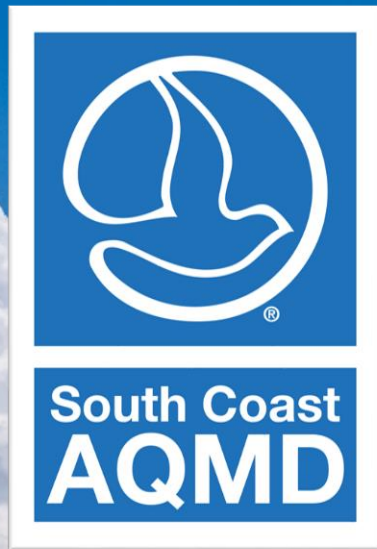


# Proposed Rule 317.1

Clean Air Act Nonattainment Fees  
for the 8-Hour Ozone Standards

*Cleaning The Air That We Breathe...*



## Working Group Meeting #1

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November 7, 2023  
1:00 p.m.

Zoom Meeting Link:

<https://scaqmd.zoom.us/j/97559313527>

Dial In: +1 (669) 900-6833

Meeting ID: 975 5931 3527

# Agenda

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Introduction



Ozone Standards



CAA Section 185 Nonattainment Fee



Rule Development Process



Open Discussion









# Introduction

**Clean Air Act Nonattainment Fees**





# Meeting Information

- South Coast Air Quality Management District (AQMD) acknowledges the challenges to businesses and stakeholders
- Working group meetings will be held remotely via videoconference and teleconference (Zoom)
- Although it is a different format, staff will take the time to listen to all stakeholder comments
  - Please use the “raise hand” feature to speak:
    -  Click on the  button
    -  Dial \*9
  - When it is your turn to speak, your name will be announced
    - If you are a panelist, use the “unmute” feature to speak:
      -  Click on the  button
      -  Dial \*6
    - If you are not a panelist, the meeting host will unmute you
- In addition to working group meetings, staff is available for individual meetings



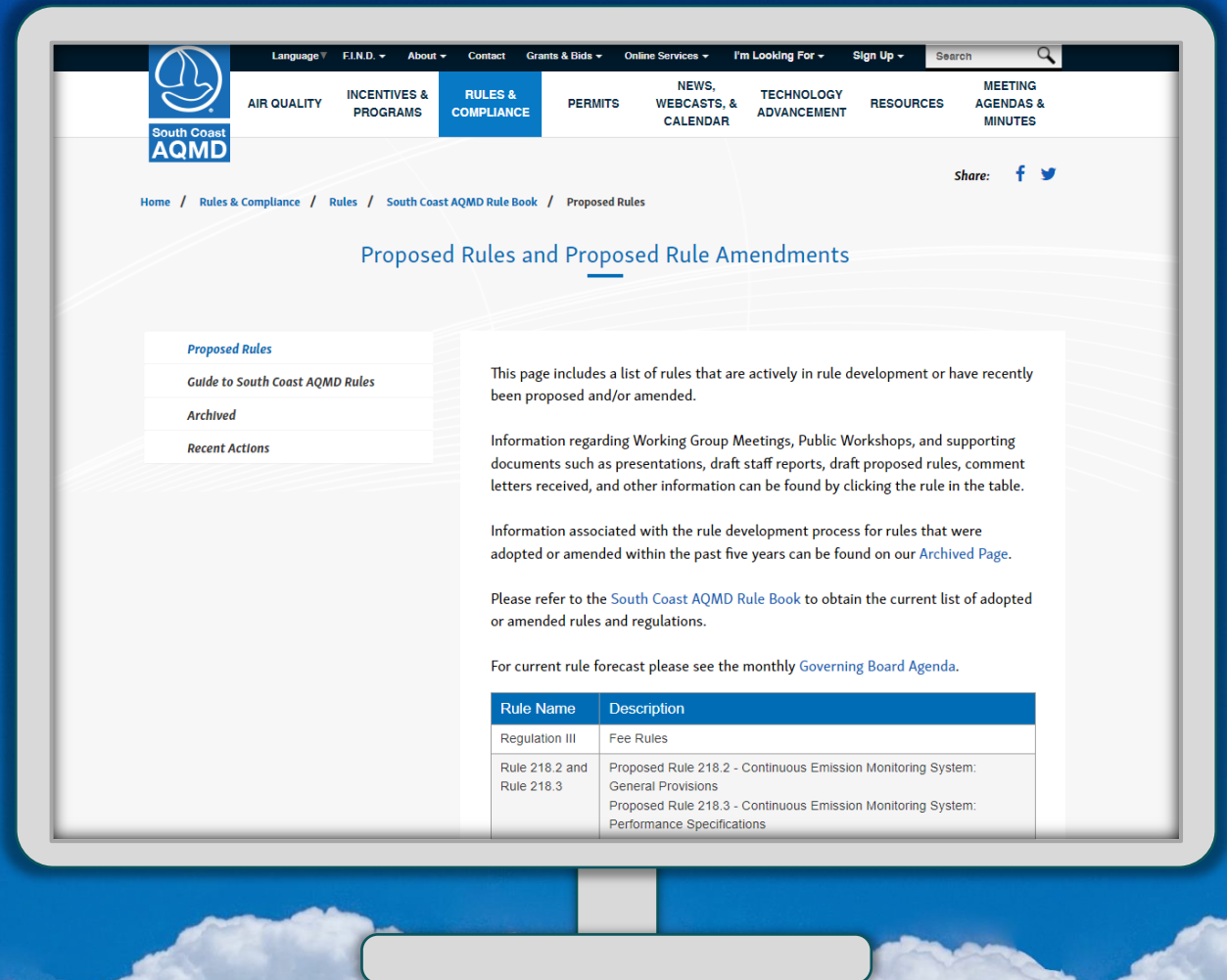


# Working Group Materials

Working group materials for each working group meeting will be made available on the Proposed Rules and Proposed Rule Amendments Website:

<https://www.aqmd.gov/home/rules-compliance/rules/scaqmd-rule-book/proposed-rules>

Point your smartphone camera here to be directed to the website





# South Coast AQMD

- Local air pollution control agency
  - Largest of the 35 local air agencies in CA and in the U.S.
  - 10,743 square miles
  - 17 million residents
- Responsibilities
  - Regulate emissions from stationary sources
  - Develop and implement plans to meet national air quality standards
  - Permit and inspect about 28,400 affected businesses
  - Administer over \$100 million of incentive funding annually



