portion of emissions categories are anticipated to be only assessed a CAA Nonattainment Fee instead of paying both an annual emissions fee and CAA Nonattainment Fee.

[20] South Coast AQMD. (2023, May 5). *Rule 301– Permitting and Associated Fees*. https://www.aqmd.gov/docs/default-source/rule-book/reg-iii/rule-301.pdf?sfvrsn=105.

[21] For additional information regarding AER, see the following website: *Annual Emissions Reporting Overview Website*. https://www.aqmd.gov/home/rules-compliance/compliance/annual-emission-reporting.

[22] For additional information on what to report through AER, see the following document: South Coast Air Quality Management District. *South Coast Air Quality Management District Annual Emissions Reporting, Reporting Tool - Frequently Asked Questions*. https://www.aqmd.gov/docs/default-source/planning/annual-emission-reporting/frequently-asked-questions.pdf?sfvrsn=6.

[23] South Coast Air Quality Management District. *South Coast Air Quality Management District Annual Emissions Reporting, Reporting Tool - Frequently Asked Questions*. https://www.aqmd.gov/docs/default-source/planning/annual-emission-reporting/frequently-asked-questions.pdf?sfvrsn=6.

- ACTUAL QUALIFYING EMISSIONS FOR BASELINE

The Actual Qualifying Emissions For Baseline may be used to determine the Baseline Emissions. The VOC and NOx emissions reported in the AER program would be used to determine the Major Stationary Source's Actual Emissions for the respective calendar year. The Actual Qualifying Emissions For Baseline would exclude from Actual Emissions any emissions that exceed limits specified in the permit(s), plan(s), applicable rule(s), and implementation plan(s), regardless of whether administratively allowed. Types of emissions which will be excluded are those due to exceeding a limit that may have been administratively allowed including, but are not limited to breakdown relief granted pursuant to Rule 430 – Breakdown Provision and variances granted by the South Coast AQMD Hearing Board. The intent of this restriction is to prevent the inflation of Baseline Emissions through exceedances of requirements. Additionally, certain Actual Emissions that were excluded for purposes of determining PR 317.1 applicability would be included when determining the Actual Qualifying Emissions For Baseline.

Example of Actual Qualifying Emissions For Baseline Evaluation:

The following is an example to calculate the Actual Qualifying Emissions For Baseline for a Major Stationary Source of NOx only:

- Actual Emissions: 20.00 tons of NOx
- Actual Emissions due to Violation of Permits: 0.50 tons of NOx
- Actual Emissions due to Violations of Rules: 0.75 tons of NOx
- Actual Emissions due to Violations of Implementation Plans: 0.10 tons of NOx
- Actual Emissions due to Breakdowns: 0.03 tons of NOx
- Actual Emissions due to Variances: 0.05 tons of NOx
- **Actual Qualifying Emissions For Baseline:**
  20.00 tons – 0.50 tons – 0.75 tons – 0.10 tons – 0.03 tons – 0.05 tons = 18.57 tons

If a facility is both a Major Stationary Source of NOx and a Major Stationary Source of VOCs, the above determination should be performed separately for both NOx and VOCs.

- ANNUAL CAA NONATTAINMENT FEE RATE

The Annual CAA Nonattainment Fee Rate is the amount assessed per ton of VOC and/or NOx that exceeds 80% of the applicable Baseline Emissions. In 1990, the CAA section 185(b)(2) annual U.S. EPA fee rate was set as $5,000 per ton of VOC and/or NOx emitted by the Major Stationary Source during the calendar year in excess of 80 percent of the Baseline Emissions. The fee must be annually adjusted beginning in the year after 1990 for inflation based on the consumer price index (CPI) for the most recent calendar year on an annual basis.[24] The U.S EPA fee rates are published annually in the *Clean Air Act Section 185 Fee Rates Memorandum*.[25]

[24] See http://www.bls.gov/cpi/ which provides a tool for calculating adjustments based on the CPl.

[25] U.S. EPA Clean Air Act Section 185 Fee Rates Memorandum: https://www.epa.gov/system/files/documents/2023-10/memorandum_sec-185-penalty-fees-for-year-2023_10-12-2023.pdf.

- BASELINE EMISSIONS

This definition is consistent with the CAA requirements of section 185 (b)(2). The method to calculate the Baseline Emissions depends on when the Major Stationary Source begins operating as a Major Stationary Source.

A Major Stationary Source will be assigned separate Baseline Emissions for each applicable pollutant, VOC and/or NOx, for each of the Applicable Ozone Standards the Basin has failed to attain. Table 2-1

summarizes which subparagraph of the Baseline Emissions definition is applicable based on when the Major Stationary Source began/begins operating.

Table 2-1
Baseline Emissions Applicable Rule Provision Based on when Major Stationary Source Begins Operation

Rule Provision	(c)(8)(A)	(c)(8)(B)	(c)(8)(C)
Began/begins operations as a Major Stationary Source	As of beginning of Attainment Year	During Attainment Year	After Attainment Year

For each Major Stationary Source, the Baseline Emissions for subparagraphs (c)(8)(A), (c)(8)(B), and (c)(8)(C) shall be the lower of clauses (i) or (ii).

PR 317.1 clauses (c)(8)(A)(i), (c)(8)(B)(i), and (c)(8)(C)(i) use the Actual Qualifying Emissions For Baseline which do not exceed the allowable emissions to determine the Baseline Emissions. The Actual Qualifying Emissions For Baseline used to calculate the Baseline Emissions, as set forth in these clauses, will be limited to only include emissions allowed through permit(s), plan(s), applicable rule(s), and implementation plan(s). The intent of this restriction is to prevent the inflation of Baseline Emissions through exceedances of requirements. These Baseline Emissions would include fugitive emissions from both permitted and unpermitted sources. An example of a permitted source of fugitive emissions is a storage tank, while examples of unpermitted sources are flanges and piping that connect storage tanks. Depending on when the Major Stationary Source began operations as a Major Stationary Source, the facility may also extrapolate the Actual Qualifying Emissions For Baseline over the entire initial year of operation as a Major Stationary Source.

PR 317.1 clauses (c)(8)(A)(ii), (c)(8)(B)(ii), and (c)(8)(C)(ii) are calculated based on the amount of allowable emissions. The allowable emissions used to calculate the Baseline Emissions, as set forth in these clauses, include emissions allowed through permit(s), plan(s), applicable rule(s), and implementation plan(s).

The following is an example to determine a Major Stationary Source's Baseline Emissions.

- Facility has 21 units, each permitted to emit 1.00 ton
- The Actual Emissions for the year when Baseline Emissions are established is 12 tons with:
  - 20 units report emitting 0.50 tons
  - 1 unit report emitting 2.00 tons (exceeding the permit limit of 1.00 ton)
- Baseline Emissions are based on either the PTE or Actual Qualifying Emissions for Baseline, whichever is lower:

- Potential to Emit: 21 tons
- Actual Qualifying Emissions for Baseline: 20 X 0.50 tons + 1.00 ton (cannot exceed what is allowed beyond the permit limit) = 11.00 tons
- Baseline Emissions would be 11.00 tons.

For the purposes of Baseline Emissions used to calculate the CAA Nonattainment Fees, adding existing equipment to a facility shall be evaluated the same as adding new equipment to an existing Major Stationary Source. If an existing Major Stationary Source adds new equipment or modifies their permit(s) to allow a higher throughput, the Major Stationary Source's Baseline Emissions will not change to reflect the increase in PTE or increase in Actual Emissions from this new equipment or increased throughput. The Baseline Emissions determination process will include the same considerations as determining a Facility under Rule 1302(p). If a facility that is a non-major stationary source merges with a Major Stationary Source located on contiguous properties such that the two facilities are considered one facility, the new Major Stationary Source (consisting of the non-major stationary source and original Major Stationary Source) shall retain the Baseline Emissions from the original Major Stationary Source and no new Baseline Emissions will be calculated. If a Major Stationary Source goes through a change of ownership process to incorporate another Major Stationary Source, the Baseline Emissions shall be that of the Major Stationary Source which is going through the change of ownership process to incorporate the other Major Stationary Source.

Example of Baseline Emissions Evaluation:

For example, during the attainment year, a new facility that is a Major Stationary Source due to PTE obtains permits in July for several boilers that have a PTE of 25 tons of NOx per year. The facility turns on the equipment and begins operating the boilers in December and reports 2 tons for the month of December. Since it is a brand-new facility, no emissions have been generated from January to November and the Actual Emissions from these boilers would be 2 tons for the calendar year. If the Major Stationary Source is able to demonstrate operational difference between operating as a Major Stationary Source and prior to operating as a Major Stationary Source, it is allowed to extrapolate the data from December. Extrapolating the reported data for the entire year would result in 24 tons (12 months × 2 tons) of adjusted emissions. As Baseline Emissions are based on the lower of either the Actual Qualifying Emissions For Baseline (24 tons) or the allowed emissions (25 tons) during the calendar year, the facility's Baseline Emissions would be 24 tons.

- MAJOR STATIONARY SOURCE

A Major Stationary Source is as described in CAA sections 182(d), 182(e), or 182(f), as applicable. The major stationary source thresholds established by these CAA requirements are summarized below:

- CAA section 182(d): Establishes a major stationary source threshold for areas classified as "severe" as a facility that emits or has the PTE of at least 25 tons per year of VOCs.
- CAA section 182 (e): Establishes a major stationary source threshold for areas classified as "extreme" as a facility that emits or has the PTE of at least 10 tons per year of VOCs.
- CAA section 182 (f): Establishes that the major stationary source threshold for sources of VOC shall also apply to sources of NOx.

Unlike other rules where the applicability is based on static characteristics, such as processes or equipment, facilities may modify their PTE or reduce emissions to no longer be subject to PR 317.1. As there is no set list of facilities that meet the definition of a Major Stationary Source per the respective sections of the CAA, South Coast AQMD will initially be using established programs to identify potential Major Stationary Sources for PR 317.1. The two programs that will be used are 1) Title V permitting program and 2) AER program.

As described in section "1.5. Title V Permit Program" of this Staff Report, a facility's permits may have a PTE for VOC or NOx that would qualify the facility as a Major Stationary Source pursuant to CAA sections 182(d), 182(e), or 182(f) and therefore these facilities would be subject to PR 317.1. The types of emissions which are not to be considered in determining whether a facility exceeds an applicable threshold were established based closely on South Coast AQMD's Title V permit program as described in the definition of Reported Emissions within Rule 3000 – General (Rule 3000). Under PR 317.1, the types of emissions that are not to be considered in determining whether a facility emits or has the PTE equal to or greater than the applicable major stationary source threshold are as follows:

(A) Fugitive emissions of VOC or NOx 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:

- Motor vehicle or vehicle as defined by the California Vehicle Code as it exists on [Date of Rule Adoption]
- Marine vessel as defined by Health and Safety Code Section 39037.1 as it exists on [Date of Rule Adoption].
- 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.
- Equipment that is mounted on a vehicle, motor vehicle or marine vessel if such equipment does not emit air contaminants.
- Asphalt pavement heaters (which are any mobile equipment used for the purposes of road maintenance and new road construction)
- 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.[26]

[26] The Rule 3000 definition of Reported Emissions excludes "[e]missions from non-road engines, as defined by 40 CFR Part 89, Section 89.2, manufactured on or after November 15, 1990 or another date subsequently determined by EPA" while the PR 317.1 definition of Major Stationary Source excludes "[e]missions from non-road engines, as defined by 40 CFR Part 103989, Section 891039.2801, manufactured on or after November 15, 1990 or another date subsequently determined by U.S. EPA." 40 CFR Part 89, Section 89.2 was updated to 40 CFR Part 103989, Section 891039.2801. The new section houses the emissions standards for non-road engines that were formally part of 40 CFR Part 89, Section 89.2. The U.S. EPA explanation for relocating these standards is included at 86 Federal Register 34308, 34342 (June 29, 2021). The date of manufacture is omitted as it is no longer part of U.S. EPA's definition.

This list of exclusions applies to the PTE as well as the facility's emissions. The emissions categories used to establish Major Stationary Source applicability are not the same as those used to establish Actual Emissions, Actual Qualifying Emissions for Baseline, Baseline Emissions, or Alternative Baseline Emissions and are not used in the calculation of the CAA Nonattainment Fees. The AER program reported emissions are more comprehensive than the emissions that need to be considered for PR 317.1 applicability. For example, fugitive emissions are reported in the AER program but fugitive emissions, except if the source belongs to one of the categories listed in 40 CFR Part 70, Section 70.2, would be excluded from PR 317.1 emissions for applicability purposes. It is important for facilities to review the amount of VOC and/or NOx emitted and the PTE of VOC and/or NOx for applicability in PR 317.1 to confirm if they are subject to this rule and if they will be required to pay CAA Nonattainment Fees. In addition, as described earlier in Chapter 2, the AER program requires the annual reporting of emissions that include NOx and VOC from facilities that exceed specific reporting thresholds. The AER program requires facilities to report all emissions, including those that would be exempt or excluded from a facility's PTE. The reporting threshold for NOx and VOC is four tons per year, which is lower than the Major Stationary Source threshold specified in the CAA. Further discussion on emissions reported through the AER program is located in the definition of Actual Emissions.

Staff will review facilities with a Title V permit and data submitted via the AER program as a starting point to identify facilities subject to PR 317.1. This method would ensure that facilities aren't overlooked. Owners or operators of facilities should review the facility's emissions or PTE to confirm whether the facility is subject to PR 317.1.

A Major Stationary Source as defined in PR 317.1 may not be required to pay CAA Nonattainment Fees under the following scenario:

- For a Fee Assessment Year with 20% Emissions Reductions from Baseline:
  - Emissions are reduced by 20% from the Baseline Emissions or Alternative Baseline Emissions, as applicable, for the fee assessment year.

A non-major stationary source is not subject to PR 317.1. A facility may demonstrate to the satisfaction of the Executive Officer that the facility's VOC and/or NOx emissions, as applicable, have been limited to below the applicable major source threshold by accepting an enforceable condition in an enforceable permit(s) or plan(s). As the CAA Nonattainment Fee is determined on a calendar year basis, a facility that is a Major Stationary Source for any time of the year will be considered as a Major Stationary Source for the Fee Assessment Year. Paragraph (e)(3) describes how facilities can submit a Rule 317.1 Exclusion Plan to take an enforceable limit to no longer be subject to CAA Nonattainment Fee for PR 317.1 purposes.

Example of Major Stationary Source Applicability Evaluation:

The following is an example to evaluate if a facility is a Major Stationary Source of VOC only:

- PTE: 8.00 tons of VOC
- Actual Emissions: 15.00 tons of VOC, which includes 6.00 tons of fugitive emissions that should be excluded from determining applicability
- **Major Stationary Source Evaluation for PTE:**
  8.00 tons (below 10 tons Major Stationary Source threshold)
- **Major Stationary Source Evaluation for Amount Emitted:**
  15.00 tons – 6.00 tons = 9.00 tons (below 10 tons Major Stationary Source threshold)
- **Conclusion: The facility is a not Major Stationary Source pursuant to PR 317.1**

The evaluation must be done for both PTE and amount emitted. If a facility is not below the applicable Major Stationary Source threshold for both PTE and amount emitted, then the facility is a Major Stationary Source pursuant to PR 317.1. If a facility is being evaluated for being both a Major Stationary Source of NOx and a Major Stationary Source of VOCs, the above determination should be performed separately for both NOx and VOCs.

2.2.4. Requirements – Subdivision (d)

Subdivision (d) specifies the requirements for the owner or operator of a Major Stationary Source.

2.2.4.1. Fee Assessment Requirements – Paragraph (d)(1)

Paragraph (d)(1) specifies that the Executive Officer will assess the CAA Nonattainment Fees for each Applicable Ozone Standard. The CAA Nonattainment Fees would be assessed in years subsequent to the year used to establish the Baseline Emissions.

Example of Fee Assessment Requirements:

An example of each type of Major Stationary Source rule applicability is diagramed for the 1997 8-hour ozone standard in Table 2-2 below.

Table 2-2
1997 8-Hour Ozone NAAQS Assessment Years

Calendar Year	Begins Operation as a Major Stationary Source:		
	Prior to Beginning of Attainment Year	During Attainment Year	After Attainment Year (e.g., Calendar Year 2026)
	Rule Clause (d)(1)(A)(i)	Rule Clause (d)(1)(A)(ii)	Rule Paragraph (d)(1)(B)
2024	Attainment Year Baseline Year	Attainment Year Baseline Year	Attainment Year
2025	Assessment Year [1]	Assessment Year [1]	N/A
2026	Assessment Year	Assessment Year	Baseline Year
2027	Assessment Year	Assessment Year	Assessment Year [2]
2028	Assessment Year	Assessment Year	Assessment Year

[1] For a Major Stationary Source that begins operating as a Major Stationary Source prior to or during the Attainment Year, the fee assessment will begin the calendar year after the Attainment Year.
[2] For a Major Stationary Source that begins operation after the Attainment Year, the fee assessment will begin the calendar year after the calendar year used to establish the Baseline Emissions.

2.2.4.2. Fee Determination Requirements – Paragraph (d)(2)

Paragraph (d)(2) establishes the calculation methodology for the CAA Nonattainment Fees. This calculation is consistent with the CAA requirements of section 185. The Annual CAA Nonattainment Fee Rate used in the calculation would be for the year when the Actual Emissions occurred and is adjusted annually for inflation based on the CPI. If the annual Actual Emissions of VOC and/or NOx emissions in tons are less than or equal to 80% of the Baseline Emissions of VOC and or NOx emissions in tons, there would be no VOC and/or NOx CAA Nonattainment Fee assessed for that pollutant in the Fee Assessment Year. A Major Stationary Source that is not a Major Stationary Source of VOC and/or NOx emissions would not be assessed the CAA Nonattainment Fee for that particular pollutant. A facility which was a Major Stationary Source in the Fee Assessment Year, is required to pay CAA Nonattainment Fees for the year in which they met the PR 317.1 definition of a Major Stationary Source. The total annual CAA Nonattainment Fees for a Major Stationary Source of both VOC and NOx emissions would be the summation of the annual CAA Nonattainment Fee for VOC emissions and the annual CAA Nonattainment Fee for NOx emissions.

The fee is based on Actual Emissions, rounded to the hundredth ton (0.01 ton), that exceeds 80% of their Baseline Emissions. This avoids over or under assessing fees by rounding to the nearest whole ton. This approach is also consistent with the determination of Basin-wide debits for facilities in the annual Rule 317 Fee Equivalency Account Reconciliation Report. Additionally, this approach is consistent with the determination of AER fees where rounding is performed to the hundredth ton at the very end of the summation for a given device (emission source) and at the end for fee calculation.

Example of Fee Determination Requirements:

The following is an example to calculate the annual CAA Nonattainment Fee for a Major Stationary Source of NOx only:

- Baseline Emissions: 20.00 tons of NOx emissions
- 80% of Baseline Emissions: 16.00 tons of NOx emissions
- NOx Actual Emissions in Fee Assessment Year: 23.40 tons of NOx
- Emissions subject to CAA Nonattainment Fee: 23.40 tons – 16.00 tons = 7.40 tons of NOx
- **CAA Nonattainment Fee: 7.40 tons × $11,922.00/ton = $88,222.80**

If a facility is both a Major Stationary Source of NOx and a Major Stationary Source of VOCs, the above determination should be performed separately for both NOx and VOCs.

2.2.4.3. Annual Reporting and Payment Requirements – Paragraph (d)(3)

Subparagraph (d)(3)(A) requires the reporting of all Actual Emissions annually. This is also required pursuant to Rule 301 paragraph (e)(2) which requires all Major Stationary Sources of VOC and/or NOx, as defined in Rule 317 and other rule(s) implementing section 185 of the CAA, to annually report and pay the appropriate CAA Nonattainment Fees. The AER for the Major Stationary Sources will be used to determine the CAA Nonattainment Fee.

Subparagraph (d)(3)(B) requires the payment of the appropriate CAA Nonattainment Fees for each applicable Fee Assessment Year. This includes the years prior to the U.S. EPA making a final finding that a Basin has failed to attain the Applicable Ozone standard if such finding is delayed.

An example of this requirement is depicted in Figure 2-1 of the next section (2.2.4.4. Payment Due Date Requirements – Paragraph [d][4]) to show that CAA Nonattainment Fee applies to years prior to the U.S. EPA making a finding of failure and after the Attainment Year. A calendar year would not be applicable if it was a calendar year prior to when the facility met the definition of a Major Stationary Source in this rule. A calendar year when a change of ownership occurs would be an applicable year to be assessed CAA Nonattainment Fees.

The owner or operator of the Major Stationary Source shall submit all Actual Emission reports and CAA Nonattainment Fee payment submittals required, regardless of whether the owner or operator received an invoice from the Executive Officer.

2.2.4.4. Payment Due Date Requirements – Paragraph (d)(4)

Paragraph (d)(4) specifies the payment due dates for CAA Nonattainment Fees.

The initial invoice will, at a minimum, bill for the initial year's CAA Nonattainment Fee, however, multiple subsequent years may be included if there is a delay in the finding of failure issued by the U.S. EPA. The initial invoice due date for the applicable standard is 365 days from the date the invoice is issued to provide the Major Stationary Source adequate time to incorporate the initial CAA Nonattainment Fees for the applicable standard into their annual budget.

Subsequent invoices will bill for the subsequent year's CAA Nonattainment Fees. Subsequent invoices are required to be paid no later than December 15th of the year of invoice issuance or no later than 75 days from the date the invoice was issued, whichever is later. After the initial year, a Major Stationary Source should be able to better estimate their future CAA Nonattainment Fees for incorporation into their annual budgets. Based on conversations with stakeholders, prior CAA Nonattainment Fees would be used to estimate future CAA Nonattainment Fees, which is similar to the practice for budgeting for AER emissions fees.

In the event the invoice is not received by the owner or operator, but the invoice was issued by the Executive Officer, the owner or operator would still be subject to the payment due date specified in subparagraph (d)(4)(A). Examples of why an invoice would not be received include: change in responsible official, change in mailing location, or invoice being lost in the mail. For the first two examples, the facility is responsible for notifying the District of the change.

If the Executive Officer has not issued an invoice for the CAA Nonattainment Fees, the owner or operator of the Major Stationary Source would be required to submit payment on December 15th of the second year following either the calendar year when the U.S. EPA makes a final finding that the Basin has failed to attain the Applicable Ozone Standard or the Fee Assessment Year for the Applicable Ozone Standard, whichever is later. This requirement provides assurance that, in the event invoices are not issued, the CAA Nonattainment Fees will still be collected by the South Coast AQMD.

Example of Payment Due Date Requirements:

An example of a Major Stationary Source's reporting and invoice payment for the 1997 8-hour ozone standard from calendar years 2024 through 2030 is provided in Figure 2-1 below. The Attainment Year is 2024 for the 1997 8-hour ozone standard and the Major Stationary Source's Baseline Emissions would be established in 2024. In this example, the U.S. EPA will make a final finding of failure in calendar year 2027. The full payment of the initial invoice, issued on 11/1/27, would be due no later than 365 days later or 10/31/28. Full payment of subsequent invoices would be due either 75 days from issuance or December 15, whichever is later. In this example, years

2028 and 2029 had invoices issued more than 75 days earlier than December 15, therefore, the respective due dates are December 15. For the year 2030, the invoice is issued less than 75 days earlier than December 15, so the due date is 75 days after the date when the invoice was issued or December 31.

Figure 2-1
1997 8-Hour Ozone NAAQS Reporting and Payment for Hypothetical Major Stationary Source

Year	2026	2027	2028	2029	2030
Submit AER for Year	2025	2026	2027	2028	2029
U.S. EPA Final Finding of Failure		√			
Invoice for Years		2025, 2026	2027	2028	2029
Invoice Issuance Date		11/01	09/01	07/01	10/17
Invoice Due Date			10/31[1], 12/15[2]	12/15[2]	12/31[2]
Fee Collection for Year(s)			2025, 2026, 2027	2028	2029

[1] +365 days from issuance.
[2] Later of 12/15 or +75 days from issuance.

2.2.4.5. Failure to Pay Fees Requirements – Paragraph (d)(5)

Paragraph (d)(5) specifies that should one-hundred twenty (120) days lapse after the invoice due date, pursuant to the authority of in Health and Safety Code Section 42307, the Executive Officer has the authority to take action to revoke all Permits to Operate for equipment on the premises.[27] In order for the South Coast AQMD to comply with CAA section 185, it is essential that the CAA Nonattainment Fees are administered and enforced. This requirement promotes compliance with payment of the CAA Nonattainment Fees. A similar requirement exists in Rule 301 to help ensure that all emission fees and surcharges are paid in full for the AER submittals.

