SACRAMENTO METROPOLITAN
AIR QUALITY MANAGEMENT DISTRICT

STATEMENT OF REASONS

Rule 307, CLEAN AIR ACT PENALTY FEES

Proposed Amendments
February 17, 2023

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RULE JUSTIFICATION

Introduction

Ground level ozone is a secondary pollutant formed from photochemical reactions of nitrogen oxides (NOx) and volatile organic compounds (VOC) in the presence of sunlight. Ozone is a strong irritant that adversely affects human health and damages crops and other environmental resources. As documented by the U.S. Environmental Protection Agency (EPA) in the most recent science assessment for ozone[1], both short-term and long-term exposure to ozone can irritate and damage the human respiratory system, resulting in:

- increased respiratory symptoms, such as irritation of the airways, coughing, or difficulty breathing;
- decreased lung function;
- aggravated asthma;
- development of chronic bronchitis;
- irregular heartbeat;
- nonfatal heart attacks,
- premature death in people with heart or lung disease; and
- increased risk of cardiovascular and cerebrovascular events in post-menopausal women.

The Sacramento Metropolitan Air Quality Management District (District) is the agency with primary responsibility for achieving and maintaining clean air standards in Sacramento County. The District is within the Sacramento Federal Ozone Nonattainment Area (SFNA), which is currently designated as nonattainment for the 1979 1-hour and 1997, 2008, and 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS). For the 1997 and 2008 standards, the area is classified as severe nonattainment. For the 2015 standard, the area is currently classified as serious; however, the air districts of the SFNA have recently requested a voluntarily bump up to a severe nonattainment classification because additional time is needed to meet the standard. EPA is expected to take action to reclassify the SFNA in a final rule.

Background

The 1990 Clean Air Act amendments included, for the first time, penalty fee assessments for nonattainment areas that fail to meet ozone standards. This provision was included to address a shortcoming in the CAA that allowed areas to miss attainment deadlines without substantial consequences. CAA Section 185[2] requires severe or extreme nonattainment areas to impose fees on major stationary sources of VOC or NOx if the area fails to attain the standard by the applicable deadline.

The District adopted Rule 307, Clean Air Act Fees, on September 26, 2002, to implement the federally mandated major stationary source fees within Sacramento County in the event the SFNA failed to attain the 1979 1-hour ozone standard by 2005. Rule 307 was approved into the SIP on August 26, 2003. Since EPA has adopted multiple and more stringent ozone standards several

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[1] "Integrated Science Assessment (ISA) for Ozone and Related Photochemical Oxidants", U.S. EPA, April 2020.
[2] 42 U.S.C. § 7511d.

times, Rule 307 needs to be amended to apply to all federal ozone standards for which the SFNA is classified as severe or extreme.

On January 17, 2023[3], EPA issued a finding that the Sacramento Federal Ozone Non-Attainment Area has failed to submit a required a State Implementation Plan (SIP) element for the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS). The element is to submit a rule to assess and collect penalty fees as specified in CAA Section 185. The finding is based on deadlines outlined in the Clean Air Act. The effective date of February 16, 2023, in EPA's finding notice starts a sanctions clock before triggering penalties unless EPA approves subsequent SIP revisions to correct the missing plan element.

Staff proposes to stop the sanctions clock by amending Rule 307 to implement the required Clean Air Act penalty fee for the 2008 ozone standard as identified by EPA. Staff is also proposing to amend the rule apply to all current and future federal ozone standards for which the SFNA is classified as severe or extreme nonattainment.

Federal Mandates

Section 185 of the CAA requires SIPs for ozone nonattainment areas classified as severe or extreme to provide that, if the area has failed to attain the NAAQS for ozone by the applicable attainment date, each major stationary source of VOCs or NOx located in the area pay a fee to the state (or district) as a penalty for such failure. Section 185 also states that if an area fails to administer the fee provisions, EPA must collect the unpaid fees, plus interest on back fees owed, and a fifty percent penalty if sources fail to pay[4].

The SFNA is designated as a severe nonattainment area for the 1979 1-hour and 1997 federal 8-hour ozone standard. Although both standards have been revoked, the requirements for a Section 185 fee rule for these standards are still applicable. The SFNA is also designated as a severe nonattainment area for the 2008 federal 8-hour ozone standard. In 2017, the districts of the SFNA adopted an attainment demonstration plan to achieve the federal 2008 8-hour ozone standard by the attainment date of July 2025[5].

The SFNA is currently designated serious nonattainment for the 2015 federal 8-hour ozone standard. However, during the attainment plan development process, we determined that the area could not reach attainment by the August 2027 deadline for serious nonattainment areas. Consequently, the districts of the SFNA submitted a voluntary bump up request to EPA, asking to be reclassified to severe, giving the area additional time to attain. The SFNA is currently working on a plan to achieve the 2015 NAAQS based on a severe classification. The current estimated attainment date for this Plan is August, 2033[6].

If the SFNA does not attain any of these standards by their respective deadlines, Section 185 fees may be triggered if EPA issues a finding of failure to attain.

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[3] "Finding of Failure to Submit State Implementation Plan Revisions Required Under Clean Air Act Section 185; California; Sacramento Metro Area", Federal Register 88:10 (January 17, 2023) p. 2541.

[4] 42 U.S.C. §§ 7604, 7511d(d), & 7661a(b)(3)(C)

[5] "Sacramento Regional 2008 NAAQS 8-hour Ozone Attainment and Reasonable Further Progress Plan." El Dorado County Air Quality Management District (AQMD), Feather River AQMD, Placer County Air Pollution Control District (APCD), SMAQMD, Yolo Solano AQMD, July 24, 2017.