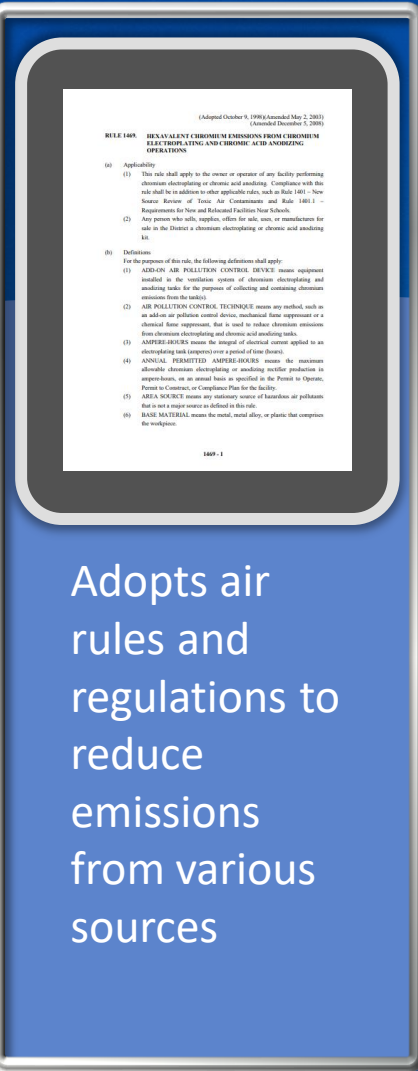




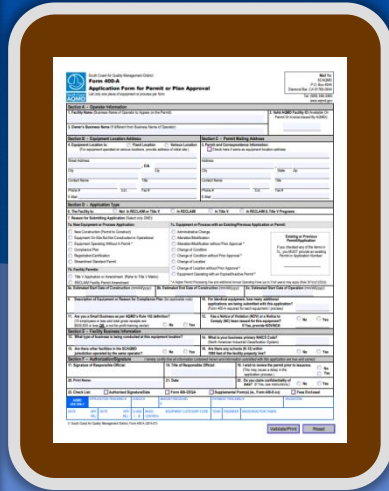
# Key South Coast AQMD Activities



Develops the Air Quality Management Plan (AQMP) - blueprint for achieving compliance with federal and state clean air standards



Adopts air rules and regulations to reduce emissions from various sources



Issues permits for equipment that limits the amount of air emissions to ensure compliance with air quality rules



Conducts periodic inspections to ensure compliance with air quality requirements



Responds to air quality complaints from the public



Conducts ambient air quality monitoring, including special studies





# Ozone Standards

**Clean Air Act Nonattainment Fees**



# Health Impacts of Ozone

**Health Impacts of Ozone Exposure**

The infographic consists of six circular icons arranged in two rows of three. Each icon is accompanied by a text label. The top row includes: 1. A silhouette of a head coughing, labeled 'Coughing and Sore Throat'. 2. A pair of lungs, labeled 'Aggravation of Emphysema and Chronic Bronchitis'. 3. A virus particle, labeled 'Increased Susceptibility to Infection'. The bottom row includes: 4. A silhouette of a head with a dotted line representing inflammation, labeled 'Airway Inflammation and Damage'. 5. A silhouette of a head with an inhaler, labeled 'Asthma Attacks'.

- Coughing and Sore Throat
- Aggravation of Emphysema and Chronic Bronchitis
- Airway Inflammation and Damage
- Increased Susceptibility to Infection
- Asthma Attacks

Depending on the level of exposure, ground-level ozone can:

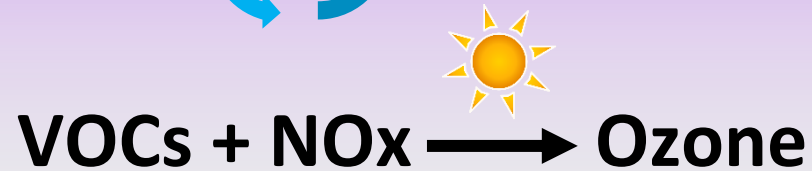
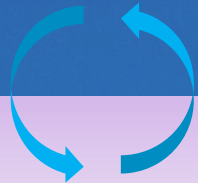
- Cause coughing and sore or scratchy throat
- Make it more difficult to breathe deeply and vigorously and cause pain when taking a deep breath
- Inflammation and damage the airways
- Make the lungs more susceptible to infection
- Aggravate lung diseases such as asthma, emphysema, and chronic bronchitis
- Increase the frequency of asthma attacks





# Ozone Formation

Boundary Layer      Mixing with Upper Atmosphere



**VOC & NO<sub>x</sub> Emissions**

**Wildfires**

**Biogenics**

**Stationary Sources**

**Mobile Sources**



<http://frostbo.deviantart.com/>

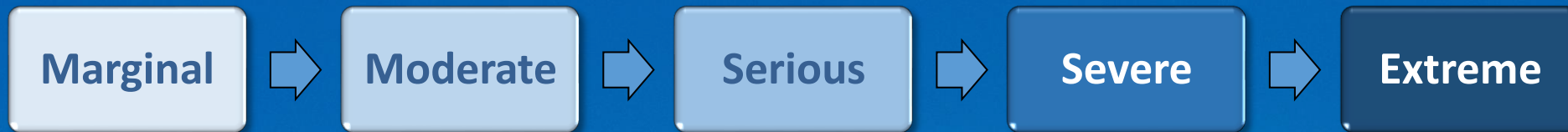
- Ground level ozone is not emitted directly into the atmosphere, but formed by the reaction of ozone precursors, nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs), in the presence of sunlight
  - Sources of NO<sub>x</sub>: combustion of fossil fuels, wildfires
  - Sources of VOCs: a wide variety of sources such as consumer products, mobile sources, vegetation, combustion, wildfires
- Ozone levels are influenced by meteorological conditions and is greatest in late spring and summer months