2.2.4.6. Process of Challenging Rule Applicability – Paragraph (d)(6)

As described earlier in Chapter 2, the applicability of this rule is dependent on the facility's emissions, either PTE or emissions reported through the South Coast AQMD's AER program. Staff will review facilities with a Title V Program permit and data submitted via the AER program to identify potential facilities subject to PR 317.1. As a courtesy, after identification, the Executive Officer may send out notifications to owners or operators of facilities on the applicability to PR 317.1. Paragraph (d)(6) specifies that, when the Executive Officer sends notification that the facility is subject to Rule 317.1, the owner or operator of the facility shall have no later than 90 days from the notice issue date to challenge the rule applicability. This notice will allow the facility the opportunity to provide any additional information which may be relevant to this determination. The Executive Officer will review evidence and notify the facility of the rule applicability no later than 90 days before the payment due date of the CAA Nonattainment Fees for the initial Fee Assessment Year for the Applicable Ozone Standard, unless the Executive Officer informs the owner or operator of the facility that more time is needed. The facility shall remain subject to PR

[27] California Code. *Health and Safety Code Section 42307*. https://codes.findlaw.com/ca/health-and-safety-code/hsc-sect-42307/.

317.1 until the Executive Office has provided notification that they are no longer subject to PR 317.1. Additionally, once the Executive Officer has made a determination on the challenge that the facility meets the definition of a Major Stationary Source and is subject to PR 317.1, the Major Stationary Source shall not be eligible to challenge the rule applicability again. Failure to receive notice of rule applicability does not absolve the owner or operator of a Major Stationary Source of the duty to pay CAA Nonattainment Fees. A notice not contested by the applicable date shall be considered confirmed.

2.2.4.7. Process of Challenging of Baseline Emissions – Paragraph (d)(7)

Paragraph (d)(7) specifies that, when the Executive Officer sends notification to the Major Stationary Source specifying the assigned Baseline Emissions, the owner or operator of the Major Stationary Source shall have no later than 90 days from the notice issue date to challenge the Baseline Emissions. As a courtesy to the Major Stationary Sources, the Executive Office may send out notifications of their assigned Baseline Emissions. This notice will allow the Major Stationary Source the opportunity to provide any additional information which may be relevant to this determination. The Executive Officer will review evidence and notify the facility of their Baseline Emissions no later than 90 days before the payment due date of the CAA Nonattainment Fees for the initial Fee Assessment Year for the Applicable Ozone Standard, unless the Executive Officer informs the owner or operator of the facility that more time is needed. The Major Stationary Source shall use the originally assigned Baseline Emissions until the Executive Office has provided notification of a revised Baseline Emissions. Additionally, the Major Stationary Source shall not be eligible to challenge the assigned Baseline Emissions after the Executive Officer has made a determination on the challenge to retain or revise the original Baseline Emissions. Failure to receive notice of Baseline Emissions, does not absolve the owner or operator of a Major Stationary Source of the duty to pay CAA Nonattainment Fees. A notice not contested by the applicable date shall be considered confirmed.

This process is independent from the process to seek Alternative Baseline Emissions. For Major Stationary Sources that seek to use Alternative Baseline Emissions, please refer to the next section.

2.2.4.8. Alternative Baseline Emissions Requirements – Paragraph (d)(8)

Paragraph (d)(8) establishes the requirements for a Major Stationary Source to use Alternative Baseline Emissions instead of the applicable Baseline Emissions to determine their CAA Nonattainment Fees. The CAA requires that the fee obligation is generally derived using a Baseline Emissions amount based on applicable source emissions information in the attainment year. In some cases, the Baseline Emissions amount, when calculated in the Attainment Year as required pursuant to under CAA section 185(b)(2), may not be considered representative of the source's normal operating conditions and not appropriate for purposes of setting the CAA Nonattainment Fee. In cases where a source's annual emissions are "irregular, cyclical, or otherwise vary significantly from year to year" the CAA provides that the U.S. EPA may issue guidance providing an acceptable alternative methodology for calculating an Alternative Baseline Emissions amount. Subparagraphs (d)(8)(A) through (D) specify the conditional requirements to be met to use Alternative Baseline Emissions. If all applicable requirements are not met, Alternative Baseline Emissions cannot be used.

This is a tentative pathway and is subject to U.S. EPA review and approval. Subparagraph (d)(8)(A) requires that U.S. EPA must approve of an alternative methodology that is consistent with the methodology or requirements specified in subparagraphs (d)(8)(B) through (D). As

discussed in Chapter 1, the U.S. EPA had approved an alternative methodology by issuing guidance for establishing Alternative Baseline Emissions for areas that fail to the attain the 1-hour ozone standard by their attainment deadline. However, this approach has not been approved for either of the 8-hour ozone standards. There is a need for an Alternative Baseline Emissions option and a request has been submitted with the U.S. EPA to allow Alternative Baseline Emissions for the 8-hour ozone standards.

Subparagraph (d)(8)(C) requires the submittal of information to demonstrate that a Major Stationary Source meets the criteria of qualifying to use Alternative Baseline Emissions in the form of an Alternative Baseline Emission Request. The requirements for Alternative Baseline Emissions Requests were incorporated and are consistent with prior U.S. EPA issued guidance for establishing alternative emissions baselines. The relevant years used for calculation of the Alternative Baseline Emissions shall only consist of years in which the facility was a Major Stationary Source pursuant to PR 317.1. The Executive Officer may only authorize the use of Alternative Baseline Emissions for calculation of a Major Stationary Source's CAA Nonattainment Fees if the U.S. EPA has issued guidance authorizing methodology for determining the Alternative Baseline Emissions which is consistent with the requirements of PR 317.1 subparagraph (d)(8)(C). Additionally, only a Major Stationary Source which was a Major Stationary Source during the attainment year may be assigned Alternative Baseline Emissions.

An Alternative Baseline Emissions may only be requested within one-hundred twenty (180) days after the end of the Attainment Year or within one-hundred twenty (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. This is to allow sufficient timing to make a decision on the appropriate baseline level, which will be used to assess the CAA Nonattainment Fees.

2.2.4.9. Alternative Baseline Emissions Request Payment – Paragraph (d)(9)

Paragraph (d)(9) establishes the fee and invoice due date for evaluation of the Alternative Baseline Emissions Request. Since this request is optional and conditional, it is anticipated that only a small number of Major Stationary Sources would proceed with this request. The duration of evaluation time may also vary significantly from facility to facility, depending on completeness of information and complexity of data or facility's operations. The evaluation fee for the Alternative Baseline Emissions Request is equal to the total actual and reasonable time incurred by District staff for evaluation of the Alternative Baseline Emissions Request and does not exceed the District's reasonable regulatory costs. As the U.S. EPA guidance has not been issued, there may or may not be additional steps as part of the evaluation, but based on the Harnett Memo,[28] the evaluation would consist of the following that include, but are not limited:

- Reviewing facility supporting information that include:
  - Relevant Actual Emission data for the past five or ten years (depending on the type of facility)
  - Analysis of Actual Emissions of the 24-consecutive month selected
  - Analysis of applicable regulations
- Reviewing the request provided by the facility is consistent of the U.S. EPA guidance for alternate baseline emissions

[28] Guidance on Establishing Emissions Baselines under Section 185 of the Clean Air Act (CAA) for Severe and Extreme Ozone Nonattainment Areas that Fail to Attain the 1-hour Ozone NAAQS by their Attainment (epa.gov)

- Providing a written approval

The evaluation is anticipated to be performed primarily by staff who are classified as an Air Quality Specialist and/or Air Quality Engineer II. This classification is equivalent to staff who would evaluate plans or permits. As there is no past precedent for how long an evaluation would take, the evaluation is assessed at an hourly staff evaluation rate that is equivalent to the applicable Plan Evaluation Fee for a Non-Title V Facility or Title V Facility, pursuant to Rule 306 – Plan Fees, and consistent with the hourly rate for the following, but not limited to:

- Requests to amend emissions report and refund of emission pursuant to Rule 301 subparagraph (e)(9)(A),
- California Environmental Quality Act (CEQA) assistance pursuant to Rule 301 subparagraph (j)(1)(A),
- Review of continuous emissions monitoring systems, fuel sulfur monitoring systems, and alternative continuous emissions monitoring systems pursuant to Rule 301 paragraph (j)(5),
- National Emission Standard for Hazardous Air Pollutants evaluation pursuant to Rule 301 (q)(1), and
- Expedited processing requests pursuant to Rule 301 subdivision (v).

2.2.5. Exemptions – Subdivision (e)

Subdivision (e) specifies the requirements for exemptions from either specific provisions of the rule or the entire rule.

2.2.5.1. Extension Year – Paragraph (e)(1)

Paragraph (e)(1) establishes that the CAA Nonattainment Fees are not applicable during an Extension Year. This exemption is consistent with CAA section 185(c) that provides an exception to the CAA Nonattainment Fee during an Extension Year which has been granted pursuant to CAA section 181(a)(5).[29] However, as there was more than one exceedance in SCAB in the year preceding the Extension Year of the 1997 8-hour ozone standard, the SCAB is not eligible to receive an Extension Year for this standard, but Coachella Valley may be eligible. The South Cost AQMD may be eligible to be granted Extension Years for the 2008 8-hour ozone standard.

2.2.5.2. Cessation of Fees – Paragraph (e)(2)

Paragraph (e)(2) specifies when the CAA Nonattainment Fees will cease. For the Applicable Ozone Standard, the CAA Nonattainment Fees will cease when the Basin has been redesignated by U.S. EPA to attainment for that Applicable Ozone Standard. For a revoked Applicable Ozone Standard, this will occur when the U.S. EPA has terminated the anti-backsliding requirement for the applicable standard.

2.2.5.3. Enforceable Limitation Through a Rule 317.1 Exclusion Plan – Paragraph (e)(3)

As described early in Chapter 2, a facility is a Major Stationary Source pursuant to PR 317.1 based on either the amount of VOC or NOx emitted or the PTE. A facility would be required to demonstrate that it does not meet both criteria in order to no longer be considered a Major

[29] CAA. (2023, November 29). Part D - Plan Requirements for Nonattainment Areas. https://www.epa.gov/clean-air-act-overview/clean-air-act-title-i-air-pollution-prevention-and-control-parts-through-d#id.

Stationary Source. Currently, the Title V permit program allows for facilities to take such a limitation to exempt the facility from the Title V permit program. This can be a lengthy process due to the time and work needed to evaluate the permit application, ensure that the facility can comply with the facility-wide limitation, reduced equipment PTEs, and possibly convert the facility's Title V permit into individual command and control permits for all pieces of permitted equipment at the facility.

Paragraph (e)(3) establishes an alternate pathway for a Major Stationary Source to expedite this process by establishing limits in a Rule 317.1 Exclusion Plan that would ensure the facility would no longer meet the definition of a Major Stationary Source and therefore be exempt from CAA Nonattainment Fees. Some facilities have already taken similar permit conditions to limit the facility's Title V PTE or have an approved Title V Exclusion Plan to be exempted from the Title V permit program. Since PR 317.1 and the Title V permit program use the same definition of PTE and the permit condition taken by these facilities limits the total reported emissions from the facility by pollutant, the facilities exempted from the Title V permit program will not need to submit an application for a Rule 317.1 Exclusion Plan. Title V facilities may elect to submit an application for a Rule 317.1 Exclusion Plan, which will allow the facility to not be subject to Rule 317.1, but still stay in the Title V permit program and retain their Title V permit. Subsequent permit applications may be filed to exempt the facility from the Title V permit program, which will take much longer to evaluate and process, due to the need to convert the Title V permit into individual command and control permits, each with the facility-wide limitation on total emissions from the facility. Facilities should also be aware that more than one permit application might be necessary (e.g. application for Title V permit modification) in addition to the application for the Rule 317.1 Exclusion Plan.

In the interim period between plan application and plan issuance, the facility would continue to meet the definition of a Major Stationary Source and be required to pay any applicable CAA Nonattainment Fees. The Rule 317.1 Exclusion Plan would be available to Title V facilities that previously had a permit condition limiting the facility's emissions, but the facility exceeded the limits established in the permit condition and the facility was brought back into the Title V permit program, provided the Title V facility can meet the criteria for approval. The Rule 317.1 Exclusion Plan would be subject the applicable plan fees, including but not limited to Plan Filing Fee and Plan Evaluation Fee, specified in Rule 306 – Plan Fees. The evaluation is anticipated to be performed primarily by staff who are classified as an Air Quality Specialist and/or Air Quality Engineer II. This classification is equivalent to staff who would evaluate plans or permits. As there is no past precedent for how long an evaluation would take, the evaluation is assessed at an hourly staff evaluation rate that is equivalent to the applicable Plan Evaluation Fee for a non-Title V Facility or Title V Facility, pursuant to Rule 306 – Plan Fees, and consistent with the hourly rate for other plans subject to Rule 306 fees. The Plan Filing Fee is $207.19 for non-Title V facilities and $259.66 for Title V facilities for fiscal year 2024-2025, and accounts for the time and materials for filing and receiving of a plan, such as work hours by administrative staff. The Plan Evaluation Fee is the amount equal to the total actual and reasonable time incurred by District staff for evaluation of a plan, assessed at the hourly rate of $207.19 for non-Title V facilities and $259.66 for Title V facilities for fiscal year 2024-2025. Other fees in Rule 306, such as Duplicate Plan Fee and Inspection Fee, might also apply.

While the facility would no longer be subject to the CAA Nonattainment Fees in PR 317.1, the Rule 317.1 Exclusion Plan will still require the reporting of Actual Emissions and recordkeeping to ensure that the facility does not exceed the limits and becomes a Major Stationary Source.

Currently, it is the District's practice in the Title V permitting program to require that a facility's most recent five years of AER data do not exceed 80% of the major source threshold. This provides assurance that the facility will be able to comply with the reduced facility-wide emissions limitation. In a similar manner, approval of the Rule 317.1 Exclusion Plan will be based on, but not limited to, the following criteria:

- Demonstration that the facility's most recent five calendar years of emissions do not exceed 8 tons per year for both VOC and NOx, subject to verification by South Coast AQMD staff. This demonstration will be based on the reported AERs at the time of submittal of the Rule 317.1 Exclusion Plan application, but excluding the emissions listed in this rule's definition of Major Stationary Source. This criterion provides assurance that the facility will be able to meet the emission limit(s) in the Rule 317.1 Exclusion Plan. The Rule 317.1 Exclusion Plan evaluation process will only consider finalized AER emissions. A facility requesting to amend past AERs for Rule 317.1 purposes, must complete the amendment process prior to submitting a Rule 317.1 Exclusion Plan. Facilities that were previously exempt from reporting AER due to emissions below reporting thresholds will need to demonstrate through records that they were below AER thresholds. Facilities with insufficient records will need to base their emissions on PTE.
- Acceptance of a condition in the Rule 317.1 Exclusion Plan that limits the facility's total VOC and/or NOx emissions, excluding the emissions listed in this rule's definition of Major Stationary Source to less than the Major Stationary Source thresholds annually.
- Acceptance of a condition in the Rule 317.1 Exclusion Plan that requires monthly recordkeeping of all VOC and/or NOx emissions, as applicable, at the facility. Records shall include equipment type, application number, emission factors, and all operating parameters used to calculate emissions subject to the rule.
- Acceptance of a condition in the Rule 317.1 Exclusion Plan that requires the facility to notify the Executive Officer if the facility's annual total VOC and/or NOx emissions exceeded the Major Stationary Source threshold, no later than February 1 of the following year.
- Acceptance of a condition in the Rule 317.1 Exclusion Plan that requires the records of the facility's monthly and annual emissions to be signed and certified for accuracy by the highest ranking individual responsible for compliance with District rules.
- Acceptance of a condition in the Rule 317.1 Exclusion Plan that requires the facility to report actual emissions annually either by using the AER program or another mechanism.
- Acceptance of a condition in the Rule 317.1 Exclusion Plan that requires the facility to keep all records in a format acceptable by the District and retained at the facility for a minimum of five years. Records shall be made available to District representatives upon request.

Note that the criteria reflect the District's current practices for implementing the Title V permitting program. Future changes might be reflected in the criteria used for the Rule 317.1 Exclusion Plans, as applicable.

In the event the facility fails to comply with any condition in the Rule 317.1 Exclusion Plan, the facility could be considered a Major Stationary Source and resume being required to or begin to be required to pay the applicable CAA Nonattainment Fee. If the emission(s) limitation is exceeded, the facility will be considered a Major Stationary Source and shall be required to pay the applicable CAA Nonattainment Fees beginning the calendar year of the exceedance or calendar year the emission(s) limitation is no longer enforceable.

A facility that exceeds the emission(s) limitation in the Rule 317.1 Exclusion Plan and becomes a Major Stationary Source will not be eligible to submit another application for a Rule 317.1 Exclusion Plan.

CHAPTER 3 – IMPACT ASSESSMENT

INTRODUCTION

AFFECTED SOURCES

EMISSIONS IMPACT

CALIFORNIA ENVIRONMENTAL QUALITY ACT ASSESSMENT

SOCIOECONOMIC IMPACT ASSESSMENT

DRAFT FINDINGS UNDER HEALTH AND SAFETY CODE SECTION 40727

3.1. INTRODUCTION

PR 317.1 is applicable to major stationary sources of VOC and/or NOx, and will impact major stationary sources of VOC and/or NOx located in South Coast Air Basin and the Coachella Valley.

3.2. AFFECTED SOURCES

The exact number of facilities subject to PR 317.1 is currently unknown because applicability will be determined from a combination of a subset of the entire universe of Title V program facilities and non-Title V program facilities with actual emissions data provided in 2024 and beyond, which 2024 AER data will not be available until the Spring of 2025. While not all Title V program facilities are Major Stationary Sources of VOC and/or NOx, it is estimated that there are 316 facilities with Title V program permits in the SCAB and 3 facilities with Title V program permits in the Coachella Valley. As the Title V permitting program excludes or exempts certain emissions, it may not completely identify all the facilities that may be subject to PR 317.1. As indicated in Chapter 2, PR 317.1 would be applicable to a facility based on either the facility's PTE or the facility's actual emissions. Therefore, it is estimated that 2 additional facilities might be subject to this rule based on analysis of 2021 AER emissions of VOC and/or NOx. To determine applicability to PR 317.1, a facility's emissions in 2024 and later will be used.

3.3. EMISSIONS IMPACT

Staff does not anticipate any direct emissions impact from PR 317.1 as it does not have any emissions requirements. However, as CAA section 185 requires that major stationary sources of VOC and/or NOx in nonattainment areas either reduce their emissions by 20% from a baseline amount or pay a CAA nonattainment fee, PR 317.1 may incentivize Major Stationary Sources to reduce their emissions to below the baseline amount.

3.4. CALIFORNIA ENVIRONMENTAL QUALITY ACT ASSESSMENT

PR 317.1 has been developed as a government funding mechanism to satisfy federal requirements without involving a commitment to any specific project that could result in a potentially significant physical impact on the environment. Therefore, PR 317.1 is not considered a "project" within the meaning of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15378 (b)(4).

3.5 SOCIOECONOMIC IMPACT ASSESSMENT

Health and Safety Code Section 40440.8 requires a socioeconomic impact assessment for proposed and amended rules resulting in significant impacts to air quality or emission limitations. However, PR 317.1 would not result in significant impacts to air quality or emission limitations. Nevertheless, a socioeconomic impact assessment has been conducted and was released for public review as a separate document at least 30 days prior to the South Coast AQMD Governing Board Hearing for PR 317.1, which is anticipated to be heard on June 7, 2024.

3.6. DRAFT FINDINGS UNDER HEALTH AND SAFETY CODE SECTION 40727

3.6.1. Requirements to Make Findings

Health and Safety Code Section 40727 requires that prior to adopting, amending, or repealing a rule or regulation, the South Coast AQMD Governing Board shall make findings of necessity, authority, clarity, consistency, non-duplication, and reference based on relevant information presented at the public hearing and in the staff report.

3.6.2. Necessity

PR 317.1 is needed to comply with the requirements of the CAA Section 185 requirements for the 1997 or 2008 8-hour ozone standard.

3.6.3. Authority

The South Coast AQMD Governing Board has authority to adopt PR 317.1 pursuant to the Health and Safety Code Sections 39002, 40000, 40001, 40440, 40441, 40702, 40725 through 40728, 41511, and 42300 et seq. and CAA Sections 172(e), 182(d), 182(e), 182(f) and 185.

3.6.4. Clarity

PR 317.1 is written or displayed so that its meaning can be easily understood by the persons directly affected by it.

3.6.5. Consistency

PR 317.1 is in harmony with and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations.

3.6.6 Non-Duplication

PR 317.1 will not impose the same requirements as or in conflict with any existing state or federal regulations. The proposed amended rule is necessary and proper to execute the powers and duties granted to, and imposed upon, the South Coast AQMD.

3.6.7. Reference

By adopting PR 317.1, the South Coast AQMD Governing Board will be implementing, interpreting or making specific the provisions of the Health and Safety Code Sections 39002 (authority for control of air pollution), 40000 (non-vehicular air pollution), 40001 (rules to achieve ambient air quality standards), 40440 (rules to carry out the Air Quality Management Plan), 40441, , 40440 (adopt regulation to carry out plan), 40702 (adopt regulations and execute duties), 40725 through 40728 (public hearings), 41510 (right of entry), 41511 (rules to require source to determine emissions), 42300 et seq. (permitting), 42303 (requests for information), and CAA Sections 116 (Retention of State authority), 172(e), 181, 182, 185, and 502(b)(3)(B)(v).