# National Ambient Air Quality Standards (NAAQS)

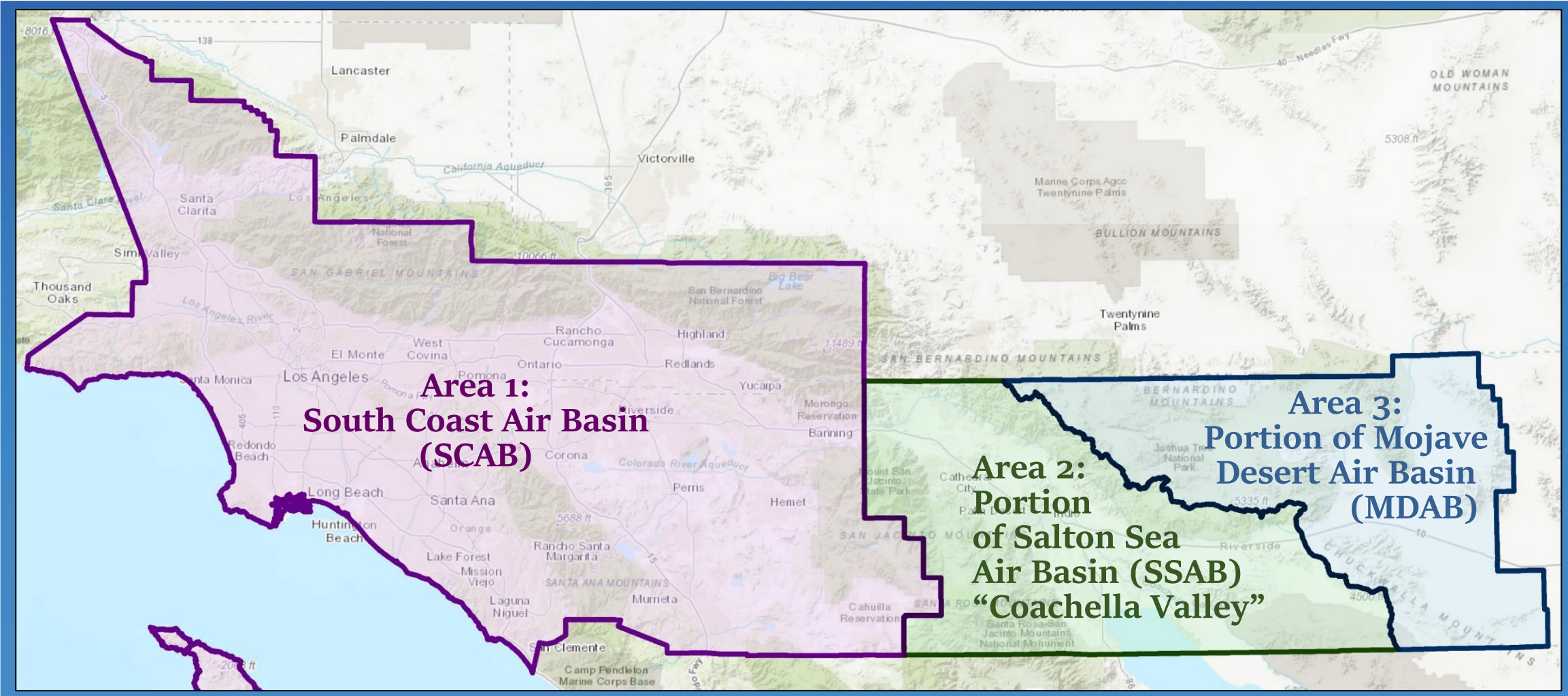
- U.S. Environmental Protection Agency (EPA) establishes NAAQS for various air pollutants to be protective of human health
- The U.S. EPA has promulgated four NAAQS for ozone (est. 1979, 1997, 2008, 2015)
- The Air Quality Management Plan (AQMP) becomes part of the State Implementation Plan (SIP) which describes the pathway to attainment for each NAAQS
- Areas not meeting the ozone standards are designated as nonattainment areas based on exceedance level:



- Attainment deadlines are established based on classification, with more time provided for areas with worse air quality



# NAAQS Attainment Regions







# Ozone NAAQS Attainment Classifications

NAAQS Year	Averaging Time	NAAQS Level	Revoked Effective	Region <sup>1</sup>	Attainment Status	Attainment Deadline
1979	1-Hour	120 ppb	06/15/2005	SCAB	Extreme Nonattainment	12/31/2022
				Coachella Valley	Attainment <sup>2</sup>	11/15/2007
1997	8-Hour	80 ppb	04/06/2015	SCAB	Extreme Nonattainment	06/15/2024
				Coachella Valley	Extreme Nonattainment	06/15/2024
2008	8-Hour	75 ppb	N/A	SCAB	Extreme Nonattainment	07/20/2032
				Coachella Valley	Extreme Nonattainment	07/20/2032
2015	8-Hour	70 ppb	N/A	SCAB	Extreme Nonattainment	08/03/2038
				Coachella Valley	Severe Nonattainment <sup>3</sup>	08/03/2033 <sup>3</sup>

*1 – South Coast AQMD portion of MDAB is designated as unclassifiable*

*2 – U.S. EPA finding of attainment in 80 FR 20166 (04/15/2015) <https://www.govinfo.gov/content/pkg/FR-2015-04-15/pdf/2015-08582.pdf>*

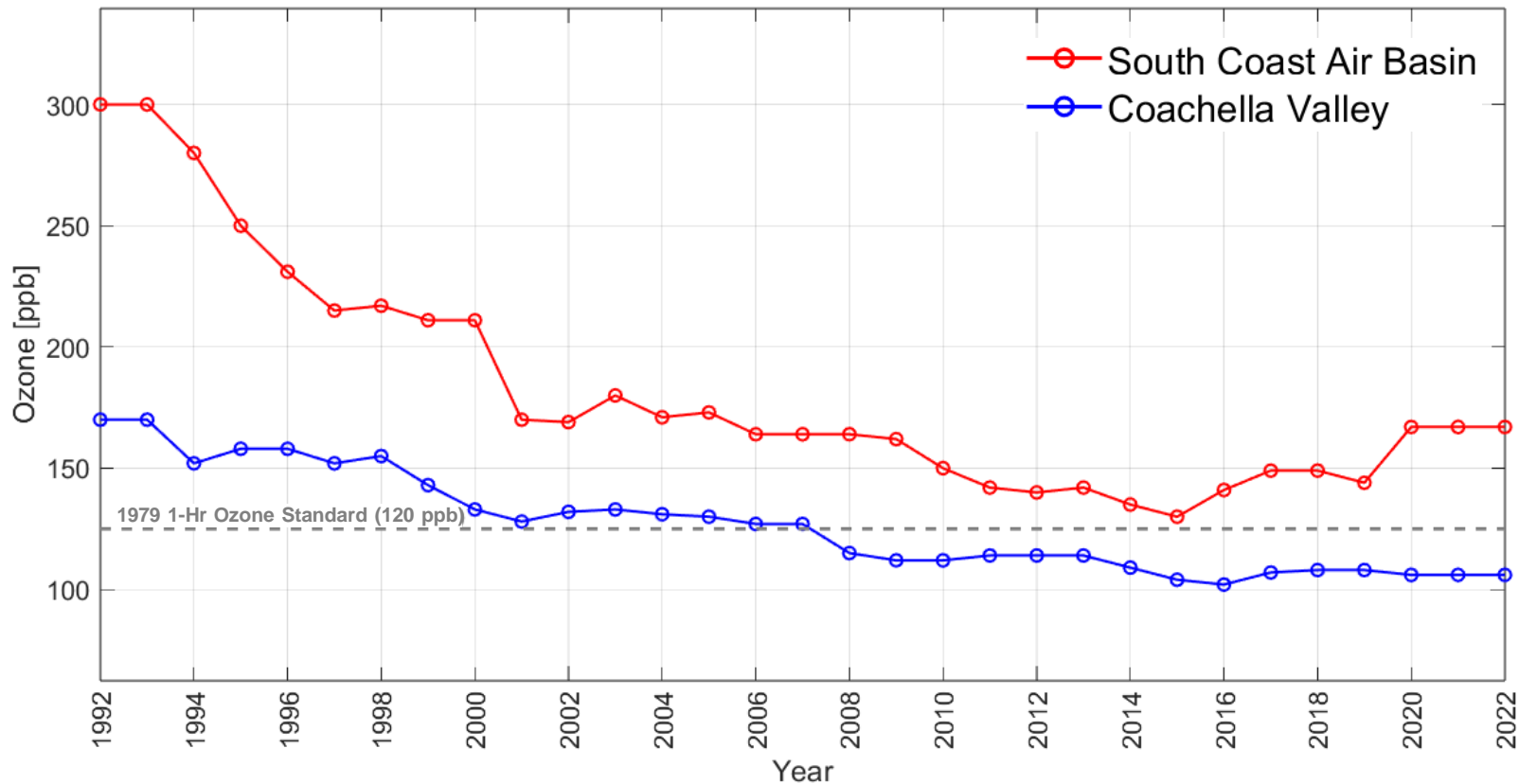
*3 – Voluntary reclassification to “extreme” nonattainment is pending U.S. EPA approval and would allow 5 more years to attain the standard*





# 1-Hour Ozone Trends

## 1-Hour Ozone Design Values <sup>1</sup>



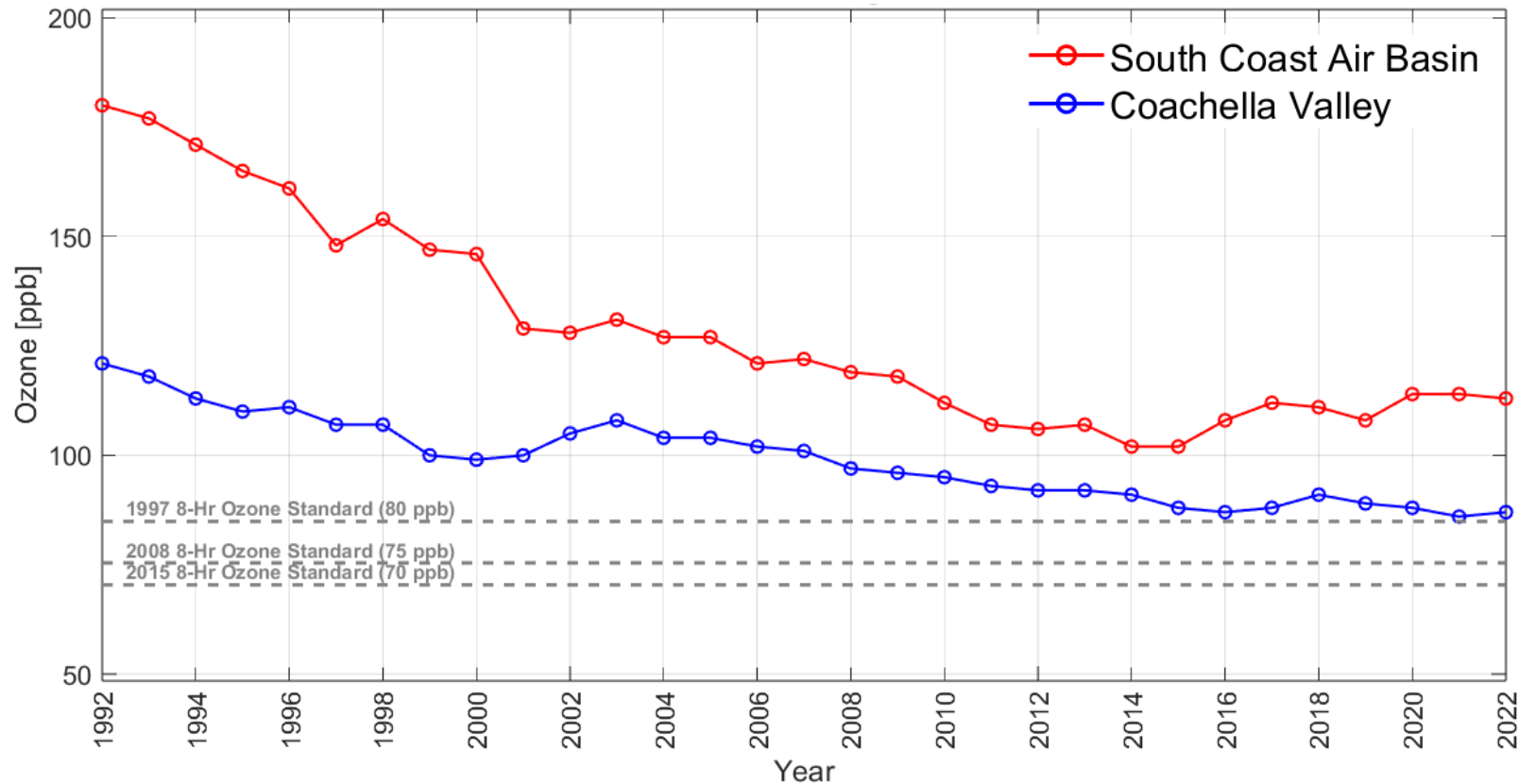
- Overall air quality has improved
- Coachella Valley has reached attainment
- Continued emission reductions will improve ozone
- Highest levels are found in inland areas of SCAB

*1 – Annual highest 1-hour average concentration, averaged over 3 years*



# 8-Hour Ozone Trends

## 8-Hour Ozone Design Values <sup>1</sup>



- Overall air quality has improved
- Continued emission reductions will improve ozone
- Highest levels are found in inland areas of SCAB

*1 – Annual 4<sup>th</sup> highest 8-hour average concentration, averaged over 3 years*