APPENDIX A: AFFECTED FACILITIES

Table A-1
PR 317.1 Potentially Impacted Major Stationary Sources

ID	Name	County	City
56	University So California, Health Sciences	LA	Los Angeles
136	Press Forge Co	LA	Paramount
222	Architectural Woodworking Co	LA	Monterey Park
346	Frito-Lay, Inc.	SB	Rancho Cucamonga
392	Taylor-Dunn Mfg Co	OR	Anaheim
550	LA Co., Internal Service Dept	LA	Los Angeles
1034	Builders Fence Co Inc	LA	Sun Valley
1073	Westlake Royal Roofing LLC	RV	Corona
1334	Soc-Co Plastic Coating Co	SB	Rancho Cucamonga
1703	Eastern Municipal Water District	RV	Temecula
2044	G B Mfg Inc/Calif Acrylic, Dba Cal Spas	LA	Pomona
2526	Chevron USA Inc	LA	Van Nuys
2619	Martin Luther King Jr Medical Campus	LA	Los Angeles
2825	MCP Foods Inc	OR	Anaheim
2846	Vista Paint Corp	OR	Fullerton
3093	LA Co., Olive View/UCLA Medical Center	LA	Sylmar
3417	Air Prod & Chem Inc	LA	Carson
3513	Irvine Ranch Water Dist	OR	Irvine
3704	All American Asphalt, Unit No.01	RV	Corona
3721	Dart Container Corp of California	RV	Corona
3968	Tabc, Inc	LA	Long Beach
4242	San Diego Gas & Electric	RV	Moreno Valley
4477	So Cal Edison Co	LA	Avalon
5723	Ducommun Aerostructures Inc	OR	Orange
5973	Socal Gas Co	LA	Valencia
6384	LA Co., Rancho Los Amigos Nat. Rehab Ctr	LA	Downey
6979	Riv Co., Waste Mgmt, Badlands Landfill	RV	Moreno Valley
7068	San Brdo Cnty Solid Waste Mgmt	SB	Redlands
7371	San Ber Cnty Solid Waste Mgmt- Milliken	SB	Ontario
7411	Davis Wire Corp	LA	Irwindale
7416	Linde Inc.	LA	Wilmington
7417	Eastern Municipal Water Dist	RV	Perris
7427	Owens-Brockway Glass Container Inc	LA	Vernon
8220	Providence St Joseph Med Ctr	LA	Burbank
8309	Cambro Manufacturing Co	OR	Huntington Beach
8547	Ecobat Resources California, Inc.	LA	City Of Industry
8582	So Cal Gas Co/Playa Del Rey Storage Fac	LA	Playa Del Rey
9163	Inland Empire Utl Agen, A Mun Water Dis	SB	Ontario
9755	United Airlines Inc	LA	Los Angeles
9898	Scientific Spray Finishes Inc	OR	Fullerton

ID	Name	County	City
9978	Peter Pepper Products	LA	Compton
10245	LA City, Terminal Island Treatment Plant	LA	San Pedro
10656	Newport Laminates	OR	Santa Ana
10966	Weber Metals Inc	LA	Paramount
11245	Hoag Hospital	OR	Newport Beach
11435	Pq LLC	LA	South Gate
11716	Fontana Paper Mills Inc	SB	Fontana
11887	Nasa Jet Propulsion Lab	LA	Pasadena
12182	Park La Brea	LA	Los Angeles
12332	Gatx Corporation	SB	Colton
12428	Gold Bond Building Products, LLC.	LA	Long Beach
12876	Foam Fabricators	LA	Compton
13011	The Gill Corporation	LA	El Monte
13854	East Los Angeles College	LA	Monterey Park
13920	Providence Saint Joseph Hospital	OR	Orange
13990	US Govt, Veterans Affairs Medical Center	LA	Long Beach
14150	Cal. St., Inst. for Women	RV	Corona
14213	Long Beach Memorial Medical Center	LA	Long Beach
14437	San Antonio Regional Hospital	SB	Upland
14492	Johnson Laminating & Coating Inc	LA	Carson
14495	Vista Metals Corporation	SB	Fontana
14502	Vernon Public	LA	Vernon
14871	Sonoco Products Co	LA	City Of Industry
14966	Va Greater Los Angeles Healthcare Sys	LA	Los Angeles
15504	Schlosser Forge Company	SB	Rancho Cucamonga
15793	Riv Co, Waste Resources Mgmt Dist, Lamb	RV	Beaumont
16338	Kaiser Aluminum Fabricated Products, LLC	LA	Los Angeles
16389	Cedars-Sinai Medical Ctr	LA	Los Angeles
16639	Shultz Steel Co	LA	South Gate
16642	Anheuser-Busch LLC., (LA Brewery)	LA	Van Nuys
17104	So Cal Edison Co	LA	Norwalk
17301	Orange County Sanitation District	OR	Fountain Valley
17841	Mc Dowell & Craig Mfg. Co.	LA	Norwalk
17953	Pacific Clay Products Inc	RV	Lake Elsinore
18294	Northrop Grumman Systems Corp	LA	El Segundo
18452	University of California, Los Angeles	LA	Los Angeles
19194	Eppink of California	LA	South Gate
20197	LAC/USC Medical Center	LA	Los Angeles
22092	Western Tube & Conduit Corp	LA	Long Beach
22911	Carlton Forge Works	LA	Paramount
23194	City of Hope Medical Center	LA	Duarte
23401	Hood Mfg Inc	OR	Santa Ana

ID	Name	County	City
23487	Royal Paper Box Co	LA	Montebello
23752	Aerocraft Heat Treating Co Inc	LA	Paramount
24450	Trend Manor Furniture Mfg Co Inc	LA	City Of Industry
24647	J. B. I. Inc	LA	Rancho Dominguez
25070	LA Cnty Sanitation District-Puente Hills	LA	City Of Industry
25513	Six Flags Themes Pks Inc,Six Flags Magic	LA	Valencia
25638	Burbank City, Burbank Water & Power	LA	Burbank
29110	Orange County Sanitation District	OR	Huntington Beach
29411	LA Co., Sheriff'S Dept	LA	Los Angeles
35302	Owens Corning Roofing and Asphalt, LLC	LA	Compton
36738	Sorenson Engineering Inc, Frank Sorenson	SB	Yucaipa
39855	Mizkan America, Inc	SB	Rancho Cucamonga
40806	New Basis	RV	Riverside
40841	The Dot Printer Inc	OR	Irvine
40915	Freund Baking Co	LA	Glendale
42514	LA County Sanitation Dist (Calabasas)	LA	Agoura
42633	LA County Sanitation Districts (Spadra)	LA	Pomona
43436	Tst, Inc.	SB	Fontana
44577	Long Beach City, Serrf Project	LA	Long Beach
45262	LA County Sanitation Dist Scholl Canyon	LA	Glendale
45489	Abbott Cardiovascular Systems, Inc.	RV	Temecula
45746	Pabco Bldg Products LLC, Pabco Paper, Dba	LA	Vernon
45938	E.M.E. Inc/Electro Machine & Engineering	LA	Compton
46268	California Steel Industries Inc	SB	Fontana
47781	Ols Energy-Chino	SB	Chino
49111	Sunshine Cyn Landfill Republic Serv Inc	LA	Sylmar
49805	LA City, Bureau of Sanit(Lopez Canyon)	LA	Lake View Terrace
50299	San Ber Cnty Solid Waste Mgmt Mid Valley	SB	Rialto
50310	Waste Mgmt Disp &Recy Servs Inc (Bradley)	LA	Sun Valley
50418	O C Waste & Recycling, Olinda Alpha	OR	Brea
51003	So Cal Edison Co	SB	Ontario
51475	So Cal Edison Co	OR	Stanton
52742	Storopack Inc	LA	Downey
52743	Oc Waste & Recycling, Santiago	OR	Orange
52753	Oc Waste & Recycling, Prima Deshecha	OR	San Juan Capistrano
57390	Advance Truck Painting Inc	LA	Pico Rivera
58044	San Ber Cnty Solid Waste Mgmt - Colton	SB	Colton
58563	Mercury Plastics Inc	LA	City Of Industry
59225	Americh Corp	LA	North Hollywood
59237	American Security Products Co Inc	SB	Fontana
62862	Imperial Irrigation District/ Coachella	RV	Coachella
69646	Oc Waste & Recycling, Frb	OR	Irvine
70021	Xerxes Corp (A Delaware Corp)	OR	Anaheim
73367	Monarch Litho Inc	LA	Montebello
74060	Engineered Polymer Solutions Inc	LA	Los Angeles

ID	Name	County	City
74529	K. F. Fiberglass, Inc.	LA	Downey
74830	Thoro Packaging Inc	RV	Corona
79691	Vacmet, Inc.	SB	Rancho Cucamonga
80066	Laird Coatings Corporation	OR	Huntington Beach
82207	All American Asphalt,All Amer Aggregates	OR	Irvine
82657	Quest Diagnostics Inc	OR	San Juan Capistrano
83102	Light Metals Inc	LA	City Of Industry
83508	The Termo Company	LA	Northridge
84273	Teva Parenteral Medicines, Inc	OR	Irvine
89248	Old Country Millwork Inc	LA	Los Angeles
89710	Royal Cabinets	LA	Pomona
94272	Rgf Enterprises Inc	RV	Corona
94872	Metal Container Corp	RV	Mira Loma
100145	Harbor Fumigation Inc	LA	San Pedro
100806	Robinson Helicopter Co Inc	LA	Torrance
101656	Air Products and Chemicals, Inc.	LA	Wilmington
101667	Ag-Fume Service Inc	LA	Long Beach
102268	Preproduction Plastics, Inc	RV	Corona
104004	Micrometals, Inc	OR	Anaheim
104806	Mm Lopez Energy LLC	LA	Sylmar
106897	Ag-Fume Services Inc	LA	San Pedro
113518	Brea Parent 2007, LLC	OR	Brea
113674	Usa Waste of Cal (El Sobrante Landfill)	RV	Corona
113873	Mm West Covina LLC	LA	West Covina
114083	Solutions Unlimited, Wilson'S Art Studio	OR	Fullerton
115314	Long Beach Generation, LLC	LA	Long Beach
115389	Aes Huntington Beach, LLC	OR	Huntington Beach
115394	Aes Alamitos, LLC	LA	Long Beach
115536	Aes Redondo Beach, LLC	LA	Redondo Beach
115663	El Segundo Energy Center, LLC	LA	El Segundo
116931	Equilon Ent LLC, Shell Oil Prod. U S	LA	Signal Hill
117140	AOC, LLC	RV	Perris
117290	B Braun Medical, Inc	OR	Irvine
117560	Equilon Enter, LLC-Shell Oil Prod. US	LA	Wilmington
118379	Arrowhead Regional Medical Ctr	SB	Colton
119219	Chiquita Canyon LLC	LA	Castaic
119741	Jensen Precast	SB	Fontana
119940	Building Materials Manufacturing Corp	SB	Fontana
121727	Pacific Pipeline System LLC	LA	Long Beach
124808	Ineos Polypropylene LLC	LA	Carson
124904	Los Angeles Times Communications LLC	LA	Los Angeles

ID	Name	County	City
126498	Steelscape, Inc	SB	Rancho Cucamonga
127299	Wildflower Energy Lp/Indigo Gen., LLC	RV	North Palm Springs
127749	Ultramar, Inc	LA	Wilmington
128243	Burbank City, Burbank Water & Power, SCPPA	LA	Burbank
129497	Thums Long Beach Co	LA	Long Beach
132368	QG Printing II LLC	RV	Riverside
134018	Industrial Container Services-CA LLC	LA	Montebello
136148	E/M Coating Services	LA	North Hollywood
136173	E/M Coating Services	LA	Chatsworth
136202	Epsilon Plastics Inc	LA	Rancho Dominguez
138103	Transcontinental Ontario Inc	SB	Ontario
139796	City of Riverside Public Utilities Dept	RV	Riverside
139799	Lithographix Inc	LA	Hawthorne
139808	Inland Empire Regional Composting Author	SB	Rancho Cucamonga
139938	Sunshine Gas Producers LLC	LA	Sylmar
140373	Ameresco Chiquita Energy LLC	LA	Valencia
140552	Performance Composites, Inc	LA	Compton
140811	Ducommun Aerostructures Inc	LA	Monrovia
141555	Castaic Clay Products, LLC	LA	Castaic
144455	Lifoam Industries, LLC	LA	Vernon
145232	Air Industries Company, LLC	OR	Garden Grove
146536	Walnut Creek Energy, LLC	LA	City Of Industry
147371	Inland Empire Utilities Agency	SB	Chino
148236	Air Liquide Large Industries U.S., Lp	LA	El Segundo
148568	Southwest Moulding	LA	Sun Valley
149620	Southern California Edison	SB	Rancho Cucamonga
149814	Sierracin/Sylmar Corp	LA	Sylmar
150233	Pacific Mfg Mgmt, Inc Dba Greneker Solut	LA	Los Angeles
151798	Tesoro Refining and Marketing Co, LLC	LA	Carson
151843	Insulfoam	SB	Chino
152707	Sentinel Energy Center LLC	RV	North Palm Springs
153992	Canyon Power Plant	OR	Anaheim
156741	Harbor Cogeneration Co, LLC	LA	Wilmington
157152	Bowerman Power Lfg, LLC	OR	Irvine
157259	Graphic Packaging International, Inc	OR	Irvine
157359	Henkel Electronic Materials, LLC	LA	Compton
157363	International Paper Co	OR	Anaheim
159492	Woodward Hrt- Valencia	LA	Valencia
160437	Southern California Edison	SB	Redlands
162556	Glendale City, Glendale Water and Power	LA	Glendale
163177	Fleetwood Homes, Inc.	RV	Riverside
166073	Beta Offshore	OR	Huntington Beach
167981	Tesoro Logistics, Wilmington Terminal	LA	Wilmington
169990	Sps Technologies, LLC	LA	Gardena
171107	Phillips 66 Co/LA Refinery Wilmington Pl	LA	Wilmington

ID	Name	County	City
171109	Phillips 66 Company/Los Angeles Refinery	LA	Carson
171320	Phillips 66 Colton Terminal - West	SB	Bloomington
171326	Phillips 66 Pipeline LLC	LA	Los Angeles
171327	Phillips 66 Pipeline LLC	LA	Torrance
171329	Phillips 66 Colton Terminal - East	SB	Rialto
172005	New- Indy Ontario, LLC	SB	Ontario
172077	City of Colton	SB	Colton
172878	Tesoro Logistics Long Beach Terminal	LA	Long Beach
173846	Azusa Land Reclamation, Inc	LA	Azusa
174406	Arlon Graphics LLC	OR	Placentia
174655	Tesoro Refining & Marketing Co, LLC	LA	Carson
174694	Tesoro Logistics, Carson Crude Terminal	LA	Carson
174703	Tesoro Logistics, Carson Prod Terminal	LA	Carson
174704	Tesoro Logistics, East Hynes Terminal	LA	Long Beach
174705	Tesoro Logistics, Colton Terminal	SB	Bloomington
174710	Tesoro Logistics, Vinvale Terminal	LA	South Gate
174711	Tesoro Logistics, Hathaway Terminal	LA	Signal Hill
174727	Tesoro Refining Marketing Company LLC	LA	South Gate
176339	Becker Specialty Corp.	SB	Fontana
176377	Tesoro Logistics Marine Terminal 2	LA	Long Beach
180908	Eco Services Operations Corp.	LA	Carson
181426	Oc Waste & Recycling, Coyote	OR	Newport Coast
181667	Torrance Refining Company LLC	LA	Torrance
182157	Baxalta US Inc	LA	Los Angeles
182561	Colton Power, Lp	SB	Colton
182563	Colton Power, Lp	SB	Colton
182752	Torrance Logistics Company LLC	LA	Vernon
182753	Torrance Logistics Company, LLC	LA	Terminal Island
183415	Ontario International Airport Authority	SB	Ontario
183501	Stanton Energy Reliability Center, LLC	OR	Stanton
183567	Gs II, Inc.	LA	Wilmington
185352	Snow Summit, LLC	SB	Big Bear Lake
185600	Bridge Energy, LLC	OR	Brea
186899	Enery Holdings Llc/Lghthp_6_Icegen	LA	Carson
187165	Altair Paramount, LLC	LA	Paramount
187823	Kirkhill Inc	OR	Brea
187885	Smithfield Packaged Meats Corp	LA	Vernon
188380	Valence Surface Technologies - Lynwood	LA	Lynwood
189790	Fleischmann's Vinegar Company, Inc	LA	Montebello
191386	The Newark Group, Inc. Dba Greif, Inc	LA	Commerce
191415	Sierra Aluminum,Div of Samuel, Son & Co	SB	Fontana
191420	Sierra Aluminum, Div of Samuel, Son & Co	RV	Riverside
193314	Zenith Energy West Coast Terminals LLC	LA	Compton
193318	Zenith Energy West Coast Terminals LLC	LA	Long Beach
193344	Sfpp, L.P. - Colton South	SB	Bloomington
193552	Vernon Environmental Response Trust	LA	Vernon

ID	Name	County	City
193561	IBY, LLC	LA	Irwindale
193691	M & J Design Corporation	OR	Anaheim
194023	Fabri Cote	LA	Los Angeles
194175	Silver Creek Industries, LLC	RV	Perris
194203	Oldcastle Infrastructure	RV	Nuevo
194343	Emd Specialty Materials, LLC	SB	Rancho Cucamonga
194733	LGM Pharma	OR	Irvine
195338	Wg Holdings Spv, LLC	LA	Los Angeles
195423	Air Products West Coast Hydrogen LLC	LA	Torrance
195802	Vernon Public Utilities	LA	Vernon
195849	Mittera California LLC	OR	Los Alamitos
195925	Olympus Terminals LLC	LA	Carson
196103	Shadow Wolf Energy, LLC	LA	Santa Clarita
198222	Bluescope Coated Products LLC	SB	Rancho Cucamonga
199197	Tex-Tech Engineered Composites Inc	LA	Gardena
800003	Honeywell International Inc	LA	Torrance
800016	Baker Commodities Inc	LA	Vernon
800022	Calnev Pipe Line, LLC	SB	Bloomington
800026	Ultramar Inc	LA	Wilmington
800030	Chevron Products Co.	LA	El Segundo
800032	Chevron Usa Inc	LA	Montebello
800037	Demenno-Kerdoon Dba World Oil Recycling	LA	Compton
800057	Kinder Morgan Liquids Terminals, LLC	LA	Carson
800074	LA City, DWP Haynes Generating Station	LA	Long Beach
800075	LA City, DWP Scattergood Generating Stn	LA	Playa Del Rey
800080	Lunday-Thagard Co Dba World Oil Refining	LA	South Gate
800088	3M Company	RV	Corona
800113	Rohr, Inc.	RV	Riverside
800128	So Cal Gas Co	LA	Northridge
800129	Sfpp, L.P.	SB	Bloomington
800168	Pasadena City, DWP	LA	Pasadena
800170	LA City, DWP Harbor Generating Station	LA	Wilmington
800189	Disneyland Resort	OR	Anaheim
800193	LA City, DWP Valley Generating Station	LA	Sun Valley
800198	Ultramar Inc	LA	Wilmington
800202	Universal City Studios, LLC.	LA	Universal City
800209	BKK Corp (Eis Use)	LA	West Covina
800214	LA City, Sanitation Bureau (Htp)	LA	Playa Del Rey
800234	Loma Linda Univ	SB	Loma Linda
800236	LA Co. Sanitation Dist	LA	Carson
800263	U.S. Govt, Dept of Navy	OR	San Clemente
800265	Univ of So Cal	LA	Los Angeles
800278	Sfpp, L.P.	LA	Carson
800279	Sfpp, L.P.	OR	Orange

ID	Name	County	City
800288	Univ Cal Irvine	OR	Irvine
800302	Chevron Products Company	OR	Huntington Beach
800312	LA Co Harbor-UCLA Medical Center	LA	Torrance
800313	Laxfuel Corp	LA	Los Angeles
800327	Glendale City, Glendale Water & Power	LA	Glendale
800335	LA City, Dept of Airports	LA	Los Angeles
800367	Ips Corporation	LA	Gardena
800369	Equilon Enter.LLC , Shell Oil Prod. US	LA	Van Nuys
800372	Equilon Enter. LLC, Shell Oil Prod. US	LA	Carson
800380	Certified Enameling Inc	LA	Los Angeles
800387	Cal Inst of Tech	LA	Pasadena
800393	Valero Wilmington Asphalt Plant	LA	Wilmington
800398	Mask-Off Company, Inc	LA	Monrovia
800408	Northrop Grumman Systems	LA	Manhattan Beach
800409	Northrop Grumman Systems Corporation	LA	Redondo Beach
800428	Lamps Plus Inc/ Pacific Coast Lighting	LA	Chatsworth
800429	Kaiser Foundation Hospital	LA	Los Angeles
800436	Tesoro Refining and Marketing Co, LLC	LA	Wilmington

APPENDIX B: RESPONSES TO COMMENTS

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1. Clean Water SoCal Comment Letter, Submitted 03/29/24

CLEAN WATER SoCal
CREATING SUSTAINABLE SOLUTIONS

March 29, 2024

Sent via email to: Britney Gallivan, bgallivan@aqmd.gov
Neil Fujiwara, nfujiwara@aqmd.gov
Kalam Cheung, kcheung@aqmd.gov
Michael Krause, mkrause@aqmd.gov

South Coast Air Quality Management District
Attn: Planning, Rule Development, and Implementation
21865 Copley Drive
Diamond Bar, CA 91765

Re: PROPOSED RULE 317.1 – CLEAN AIR ACT NONATTAINMENT FEES FOR 8-HOUR OZONE STANDARDS

Clean Water SoCal appreciates the opportunity to comment on the Proposed Rule 317.1– Clean Air Act Nonattainment Fees for 8-hour Ozone Standards.

Clean Water SoCal represents over 80 public water/wastewater agencies in Southern California. Clean Water SoCal members provide essential water supply and wastewater treatment for approximately 20 million people in San Diego, Orange, Los Angeles, Santa Barbara, Riverside, San Bernardino, and Ventura counties. Our wastewater members provide environmentally sound, cost-effective management of more than two billion gallons of wastewater each day and, in the process, convert wastewater into resources for beneficial uses such as recycled water and renewable energy.

Proposed Rule 317.1 will require major stationary sources, including publicly owned wastewater facilities, to pay for the regions inability to achieve attainment with the 1997 and 2008 federal 8-hour ozone standards pursuant to Section 185 of the Clean Air Act (CAA). This makes little sense today because most of the pollution leading to nonattainment is caused by mobile and federal sources such as cars, trucks, trains, boats, and planes. These sources are regulated by State and Federal agencies beyond the control of the SCAQMD, but only the major stationary sources will be required to pay these penalties. Even with the elimination of all stationary sources, the South Coast Air Basin will not achieve the 1997 or 2008 federal 8-hour ozone standards. Instead, the penalty should be imposed upon ozone precursor sources that lack adequate emission controls (i.e., mobile and federal sources). Proposed Rule 317.1 places an unnecessary burden on the wastewater facilities in the SCAQMD that are classified as major stationary sources. These facilities provide essential wastewater treatment to the communities in the South Coast Air Basin; therefore, they cannot relocate or reduce treatment capacity to avoid the inequitable penalties that Proposed Rule 317.1 will impose. Moreover, these facilities are already required to meet

Comment 1-1

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stringent SCAQMD Best Available Control Technology standards and cannot reduce emissions to avoid this penalty. It is unfortunate that the fees imposed on these essential public service facilities won't even address the source of the subject pollution, as intended by the CAA.

Comment 1-1 Cont.

As Congressman Henry Waxman, one of the primary authors of the 1990 CAA amendments, told us in 2010, it was never the intent of the CAA to penalize stationary sources when mobile and federal sources, beyond the control of air districts, are the reason for nonattainment. Due to this disconnect, USEPA accepted the concept of "not less stringent" fee or emission reduction programs in response to nonattainment with the 1-hour federal ozone standard. To our knowledge, USEPA has not performed a critical high-level review of the 8-hour nonattainment problem and the principles contained in their 2010 Section 185 Guidance[1] should be considered to avoid illogical results. In other words, Congress never intended to penalize sources that were not responsible for ozone nonattainment. Even with the complete closure of all major stationary sources in the South Coast Air Basin, attainment of the 8-hour standards would not be possible due to the fact that the majority of ozone-forming emissions are derived from mobile and federal sources.

Comment 1-2

The Mojave Desert Air Quality Management District (MDAQMD) adopted Rules 315.1, 315.2 and 315.3 to implement Section 185 penalties for nonattainment with the 1997, 2008, and 2015 ozone standards. All three rules include Section 185 equivalency provisions for USEPA's consideration. As described in MDAQMD's staff report USEPA expressed concerns about the approvability of these rules, but further discussions with USEPA are needed to determine whether potential "not less stringent" requirements could be acceptable. The San Joaquin Valley Air Pollution Control District (SJVAPCD) nonattainment fee rules also have equivalency language. We respectfully request the inclusion of language in Proposed Rule 317.1 that allows SCAQMD to implement equivalency in the event that USEPA develops new equivalency guidance. We understand that SCAQMD staff believe equivalency criteria cannot be met for the 1997 and 2008 standards, however the exclusion of such language could set an unreasonable precedence. It is important for local air districts to have a uniform approach to Section 185 compliance which would encourage USEPA to draft new guidance clearly allowing for equitable equivalency programs.

As such, SCAQMD Proposed Rule 317.1 should include additional provision language for the Cessation of Fees if either of the following occur:

1. If the USEPA approves an equivalent alternative Section 185 fee program.
2. If the USEPA provides guidance for acceptable fee equivalency for non-revoked standard and/or revoked standards for which the SCAQMD can demonstrate fee equivalency.

Comment 1-3

[1] Although this guidance was vacated by the D.C. Circuit Court of Appeals in NRDC v. EPA, 643 F.3d 322 (D.C. Cir. 2011) on procedural grounds, the Court did not prohibit alternative programs.

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In addition, Clean Water SoCal requests some additional clarifications in the rule language related to the fee applicability for synthetic minor source facilities, and the applicability for multiple fees. The MDAQMD rules include provisions limiting the fee collection to a single standard. Clean Water SoCal requests a similar approach in Proposed Rule 317.1 to reduce the economic burden and ratepayer impact to public wastewater facilities that will be magnified by the collection of fees for multiple standards.

Recommended Rule Language:
Clean Water SoCal requests the addition of the following language to the *"Exemptions"* section of the "*Preliminary Draft Rule Language-Version 2024/03/22"* to further clarify the rule.

Cessation of Fees:

- The owner or operator of a Major Stationary Source shall not be required to remit CAA Nonattainment Fees, if the USEPA has approved an equivalent alternative Section 185 fee program for the Applicable Ozone Standard for the Basin. The CAA Nonattainment Fees will cease in the same calendar year as the approved alternative program approval.
- The owner or operator of a Major Stationary Source shall not be required to remit CAA Nonattainment Fees if the District has demonstrated fee equivalency in accordance with USEPA guidance for acceptable fee equivalency for the Basin. The CAA Nonattainment Fees will cease in the same calendar year as the demonstrated fee equivalency.

Additional clarifying exemption language:

- No Major Stationary Source permitted as a Synthetic Minor Source facility shall be required to remit CAA Nonattainment Fees under this rule.
- No facility otherwise subject to this rule shall be required to remit CAA Nonattainment Fees under this rule for any calendar year in which the Facility emits verified Actual Emissions equal to or less than 80 percent of its Baseline Emissions
- No Facility otherwise subject to this Rule shall be required to remit CAA Nonattainment Fees for more than one Federal ozone standard for any specific calendar year. A Facility's applicable CAA Nonattainment Fees for any calendar year shall be the largest of all such applicable CAA Nonattainment Fees.