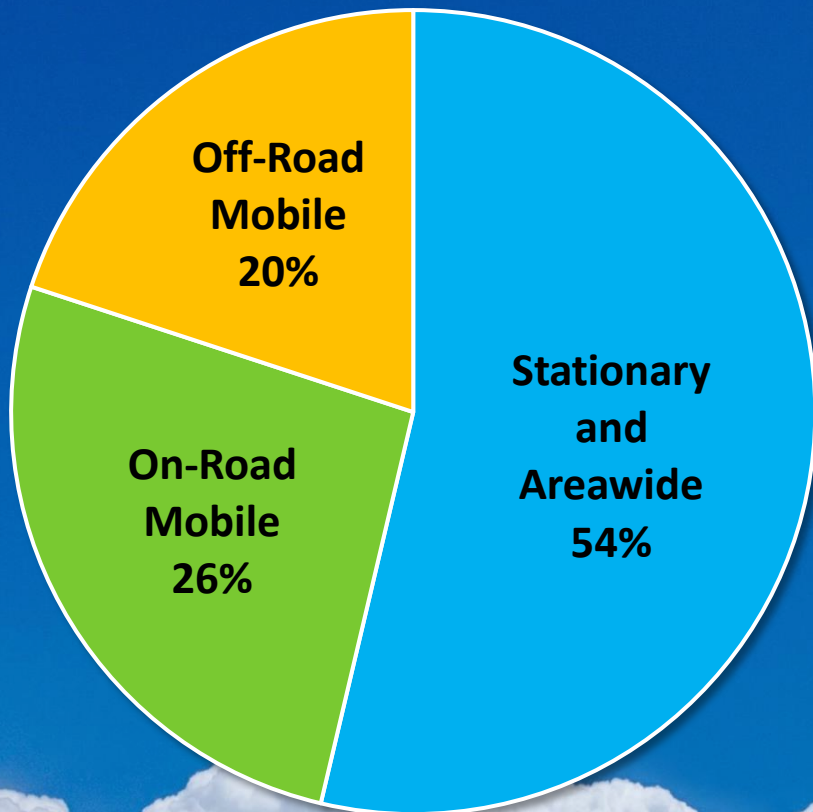




# Source Contributions for Ozone Precursors

## 2018 VOC Emissions

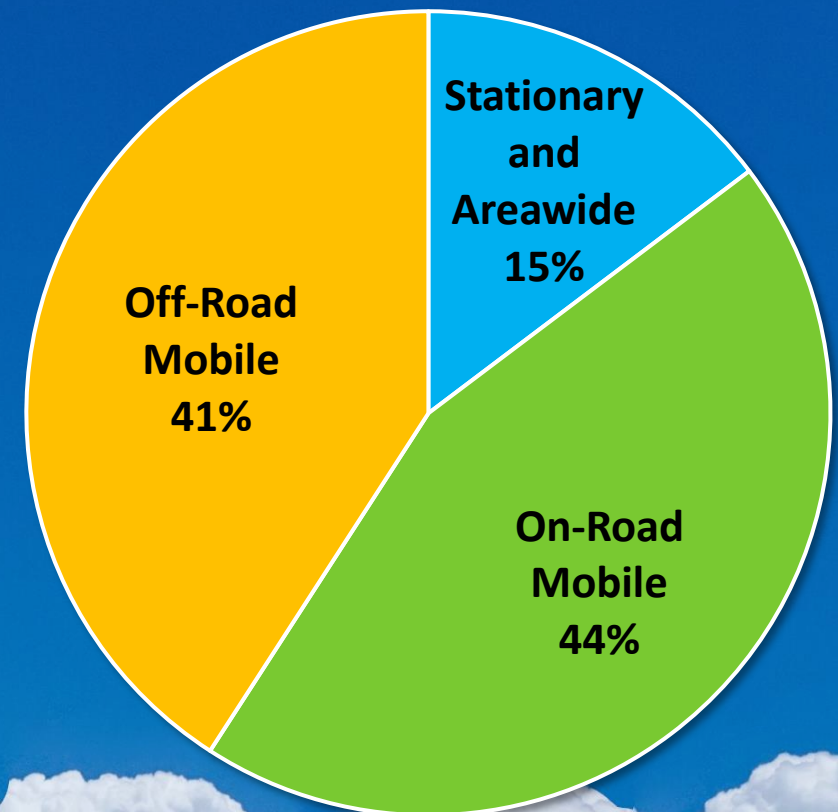
406 tons per day



- As established in the 2022 AQMP, to reduce ozone in our region, the primary pollutants that must be controlled are nitrogen oxides (NOx)
- Over 80% of the NOx emissions in 2018 are from mobile sources

## 2018 NOx Emissions

351 tons per day





# CAA Section 185 Nonattainment Fee

Clean Air Act Nonattainment Fees





# CAA Section 185 Fee Requirements

- Clean Air Act (CAA) section 185 establishes fee requirements for “severe” or “extreme” ozone nonattainment areas when the area fails to attain a NAAQS by the applicable attainment date
- The CAA requires that each major stationary source of VOCs and NO<sub>x</sub>, within such area, pay a fee to the State
- The fee shall be collected
  - For each calendar year beginning after the attainment date
  - 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
- 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



# CAA Section 185 Fee Amount

- The annual CAA section 185 fee rate shall equal \$5,000 prior to 1990 and be adjusted annually beginning in the year after 1990

Calendar Year	Annual CAA Section 185 Fee Rate
1990	\$5,000.00
2023	\$11,922.00

- The fee collected shall be the annual CAA section 185 fee rate per ton of VOC and of NOx emitted by the source during the calendar year in excess of 80 percent of the baseline amount for that pollutant
  - The baseline amount is the lower of the amount of actual VOC/NOx emissions or the amount of VOC/NOx emissions allowed under the permit during the year of the attainment deadline





# CAA Section 185 Fee Amount Example Calculation

$$\left[ \text{Actual Annual Tons of VOC Emitted} - \left( 0.8 \times \text{Baseline Annual Tons of VOC Emitted} \right) \right] \times \text{Annual U.S. EPA CAA §185 Fee Rate} = \text{Annual CAA Nonattainment Fee for VOC}$$

## Hypothetical Facility Calculation for VOCs

- **Baseline Annual Tons of VOCs = 15**
- **2023 Annual Tons of VOCs = 13**
- **2023 Annual U.S. EPA CAA §185 Fee Rate = \$11,922.00**

$$\text{Annual CAA Nonattainment Fee for VOC} = [ 13 - ( 0.8 \times 15 ) ] \times \$11,922.00 = \$11,922.00$$

- Follow same procedure, using NO<sub>x</sub>, to calculate annual CAA nonattainment fee for NO<sub>x</sub>
- Add together the annual CAA nonattainment fee for VOC and for NO<sub>x</sub> to calculate the total annual CAA nonattainment fee



# What is a Major Source?

- A source is classified as a major source based on the potential to emit air pollutants, such as a criteria pollutant, criteria pollutant precursor, or hazard air pollutant, above a specific threshold
  - Major sources of VOCs or NO<sub>x</sub> are classified based on exceeding the following potential to emit thresholds :