Comment 1-3 Cont.

Use of Funds:
In addition, affected Clean Water SoCal agencies strongly urge the SCAQMD to develop a fee distribution program that would facilitate the use of funds collected from the public wastewater sector to return to the sector for use towards Clean Air Projects implemented by public wastewater agencies. Clean Water SoCal understands that the focus of the current rule development for

Comment 1-4

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Proposed Rule 317.1 is on the regulatory framework for collection of the CAA nonattainment fees and not the use of funds, however a mechanism for the funds collected from public wastewater agencies for CAA nonattainment fees to be allocated towards Clean Air Projects by public wastewater agencies should be considered as part of the program for the use of funds collected from CAA nonattainment fees.

Comment 1-4 Cont.

If there are any questions regarding these comments, please contact the Clean Water SoCal Air Quality Committee Chair, David Rothbart directly at (714) 878-9655 drothbart@lacsd.org or contact me directly at (760) 415-4332 sjepsen@cleanwatersocal.org

Sincerely,

Steve Jepsen

Executive Director – Clean Water SoCal

cc: Clean Water SoCal Air Quality Committee

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1-1 Response

Staff disagrees that PR 317.1 will "place an unnecessary burden on the wastewater facilities" as the CAA Nonattainment Fees will be collected from Major Stationary Sources of VOC and/or NOx regardless of whether PR 317.1 is adopted. PR 317.1 is being developed to implement the existing requirements of CAA section 185 for the 1997 and 2008 8-hour ozone NAAQS. If a regulatory pathway is not developed, these Major Stationary Sources would still be required to comply with CAA section 185 and CAA Nonattainment Fees would instead be collected by the U.S. EPA.

Additionally, Best Available Control Technology (BACT) standards are implemented at the time of permitting and new BACT standards would only be triggered if the equipment was modified with an emissions increase. Equipment which was permitted several years ago, for which there have been more recent BACT standards established, may not be at current BACT standards. Examples include the new Tier 4 Final Emergency Engines that were established as BACT/ Lowest Achievable Emission Rate (LAER), or the Rule 1118.1 – Control of Emissions from Non-Refinery Flares NOx standards. Staff is clarifying how BACT is implemented and acknowledges that some facilities which have very recently been issued permits for all of their equipment could be at current BACT levels.

1-2 Response

To clarify, the U.S. EPA allows for a fee equivalency approach for the revoked 1979 1-hour standard as well as the revoked 1997 8-hour ozone standard, but has determined that it should not be used for any standard that is not revoked. Please see section "1.4.4. CAA Section 185 Compliance Pathway for 1997 and 2008 Ozone Standards" of this PR 317.1 Staff Report for an explanation of why CAA Nonattainment Fee collection is necessary for the 1997 and 2008 8-hour ozone standards.

1-3 Response

Fee Equivalency Approach:

San Joaquin Valley Air Pollution Control District (SJVAPCD) has implemented the following rules for implementing section 185 requirements:

- Rule 3170 – Federally Mandated Ozone Nonattainment Fee,
- Rule 3171 – Federally Mandated Ozone Nonattainment Fee – 1997 8-Hour Standard
- Rule 3172 – Federally Mandated Ozone Nonattainment Fee – 2008 8-Hour Standard, and
- Rule 3173 – Federally Mandated Ozone Nonattainment Fee – 2015 8-Hour Standard.[30]

SJVAPCD has only proposed the fee equivalency approach for Rules 3170 and 3171 which are both for revoked standards where a fee equivalency approach is allowed by the U.S. EPA. Rules 3172 and 3173 are unable to utilize the fee equivalency approach as both address ozone standards that have not been revoked.

[30] San Joaquin Valley Air Pollution Control District. *Rules and Regulations*. https://ww2.valleyair.org/rules-and-planning/current-district-rules-and-regulations/.

Mojave Desert Air Quality Management District's (MDAQMD) has implemented a fee equivalency approach in:

- Rule 315 – Federal Clean Air Act Section 185 Penalty (1979 Ozone Standard),
- Rule 315.1 – Federal Clean Air Act Section 185 Penalty (1997 Standard),
- Rule 315.2 – Federal Clean Air Act Section 185 Penalty (2008 Standard), and
- Rule 315.3 – Federal Clean Air Act Section 185 Penalty (2015 Ozone Standard).[31]

These MDAQMD regulations have not been approved by the U.S. EPA and the U.S. EPA staff has indicated that the fee equivalency approach is not available for unrevoked ozone standards. Incorporation of such language would make the rule vulnerable to disapproval as part of the U.S. EPA state implementation plan (SIP) review process. Please see section "1.4.4. CAA Section 185 Compliance Pathway for 1997 and 2008 Ozone Standards" of this PR 317.1 Staff Report for why CAA Nonattainment Fee collection is necessary for South Coast AQMD the 1997 and 2008 8-hour ozone standards.

Payment of Single Largest Standard in Year:

Mojave Desert Air Quality Management District's (MDAQMD) requires a major stationary source to only remit the largest applicable CAA Nonattainment Fee for a single ozone standard in any calendar year in:

- Rule 315.1 – Federal Clean Air Act Section 185 Penalty (1997 Standard),
- Rule 315.2 – Federal Clean Air Act Section 185 Penalty (2008 Standard), and
- Rule 315.3 – Federal Clean Air Act Section 185 Penalty (2015 Ozone Standard).

These MDAQMD regulations have not been approved by the U.S. EPA and the U.S. EPA staff has indicated that only paying the largest of the applicable CAA Nonattainment Fees in MDAQMD's Rules 315.1 may not be approvable.[32, 33] Incorporation of such language would make the rule vulnerable to disapproval as part of the U.S. EPA SIP review process. Please see section "1.4.4. CAA Section 185 Compliance Pathway for 1997 and 2008 Ozone Standards" of this PR 317.1 Staff Report for why CAA Nonattainment Fee collection is necessary for the 1997 and 2008 8-hour ozone standards.

Applicability to Non-Major Stationary Sources:

PR 317.1 is applicable to facilities that meet this rule's definition of a Major Stationary Source. Please refer to the definition of Major Stationary Source in "2.2.3. Definitions – Subdivision (c)" of this PR 317.1 Staff Report for an explanation of how a Major Stationary Source may no longer be subject to PR 317. Additionally, please refer to section "2.2.5.3. Enforceable Limitation Through a Rule 317.1 Exclusion Plan– Paragraph (e)(3)" of this PR 317.1 Staff Report for an explanation of the enforceable limit to not be subject to nonattainment fee through a Rule 317.1 Exclusion Plan.

[31] Mojave Desert Air Quality Management District. *Rules and Regulations*. https://www.mdaqmd.ca.gov/rules/rule-book/regulation-iii-fees.

[32] Mojave Desert Air Quality Management District. (2022, March). *Governing Board Meeting Agenda for March 28, 2022*. See Doris Lo. (August 16, 2018). *Preliminary Review of Mojave Desert AQMD Rule 315.1*. https://www.mdaqmd.ca.gov/home/showpublisheddocument/9292/637835283042130000.

[33] Mojave Desert Air Quality Management District. (2022, March). *Governing Board Meeting Agenda for March 28, 2022*. See Donnique Sherman. (March 10, 2022). *EPA Comments on MDAQMD Rule 315.1 RE: Amendment/Adoption of MDAQMD Rule 315 Series*). https://www.mdaqmd.ca.gov/home/showpublisheddocument/9292/637835283042130000.

Actual Emissions Below 80% of Baseline Emissions:

Pursuant to PR 317.1 paragraph (d)(2), no CAA Nonattainment Fees are charged when actual emissions are less than 80 percent of the Baseline Emissions or Alternative Baseline Emissions. Therefore, there is no need for an exemption from PR 317.1 in this scenario.

1-4 Response

Please see section "1.6. Use of Funds" of this PR 317.1 Staff Report for an explanation of why guidance on the spending of these potential funds would be determined in the future though a public process that would be separate from this rulemaking. The South Coast AQMD may consider prioritizing monies collected to be spent on emissions reduction projects near essential public services, environmental justice areas, and stationary sources.

2. Hoag Memorial Hospital Presbyterian Comment Letter, Submitted 04/16/24

April 16, 2024

Ms. Britney Gallivan
Air Quality Specialist
South Coast Air Quality Management District (SCAQMD)
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E-mail: bgalivan@aqmd.gov

Subject: **Proposed Rule Language to Include Title V Exclusions and Processes; Proposed Rule 317.1**

Dear Ms. Gallivan:

Hoag Memorial Hospital Presbyterian (Hoag Hospital, Facility ID: 11245) is an acute care, not-for-profit hospital that offers a comprehensive mix of health care services, including Centers of Excellence in cancer, heart and vascular, neurosciences, women's health, and orthopedics.

Proposed Rule (PR) 317.1 would impose penalty fees on facilities that have already reduced emissions to below major source threshold levels. Moreover, the rule does not adequately provide for facilities with actual emissions below major source thresholds to leave the Title V program through a Synthetic Minor facility-wide limit, commonly referred to as a Title V Exclusion. Hoag Hospital provides an example of why the PR language must include provisions that allow low-emitting facilities the opportunity to exclude themselves from Title V in a timely manner to avoid undue fees.

Comment 2-1

Comment 2-2

Hoag Hospital currently holds a Title V permit, which is a federal operating permit required for Major Sources of air emissions. The facility submitted the Initial Title V application in 2006 under Application Number (A/N) 454723 and currently remains a Title V facility. Initially considered a Major Source based on the potential to emit (PTE) for nitrogen oxides (NO_x) and volatile organic compound (VOC) emissions, Hoag Hospital has been below Major Source thresholds for all pollutant emissions since 2019 due to emission reduction retrofit projects and reduced actual emissions. In May 2023, Hoag Hospital submitted a Title V Exclusion application with the request that the facility be made a Synthetic Minor by accepting a 12-month PTE limit for all criteria pollutants. Hoag Hospital has been working diligently with the South Coast Air Quality Management District (SCAQMD) to complete processing this Title V Exclusion application. Since June 2023, Hoag Hospital has been in regular communication with SCAQMD staff, providing additional supporting data to justify the request for Synthetic Minor status.

Below is a timeline of Hoag Hospital's Title V Exclusion activities based on agency correspondence and records obtained from the SCAQMD's online Facility Information Detail (F.I.N.D.) system:

- May 2023 – Hoag Hospital submitted a Title V Exclusion application package;
- June 8, 2023 – Title V Exclusion application received by the SCAQMD (as noted in F.I.N.D.);
- June 22, 2023 – E-mail submitted to the SCAQMD in regards to their initial rejection of the application;
- June 26, 2023 – E-mail submitted to the SCAQMD (Li Chen) in regards to the initial determination;
- July 18, 2023 – Letter submitted to the SCAQMD challenging the application refusal;
- August 3, 2023 – Met with SCAQMD staff to discuss the letter and their reservations about the application;

Comment 2-3

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- October 4, 2023 – Letter submitted to the SCAQMD challenging additional points made by SCAQMD staff;
- October 31, 2023 – March 28, 2024 – Continued follow-up for a status update;
- March 29, 2024 – Adan Velasco of the SCAQMD replied that the application cannot be processed based on internal policy;
- April 8, 2024 – Requested the internal SCAQMD policy; and
- April 9, 2024 – SCAQMD cannot provide the internal SCAQMD policy.

Comment 2-3 Cont.

Processing Title V Exclusions can and should be an important aspect in the implementation of PR 317.1. Hoag Hospital, like many Title V facilities, does not significantly cause or contribute to the South Coast Air Basin's nonattainment status. Hoag Hospital supports the SCAQMD's efforts to comply with the Clean Air Act should the South Coast Air Basin fail to attain the 1997 and/or 2008 8-hour standard with the implementation of Rule 317.1, but the primary objective of this fee is as a penalty levied on Major Sources of emissions that have caused or contributed to failure of the region to meet its attainment goals.

We reviewed the PR 317.1 dated March 22, 2024, as part of the Public Consultation Meeting held April 3, 2024, during which the SCAQMD did not consider applicability of the rule to Title V facilities who have applied and are currently in the process of being excluded from the Title V program. As mentioned above, Hoag Hospital has applied to the SCAQMD for a Title V Exclusion; therefore, we are requesting that the SCAQMD examine the following for inclusion into Rule 317.1 implementation:

- Allow an exemption or deferral period in Rule 317.1 (e), Exemptions, for Title V facilities who have applied for Title V Exclusions with the submittal of Form 500-E and are awaiting SCAQMD final approval; and
- Create a streamlined process and guidelines for Title V facilities submitting a Form 500-E, Title V Exclusion/Exemption Request, per Rule 301(p)(13) and Rule 306.

Comment 2-4

We appreciate your assistance in addressing this matter.

Sincerely,

Erik Lidecis
Director of Facilities, Energy, & Sustainability
Hoag Hospital
(949) 764-6574
erik.lidecis@hoag.org

cc: Duane Suby, Hoag Memorial Hospital Presbyterian
Corina Chang, Yorke Engineering, LLC
Peter Moore, Yorke Engineering, LLC
Greg Wolffe, Yorke Engineering, LLC
Corey Luth, Yorke Engineering, LLC
Gerard Randolph, Yorke Engineering, LLC
Jason Aspell, South Coast Air Quality Management District
Adan Velasco, South Coast Air Quality Management District
Shannon Lee, South Coast Air Quality Management District
Li Chen, South Coast Air Quality Management District
Kelland Chow, South Coast Air Quality Management District

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2-1 Response

The CAA Nonattainment Fees will be collected form Major Stationary Sources of VOC and/or NOx regardless of whether PR 317.1 is adopted. The CAA section 185 requires that a Major Stationary Source of VOC and/or NOx in an area classified as "severe" or "extreme" that has failed to attain the ozone standard by the assigned attainment dates, either reduce their emissions by 20% from a baseline amount or pay a CAA nonattainment fee. PR 317.1 is being developed to implement the existing requirements of CAA section 185 for the 1997 and 2008 8-hour ozone NAAQS. If a regulatory pathway is not developed, these Major Stationary Sources would still be required to comply with CAA section 185 and CAA Nonattainment Fees would instead be collected by the U.S. EPA.

2-2 Response

PR 317.1 applies to Major Stationary Sources that emit or have the PTE more than 10 tons per year of either VOC or NOx. Pathways already exist for facilities to exit the Title V permitting program and these pathways are specified on South Coast AQMD website at https://www.aqmd.gov/home/permits/title-v/what-is-title-v-. Please refer to the definition of Major Stationary Source in "2.2.3. Definitions – Subdivision (c)" of this PR 317.1 Staff Report for an explanation of how a Major Stationary Source may no longer be subject to PR 317.1. Additionally, please refer to section "2.2.5.3. Enforceable Limitation Through a Rule 317.1 Exclusion Plan – Paragraph (e)(3)" of this PR 317.1 Staff Report for an explanation of the enforceable limit to not be subject to the nonattainment fee through a Rule 317.1 Exclusion Plan.

2-3 Response

South Coast AQMD Engineering and Permitting staff reviews every Title V exclusion application to ensure that facilities meet the criteria to exit the Title V permit program. A facility may be excluded from the Title V permit program by either demonstrating that the facilities actual emissions are below 50% of the Title V major source thresholds pursuant to Rule 3008 or below 80% of the Title V major source thresholds to take a permit limit pursuant to Rule 3001. So it is not an arbitrary analysis, it has been staff's practice to require facilities to demonstrate that the most recent five years of actual emissions reported through the AER program are under 80% of the Title V major source thresholds to provide assurance that the facility can and will comply with the permit condition that limits the facility's total emissions to less than the Title V major source threshold. As explained in this Staff Report, PR 317.1 includes an exemption for facilities electing to accept federally enforceable limits through a Rule 317.1 Exclusion Plan. The facility would have to demonstrate that the facility's emissions, excluding the emissions listed in this rule's definition of Major Stationary Source, were below the major source threshold for the most recent five calendar years, and be willing to accept conditions to ensure that the facility's emissions do not exceed the threshold. Please refer to section "2.2.5.3. Enforceable Limitation Through a Rule 317.1 Exclusion Plan – Paragraph (e)(3)" of this PR 317.1 Staff Report for additional details. Alternatively, a facility could also request to reduce their permitted PTEs below Major Stationary Source thresholds, however this approach is dependent on business decisions and process needs by the facility.

2-4 Response

PR 317.1 has been modified to clarify that facilities with enforceable conditions that reduce emissions to below the Major Stationary Source thresholds are exempt from payment of applicable

CAA Nonattainment Fees beginning the calendar year after the calendar year such conditions are added.

South Coast AQMD's Title V permit program is separate from PR 317.1. Please contact the South Coast AQMD engineer assigned to your facility for the process for exiting the Title V permit program.

3. Earthjustice, California Communities Against Toxics, California Safe Schools, Center for Community Action and Environmental Justice, Coalition for Clean Air, Communities for a Better Environment, Industrious Labs, Natural Resources Defense Council, Sierra Club, and West Long Beach Association Comment Letter, Submitted 04/17/24

April 17, 2024

Britney Gallivan
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Re: Proposed Rule 317.1

Dear Ms. Gallivan:

The undersigned organizations are grateful for the opportunity to comment on Proposed Rule 317.1. Overall, we remain pleased that the South Coast AQMD has proposed to actually adopt a fee on the largest stationary sources, as opposed to using an "equivalency" approach for the 1997 and 2008 8-hour ozone standards. A fee rule is not only a welcome sight but also a legal requirement under Section 185 of the Clean Air Act, which requires that major stationary sources in regions classified "severe" or "extreme" for ozone that fail to attain are subject to fees. Many of the large facilities that will be subject to Proposed Rule 317.1 would have paid fees under the originally adopted Rule 317, but the South Coast AQMD decided to exempt these entities from fees by taking credit for other incentive programs the legislature and voters approved (e.g. Proposition 1B, Carl Moyer Program, etc.). The end result of this "equivalency" approach has been corporations – some of them amongst the largest and most profitable in the world – not having to pay fees or reduce emissions by 20%. The unfortunate reality is this decadal free pass has meant more pollution in communities, particularly those living in the shadows of oil and gas infrastructure and in an air basin that is habitually in non-compliance with federal air quality standards. We anticipate that industry and major polluters will push South Coast AQMD to again develop a program outside of the clear requirements of Section 185 of the Clean Air Act. As the following sections outline, a direct fee approach is not only the soundest approach legally, but also makes the most sense if the South Coast AQMD desires to reduce emissions and address rampant and persistent environmental injustice.

I. Commenters Continue to Object to Rule 317 – the 1-hour Ozone Fee Rule – Because It Was Adopted Under a False Premise and Exacerbates Environmental Injustice.

In its initial promulgation of a fee program for the 1979 one-hour ozone standard, South Coast

Comment 3-1

AQMD provided that major polluters in non-attainment areas can either pay a fee representative of 20% of their NOx and VOCs emissions or reduce their emissions by 20% to comply.[1] However, lawyers for industry invented and sold the air district on a credit equivalency program – fundamentally a scheme under which no polluting facility would have to pay a single cent for their emissions.

In promulgating the final rule, SCAQMD admitted to the fossil fuel lobby's efforts stating:

> "[T]here is substantial opposition to [an initial 2010] fee rule by the regulated community as the fee burden is significant while the relative contribution by major stationary sources to ground level ozone is small relative to area and mobile sources. Further, the applicability of the fee solely to major stationary sources is seen as unfair given the fact that major stationary sources in the South Coast air basin are subject to the nation's most stringent regulations and have reduced their emissions significantly over the years."[2]

Ignoring calls for stronger fee provisions, South Coast AQMD capitulated to fossil fuel lobbyists and instituted an alternative fee program pursuant to Section 172(e), called Rule 317. Rule 317, as amended on February 4, 2011, and approved as a revision to the California State Implementation Plan (SIP) by U.S. EPA on December 14, 2012, provides the framework for implementing an alternative fee program to Section 185, as authorized under CAA Section 172(e). Rule 317 requires the Executive Officer ("EO") to establish and maintain a Section 172(e) fee equivalency account ("FEA").[3]

Under Rule 317 FEA, South Coast AQMD tracks expenditures from "qualified programs" and uses them as credits to offset any Section 185 non-attainment fee obligation incurred by major stationary sources.[4] The expenditures for which South Coast AQMD could take credit were "designed to result or have resulted in direct VOC or NOx reductions in the South Coast AQMD; or have facilitated VOC or NOx reductions in the South Coast AQMD through vehicle/engine fueling infrastructure or advanced technology development and demonstration efforts for implementation within the next 10 years."[5] *In theory,* the hope was that these credits would avoid the need for a facility-specific fee.

Stated differently, instead of collecting a fee from large stationary sources like refineries, South Coast AQMD decided to take credit for a grab bag of programs fundamentally untethered to limiting ozone precursors. For example, instead of making Tesoro Refinery pay a fee or reduce emissions by 20%, South Coast AQMD took credit for programs like California Natural Gas Vehicle Partnership to promote the greater deployment of natural gas vehicles in California, the "Prop 1B Program," which provides funding for projects that reduce emissions from goods movement operations, and the Carl Moyer Program, a voluntary program that provides incentives to private companies to purchase cleaner than-required engines, equipment, and emission reduction technologies.[6] Tesoro has paid no fees under

Comment 3-1 Cont.

[1] Memorandum from EPA Office of Air Quality Planning and Standards, *Guidance on Developing Fee Programs Required by Clean Air Act Section 185 for the 1-hour Ozone NAAQS* (Jan. 5, 2010) https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/20100105_page_section_185_fee_programs.pdf.
[2] *Id.*
[3] *Rule 317*, *supra* note 1, at 5.
[4] FEA Report, *supra* note 2, at 2.
[5] *Id.* at 4.
[6] *Id.* at 5-7.

Rule 317 and did not even have to find and fund the programs that it was credited for itself.

Since no fees are levied on stationary sources, there is also no incentive mechanism to undertake abatement actions that would reduce emissions by 20%. Thus, SCAQMD's fee program for the 1-hour ozone standard amounts to no penalty and instead a paper exercise providing the veneer of a penalty.

Worse yet, incorrect data informed the Rule 317 credit approach. In the 2011 Staff Report supporting the revisions to Rule 317, staff noted the following: "Staff's approach builds on that concept as major stationary sources are already at BACT ["Best Available Control Technology"] or BARCT ["Best Available Retrofit Control Technology"] with limited potential for further VOC/NOx reductions through additional control."[7] We now know that this was absolutely incorrect, as many of the largest stationary sources were not at BACT/BARCT in 2011 and continue to not be at BACT/BARCT today.

In fact, in its effort to dismantle the Regional Clean Air Incentives Market ("RECLAIM"), staff noted the following: "Based on South Coast AQMD's permit database, well over half of the equipment at RECLAIM facilities is currently not at BARCT. Much of this equipment resides at some of the largest NOx emitting facilities in the Basin."[8] Thus, this failure to impose a fee or compel cleanup of these highly toxic and polluting facilities was based on an error that gravely understated the extent of uncontrolled emissions in the South Coast.

The biggest beneficiaries of this "equivalency approach" are some of the largest oil corporations in the world, the U.S. Department of Defense, investor owned utilities, amongst others. The following chart uses data from the South Coast AQMD's equivalency reports to show what facilities have benefited most from not paying fees under Rule 317 over a period from 2018 to 2022.

Comment 3-1 Cont.

ID	Facility Name	2022	2021	2020	2019	2018	Total
800436	TESORO REFINING AND MARKETING CO, LLC	2,285,791	2,905,909	3,198,819	5,072,875	5,941,797	19,405,191
181667	TORRANCE REFINING COMPANY, LLC	1,193,653	3,066,523	7,728,775	5,044,733	4,694,000	21,727,684
800026	ULTRAMAR, INC	807,107	1,427,858	2,075,271	1,823,493	1,098,514	7,232,243
166073	BETA OFFSHORE	1,552,687	1,802,625	1,735,421	1,624,791	1,556,991	8,272,515
113518	BREA PARENT 2007, LLC	789,406	805,791	867,659	918,229	865,192	4,246,277
800263	U.S. GOVT, DEPT OF NAVY	903,397	901,679	926,956	914,510	895,107	4,541,649
18931	TAMCO	0	0	239,241	830,788	410,454	1,480,483
155877	MOLSON COORS USA, LLC	0	0	0	782,043	786,171	1,568,214
160437	SOUTHERN CALIFORNIA EDISON	241,759	416,510	1,002,284	765,057	1,180,388	3,605,998
171107	PHILLIPS 66 CO/LA REFINERY WILMINGTON PL	269,142	625,204	1,081,722	763,951	1,270,234	4,010,253
151843	INSULFOAM	469,933	462,289	367,802	562,234	562,394	2,424,652
49111	SUNSHINE CYN LANDFILL REPUBLIC SERV, INC	160,270	182,678	865,090	536,706	478,355	2,223,099
94872	METAL CONTAINER CORP	525,596	576,372	536,545	529,067	308,407	2,475,987
800236	LA CO. SANITATION DIST	325,445	459,152	466,355	487,156	485,440	2,223,548
800129	SFPP, L.P.	523,250	344,756	443,438	800129	372,469	2,484,042

Proponents of facilities subject to Rule 317 might try to point to the ongoing dismantling of the RECLAIM program as evidence that South Coast is on track to rectifying its ozone pollution problem.