**Potential to Emit Emission Thresholds (tons/year)**

Pollutant	SCAB	Coachella Valley
VOCs	10	10
NO <sub>x</sub>	10	10

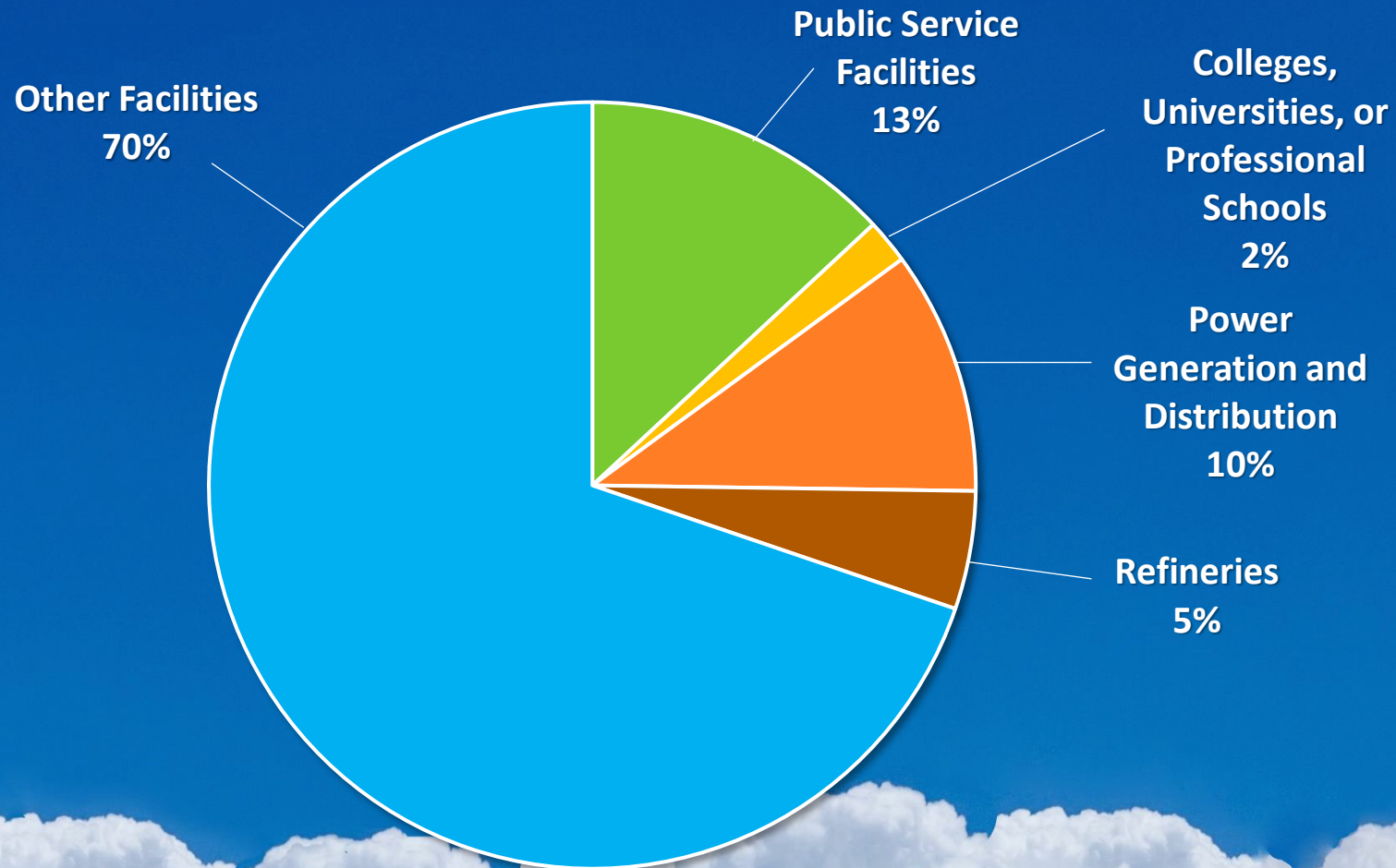
- CAA Title V – Permits required U.S. EPA to establish a national operating permit program
- Major sources are part of the South Coast AQMD Title V Program
- A Title V permit is federally enforceable





# Major Source Facility Universe

Title V Program Facilities  $\approx$  320 Facilities in South Coast AQMD





# Alternative Fee Equivalency Approach

- A fee equivalency approach is a program that “clearly raises at least as much revenue as otherwise required section 185 fee program if the proceeds are spent to pay for emissions reductions that will further improve ozone air quality”
- U.S. EPA advised a fee equivalency approach may be approvable under the CAA section 172(e) concept only for revoked standards
- U.S. EPA acknowledged that a fee equivalency approach might actually produce more emission reductions as CAA section 185 does not require the fees collected to be spent on emission reductions <sup>1</sup>
- Alleviates burden on stationary essential public services and health facilities
- Promotes emission reductions from mobile sources, which have greater contributions to ozone formation
- Utilizes monies from programs that are surplus to the applicable ozone SIP

<sup>1</sup> – 77 FR 74372, 74376-74379 (Dec. 14, 2012) <https://www.govinfo.gov/content/pkg/FR-2012-12-14/pdf/2012-29385.pdf>





# 1979 1-Hour NAAQS

- Coachella Valley was in attainment effective 12/31/2013, but had prior statutory attainment deadline of 11/15/2007
- The SCAB statutory attainment deadline is 12/31/2022, but had a prior statutory attainment deadline of 11/15/2010
- Annual CAA nonattainment fee obligations began calendar year 2008 for Coachella Valley and in calendar year 2011 for SCAB
- This ozone NAAQS was revoked effective 6/15/2005
  - Anti-backsliding measures require areas to continue to meet the requirements of CAA 185
  - The area may utilize the fee equivalency approach
- Rule 317 - Clean Air Act Non-Attainment Fees was adopted to address this NAAQS



## Rule 317 – Clean Air Act Non-Attainment Fees

- Addresses the 1979 1-hour ozone NAAQS
- Utilizes the fee equivalency approach (SIP approved)
  - The fee equivalency approach must utilize monies from programs that are surplus to the applicable ozone SIP
- Fee equivalency reports are prepared each year
- No CAA 185 fees have been collected from facilities
- South Coast AQMD prioritizes disadvantaged areas for incentive programs (e.g. Carl Moyer)





# 1997 8-Hour NAAQS

- The SCAB and Coachella Valley statutory attainment deadlines are 06/15/2024
- This ozone NAAQS was revoked effective 04/06/2015
  - Anti-backsliding measures require areas to continue to meet the requirements of CAA 185
  - The area may utilize the fee equivalency approach
- Annual CAA nonattainment fee to be collected starting calendar year 2025
- No rules have been adopted to address the 1997 ozone NAAQS nonattainment fees



# Issue with Fee Equivalency Approach for 1997 8-Hour NAAQS

- Fee equivalency approach must utilize monies from programs that are surplus to the applicable ozone SIP
  - South Coast AQMD periodically prepares an AQMP, which serves as the regions SIP
  - In the 2016 AQMP, emission reductions strategies relied heavily on incentives and yet to be determined programs to successfully achieve the emission reductions needed to reach attainment with the 8-hour ozone NAAQS
  - Emission reductions from incentives account for a substantial portion of the NO<sub>x</sub> emission reductions (approximately 200 tons per day) needed to reach attainment with the 8-hour ozone NAAQS
  - Programs that we relied on for reductions would not be eligible for fee equivalency
- With substantial emission reduction obligations, adequate funding to utilize the fee equivalency approach for the 8-hour standards is not available