[7] SCAQMD, Proposed Amended Rule 317 Staff Report, at p. p. 317-1 (Feb. 4, 2011), http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2011/2011-feb4-029.pdf?sfvrsn=2.

[8] *RECLAIM Transition Plan Draft Version 2.0*, S. Coast AQMD vii (Dec. 2020), http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/regx111/reclaim-transition-plan-draft-version-2-0.pdf?sfvrsn=6 ("South Coast AQMD retains broad statutory authority to adopt emission-control requirements for stationary sources, and that authority may include equipment replacement, as long as the requirement is not arbitrary and capricious").

We remind South Coast AQMD, however, that many compliance dates for RECLAIM facility equipment have been outdated for a decade or more, so deadly and archaic equipment could continue to poison communities for years, as the South Coast Air Basin fails to achieve both the 1979 standard and the 1997 eight-hour ozone standard.

Comment 3-1 Cont.

II. The Current Proposal for Rule 317.1 Makes More Sense Than the Rule 317 Approach.

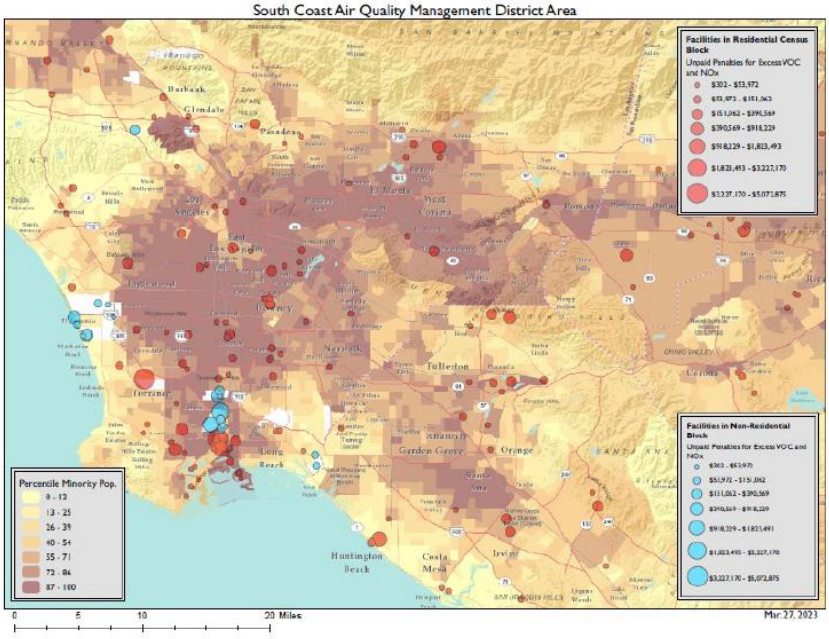
The current staff proposal for the 1997 ozone nonattainment fee makes sense from an air quality and environmental justice perspective. In fact, if implemented correctly, Proposed Rule 317.1 could be used as a start to address the environmental injustice associated with the location of some of the largest polluting facilities in the region. In addition, it could result in oil refineries and other polluting sources hastening implementation of BARCT to turn off the penalties. This would provide desperately needed relief to communities.

Comment 3-2

A. Data From Rule 317 Shows the Largest Stationary Sources Have a Disparate Impact on Overburdened Communities.

The following maps show the concentration of and proximity of major source facilities that are subject Rule 317 that are adding a significant amount of pollution to these already over-burdened areas.

South Coast Air Quality Management District Area

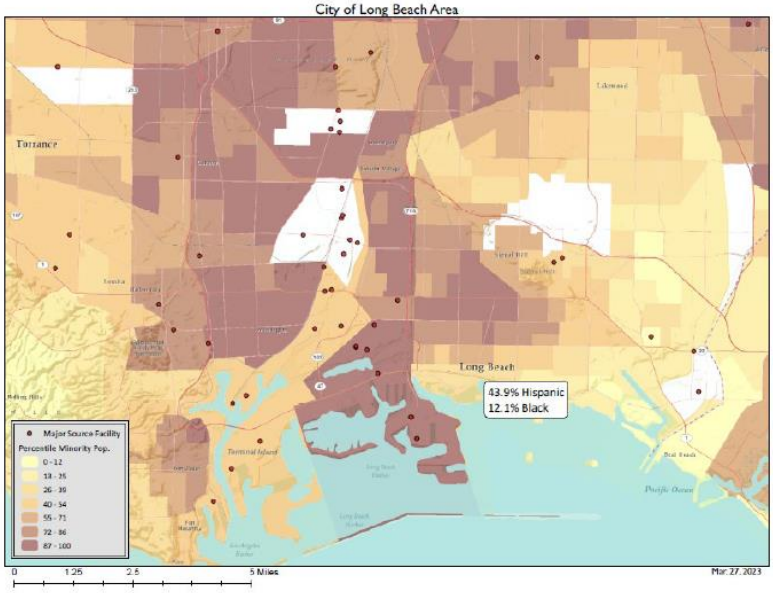


While the above map clearly demonstrates the pattern and practice of major sources in communities of color, the maps below also show a more granular view of the cities in the Air Basin. The red dots represent facilities covered under South Coast AQMD Rule 317.

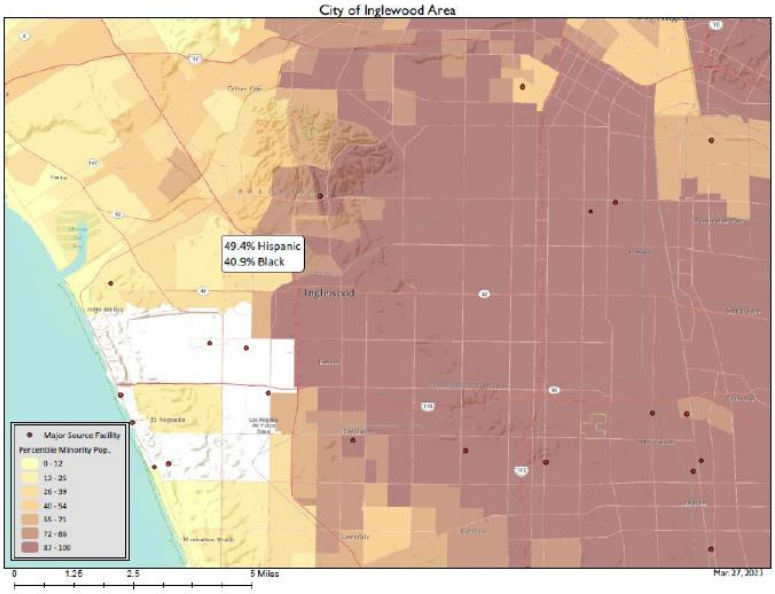
Comment 3-2 A Cont.

The maps below show locations of Rule 317 facilities in various communities throughout the South Coast Air Basin.

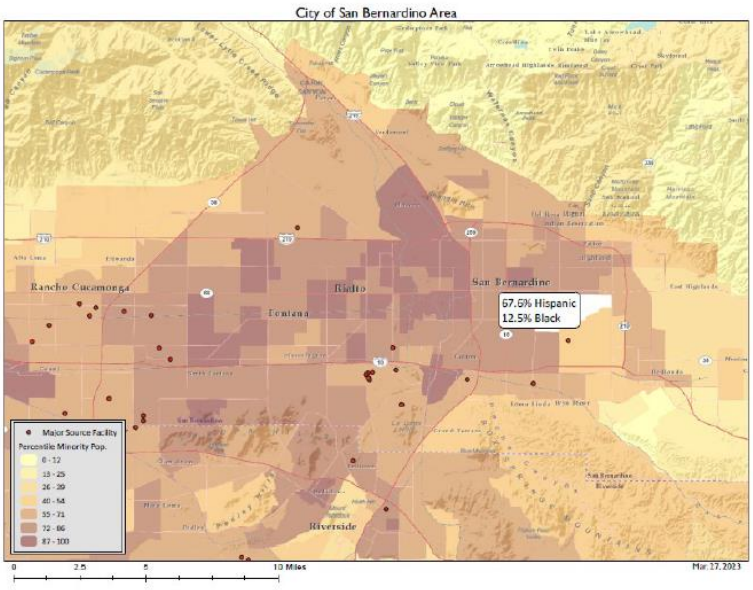
City of Long Beach Area

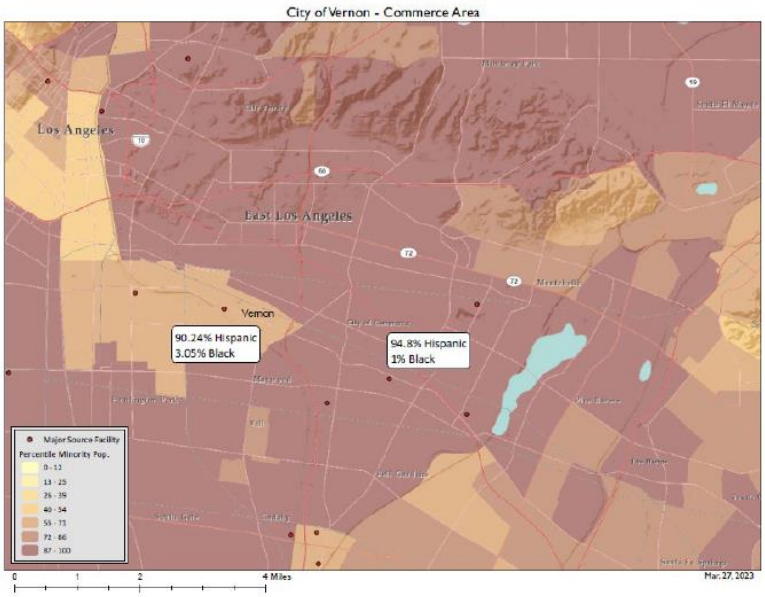


City of Inglewood Area

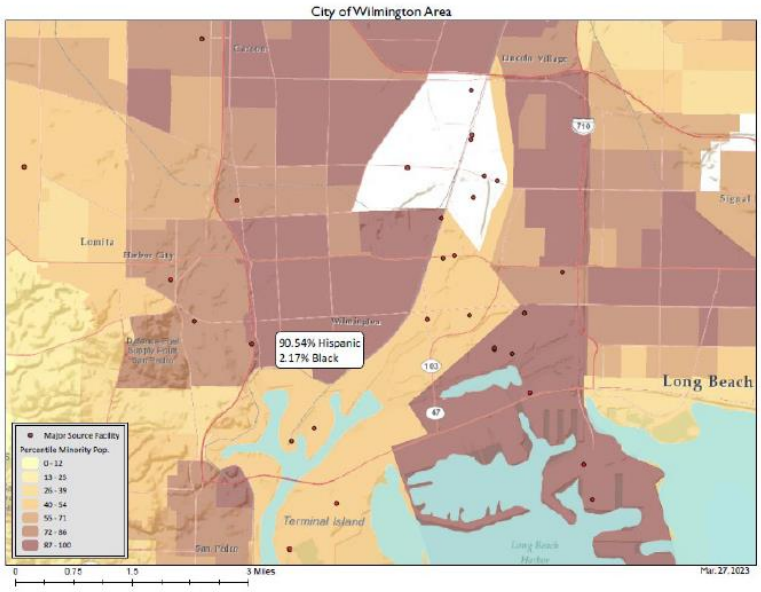


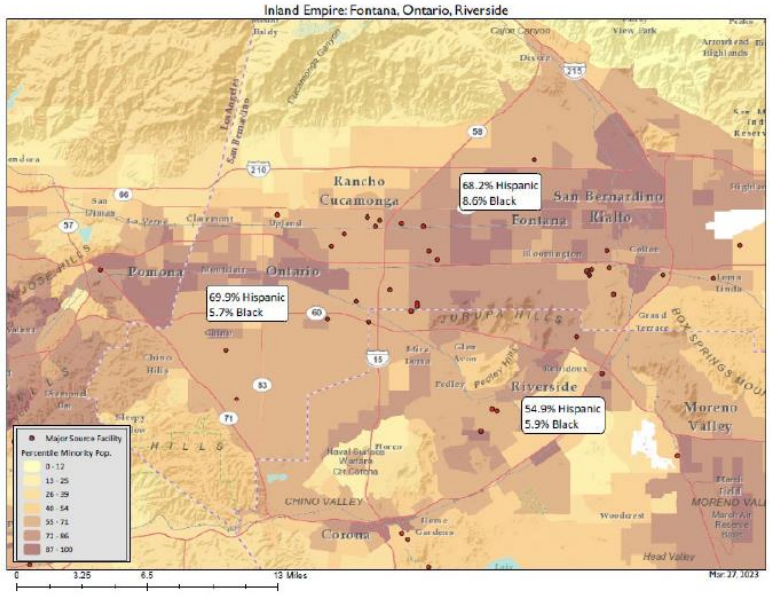
Comment 3-2 A Cont.



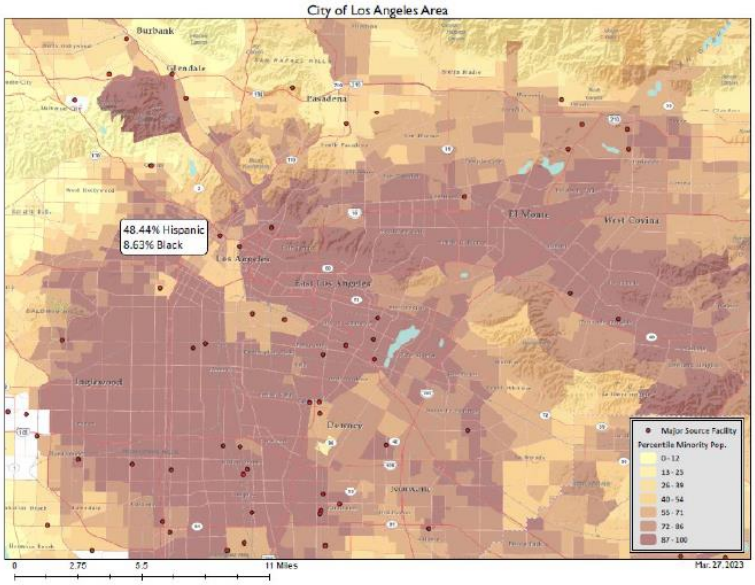


Comment 3-2 A Cont.





Comment 3-2 A Cont.



Comment 3-2 A Cont.

The disparate impacts demonstrated by these maps are clear. Communities that are majority Black and Hispanic/Latinx are disproportionately burdened. Importantly, failing to collect the required fee on these stationary sources – as some working group participants suggest – means the precursors to ozone pollution – VOC and NOx are emitted in these communities, in addition to cumulative impacts from air toxic reductions that would be foregone if large facilities had to actually pay a fee. So, by not taking a straight-forward fee approach, South Coast AQMD would forego "section 185's powerful incentive for major stationary sources to reduce emissions,"[9] which would continue this legacy of disparate impact.

Besides, since passage of Rule 317, the California Legislature has confirmed the importance of addressing the harm from industrial sources in Assembly Bill (AB) 617.[10] Several of the communities that have been identified as overburdened pursuant to the AB 617 process host or are impacted by dozens or more of facilities covered by Rule 317. It is imperative to assess the fee to create an incentive for emissions reductions.

B. In Addition to Addressing Environmental Justice, the Fee Provides a Powerful Incentive to Move to Zero-Emissions.

Comment 3-2 B Cont.

During the workgroup meeting, several commenters raised concerns about facilities at BACT and BARCT having to pay fees. To the extent staff seeks to dig into this issue, we want to highlight several clarifying points. We remind the Air District that BARCT is constantly evolving. With South Coast AQMD revising cost effectiveness thresholds in the last AQMP, it is likely that BARCT levels are not set at appropriate levels for some categories of equipment. Thus, some facilities claiming to be at

[9] *NRDC v. EPA*, 643 F.3d 311, 318 (D.C. Cir. 2011).
[10] *See generally* Cal. Health & Safety Code § 44391.2.

BARCT may have some additional technologies that could be deployed to reduce emissions. Moreover, this fee will provide a powerful incentive for facilities with combustion equipment to shift to zero-emitting equipment as the most recent air plan says needs to happen. Finally, we would be amenable to discussions of allocating some portion of incentive funds for facilities that are at BARCT to move to zero-emissions.

Comment 3-2 B Cont.

III. Specific Comments on Proposed Rule 317.1.

Commenters provide the following feedback on the text of Proposed Rule 317.1:

- The South Coast AQMD should post all requests for Alternative Baseline Emissions on the South Coast AQMD website. It will be critical to have transparency if industrial sources seek an alternative baseline.

Comment 3-3

- The Proposed Rule should require payments sooner. The current rule provides a full 12 months from invoicing. That is an absurd amount of time, and the South Coast AQMD should consider moving the payment date to four (4) months after invoicing.

Comment 3-4

- In section (d)(5) of Proposed Rule 317.1, the proposal provides 120 days for companies that are truants and do not pay their bills on time. It is not clear why there should be 4 months of penalty-free amnesty for companies that decide not to pay their fees on time. This is especially important because facilities will have a full 365 days to pay invoices under the rule.

Comment 3-5

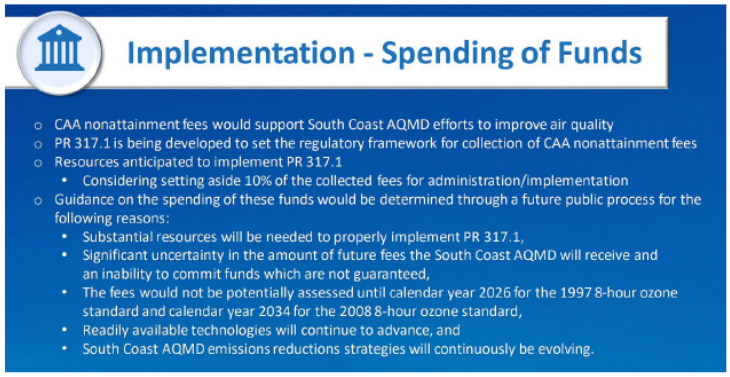
- Some commenters suggested using the Mojave Air District approach of only requiring one fee be paid when a region violates multiple standards. This request is patently unlawful, and we suggest this type of language, which would make the rule legally vulnerable, not be included in the final rule.

Comment 3-6

To the extent language changes, we will likely provide additional comments on the proposal.

IV. Discussions on How Funds Should Be Used Must Center Communities.

We appreciate staff recognition in the slide provided below that a public process is needed to decide how funding is allocated.



Comment 3-7

In implementing Proposed Rule 317.1, there must be full engagement of stakeholders from overburdened communities. The "equivalency" approach used in Rule 317, which allowed large stationary sources to emit without a fee, had disparate impacts on certain communities, including several that have been identified as AB 617 communities. To repair the harm of allowing this to happen for the last decade, the South Coast AQMD should center communities in its decisions.

Comment 3-7 Cont.

We appreciate your consideration of these comments, and we look forward to the adoption of these rule amendments to get one step closer to the emissions reductions the region desperately needs.

Sincerely,

Adrian Martinez
Earthjustice

Jane Williams
California Communities Against Toxics

Robina Suwol
California Safe Schools

Ana Gonzalez
Center for Community Action & Environmental Justice

Chris Chavez
Coalition for Clean Air

Julia May
Communities for a Better Environment

Evan Gillespie
Industrious Labs

Ali Hahm
Natural Resources Defense Council

Nihal Shrinath
Sierra Club

Theral Golden
West Long Beach Association

3-1 Response

We appreciate your comment. Rule 317, or the pathway to implement section 185 requirement for the 1979 1-hour ozone standard, is outside the scope of this rule development effort under PR 317.1.

3-2 Response

A. Staff appreciates your comment and support for the proposed approach under PR 317.1. South Coast AQMD agrees that emissions reductions from Major Stationary Sources will improve the air quality surrounding overburdened communities. However, this comment fails to consider that the emissions reductions from the incentive programs under Rule 317 are also primarily located in overburdened communities, either as a requirement of the program or due to how they have been implemented. Moreover, the comment's assertion that the incentive programs are "untethered" to emissions reductions is simply incorrect, as all of the programs currently used for Rule 317 do reduce emissions.

B. South Coast AQMD agrees that transition from combustion equipment to zero-emission equipment is necessary to achieve attainment with our clean air goals. The CAA Nonattainment Fees may promote the conversion to zero-emission equipment. Please see section "1.6. Use of Funds" of this PR 317.1 Staff Report for an explanation of why guidance on the spending of these potential funds would be determined in the future though a public process that would be separate from this rulemaking.

3-3 Response

Applications/requests from facilities are not posted on the South Coast AQMD website as they may contain confidential business information and contain unevaluated information. The final determinations for any facilities requesting Alternative Baseline Emissions will be available through the Public Records Request process. Requests may be made here: https://www.aqmd.gov/nav/online-services/public-records.

3-4 Response

Please refer to section "2.2.4.4. Payment Due Date Requirements – Paragraph (d)(4)" of this PR 317.1 Staff Report for additional details regarding the payment due date for the invoice that includes the CAA Nonattainment Fees for the initial Fee Assessment Year for the Applicable Ozone Standard. The initial invoice will, at a minimum, bill for the initial year's CAA Nonattainment Fees, however, multiple subsequent years may be included if there is a delay in the finding of failure by the U.S. EPA. Impacted facilities have raised concerns about the payment due date for the initial invoice as the fee obligation may not be included in the budget and about the uncertainty of the fee amount for the initial invoice. As such, the initial invoice due date for the applicable standard is 365 days from the date the invoice is issued to provide the Major Stationary Source adequate time to incorporate the initial CAA Nonattainment Fees for the Applicable Ozone Standard into their annual budget. Subsequent invoices would be required to be paid sooner with a deadline of no later than December 15th of the year of invoice issuance or no later than 75 days from the date the invoice was issued, whichever is later.

3-5 Response

A Major Stationary Source will only have a payment due date which is 365 days after issuance for the invoice that includes the CAA Nonattainment Fees for the initial Fee Assessment Year for the

Applicable Ozone Standard. Please refer to section "2.2.4.5. Failure to Pay Fees Requirements – Paragraph (d)(5)" of this PR 317.1 Staff Report for additional details regarding the one-hundred twenty (120) days lapse after the invoice due date before the Executive Officer has the authority to take action to revoke all Permits to Operate for equipment on the premises. The one-hundred twenty (120) days are based on a similar requirement which exists in Rule 301 subparagraph (c)(10)(F) to help ensure that all emission fees and surcharges are paid in full for the AER submittals.

3-6 Response

PR 317.1 requires CAA Nonattainment Fees for each Applicable Ozone Standard. Please refer to the "Payment of Single Largest Standard in Year" section of the "1-3 Response" in this PR 317.1 Staff Report for an explanation of why the South Coast AQMD would not require a Major Stationary Source to only remit the largest applicable CAA Nonattainment Fees for a single ozone standard in any calendar year.

3-7 Response

PR 317.1 is being developed to set the regulatory framework for collection of CAA Nonattainment Fees for the 1997 and 2008 ozone standards. Overburdened communities may be considered in the implantation phase of PR 317.1. Please see section "1.6. Use of Funds" of this PR 317.1 Staff Report for an explanation of why guidance on the spending of these potential funds would be determined in the future though a public process that would be separate from this rulemaking.

4. RadTech Comment Letter, Submitted 04/17/24

April 17, 2024

Mr. Michael Krause
Assistant Deputy Executive Officer
South Coast Air quality Management District
mkrause@aqmd.gov

Re: Public Comments Rule 371.1 -- Clean Air Act Nonattainment Fees

Dear Mr. Krausse:

RadTech is pleased to comment on the District's Proposed Amended Rule 317.1. Our Association represents over 800 members who are involved in industry sectors ranging from printing and packaging to nail polish. UV/EB/LED processes are all electric, eliminating the need for add-on control devices thereby preventing NOx and Greenhouse Gases. The materials are not formulated with conventional solvents and therefore the emissions of VOCs are negligible. They are "super-compliant" as they go above and beyond current rule requirements and provide the district with excess emission reductions. Our recommendations are as follows:

Baseline Emissions Calculation

We urge the district to recognize the efforts of facilities who have voluntarily reduced their emissions. There should be an exemption for companies that have invested in clean technology early on. The baseline calculation may penalize operators who have been good environmental stewards. Presumably, the emissions from facilities that have implemented clean technology will be lower than those who have not done so. The baseline emissions of the good stewards will be lower than those of facilities that did not implement early voluntary emission reductions. The good operators will have less flexibility because their baseline emissions will be lower. The district should provide exemptions from Rule 317.1 fees for facilities that have gone above and beyond district requirements and have done so voluntarily. As an example, facilities that have transitioned to energy curable processes have most likely phased out processes that generate Greenhouse Gases like afterburners.

Comment 4-1

Title V Applicability

During the public consultation meeting, permit holders expressed concern that they may have been advised by district staff to participate in the Title V program. One commenter stated that the emissions from his facility were well below the Title V applicability threshold but that permit engineers had encouraged the facility to stay in the Title V program. Since Proposed Amended

Comment 4-2

Rule 317.1 specifically targets Title V facilities, it is now even more important for facilities to avoid applicability. Currently, there is no clear procedure on how facilities can petition the district if they want to get out of the Title V program. We urge the district to explain the process in the staff report.

Comment 4-2 Cont.

Relief from Fees for Clean Technology

In 2010, UV/EB processes were included in Table 1 of district Rule 3008 h (1)(B)(6) (Potential to Emit Limitations) as alternative operational limits. We urge the district to provide relief from Rule 317.1 fees to companies that have UV/EB/LED operations that meet the specified limits in Rule 3008. Rule 317.1 should mirror the existing Title V program rules and the staff report should provide clarification that the processes listed in Table 1 of Rule 3008 will not be subject to the Clean Air Act fees contemplated by Rule 317.1.

Comment 4-3

As I mentioned during the public consultation meeting, we are concerned that Rule 317.1 is extremely punitive to stationary sources who are not responsible for the majority of emissions in the South Coast Basin. We hope the district will provide incentives for facilities who have achieved voluntary emission reductions. We thank you for your consideration, and look forward to further conversations on our suggestions.

Comment 4-4

Regards,

Rita M. Loof
Director, Environmental Affairs

4-1 Response

Please refer to section "1.4.4. CAA Section 185 Compliance Pathway for 1997 and 2008 Ozone Standards of this Staff Report for an explanation of why CAA Nonattainment Fee collection is necessary for South Coast AQMD for the 1997 and 2008 8-hour ozone standards.

4-2 Response

Please refer to the "2-2 Response", "2-3 Response", and "2-4 Response" of this PR 317.1 Staff Report for an explanation of what qualifies as a Major Stationary Source and the existing pathway for facilities to exit the Title V permit program. The process to exit Title V has been implemented since the beginning of the District's Title V program and there is a dedicated permit application form posted on the District's webpage. Each facility deciding whether to remain or request to exit the Title V permit program is a case-by-case situation and is dependent on each facility's actual emissions and PTE at the time of the request. Staff does not consult facilities on their business decisions, and those decisions are left to the facility based on their process and economic needs. Staff may provide explanations on each of the permit application processes for businesses seeking information to support their decisions.

4-3 Response

The Alternative Operational Limits of Table 1 in Rule 3008 – Potential to Emit Limitations (Rule 3008) are not part of Rule 3008 (h)(6). Rather, Table 1 of Rule 3008 is referenced in Rule 3008 (d)(2) for alternative operational limits that require that "[a]ny facility for which 90 percent of the facility's emissions from the permitted emission units in every 12-month period are associated with one of the operations identified in Table 1 shall comply with the corresponding operational limits in Table 1." Facilities may elect to use Table 1, which requires a usage limit in every 12-month period for "Ultraviolet/Electron Beam Cured Operations" be "21,582 gallons of ultraviolet/electron beam materials not to exceed 50 grams/liter." Table 1 does not address LED technologies. Facilities meeting the applicable requirements of Rule 3008 (d)(2) do not meet the definition of a Major Stationary Source in Regulation XXX - Title V Permits. Similarly, they would not meet the PR 317.1 definition of a Major Stationary Source and, therefore, not be applicable to PR 317.1. Please refer to the definition of Major Stationary Source in section "2.2.3. Definitions – Subdivision (c)" of this PR 317.1 Staff Report for an explanation of what qualifies as a Major Stationary Source.

4-4 Response

Staff disagrees that PR 317.1 would be "extremely punitive" as the CAA Nonattainment Fees will be collected from Major Stationary Sources of VOC and/or NOx regardless of whether PR 317.1 is adopted. PR 317.1 is being developed to implement the existing requirements of CAA section 185 for the 1997 and 2008 8-hour ozone NAAQS. If a regulatory pathway is not developed, these Major Stationary Sources would still be required to comply with CAA section 185 and CAA Nonattainment Fees would instead be collected by the U.S. EPA. Please see section "1.6. Use of Funds" of this PR 317.1 Staff Report for an explanation of why guidance on the spending of these potential funds would be determined in the future though a public process that would be separate from this rulemaking.

5. Western States Petroleum Association (WSPA) Comment Letter, Submitted 04/17/24

WSPA

Ramine Ross
Senior Manager, Southern California Region

April 17, 2024

Dr. Kalam Cheung
Planning & Rules Manager
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Via e-mail at: kcheung@aqmd.gov

Re: SCAQMD Proposed Rule 317.1, Clean Air Act Nonattainment Fees for the 8-Hour Ozone Standards: WSPA Comments on Preliminary Draft Rule Language

Dear Dr. Cheung,

Western States Petroleum Association (WSPA) appreciates the opportunity to participate in South Coast Air Quality Management District (SCAQMD or District) Proposed Rule 317.1, Clean Air Act Nonattainment Fees for the 8-Hour Ozone Standards (PR 317.1). The stated purpose of this rulemaking 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.[1] PR 317.1 is proposed to apply to any Major Stationary Source of volatile organic compounds (VOCs) and/or oxides of nitrogen (NOx) pursuant to Section 185 of the federal CAA.[2]

WSPA is a non-profit trade association representing companies that explore for, produce, refine, transport, and market petroleum, petroleum products, natural gas, renewable fuels, and other energy supplies in five western states including California. WSPA has been an active participant in air quality planning issues for over 30 years. WSPA member companies operate petroleum refineries and other facilities in the South Coast Air Basin that are within the purview of the SCAQMD and thus will be impacted by PR 317.1.

SCAQMD published the Preliminary Draft Rule Language on March 22, 2024.[3] WSPA offers the following comments.

[1] SCAQMD Proposed Rule 317.1 Preliminary Draft Rule Language. Available at: https://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/317.1/pdrl-317-1_2024-03-22_final.pdf?sfvrsn=16.
[2] Ibid.
[3] Ibid.

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1. **The United States Environmental Protection Agency (U.S. EPA) previously issued guidance for alternative methodologies for establishing emissions baselines under Section 185 of the CAA for the 1-hour Ozone Standard. This methodology should be allowed under PR 317.1 without accruing additional fees.**

   PR 317.1(d)(8) states that once EPA issues guidance authorizing an alternative methodology for calculation of baseline emissions, facilities may submit a request for alternative baseline conditions if the attainment year is not representative of normal operating conditions. This would allow facilities to select an alternative baseline using twenty-four consecutive months out of the past 10 years that are representative of normal operating conditions.[4] This policy is presented in the U.S. EPA Guidance on Establishing Emissions Baselines under Section 185 of CAA for Severe and Extreme Ozone Nonattainment Areas that Fail to Attain the 1-hour Ozone NAAQS by their Attainment (Guidance).[5] The policy is consistent with the method for calculating "baseline actual emissions" found in U.S. EPA's regulations for Prevention of Significant Deterioration of Air Quality (PSD) (40 CFR 52.21(b)(48)).[6]

   According to the Guidance, U.S. EPA determined it is fair and reasonable for a source to use a 10-year look back period for baseline calculating "actual emissions" because it allows the source to consider a full business cycle in setting a baseline emissions rate that represents normal operation of the source for that time period.[7] According to SCAQMD staff, U.S. EPA may be amenable to the use of this methodology within PR 317.1.

   PAR 317.1 is written such that an alternative baseline can be established for facilities only if the attainment year is not representative of normal operations. WSPA members have taken a significant number of actions to reduce VOC and NOx emissions as a result of the reduction of NOx RECLAIM Trading Credits over the past 15 years and the 2016 Air Quality Management Plan (AQMP) and associated transition of RECLAIM facilities to command and control rules.[8] Facilities should be able to receive credit under PR 317.1 for these reductions in emissions.

   Additionally, PAR 317.1(d)(9)(A) states:

   > *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.*

Comment 5-1

[4] Ibid.
[5] U.S. EPA Guidance on Establishing Emissions Baselines under Section 185 of the Clean Air Act for Severe and Extreme Ozone Nonattainment Areas that Fail to Attain the 1-hour Ozone NAAQS by their Attainment. Available at: https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/20080321_harnett_emissions_basline_185.pdf.
[6] 40 CFR Part 52. Available at: https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-52/subpart-A/section-52.21.
[7] U.S. EPA Guidance on Establishing Emissions Baselines under Section 185 of the Clean Air Act for Severe and Extreme Ozone Nonattainment Areas that Fail to Attain the 1-hour Ozone NAAQS by their Attainment. Available at: https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/20080321_harnett_emissions_basline_185.pdf.
[8] SCAQMD 2016 AQMP. Available at: https://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2016-air-quality-management-plan/final-2016-aqmp/final2016aqmp.pdf.

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It is unclear why the District proposes charging an hourly staff evaluation fee if a facility were to pursue this alternative baseline emissions approach. It is reasonable to expect the District to engage with facilities and evaluate baseline emissions without additional fees. As stated in the Public Consultation Meeting on April 3, 2024, staff is considering reserving 10% of the collected fees for administration and implementation purposes.[9] According to the Preliminary Draft Staff Report, the total collected funds in 2025 are (conservatively) approximated to be ~$26 million per year from 320 Major Stationary Sources in SCAQMD's jurisdiction in calendar year 2025, so ~$2.6 million could be set aside in the first year alone.[10] Staff would need to demonstrate that the administrative burden for the one-time assessment of alternative baseline year methodologies would exceed the cumulative funds reserved for administrative purposes over the timeline of these fee schedules in order to justify the additional hourly staff evaluation fee. For these reasons, WSPA recommends that the hourly evaluation fee be removed from the rule.

Comment 5-1 Cont.

2. **SCAQMD should follow the example set by Mojave Desert Air Quality Management District and revise PR 317.1 such that facilities would be required to pay only one nonattainment fee should the air basin remain in nonattainment NAAQS, rather than pay fees on all three NAAQS.**

Mojave Desert Air Quality Management District (MDAQMD) Rules 315.1, 315.2, and 315.3 state:[11,12,13]

> *No Facility otherwise subject to this Rule shall be required to remit a FCAA Section 185 penalty for more than one Federal ozone standard for any specific calendar year. A Facility's applicable FCAA Section 185 penalty for any calendar year shall be the largest of all such applicable penalties.*

SCAQMD stated in the April 3rd Public Consultation Meeting that facilities would be required to pay nonattainment penalties on each of the 1997, 2008, and 2015 federal ozone standards, should the basin remain in nonattainment with each standard through 2033 and 2039, effectively "triple dipping" on facilities' emissions.[14]

U.S. EPA's periodic review and revision of the NAAQS is intended to set standards that adequately protect public health and public welfare based on the evolving understanding of the environmental and health impacts of criteria pollutants. The revisions to the standards do not represent a level of ambient air concentrations corresponding to a separate public health benchmark, rather they are the standards that would have been established in prior years had the public health and welfare impacts of these pollutants been better understood. Consequently, treating nonattainment under each standard for the same pollutant as a

Comment 5-2

[9] SCAQMD Public Consultation Meeting for PR 317.1. Available at: https://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/317.1/pr317-1_pcm_032924.pdf?sfvrsn=8.
[10] SCAQMD Preliminary Draft Staff Report for PR 317.1. Available at: https://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/317.1/pdsr-317-1_2024-03-22_final.pdf?sfvrsn=8.
[11] MDAQMD Rule 315.1. Available at: https://www.mdaqmd.ca.gov/home/showpublisheddocument/9306/637847640024930000.
[12] MDAQMD Rule 315.2. Available at: https://www.mdaqmd.ca.gov/home/showpublisheddocument/9308/637847619490870000.
[13] MDAQMD Rule 315.3. Available at: https://www.mdaqmd.ca.gov/home/showpublisheddocument/9733/638156003537770000.
[14] SCAQMD PR 317.1 Public Consultation Meeting, April 3, 2024.

separate violation rather than a continuous evolution of public health sciences unjustly penalizes stationary sources within the basin.

Revising the approach to the collection of fees would not compromise SCAQMD's ability to apply enforcement actions to facilities located in severe or extreme ozone nonattainment areas, as defined under Section 185 of the Clean Air Act.[15] As it currently stands, the South Coast Air Basin is designated as extreme nonattainment for all three of the 1997, 2008, and 2015 ozone standards.[16] WSPA strongly recommends that the District incorporate language into PR 317.1 similar to that in the MDAQMD rules that address CAA Section 185 penalties, allowing facilities to remit fees for only one ozone standard in any calendar year.

Comment 5-2 Cont.

3. **Emissions from equipment that are not federal sources, such as those registered under the Portable Equipment Registration Program (PERP), should be excluded from the calculation of Baseline and Actual Emissions.**

PR 317.1 (c)(1) defines Actual Emissions as:[17]

> *The mass of emissions of NO_x or VOCs emitted by a Major Stationary Source as reported through SCAQMD's Annual Emission 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*

Baseline Emissions would be calculated based on the lower of Actual Emissions, adjusted for emission exceedances, or the amount of emissions allowed under permits, plans, applicable rules, etc.[18] Some of the emissions reported under the AER program do not meet the definition of Major Stationary Source emissions and are not required to be counted under federal source requirements. Therefore, those emissions should not count towards a facility's Baseline or Actual Emissions.

PR 317.1 references CAA section 182(e) for extreme Nonattainment Areas, which defines a "Major Stationary Source" as:[19]

> *Any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 10 tons per year of volatile organic compounds.*

Comment 5-3

[15] Clean Air Act Enforcement for Severe and Extreme ozone nonattainment areas for failure to obtain. Available at: https://www.govinfo.gov/content/pkg/USCODE-2013-title42/html/USCODE-2013-title42-chap85-subchapI-partD-subpart2-sec7511d.htm.
[16] U.S. EPA Current Nonattainment Counties for All Criteria Pollutants. Available at: https://www3.epa.gov/airquality/greenbook/ancl.html.
[17] SCAQMD Proposed Rule 317.1 Preliminary Draft Rule Language. Available at: https://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/317.1/pdrl-317-1_2024-03-22_final.pdf?sfvrsn=16.
[18] Ibid.
[19] CAA Section 182(e). Available at: https://www.govinfo.gov/content/pkg/USCODE-2013-title42/html/USCODE-2013-title42-chap85-subchapI-partD-subpart2-sec7511a.htm

Mobile and portable sources are not required to be counted under federal source requirements. The inclusion of emissions of these sources within the Actual Emissions impacts the difference between Actual and Baseline Emissions in a given year and misrepresents the progress being made by stationary sources towards the attainment goals. WSPA suggests aligning the baseline and actual emission inventories with federal act requirements.

Comment 5-3 Cont.

4. **WSPA encourages SCAQMD to develop a resolution to direct the fees collected under this rule towards programs that facilitate VOC and NOx emission reductions projects at the Major Stationary Sources from which the fees were paid.**

   SCAQMD currently plans to defer the decision on how to allocate the funds collected under PR 317.1 until future proceedings due to uncertainties in the resources necessary to implement the rule and the amount of future fees that will be collected.[20] The South Coast Air Basin's nonattainment status primarily results from emissions from mobile sources, and yet the penalties of nonattainment are solely felt by Major Stationary Sources.[21] As such, WSPA recommends SCAQMD to allocate the funds raised back to those facilities to implement emission reduction projects.

Comment 5-4

WSPA appreciates the opportunity to provide these comments related to PR 317.1. We look forward to continued discussion of this important rulemaking. If you have any questions, please contact me at (310) 808-2146 or via e-mail at rross@wspa.org.

Sincerely,

Ramon Ross

Cc: Wayne Nastri, Executive Officer, SCAQMD
Sarah Rees, Deputy Executive Officer, SCAQMD
Michael Krause, Assistant Deputy Executive Officer, SCAQMD
Neil Fujiwara, Program Supervisor, SCAQMD
Britney Gallivan, Air Quality Specialist, SCAQMD
Patty Senecal, Senior Director, WSPA

[20] SCAQMD Public Consultation Meeting for PR 317.1. Available at: https://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/317.1/pr317-1_pcm_032924.pdf?sfvrsn=8
[21] SCAQMD Final 2022 AQMP Chapter 3: Base Year and Future Emissions. Available at: https://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2022-air-quality-management-plan/final-2022-aqmp/06-ch3.pdf?sfvrsn=18.

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5-1 Response

South Coast AQMD is appreciative of the efforts WSPA members have made to improve air quality. Unfortunately, these efforts alone were not enough to achieve attainment with the 1997 8-hour ozone standard. As such, the SCAB and Coachella Valley are subject to the fee collection requirements of CAA section 185, which determines fee obligations based on emissions relative to the established Baseline Emissions or Alternative Baseline Emissions. Please refer to the "2.2.4.9. Alternative Baseline Emissions Request Payment – Paragraph (d)(9)" section of this PR 317.1 Staff Report for an explanation of why South Coast AQMD has set a fee for evaluation of the Alternative Baseline Emissions Request. At this time, no funds have been reserved for administration and implementation of PR 317.1.

5-2 Response

Please refer to the "Payment of Single Largest Standard in Year" section of the "1-3 Response" in this PR 317.1 Staff Report for an explanation of why the South Coast AQMD would not require a Major Stationary Source to only remit the largest applicable CAA Nonattainment Fee for a single ozone standard in any calendar year.

5-3 Response

The definition of Actual Emissions has been revised since the release of the Preliminary Draft Rule Language. Please refer to the definition of Actual Emissions in section "2.2.3. Definitions – Subdivision (c)" of this PR 317.1 Staff Report. Actual Emissions are VOC and/or NOx emissions reported to or amended by the Executive Office through the AER program. Actual Emissions during the Fee Assessment Year would be used to establish Baseline Emissions. Portable equipment may qualify as emissions from stationary sources as certain portable equipment is required to be permitted by South Coast AQMD. Also, there could be emissions from PERP equipment that operates at a Major Stationary Source. As such, staff disagrees that emissions from PERP shall not be included in determination of the CAA Nonattainment Fees. For questions regarding which emissions would or would not be included in reporting to the AER program, please refer to the AER program.[34]

5-4 Response

PR 317.1 is being developed to set the regulatory framework for collection of CAA Nonattainment Fees for the 1997 and 2008 ozone standards. Please see section "1.6. Use of Funds" of this PR 317.1 Staff Report for an explanation of why guidance on the spending of these potential funds would be determined in the future though a public process that would be separate from this rulemaking. The South Coast AQMD may consider prioritizing monies collected to be spent on emissions reduction projects at or near essential public services, environmental justice areas, and stationary sources.

[34] For additional information on what to report through AER, see the following document: South Coast Air Quality Management District. *South Coast Air Quality Management District Annual Emissions Reporting, Reporting Tool - Frequently Asked Questions*. https://www.aqmd.gov/docs/default-source/planning/annual-emission-reporting/frequently-asked-questions.pdf?sfvrsn=6.

6. Stoel Rives, LLP Comment Letter, Submitted 04/23/24

April 23, 2024

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VIA E-MAIL

Mr. Michael Krause
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Ms. Britney Gallivan
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Re: Proposed Rule 317.1

Dear Mr. Krause and Ms. Gallivan:

We would like to take this opportunity to provide comments on the South Coast Air Quality Management District proposed Rule 317.1, which has the potential to deal a significant economic blow to regulated businesses in the air basins within the District's jurisdiction. With this Rule, the District should aim to satisfy Section 185 of Clean Air Act in a manner that imposes the least possible burden on the facilities within the District that will be subject to the rule's requirements. Our comments and proposed revisions to the proposed Rule, provided below, are reasonable and practical adjustments that the District can make to ease the burden on its local businesses without compromising timely compliance with the Clean Air Act.

Alternative Baseline Emissions

We propose certain revisions to the Alternative Baseline Emissions provisions under proposed Rule 317.1. We appreciate the District proposed an Alternative Baseline Emissions pathway to help make sure that the new nonattainment fees will be calculated more fairly and accurately. Our proposed changes would capture this intent, by ensuring that regulated facilities can appropriately utilize the Alternative Baseline Emissions option.

Comment 6-1

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Definition of Alternative Baseline Emissions

In proposed Rule 317.1(c)(2), "Alternative Baseline Emissions" is defined as the average annual actual emissions for two consecutive years within the last ten calendar years. This definition should be revised to allow for average annual emissions data from two *non-consecutive* years. This revision would also be reflected in proposed Rule 317.1(d)(8)(C)(ii) with removal of the word "consecutive." For many regulated facilities, the most representative years of emissions may not be in consecutive years, due to normal fluctuations in production or operations. Flexibility to incorporate emissions data from two consecutive – or non-consecutive years – would allow for calculation of the most representative Alternative Baseline Emissions period for a given source.

Comment 6-2

Determination of Alternative Baseline Emissions

We propose a revision to Rule 317.1(d)(8)(D), for approval of Alternative Baseline Emissions by the Executive Officer where all requirements delineated in the preceding clause (d)(8)(C) are met. As currently drafted, proposed clause (d)(8)(D) implies that the Executive Officer has discretion to disallow use of a proposed Alternative Baseline Emissions calculation, even where all of the requirements of clause (d)(8)(C) have been demonstrated. This would introduce the potential for a regulated source to be held to an undefined, ambiguous standard, outside of the delineated requirements of clause (d)(8), in order to use Alternative Baseline Emissions. We do not believe that is the District's intent. We would suggest revision of this clause to remove this ambiguity, and also include a timeline for approval by the Executive Officer:

> The Executive Officer shall approve ~~has authorized~~ a Major Stationary Source to use this Alternative Baseline Emissions within 90 days if all requirements identified in clause (d)(8)(C) are met.

This revision would allow the Executive Office to evaluate a request for Alternative Baseline Emissions and determine whether all the delineated requirements of clause (d)(8)(C) have been met prior to authorization of Alternative Baseline Emissions, but would avoid the potential for rejection of a proposed Alternative Baseline Emissions based on some unspecified or additional criteria.

Comment 6-3

We also propose revisions to certain criteria in clause (d)(8)(C), where requirements are unnecessary to adequately demonstrate alternative representative emissions, or unnecessarily burdensome. First, we propose deletion of proposed Rule 317.1(d)(8)(C)(iv), requiring analysis of all adopted local, state, and federal rules or regulations that would have restricted a source's operations and emissions during the proposed 24-month Alternative Baseline Emissions period. Such a comprehensive, hypothetical legal analysis is unnecessarily burdensome and complicated for regulated entities. Clause (d)(8)(C)(iii) already requires that a regulated entity provide an analysis demonstrating that Actual Emissions from the proposed 24-month period represent typical operations. With this analysis, the District can adequately evaluate whether proposed

Comment 6-4

Alternative Baseline Emissions are representative. To the extent new regulations have impacted a facility's operations or emissions in recent times, this would be implicated in the analysis prepared under clause (d)(8)(C)(iii) to support use of an alternative two-year period.

Comment 6-4 Cont.

Second, we also propose deletion of proposed Rule 317.1(d)(8)(C)(vi), requiring certification that a source's emissions are irregular, cyclical, or otherwise vary significantly from year to year. This certification is unnecessary. If a facility's pattern of emissions is substantially variable, this alone shows that emissions are irregular and vary significantly from year to year. Moreover, the analysis required under clause (d)(8)(C)(iii), demonstrating that a proposed 24-month period represents typical operations, would include an explanation of any irregular, cyclical, or variable emissions at the source. Therefore, no additional certification is needed.