## 2008 8-Hour NAAQS

- The SCAB and Coachella Valley statutory attainment deadlines are 07/20/2032
- SIP plan revision meeting requirements of CAA section 185 was due by 07/20/2022
- As this ozone NAAQS has not been revoked, the South Coast AQMD may not utilize the fee equivalency approach
- Annual CAA nonattainment fee to be collected starting calendar year 2033
- No rules have been adopted to address the 2008 ozone NAAQS nonattainment fees



## 2015 8-Hour NAAQS

- The SCAB statutory attainment deadline is 08/03/2038
- The Coachella Valley statutory attainment deadline is 08/03/2033
  - Voluntary reclassification to “extreme” nonattainment is pending U.S. EPA approval and would increase the deadline by 5 years
- SIP plan revision meeting requirements of CAA section 185 is due by 08/03/2028
- As this ozone NAAQS has not been revoked, the South Coast AQMD may not utilize the fee equivalency approach
- Assuming Coachella Valley is reclassified, Annual CAA nonattainment fee begins to be collected for SCAB and Coachella Valley starting in calendar year 2039
- No rules have been adopted to address the 2015 ozone NAAQS nonattainment fees





# Implementation of CAA Section 185

Several approaches have been taken by California air agencies to comply with CAA section 185:

## Fee Collection

Air agency collects fees from major sources

## Fee Equivalency Approach

Air agency solely uses fee equivalency approach with funds surplus to the applicable SIP and major sources do not pay a fee to the air agency

## Fee Equivalency Approach with Shortfall Collection

Air agency uses fee equivalency approach with funds surplus to the applicable SIP and collects fees from major sources to cover any shortfall

## Fee Collection with Exemption if Alternative Approach is Approved by U.S. EPA

Air agency collects fees from major sources with exemption for an alternative approach approved by U.S. EPA



# Implementation of CAA Section 185

Air District	1979 1-Hour Ozone NAAQS	1997 8-Hour Ozone NAAQS	2008 8-Hour Ozone NAAQS
South Coast AQMD	Fee Equivalency Approach	Pending Rule Development/Adoption	Pending Rule Development/Adoption
Sacramento Metro AQMD	Fee Collection	Fee Collection	Fee Collection
San Diego County APCD	Not applicable	Not applicable	Fee Collection with Exemption if Alternative Approach is Approved by U.S. EPA
San Joaquin Valley APCD	Fee Equivalency Approach with Shortfall Collection	Fee Equivalency Approach with Shortfall Collection	Pending Rule Development/Adoption
Antelope County APCD	Fee Equivalency Approach with Shortfall Collection	Fee Equivalency Approach with Shortfall Collection	Fee Equivalency Approach with Shortfall Collection
Mojave Desert AQMD	Fee Equivalency Approach with Shortfall Collection	Fee Equivalency Approach with Shortfall Collection	Fee Equivalency Approach with Shortfall Collection

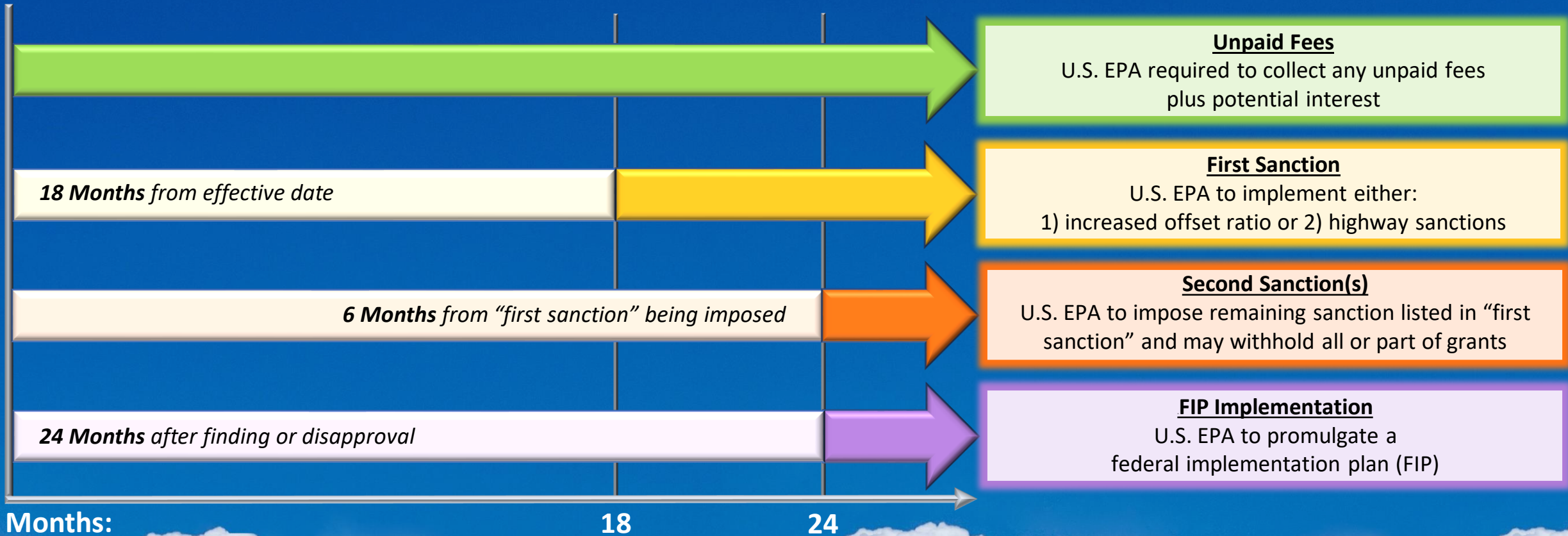
As the 2008 8-hour ozone NAAQS is not revoked, U.S. EPA would not approve of a rule which relies on a fee equivalency approach for this standard





# Statutory Timeline for CAA Section 185 Deficiencies

U.S. EPA issues finding, disapproval, or determination on failure to meet nonattainment fee requirements