Comment 6-5

Lastly, we request that the timeline for submission of an Alternative Baseline Emissions Report in clause (d)(8)(C) be revised from 120 days to 180 days, from U.S. EPA's final nonattainment finding. The preparation of a complete and supported Alternative Baseline Emissions Report will require significant efforts by a regulated entity and additional time is necessary to meet this burden.

Comment 6-6

Stationary Source Status During the Attainment Year

We propose deletion of proposed Rule 317.1(d)(8)(B), providing that a stationary source be major during the entirety of the Attainment Year, as defined, in order to use an alternative baseline. A facility is subject to the proposed Rule and potentially substantial Nonattainment Fees whether it is a major stationary source prior to, during, or following the defined Attainment Year. There is no reason for the Alternative Baseline Emissions pathway to be available only to those facilities that are major during the entirety of the Attainment Year.

Comment 6-7

Timing of Compliance

We would request that certain timelines in the proposed Rule be revised to allow sufficient time for evaluation and compliance. Regulated businesses need time to manage compliance with a new program with the potential for such significant impact.

Proposed Rule 317.1(d)(6) provides 60 days for a source to confirm or contest the Rule's applicability. We request that this timeline be revised to 90 days to allow regulated entities sufficient time to evaluate the applicability of this new program to their facilities. Likewise, we request that the timeline to confirm or contest assigned Baseline Emissions under proposed Rule 317.1(d)(5) be revised from 60 days to 90 days. Regulated entities need adequate time to evaluate the District's assignment of Baseline Emissions.

Comment 6-8

The timeline for the District to take action under proposed Rule 317.1(d)(5) for failure to pay fees should be extended to one year. California Health and Safety Code Section 42307 provides the District with authority to request a hearing to revoke a permit, but does not dictate a

Comment 6-9

timeline for such action. The District should allow for more than 120 days before this rather significant step is taken for a late payment of Rule 317.1 fees.

Comment 6-9 Cont.

Revise Exemptions for Clarity

We propose an additional clause in proposed Rule 317.1(e) to make explicit the exemption offered to sources that emit less than 80% of their baseline in a given year. The fee determination provisions of proposed Rule 317.1(d)(2) stipulate that if actual emissions are less than or equal to 80% of baseline emissions, no nonattainment fee is assessed for that year. We suggest a new subsection (e)(3) to provide:

> No VOC or NOx CAA Nonattainment Fee shall be assessed for a Fee Assessment Year where Actual Emissions of VOC or NOx do not exceed 80% of Baseline Emissions or Alternative Baseline Emissions for VOC or NOx, as applicable.

Comment 6-10

Conclusions

We recognize that factors outside of the District's control have placed it in a difficult position and led to the proposed Rule 317.1. Yes, proposed Rule 317.1 represents a significant new economic burden on regulated stationary sources in the District, unrelated to the sources' contribution (or lack thereof) to the District's nonattainment status. It is widely acknowledged that certain air basins in the District would not be able to meet applicable air quality standards, even if all emitting industries were eliminated in the District. Over 80% of ozone forming emissions in the District derive from mobile sources, including trucks, cars, airplanes, trains, and ships. None of these sources are subject to these nonattainment fees. For all these reasons, we urge the District to revise proposed Rule 317.1 where feasible, to comply with the Clean Air Act while lessening unnecessary burdens on major stationary sources.

Very truly yours,

Allison Smith

Allison C. Smith

Enclosure
cc: Ivan Tether, Esq., Tether Law

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(Preliminary Draft Rule Language - Version 2024/03/22)

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 (NOx).

(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 VOC and/or NOx emissions, for which a source qualifies as a Major Stationary Source. Baseline Emissions for VOC and/or NOx 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 NOx 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 =

Annual CAA Nonattainment Fee Rate × [A_V – (0.8 × B_V)]

NOx CAA Nonattainment Fees =

Annual CAA Nonattainment Fee Rate × [A_N – (0.8 × B_N)]

CAA Nonattainment Fees =

NOx CAA Nonattainment Fees + 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 NOx:
  - A_N = Actual Emissions of NOx 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 NOx CAA Nonattainment Fee assessed for the Fee Assessment Year.
  - B_N = Baseline Emissions or Alternative Baseline Emissions for NOx (in tons per year).

Proposed Rule 317.1 (Cont.) (Version 2024/03/22)

(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~~one year has 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~~90 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~~90 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~~180 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;~~

(iv) 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

(v~~i~~ii) Any other information as required by the U.S. EPA guidance; and

(D) The Executive Officer shall approve~~has authorized~~ a Major Stationary Source to use this Alternative Baseline Emissions within 90 days if all requirements identified in clause (d)(8)(C) are met.

(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.

(3) Baseline Emissions Threshold

No VOC or NOx CAA Nonattainment Fee shall be assessed for a Fee Assessment Year where Actual Emissions of VOC or NOx do not exceed 80% of Baseline Emissions or Alternative Baseline Emissions for VOC or NOx, as applicable.

6-1 Response

The South Coast AQMD appreciates your support of the inclusion of an Alternative Baseline Emissions pathway.

6-2 Response

As discussed in section "1.3.2. Alternative Baseline Emissions" of the PR 317.1 Staff Report, the requirements in PR 317.1 are in alignment with the Alternative Baseline Emissions guidance, established by the U.S. EPA on March 21, 2008, in which the U.S. EPA determined that 24-consecutive month period is reasonable. The guidance did not allow the use of non-consecutive months or years.

6-3 Response

A Major Stationary Source shall be allowed to use Alternative Baseline Emissions only if such request has been evaluated and approved by the Executive Officer to ensure the conditions described in the guidance established by U.S. EPA are met. Submission of an Alternative Baseline Emissions Request alone does not allow the use of Alternative Baseline Emissions. The Alternative Baseline Emissions Request requires evaluation by the South Coast AQMD and will only be approved if the South Coast AQMD believes there is adequate evidence to authorize the use of Alternative Baseline Emissions. The proposed rule language has been revised since the release of the Preliminary Draft Rule Language to clarify the basis of approval of the request.

6-4 Response

The intent is that the impacts from other requirements are evaluated to ensure Alternative Baseline Emissions represent typical operations. As the Major Stationary Source is most knowledgeable of their process and business decisions, they are required to identify if any changes in emissions are due to changes made in response to any local, state, or federal rules or regulations. Without this analysis, a facility may present a proposed Alternative Baseline Emissions which does not account for emissions reductions which are currently required.

6-5 Response

As discussed in section "1.3.2. Alternative Baseline Emissions" of the PR 317.1 Staff Report, the South Coast AQMD is establishing these requirements in alignment with the Alternative Baseline Emissions guidance established by the U.S. EPA on March 21, 2008, which requires that Alternative Baseline only be used if a source's annual emissions are "irregular, cyclical, or otherwise vary significantly from year to year." PR 317.1 clause (d)(8)(C)(ii) requires an analysis for representation of typical operations and makes no mention of requirements that the emissions be "irregular, cyclical, or otherwise vary significantly from year to year." PR 317.1 clause (d)(8)(C)(ii) would not be duplicative of PR 317.1 clause (d)(8)(C)(vi).

6-6 Response

A facility may begin preparing their Alternative Baseline Emissions Request at any time and does not need to delay preparation until after the Attainment Year or until 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. In consideration of this comment, PR 317.1 has been revised to from "no later than one-hundred twenty (120) days" to "no later than one-hundred eighty (180) days" after the end of the Attainment Year or no later than one-hundred twenty (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. In making a finding of failure to attain, the U.S. EPA typically first issues a proposed rule and adopts a final rule within a few months (sometimes longer). As this requirement is the later of two options, one-hundred twenty (120) days from whenever the U.S. EPA makes a final finding that the Basin has failed to attain the Applicable Ozone Standard by the applicable Attainment Date should allow ample time (more than one-hundred eighty (180) days after U.S. EPA's proposed rule) for the preparation of an Alternative Baseline Emissions Request.

6-7 Response

A facility qualifying as a Major Stationary Source after the start of the Attainment Year shall not be eligible to use Alternative Baseline Emissions as the Alternative Baseline Emissions would then be representative of their operations as a non-major stationary source instead of those as a Major Stationary Source.

6-8 Response

PR 317.1 has been revised as recommended to allow 90 days to challenge rule applicability and Baseline Emissions.

6-9 Response

PR 317.1 was revised from one-hundred twenty (120) days from the invoice due date to one-hundred twenty (120) days from the payment due date to provide clarity. Please refer to the section "2.2.4.5. Failure to Pay Fees Requirements – Paragraph (d)(5)" of the PR 317.1 Staff Report for an explanation of why the Executive Officer may take action to revoke all Permits to Operate for equipment on the premises if one-hundred twenty (120) days have lapsed since the payment due date.

6-10 Response

Please refer to the "Actual Emissions Below 80% of Baseline Emissions" section of the "1-3 Response" in this PR 317.1 Staff Report for an explanation of why an exemption is not necessary when actual emissions are less than 80 percent of the Baseline Emissions or Alternative Baseline Emissions.

7. Latham and Watkins, LLC Comment Letter, Submitted 04/30/24

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LATHAM & WATKINS LLP

April 30, 2024

Britney Gallivan, Air Quality Specialist
Michael Krause, Assistant Deputy Executive Officer
Planning, Rule Development and Implementation
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Re: Regulatory Flexibility Group Comments on Proposed Rule 317.1

Dear Ms. Gallivan and Mr. Krause,

We write on behalf of our client, the Regulatory Flexibility Group ("RFG"), with comments on Proposed Rule 317.1 ("PR 317.1"). RFG members include companies in the refining, utility, and aerospace sectors that operate facilities within the South Coast Air Quality Management District ("SCAQMD" or the "District") and that will be required to pay fees pursuant to PR 317.1.

The RFG appreciates the opportunity to participate in the rulemaking process and provide these comments. We recognize that Section 185 of the federal Clean Air Act requires the District to collect nonattainment penalty fees from stationary sources, and that the District's discretion in developing PR 317.1 is limited. Where the District does have discretion, however, it should be used to minimize the burden on the region's already heavily controlled stationary sources that have limited feasible opportunities to reduce emissions and avoid penalty fees. Below, we provide background comments and propose three primary ways in which the District can partially alleviate the substantial burden of this rule.[1]

Clean Air Act Section 185 Was Not Intended to Penalize Well-Controlled Stationary Sources

As a backdrop for our proposals, it should be noted that Congress designed Section 185 as a penalty backstop for failures by a state to regulate major stationary sources. But here, the State of California and the District have not failed, and the stationary sources potentially subject to PR 317.1 are among the most – if not the most – controlled sources in the country. The legislative history of Section 185 acknowledges that Congress intended the fee to function as a penalty for an

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[1] RFG's proposed amendments in Attachment A also suggest certain revisions to alleviate certain timing burdens and provide additional certainty for sources looking to utilize the alternative baseline approach.

area's failure to attain the ozone standard, but it was not intended to punish individual sources.[2] Rather, the Section 185 fee mechanism was designed to serve as an economic incentive if an area failed to regulate major stationary sources. The fee was intended to encourage stationary sources to implement the controls that the state had failed to require in order to reduce emissions and avoid paying the fee.

As the District is well aware, stationary sources in the District's jurisdiction are already heavily controlled, leaving scant yet-to-be-implemented controls that will reduce emissions from these sources. Indeed, as stated in the District's recent comment letter to EPA, "[SCAQMD has] established Best Available Retrofit Control Technology (BARCT) standards in rules that impose strict emission limits for virtually every combustion category of stationary sources to reduce NOx emissions to the greatest extent feasible."[3] The only remaining options, therefore, are to reduce emissions by curtailing operations or pay the penalty fee.

Moreover, the District's nonattainment stems primarily from emissions from mobile and federal sources, not from the stationary sources singled out by Section 185. The District itself forcefully made this point in response to EPA's proposed disapproval of SCAQMD's Contingency Measure Plan for the 1997 Ozone Standard:

> Today, over 80 percent of NOx emissions are from mobile sources, and of these, it is the trucks, ships, aircraft, locomotives, and similar heavy-duty engines that are responsible for about three-quarters of these emissions. Indeed, . . . since 1997 emissions under South Coast AQMD's and CARB's control have declined by 70 percent; yet the emissions subject to EPA's authority have only declined 15 percent. . . . It is not possible for our region to meet the 1997 and future standards without the federal government addressing the sources under its control.[4]

The District went on to argue that "[it] does not make sense that a region with the most stringent rules and largest investments in advanced clean air technology deployment should face perpetual nonattainment and *looming harsh economic sanctions with no ability to resolve the situation.*"[5] The same is true here. Because nonattainment is a mobile and federal source problem, it does not make sense to sanction stationary sources that have no ability to resolve the situation.

Owners of stationary sources have been doing their part for decades to improve air quality in the region, while mobile and federal sources remain under-controlled. Contrary to

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[2] See Report of the Committee on Energy and Commerce on H.R. 3030, Report 101-490 (May 17, 1990) at 257 ("[Section 185] is a State penalty for failure to attain.").

[3] SCAQMD, Comments of the South Coast Air Quality Management District Staff Regarding U.S. EPA's Proposed Disapproval of the South Coast Air Basin Contingency Measure Plan for the 1997 Ozone Standard [Docket ID No. EPA-R09-OAR-2023-0626-0001] (March 27, 2024), pp.1–2.

[4] *Id.* at 2–3.

[5] *Id.* at 4.

Congressional intent and ordinary logic, the imposition of Section 185 fees on stationary sources within the District is an unfair penalty simply for doing business in the region. The District should therefore take every opportunity it has to relieve this burden.

Comment 7-1 Cont.

The Alternative Baseline Approach Should Be Established Prior to Rule Adoption

The Clean Air Act uses a default baseline of actual emissions during the attainment year to calculate Section 185 fees, but it allows EPA to issue guidance authorizing the use of actual emissions averaged over multiple years for sources with emissions that vary from year to year.[6] PR 317.1 incorporates an alternative baseline option by allowing a facility to identify a two-year period that is representative of a source's typical emissions within the prior ten years.[7] The District used the same alternative baseline approach in Rule 317, consistent with EPA guidance issued for the 1-hour ozone standard.[8] However, EPA has not issued guidance authorizing the alternative baseline for the 8-hour ozone standard. Accordingly, we understand PR 317.1 only authorizes the alternative baseline approach once EPA has issued the requisite guidance. We further understand that Staff has submitted a request for EPA to issue guidance authorizing use of the alternative baseline for the 8-hour ozone standard.[9]

The RFG supports the District's proposal to include an alternative calculation for a source's baseline emissions, and it is grateful for the District requesting that EPA issue guidance that will allow such alternative calculation. With respect to the specifics of the alternative calculation approach itself, given the significant variability of emissions at certain major sources, we do recommend revising the language to give the Executive Officer authority to approve an alternative time period to the twenty-four consecutive months during the preceding 10-years. [10]

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Because a source's emissions baseline is determined once and used to calculate fees for every subsequent year, ***it is incredibly important that the baseline accurately represents the source's typical actual emissions***. As Staff is aware, a source's emissions during the attainment year may not be representative of the source's typical emissions. The alternative baseline approach therefore provides the needed flexibility to ensure that a source will not be assessed fees calculated using an unrepresentative baseline.

Because of the critical importance of the baseline to the fundamental accuracy of the fee determination, ***the District should not adopt PR 317.1 until EPA issues guidance that definitively authorizes use of the alternative baseline as proposed in the rule***.

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[6] 42 U.S.C. § 7511d(b)(2).

[7] PR 317.1(d)(8)(C)(ii). The two-year period must be within the prior five years for sources with an electrical steam generating unit. (*Id.*)

[8] Rule 317(c)(6)(A); see also EPA, Guidance on Establishing Emissions Baselines under Section 185 of the Clean Air Act (CAA) for Severe and Extreme Ozone Nonattainment Areas that Fail to Attain the 1-hour Ozone NAAQS by their Attainment (March 21, 2008), available at https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/20080321_harnett_emissions_basline_185.pdf.

[9] SCAQMD, Preliminary Draft Staff Report, Proposed Rule 317.1 (March 2024) p. 2-8.

[10] Proposed revisions are shown in Attachment A to this letter.

Collected Fees Should Be Used to Generate Offsets for RECLAIM Facilities Transitioning to Command-and-Control

The Clean Air Act does not dictate how the District must use the Section 185 fees that it collects. As described above, the fees unfairly single out highly controlled stationary sources. Accordingly, we propose that fees be used in part to generate offsets that will be made available to Regional Clean Air Incentives Market ("RECLAIM") facilities as they exit the program.[11]

Background

As you are aware, the District is in the process of transitioning facilities out of the RECLAIM regulatory program for nitrogen oxides (NO_X) emissions and into a command-and-control regulatory structure. One of the more challenging aspects of the proposed transition from RECLAIM's market-based design to a command-and-control structure relates to the nature of SCAQMD's current new source review ("NSR") programs and, in particular, the offsetting provisions that would apply to former NO_X RECLAIM sources in the future. When the RECLAIM program was launched in 1993, facilities were granted RECLAIM Trading Credits ("RTCs") equal to their initial allocation of emissions. Under the RECLAIM program, RTCs are used as both a BARCT compliance instrument and as NSR offsets.

Comment 7-3

EPA has taken the position that a NO_X RECLAIM facility exiting the program must surrender its RTCs.[12] Without RTCs, the current supply of NOx ERCs on the open market is far below anticipated future demand if former NO_X RECLAIM facilities were transitioned into the Regulation XIII NSR program.[13] The lack of NOx ERCs on the open market to meet the needs of all sources means that a transitioning facility that is unable to generate or acquire sufficient offsets will be unable to obtain a permit to install new equipment. If such offsets are not available, permits for the new equipment cannot be issued. Such a facility would be prevented from expanding its operations or from modernizing its equipment to increase efficiency and throughput, even when the modernization would include using newer, lower emitting equipment than the equipment currently in use. Preventing modernization due to a lack of offsets would impede achieving important modernization co-benefits, including lower air toxics and GHG emissions.

[11] We recognize that a portion of the fees will need to be used to cover the costs of administering the fee program.

[12] It should be noted that RFG fundamentally disagree with this position. If the NO_X RECLAIM NSR program were to be replaced by a program in which NO_X RTCs are no longer available as NSR offsets, then existing NO_X RTCs should be convertible to ERCs. In particular, a facility that holds RTCs in excess of its actual emissions at the time it exits RECLAIM should be allowed to retain the benefit of that corresponding emission reduction by converting the surplus RTCs to ERCs.

[13] The District previously estimated that the average annual offset demand for RECLAIM facilities could be 1,000 lbs/day, which would exceed the total NOx ERCs in the open market, which is roughly 800 lbs/day. See RECLAIM Working Group Meeting Presentation (Feb. 14, 2019) at slide 18; see also SCAQMD, Current and Historical Active ERC and STERC Lists, available at http://www.aqmd.gov/home/permits/emission-reduction-credits/historical-active-erc-and-sterc-lists.

Proposal

The District anticipates that it will collect approximately $26 million in Section 185 fees for the 1997 ozone standard in calendar year 2025 pursuant to PR 317.1.[14] We propose that the District deposit the fees into a "Rule 317.1 RECLAIM Transition Fund" that will be used to, among other things,[15] subsidize the adoption of surplus emission-reducing control equipment and technologies throughout the District. Reductions in NOx emissions realized through these efforts would be banked as offsets while the reduction of co-pollutant emissions would benefit overall air quality. The NOx offsets generated by the Rule 317.1 RECLAIM Transition Fund would then be banked to be made available to RECLAIM facilities in need of offsets when exiting the program. To facilitate this, we propose the amendments to PR 317.1 shown in Attachment A to this letter.

Using the fees in this way would alleviate some of the offset burden associated with exiting the RECLAIM program, would aid the District in realizing a successful RECLAIM transition, and would benefit air quality overall.

Comment 7-3 Cont.

The Definition of Actual Emissions Should Be Clarified

The definition of "actual emissions" in the preliminary draft rule language introduces ambiguity regarding the emissions that will be used to calculate a facility's fee determination. Paragraph (c)(1) states that actual emissions means the emissions a facility reports through the District's Annual Emissions Report ("AER") program and "shall include, but not be limited to (i) Permitted emissions; (ii) Regulated emissions; (iii) Fugitive emissions; and (iv) Unregulated emissions."[16] According to the Staff Report, these emissions include, among other things, emissions from portable equipment, solvents, and architectural coatings.[17] However, the AER Reporting Tool – Frequently Asked Questions, cited in the Staff Report as providing additional information on what emissions to report through AER, states that certain portable equipment, solvents, and architectural coatings are *not* subject to reporting under the AER program.[18]

To avoid confusion, we suggest revising the definition of "actual emissions" in PR 317.1 to refer directly to a facility's emissions reported through the District's AER program pursuant to Rule 301. It should also specifically exclude emissions from equipment registered under CARB's

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[14] SCAQMD, Preliminary Draft Staff Report, Proposed Rule 317.1 (March 2024), p. 3-5. Staff estimates the total collected for the 1997 standard will gradually decline before leveling out around $19 million in 2029. *Id.* For the 2008 standard, the District estimates it will collect approximately $20 million beginning in 2033. *Id.*

[15] We propose the Fund could also purchase available offsets (e.g. ERCs) in the market and provide them to the transitioning RECLAIM sources.

[16] PR 317.1(c)(1) (preliminary draft rule language released March 22, 2024).

[17] SCAQMD, Preliminary Draft Staff Report, Proposed Rule 317.1 (March 2024), p. 2-3.

[18] See SCAQMD, Annual Emissions Reporting, Reporting Tool - Frequently Asked Questions (FAQ) (March 2023) pp. 1–2, available at https://www.aqmd.gov/docs/default-source/planning/annual-emission-reporting/frequently-asked-questions.pdf?sfvrsn=6. Specifically, the FAQ states that emissions need not be reported from portable equipment registered under CARB's Statewide Portable Equipment Registration Program (unless otherwise required), Clean Air Solvents, and architectural coatings used on structures defined by Rule 1113. *Id.*

Portable Equipment Registration Program ("PERP"), as these emissions should not be categorized as emitted by the regulated facility. Because the PERP equipment are not owned by or permitted at the facility, we believe the emissions need not be attributed to the facility under Section 185.[19] As shown in Table 1, major sources, like all sources, already pay fees based on emissions. Section 185 fees are punitive and duplicative, so the District should not further punish major sources unfairly with another layer of duplicative fees not required by the Clean Air Act. We believe exclusion of PERP emissions is also consistent with other California air district rules addressing Section 185 penalties.[20]

Table 1: Fees Paid to District by Facility Type

	Major Sources	Minor Sources
AER/Rule 301 Fees	Yes	Yes
Section 185 Fees	Yes	No
PERP 185 Fees (under current draft of PR 317.1)	Potentially Unless Amended[21]	No

Suggested revisions to the definition to address this inequity are shown in Attachment A.[22] We believe our proposed approach remains consistent with the Clean Air Act.

Comment 7-4 Cont.

Conclusion

We greatly appreciate the opportunity to provide these comments on PR 317.1. We would also appreciate a meeting to discuss the proposals discussed in this letter. Please contact me at (213) 891-7395, or by email at john.heintz@lw.com with your availability to schedule a discussion.

Best regards,

John C. Heintz
of LATHAM & WATKINS LLP

[19] *See* 42 U.S.C. §7511d

[20] *See* Mojave Desert AQMD (see MDAQMD Rules 315, 315.1, 315.2, and 315.3; see also MDAQMD, Comprehensive Emission Inventory Guidelines (Nov. 2023) at 7, available at https://www.mdaqmd.ca.gov/home/showpublisheddocument/10031/638362505853570000); Antelope Valley AQMD (see AVAQMD Rules 315, 315.1, and 315.2; see also AVAQMD, Comprehensive Emission Inventory Guidelines (Dec. 2020) at 7, available at https://avaqmd.ca.gov/files/9ce7b3ca0/AV+CEI+Guidance+2020.pdf); and San Joaquin Valley APCD (see SJVAPCD Rules 3170, 3171, 3172, and 3173 [fees for permitted emissions only].)

[21] We understand that some facilities are required to report PERP emissions to the District for tracking purposes pursuant to CARB's Criteria Air Pollutants and Toxic Air Contaminant Reporting Regulation. A requirement to report for tracking purposes does not mean such emissions are attributable to the facility under Section 185.

[22] We note that corresponding revisions should be made to PAR 301 paragraph (e)(2) to exclude PERP equipment from emissions fees. Specifically, we propose adding to paragraph (e)(2) the following sentence: "Emissions from Statewide Equipment emitted at any facility shall be excluded from emissions fees, including from clean air act nonattainment fees under any rule implementing section 185 of the federal Clean Air Act."