# Ozone NAAQS Nonattainment Fee Summary and Approach

		Rule 317 – Clean Air Act Non-Attainment Fees	PR 317.1 – Clean Air Act Nonattainment Fees for the 8-Hour Ozone Standards		TBD
		1979 (revoked)	1997 (revoked)	2008	2015
Section 185 Due Date		12/31/2000	Not Established	07/20/2022	08/03/2028
Attainment Deadline	South Coast	12/31/2022	06/15/2024	07/20/2032	08/03/2038
	Coachella Valley	11/15/2007 <sup>2</sup>	06/15/2024	07/20/2032	08/03/2033 <sup>3</sup>
Calendar Year Nonattainment Fees Begin	South Coast	2011 <sup>1</sup>	2025	2033	2039
	Coachella Valley	2008 <sup>2</sup>	2025	2033	2034 <sup>3</sup>
U.S. EPA Currently Allows District to Utilize CAA §172(e) Fee Equivalency Approach		Yes	Yes	No	No
South Coast AQMD Currently has Emission Reductions Surplus to Applicable SIP		Yes	No	Not Applicable	Not Applicable

1 – 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

2 – U.S. EPA finding of attainment in 80 FR 20166 (04/15/2015) <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 increase date by 5 years





# Need for Proposed Rule 317.1

Air District	1979 1-Hour Ozone NAAQS	1997 8-Hour Ozone NAAQS	2008 8-Hour Ozone NAAQS
South Coast AQMD	Fee Equivalency Approach (Rule 317 SIP Approved)	Pending Rule Development/Adoption	Pending Rule Development/Adoption

- Rule 317.1 – Clean Air Act Nonattainment Fees for the 8-Hour Ozone Standards
  - Provides a compliance pathway for the 1997 and 2008 8-hour ozone NAAQS CAA 185 requirements
    - 1997 8-hour ozone standard – adequate funding to utilize the fee equivalency approach is not available
    - 2008 8-hour ozone standard – not a revoked standard and the South Coast AQMD may not utilize a fee equivalency approach
- If South Coast AQMD does not adopt a SIP approved rule, facilities would be subject to fees which will instead be collected by the U.S. EPA



# Rule Development Process

**Clean Air Act Nonattainment Fees**





# Working Group Process

*Working group and stakeholder meetings continue throughout process*

**Information  
Gathering  
and Analysis**

**Preliminary  
Draft Rule  
and Staff  
Report**

**Public  
Workshop**

**Draft Rule  
and Staff  
Report**

**Public  
Hearing**



# Working Groups

- Comprised of stakeholders and representatives from industry (regulated industry, equipment suppliers), community and environmental groups, labor associations, government agencies, and academia
- Working group meetings are held throughout the rule development process and are open to the public
- Objectives:
  - Build consensus and work through challenges
  - Opportunities for early input
  - Implement requirements
- Assists staff in understanding key issues and concerns

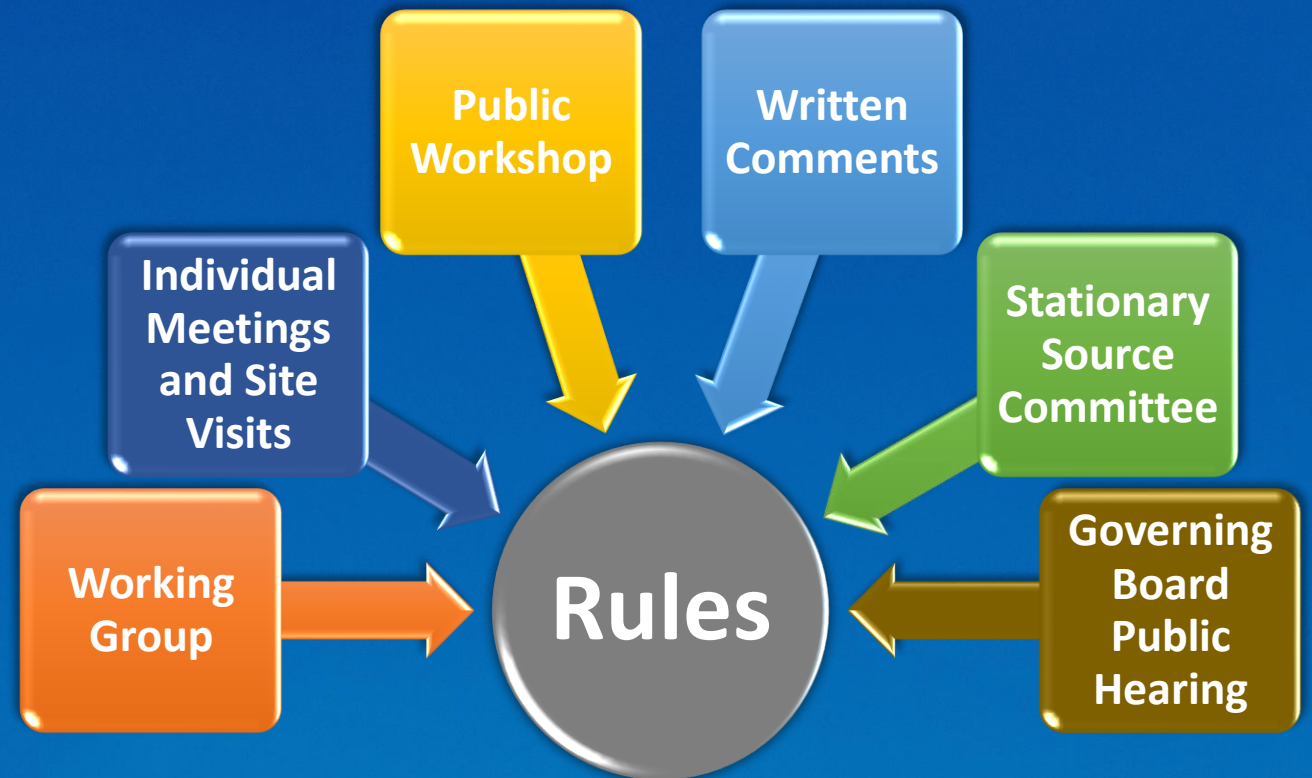






# Stakeholder Input

- Stakeholders can provide input during working group meetings and throughout the rulemaking process
- Early input is strongly encouraged to help develop proposed rule amendments and to address issues
- Working group meetings, individual meetings, and site visits allow stakeholders to dialogue directly with staff and discuss individual issues





# Gathering Information

- Information is used to provide more context
- Used to accurately characterize information used for the rulemaking and its impacts such as cost
- Sharing knowledge benefits the rule







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Rules 317 & 317.1





# Next Steps



Public Hearing



Public Workshop



Develop rule concepts



Continue information gathering



Hold working group meetings






# Proposed Rule 317.1 Staff Contacts

Please contact staff with any questions or comments

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# Open Discussion

- Please use the “raise hand” feature to request to speak:
  -  Click on the  button
  -  Dial \*9
- When it is your turn to speak, your name will be announced
  - If you are a panelist, use the “unmute” feature to speak:
    -  Click on the  button
    -  Dial \*6
  - If you are not a panelist, the meeting host will unmute you