LATHAM & WATKINS LLP

Cc: Neil Fujiwara, SCAQMD
Kalam Cheung, Ph.D., SCAQMD
RFG Members
Nick Cox, Latham & Watkins LLP

Attachment A: RFG Suggested Revisions to Proposed Rule 317.1

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 (NOx).

(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 pursuant to Rule 301, excluding emissions from equipment registered pursuant to the Air Resources Board's Portable Equipment Registration 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 VOC and/or NOx emissions, for which a source qualifies as a Major Stationary Source. Baseline Emissions for VOC and/or NOx 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 NOx 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 =

Annual CAA Nonattainment Fee Rate × [AV – (0.8 × BV)]

NOx CAA Nonattainment Fees =

Annual CAA Nonattainment Fee Rate × [AN – (0.8 × BN)]

CAA Nonattainment Fees =

NOx CAA Nonattainment Fees + 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 NOx:
  - A_N = Actual Emissions of NOx 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 NOx CAA Nonattainment Fee assessed for the Fee Assessment Year.
  - B_N = Baseline Emissions or Alternative Baseline Emissions for NOx (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~~ one (1) year has~~ve~~ 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~~ 90 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, or alternative time period approved by the Executive Officer, 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 (or approved alternative time period), 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 (or approved alternative time period) selected;

(v) The average annual emissions of the twenty-four months (or approved alternative time period), 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) In the event a Major Source submits an application establishing the required elements in 8(C), ~~T~~the Executive Officer shall ~~has~~ authorize~~d~~ 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) Use of CAA Nonattainment Fees

(1) CAA Nonattainment Fees collected pursuant to paragraph (d)(3)(B) shall be used in the following ways:

(A) Ten (10) percent of the fees shall be retained by the District for costs in administering the CAA Nonattainment Fee collection program;

(B) The remaining ninety (90) percent of collected fees shall be deposited into a Rule 317.1 RECLAIM Transition Fund, created pursuant to paragraph (f).

(f) RECLAIM Transition Fund

(1) The Executive Officer shall establish a RECLAIM Transition Fund ("RTF") for investment in emerging low-emission technologies and/or incentive programs that the Governing Board determines will benefit attainment of National Ambient Air Quality Standards, meet the District's public health objectives, and generate federally verifiable NOx emissions offsets that may be used by RECLAIM facilities in order to satisfy offset requirements upon exiting the RECLAIM program.

(2) The RTF shall be funded by CAA Nonattainment Fees deposited pursuant to paragraph (e)(1)(B).

(3) Funds in the RTF may be used to generate offsets in the following way:

(A) Emission reduction projects approved by the Governing Board. Emission reductions achieved by approved projects shall be banked as offsets in the RTF if the Executive Officer determines that the emission reductions achieved:

(i) are not used to demonstrate equivalency with federal or state NSR requirements;

(ii) are not used to demonstrate attainment in any Air Quality Management Plan; and

(iii) meet the requirements of each of Rule 1309(b)(4), 42 U.S.C. § 7503(c)(1), and 40 CFR 51.165(a)(3)(ii)(C)(i).

(B) Purchase of available NOx emission reduction credits from the open market;

(C) Other methods as approved by the Executive Officer.

(4) The Executive Officer shall account for reductions in each pollutant for which emissions are reduced by a RTF-funded project and that meet the requirements of paragraph (f)(2)(A) of this Rule. The Executive Officer shall generate NOx offsets for any reduction in NOx emissions.

(A) NOx offsets generated in accordance with (f)(3) shall be banked in the RTF and made available at no cost to RECLAIM facilities that have paid CAA Nonattainment Fees. A RECLAIM facility that has paid CAA Nonattainment Fees shall be granted access to offsets in the RTF to satisfy any offset requirements necessary to facilitate the facility's exit from the RECLAIM program.

(i) No individual RECLAIM facility shall receive a portion of the total offsets available in the RTF that is greater than the total CAA

Nonattainment Fees collected from that facility divided by the total CAA Nonattainment Fees collected from all RECLAIM facilities in the prior calendar year.

(B) The Executive Officer may use reductions in emissions of any non-NOx pollutant to demonstrate attainment or for any other purpose it deems appropriate.

~~(e)~~ (g) 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

7-1 Response

PR 317.1 is being developed to implement the existing requirements of CAA section 185 for the 1997 and 2008 8-hour ozone NAAQS. If a regulatory pathway is not developed, these Major Stationary Sources would still be required to comply with CAA section 185 and CAA Nonattainment Fees would instead be collected by the U.S. EPA. The South Coast AQMD has explored many options with the U.S. EPA and did not identify a pathway to relive the burden of CAA Nonattainment Fees from Major Stationary Sources for the 1997 and 2008 ozone standards.

7-2 Response

If a state is not administering and enforcing CAA section 185, the CAA Nonattainment Fees will instead be collected by the U.S. EPA. As the 1997 8-hour ozone standard attainment date is this year, the South Coast AQMD is unable to accommodate a request to postpone adoption of PR 317.1 until after the U.S. EPA issues guidance that definitively authorizes the use of Alternative Baseline Emissions. The requirements for Alternative Baseline Emissions Requests were incorporated and are consistent with the prior U.S. EPA issued guidance. The CAA requires that the Alternative Baseline Emissions must be in alignment with guidance established by the U.S. EPA. The U.S. EPA guidance for the 1979 1-hour ozone standard does not provide authority to approve Alternative Baseline Emissions based on any time period, other than for electrical steam generating unit(s), that is not twenty-four consecutive months during the preceding ten years. Incorporation of such language would make the rule vulnerable to disapproval as part of the U.S. EPA SIP review process. Please refer to section "2.2.4.8. Alternative Baseline Emissions Requirements – Paragraph (d)(8)" of this PR 317.1 Staff Report for an explanation of the basis for the requirements to use an Alternative Baseline Emissions.

7-3 Response

Please refer to section "1.6. Use of Funds" of this PR 317.1 Staff Report for an explanation of why guidance on the spending of these potential funds would be determined in the future through a public process that would be separate from this rulemaking.

7-4 Response

Please refer to the definition of "Actual Emissions" in section "2.2.3. Definitions – Subdivision (c)" of this PR 317.1 Staff Report for an explanation of what emissions should be included in the AER. Please refer to the "5-3 Response" of this PR 317.1 Staff Report for an explanation of including portable emissions in AER.

8. Los Angeles County Business Federation (BizFed) Comment Letter, Submitted 05/02/24

Los Angeles County Business Federation
Strengthening the Voice of Business Since 2008

May 2, 2024

Via e-mail at:
mkrause@aqmd.gov

Michael Krause
Assistant Deputy Executive Officer
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Re: SCAQMD Proposed Rule (PR) 317.1 Clean Air Act Nonattainment Fees for the 8-Hour Ozone Standards

Dear Mr. Krause,

We are contacting you on behalf of BizFed, the Los Angeles County Business Federation. We are an alliance of over 240 business organizations who represent over 420,000 employers in Los Angeles County, including large and small businesses from a wide range of industries throughout the South Coast Air Basin (SCAB). Many of the businesses we represent have or will be writing their own individual comment letters that specifically address the impacts to their industries. Our comments address the impacts to the business community as a whole and include overarching concerns of our diverse membership.

SCAQMD is in the process of rule development for Proposed Rule 317.1 (PR 317.1), Clean Air Act Nonattainment Fees for the 8-Hour Ozone Standards. While SCAQMD has already addressed several concerns expressed by stakeholders as part of their working group meeting (WGM) #2 presentation, BizFed would like to raise additional thoughts for the District to consider as they refine PR 317.1. BizFed offers the following comments on the proposed rule concepts for PR 317.1:

1. **The District has stated that the fee equivalency approach utilized in existing Rule 317 – Clean Air Act Non-Attainment Fees for the revoked 1979 standard is not available for use in PR 317.1. BizFed requests that SCAQMD provide additional information on the funding limitations that restrict use of this funding pathway for the revoked 1997 standard.**

   SCAQMD outlined the existing fee equivalency approach established in existing Rule 317 and noted that the U.S. EPA has advised that such an approach may be approvable under CAA section 172(e) only for revoked standards as an equivalent pathway to satisfy requirements of CAA Section 185.[1] The fee

Comment 8-1

[1] SCAQMD PR 317.1, Working Group Meeting #1. Available at: https://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/317.1/pr317-1_wgm1_110723.pdf?sfvrsn=20.

equivalency approach would allow Districts to satisfy Section 185 requirements by:[2]

> *"...comparing expected fees and/or emissions reductions directly attributable to application of Section 185 to the expected fees, pollution control project funding, and/or emissions reductions from the proposed alternative program."*

SCAQMD noted in their presentation to the Stationary Source Committee that fee collection is the only pathway available for the 1997 and 2008 ozone standards.[3] For the 1997 standard, SCAQMD noted that adequate funding is not available.

BizFed requests that SCAQMD provide additional information on funding needs for a fee equivalency approach, including details on the amount of incentive funding that would be required to utilize the fee equivalency option.

Comment 8-1 Cont.

2. **The District has acknowledged the need for an alternative baseline option. BizFed requests that SCAQMD engage with EPA staff to reiterate the need for issuance of an alternative baseline guidance document for the 8-hour ozone standards.**

   In WGM #2, SCAQMD responded to concerns related to the 2024 attainment baseline, agreeing with the need for an alternative baseline option.[4] Implementation of an alternative baseline policy would allow facilities to establish a baseline year that is reflective of normal operating conditions in the event that emissions in the default baseline year are irregular. Due to legal constraints established by the Clean Air Act (CAA), an alternative baseline can only be utilized if U.S. EPA has issued guidance for establishing an alternative baseline. SCAQMD has submitted a request to U.S. EPA for allowing an alternative baseline for the 8-hour ozone standards.

   BizFed requests that SCAQMD take actions to engage with EPA to advocate for the issuance of the 8-hour ozone standard alternative baseline guidance document and consider this as a key remaining issue for the development of PR 317.1.

Comment 8-2

3. **As drafted, PR 317.1 would require facilities to pay nonattainment fees on each individual Federal ozone standard. BizFed recommends that SCAQMD revise the proposed rule language to instead require facilities to pay nonattainment fees on only one standard for any specific calendar year, similar to the example set by the Mojave Desert Air Quality Management District.**

Comment 8-3

[2] 40 CFR Part 52, Revisions to the California State Implementation Plan, South Coast Air Quality Management District. Available at: https://www.federalregister.gov/documents/2012/01/12/2012-447/revisions-to-the-california-state-implementation-plan-south-coast-air-quality-management-district.
[3] SCAQMD Stationary Source Committee, April 19, 2024. Available at: https://www.aqmd.gov/docs/default-source/Agendas/ssc/ssc-agenda-4-19-2024.pdf?sfvrsn=10.
[4] SCAQMD PR 317.1 Working Group Meeting #2. Available at: https://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/317.1/pr-317-1---wgm-2-presentation-020224.pdf?sfvrsn=14.

National Ambient Air Quality Standards (NAAQS) are reviewed and may be revised by U.S. EPA on a 5-year cycle to reflect the most recent scientific findings, including the review of relevant scientific literature as summarized in an Integrated Science Assessment (ISA) report and an assessment of risk and exposure as summarized in the Risk and Exposure Assessment (REA) report.[5,6] Each revision is intended to reflect an updated understanding of impacts associated with exposure to a given criteria air pollutant. Establishing a requirement for facilities to pay fees on each Federal ozone standard suggests that the revised NAAQS are independent in nature when instead they are intended to reflect a more appropriate threshold of impact to human wellbeing.

PR 317.1(d)(1) states:

> *"The Executive Officer shall assess the CAA Nonattainment Fees for Each Applicable Ozone Standard…"*

Per PR 317.1(e)(2):

> *"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 antibacksliding 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."*

So if the basin is found to be in nonattainment with the 1997, 2008, and 2015 8-hour ozone standards beyond the 2032 and 2038 attainment deadlines, facilities would be required to pay annual nonattainment fees associated with all three NAAQS under this draft PR 317.1.

In contrast, the Mojave Desert Air Quality Management District (MDAQMD) has taken an approach to nonattainment fees that better aligns with the spirit of NAAQS revisions established by the U.S. EPA. The MDAQMD nonattainment fee policy is established in Rules 315.1, 315.2, and 315.3, including the following language:[7,8,9]

> *"No Facility otherwise subject to this Rule shall be required to remit a FCAA Section 185 penalty for more than one Federal ozone standard for any specific calendar year. A Facility's applicable FCAA Section 185 penalty for any calendar year shall be the largest of all such applicable penalties."*

Comment 8-3 Cont.

[5] U.S. EPA Integrated Science Assessment (ISA) for Ozone and Related Photochemical Oxidants. Available at: https://www.epa.gov/isa/integrated-science-assessment-isa-ozone-and-related-photochemical-oxidants.

[6] U.S. EPA Risk Assessment and Modeling – Ozone Risk Analyses. Available at: https://www.epa.gov/fera/risk-assessment-and-modeling-ozone-risk-analyses.

[7] MDAQMD Rule 315.1. Available at: https://www.mdaqmd.ca.gov/home/showpublisheddocument/9306/637847640024930000.

[8] MDAQMD Rule 315.2. Available at: https://www.mdaqmd.ca.gov/home/showpublisheddocument/9308/637847619490870000.

[9] MDAQMD Rule 315.3. Available at: https://www.mdaqmd.ca.gov/home/showpublisheddocument/9733/638156003537770000.

BizFed requests that SCAQMD consider revising the draft rule language to incorporate nonattainment fee payment procedures similar to those established by MDAQMD and allow for the payment of one ozone standard in a given calendar year to satisfy CAA Section 185 requirements.

Comment 8-3 Cont.

Finally, BizFed would be interested in joining any effort to address the Section 185 provision in the Clean Air Act directly with a legislative fix. While EPA and others refer to the Section 185 requirement as a "fee", it is in reality a penalty on businesses that have not violated the Clean Air Act. As Bizfed understands the SCAQMD's position, the failure to attain is directly attributable to EPA's failure to regulate sources that it cannot regulate, and further that even if SCAQMD regulated all sources to the maximum extent possible, the revoked ozone standard could not be attained. The businesses that are being penalized have no control over when the fines will cease because they have no control over abatement of the violation. Only EPA does. It is imperative that this issue be addressed with the Congress.

We look forward to continuing our work with the District to see progress made in a way that is equitable and lasting.

Thank you for your consideration of our letter. If you have any questions, please contact BizFed's Director of Advocacy Sarah Wiltfong at sarah.wiltfong@bizfed.org.

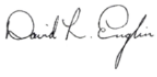
Comment 8-4

Sincerely,

Fran Inman
BizFed 2024 Chair
Majestic Realty

David Fleming
BizFed Founding Chair

Tracy Hernandez
BizFed Founding CEO
IMPOWER, Inc.



David Englin
BizFed President

Cc: Wayne Nastri, SCAQMD
Sarah Rees, SCAQMD
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BizFed Association Members

Action Apartment Association
Advanced Medical Technology Association
Alhambra Chamber
American Beverage Association
Antelope Valley Chamber formerly Lancaster Chamber of Commerce
Apartment Association of Greater Los Angeles
Apartment Association of Orange County
Apartment Association, CA Southern Cities, Inc .
Arcadia Association of Realtors
AREAA North Los Angeles SFV SCV
Armenian American Business Association
Armenian Trade & Labor Association
Arts District Los Angeles
ASCM Inland Empire Chapter
Asian American Advertising Federation- 3AF
Associated Builders & Contractors SoCal (ABC SoCal)
Associated General Contractors
Association of Independent Commercial Producers
AV Edge California
Azusa Chamber
Bell Chamber
Beverly Hills Bar Association
Beverly Hills Chamber
BioCom
Black Business Association
BNI4SUCCESS
Boyle Heights Chamber of Commerce
Bridge Compton Org
Building Industry Association - LA/Ventura Counties
Building Industry Association of Southern California
Building Industry Association- Baldyview
Building Owners & Managers Association of Greater Los Angeles
Burbank Association of Realtors
Burbank Chamber of Commerce
Business and Industry Council for Emergency Planning and Preparedness
Business Resource Group
Calabasas Chamber of Commerce
CalAsian Chamber
CalChamber
California Apartment Association- Los Angeles
California Asphalt Pavement Association
California Bankers Association
California Business Properties
California Business Roundtable
California Cleaners Association
California Contract Cities Association
California Fashion Association
California Fuels & Convenience Alliance- Formerly California Independent Oil Marketers Association (CIOMA)
California Gaming Association
California Grocers Association
California Hispanic Chamber
California Hotel & Lodging Association
California Independent Petroleum Association
California Life Sciences Association
California Manufacturers & Technology Association
California Metals Coalition
California Natural Gas Producers Association
California Restaurant Association
California Retailers Association
California Self Storage Association
California Small Business Alliance
California Society of CPAs - Los Angeles Chapter
California Trucking Association
Carson Chamber of Commerce
Carson Dominguez Employers Alliance
Central City Association
Century City Chamber of Commerce
Chatsworth Porter Ranch Chamber of Commerce
Citrus Valley Association of Realtors
Civil Justice Association of California CJAC
Claremont Chamber of Commerce
Commerce Business Council formerly Commercial Industrial Council/Chamber of Commerce
Community Foundation of the Valleys
Compton Chamber of Commerce
Compton Community Development Corporation
Compton Entertainment Chamber of Commerce
Construction Industry Air Quality Coalition
Construction Industry Coalition on Water Quality
Council of Infill Builders
Crenshaw Chamber of Commerce
Culver City Chamber of Commerce
Downey Chamber of Commerce
Downtown Center Business Improvement District
Downtown Long Beach Alliance
DTLA Chamber of Commerce
El Monte/South El Monte Chamber
El Segundo Chamber of Commerce
Employers Group
Energy Independence Now EIN
Engineering Contractor's Association
EXP The Opportunity Engine
FastLink DTLA
Filipino American Chamber of Commerce
Friends of Hollywood Central Park
FuturePorts
Gardena Valley Chamber
Gateway to LA
Glendale Association of Realtors
Glendale Chamber
Glendora Chamber
Greater Antelope Valley AOR
Greater Bakersfield Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater Downey Association of REALTORS
Greater Lakewood Chamber of Commerce
Greater Leimert Park Crenshaw Corridor BID
Greater Los Angeles African American Chamber
Greater Los Angeles Association of Realtors
Greater Los Angeles New Car Dealers Association
Greater San Fernando Valley Chamber
Harbor Association of Industry and Commerce
Harbor Trucking Association
Historic Core BID of Downtown Los Angeles
Hollywood Chamber
Hospital Association of Southern California
Hotel Association of Los Angeles
ICBWA- International Cannabis Women Business Association
Independent Cities Association
Independent Hospitality Coalition
Industrial Environmental Association
Industry Business Council
Inglewood Board of Realtors
Inland Empire Economic Partnership
Irwindale Chamber of Commerce
Kombucha Brewers International
La Cañada Flintridge Chamber
LA County Medical Association
LA Fashion District BID
LA South Chamber of Commerce
Larchmont Boulevard Association
Latin Business Association
Latino Food Industry Association
Latino Restaurant Association
LAX Coastal Area Chamber
Licensed Adult Residential Care Association- LARCA
Long Beach Area Chamber
Long Beach Economic Partnership
Long Beach Major Arts Consortium
Los Angeles Area Chamber
Los Angeles Economic Development Center
Los Angeles Gateway Chamber of Commerce
Los Angeles Latino Chamber
Los Angeles LGBTQ Chamber of Commerce
Los Angeles Parking Association
Los Angeles Regional Food Bank
Los Angeles World Affairs Council/Town Hall Los Angeles
MADIA Tech Launch
Malibu Chamber of Commerce
Manhattan Beach Chamber of Commerce
Marina Del Rey Lessees Association
Marketplace Industry Association
Monrovia Chamber
Motion Picture Association of America, Inc.
MoveLA
MultiCultural Business Alliance
NAIOP Southern California Chapter
NAREIT
National Association of Minority Contractors
National Association of Theatre Owners CA/Nevada
National Association of Women Business Owners
National Association of Women Business Owners - LA
National Association of Women Business Owners-California
National Federation of Independent Business Owners California
National Hookah
National Latina Business Women's Association
Norweigian American Chamber of Commerce
Orange County Business Council
Orange County Hispanic Chamber of Commerce
Pacific Merchant Shipping Association
Panorama City Chamber of Commerce
Paramount Chamber of Commerce
Pasadena Chamber
Pasadena Foothills Association of Realtors
PGA
Pharmaceutical Care Management Association
PhRMA
Pico Rivera Chamber of Commerce
Pomona Chamber
Rancho Southeast REALTORS
ReadyNation California
Recording Industry Association of America
Regional CAL Black Chamber, SVF
Regional Hispanic Chambers
San Dimas Chamber of Commerce
San Gabriel Valley Economic Partnership
San Pedro Peninsula Chamber of Commerce
Santa Clarita Valley Chamber
Santa Clarita Valley Economic Development Corp.
Santa Monica Chamber of Commerce
Secure Water Alliance
Sherman Oaks Chamber
South Bay Association of Chambers
South Bay Association of Realtors
South Gate Chamber of Commerce
South Pasadena Chamber of Commerce
Southern California Contractors Association
Southern California Golf Association
Southern California Grantmakers
Southern California Leadership Council
Southern California Minority Suppliers Development Council Inc.
Southern California Water Coalition
Southland Regional Association of Realtors
Specialty Equipment Market Association
Sportfishing Association of California
Structural Engineers Association of Southern California
Sunland/Tujunga Chamber
Sunset Strip Business Improvement District
Swiss American Chamber of Commerce
Thai American Chamber of Commerce
The LA Coalition for the Economy & Jobs
The Los Angeles Taxpayers Association
The Two Hundred for Homeownership
Torrance Area Chamber
Tri-Counties Association of Realtors
United Chambers – San Fernando Valley & Region
United States-Mexico Chamber
Unmanned Autonomous Vehicle Systems Association
Urban Business Council
US Green Building Council
US Resiliency Council
Valley Economic Alliance, The
Valley Industry & Commerce Association
Venice Chamber of Commerce
Vermont Slauson Economic Development Corporation
Veterans in Business
Vietnamese American Chamber
Warner Center Association
West Hollywood Chamber
West Hollywood Design District
West Los Angeles Chamber
West San Gabriel Valley Association of Realtors
West Valley/Warner Center Chamber
Westchester BID
Western Electrical Contractors Association
Western Manufactured Housing Association
Western Propane Gas Association
Western States Petroleum Association
Westside Council of Chambers
Westwood Community Council
Whittier Chamber of Commerce
Wilmington Chamber
World Trade Center

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8-1 Response

The 2016 Air Quality Management Plan (AQMP) is the applicable SIP for the 1997 ozone standard. In the 2016 AQMP, emissions reduction strategies relied heavily on incentives and yet to be determined programs to successfully achieve the emissions reductions needed to attain the 1997 standard. Emissions reductions from incentives account for a substantial portion of NOx emissions reductions (approximately 200 tons per day). The 2016 AQMP also indicated approximately $1 billion per year would be needed from 2017 to achieve such emissions reductions (cost not adjusted per inflation). Despite many actions undertaken to solicit additional and sustainable funding, the incentive funding implemented in South Coast AQMD has been considerably below $1 billion per year since the adoption of 2016 AQMP. As such, it is infeasible to identify incentive programs surplus to the SIP for the fee equivalency approach.

8-2 Response

Please refer to section "2.2.4.8. Alternative Baseline Emissions Requirements – Paragraph (d)(8)" of this PR 317.1 Staff Report for an explanation of the requirements to use Alternative Baseline Emissions. The requirements for Alternative Baseline Emissions Requests were incorporated and are consistent with U.S. EPA guidance issued for the 1979 1-hour ozone standard. The CAA requires that the Alternative Baseline Emissions must be in alignment with guidance established by the U.S. EPA. As the U.S. EPA has not issued guidance for Alternative Baseline Emissions for the 8-hour ozone standards, South Coast AQMD will continue to engage with the U.S. EPA to advocate the need for such guidance documents for 8-hour ozone standards.

8-3 Response

PR 317.1 requires CAA Nonattainment Fees for each applicable ozone standard. Please refer to the "Payment of Single Largest Standard in Year" section of the "1-3 Response" in this PR 317.1 Staff Report for an explanation of why the South Coast AQMD would not require a Major Stationary Source to only remit the largest applicable CAA Nonattainment Fee for a single ozone standard in any calendar year.

8-4 Response

The South Coast AQMD appreciates your understanding of the limitations of the South Coast AQMD and support for reaching attainment.