[6] U.S. EPA. *Ozone NAAQS* Timelines. https://www.epa.gov/ground-level-ozone-pollution/ozone-naaqs-timelines

Currently, Rule 307 applies only to the revoked 1979 1-hour NAAQS. Staff is proposing to amend Rule 307 to apply to all existing or future ozone NAAQS for which the District is classified as severe or extreme nonattainment. This includes the 2008 8-hour ozone NAAQS that EPA's finding specifically found to be missing. Additionally, Rule 307 is required to include provisions for CAA Section 185 fees into the SIP for the 1997 and 2015 8-hour ozone NAAQS.

EPA Sanction Clock: The February 16, 2023 effective date of EPA's failure to submit action starts a sanctions clock[7] unless EPA affirmatively determines that the District has submitted the required plan revisions that implement the Clean Air Act penalty fee within 18 months of the effective date (by August 16, 2024). An emission offset sanction, increasing the emission offset ratio to 2:1, would occur first. The second sanction, a highway fund sanction, would be applied 24 months after the effective date (February 16, 2025). If the highway fund sanction were to take effect, our region would lose funding for transportation projects if the funds have not been obligated by the Federal Highway Administration by the date the highway sanctions are imposed. Projects that have already received approval to proceed and had funds obligated may proceed. In addition, EPA must promulgate a Federal Implementation Plan (FIP} unless the SIP revisions are approved by August 16, 2024.

SUMMARY OF PROPOSED AMENDMENTS TO RULE 307, CLEAN AIR ACT PENALTY FEES (Proposed New Title)

Staff is proposing to amend Rule 307 to expand the applicability to any ozone NAAQS for which the District is designated as a severe or extreme nonattainment area. Rule 307 was originally adopted for the 1979 ozone NAAQS and is proposed to be amended to include all existing and future ozone NAAQS (i.e., the revoked 1997 NAAQS and the current 2008 and 2015 NAAQS). No CAA penalty fees will be assessed unless EPA issues a finding of failure to attain.

The proposed amendments to Rule 307 will add an exemption for cessation of penalty fees. The added exemption identifies two ways the penalty fees are terminated by EPA action, either by: 1) redesignating Sacramento County to attainment for an ozone standard, or 2) terminating the anti-backsliding requirements associated with the Section 185 penalty for a revoked standard.

The proposed amendments include some minor language changes for clarity, including how a major stationary source's baseline emissions are determined based on when it began operation or transitioned to major. The proposed amendments do not change the existing procedures but clarify how baseline emissions are calculated.

A detailed description of the amendments to Rule 307 is included in Appendix A.

Socioeconomic Impact

CHSC §40728.5 requires a district to perform an assessment of the socioeconomic impacts before adopting, amending, or repealing a rule that will significantly affect air quality or emission

[7] Under authority of CAA sections 110(k)(3), codified at 42 USC 7410(k)(3), and 40 CFR 52.31.

limitations. The District Board is required to actively consider the socioeconomic impacts of the proposal and make a good faith effort to minimize adverse socioeconomic impacts.

CHSC §40728.5 defines “socioeconomic impact” as:

1. The type of industry or business, including small business, affected by the proposed rule or rule amendments.
2. The impact of the proposed rule or rule amendments on employment and the economy of the region.
3. The range of probable costs, including costs to industry or business, including small business.
4. The availability and cost-effectiveness of alternatives to the proposed rule or rule amendments.
5. The emission reduction potential of the rule or regulation.
6. The necessity of adopting, amending, or repealing the rule or regulation to attain state and federal ambient air standards.

Staff has determined that the proposed amendments to Rule 307 will not significantly affect air quality or emission limitations; therefore, a socioeconomic impact analysis for the amendments is not required. Nevertheless, Staff has prepared an overview of approximate costs to sources if a penalty fee is triggered for failure to attain a NAAQS. No penalty fees are assessed unless EPA issues a finding of failure to attain.

<u>Example penalty fee calculations for major stationary sources in the District:</u>
Proposed amended Rule 307 applies to all major stationary sources of NOx or VOCs in Sacramento County. There are no small businesses affected by the proposed rule. The twelve currently permitted major stationary sources that could be affected by this rule are:

- Chevron USA, Sacramento Terminal
- County of Sacramento PW (Kiefer Landfill)
- Mitsubishi Rayon Carbon Fiber & Composites
- NTT Global Data Centers Americas, Inc.
- Procter and Gamble Manufacturing Company
- Santa Fe Pacific Pipelines, L.P. Bradshaw Terminal
- Silgan Can Company
- SMUD Financing Authority DBA Campbell Power Plant
- SMUD Financing Authority DBA Carson Power Plant
- SMUD Financing Authority DBA Cosumnes Power Plant
- SMUD Financing Authority DBA Procter and Gamble Power Plant
- UC Davis Medical Center

Several of these sources have actual emissions below the major source threshold. These sources would have the option of lowering their permitted emission levels to be redesignated as non-major stationary sources, thus exempting themselves from the penalty fee. Major stationary sources that begin operation, or that transition to major stationary source status, during or after an attainment year would also be subject to the penalty fee.

The penalty fee established in CAA Section 185 is $5000 per ton of VOC and NOx emitted in excess of 80% of the baseline emissions[8]. The penalty fee is only assessed for the pollutant for which the source is considered major. EPA will adjust the fee annually by the Consumer Price Index (CPI) as specified in Section 403. The adjusted 2020 Clean Air Act penalty fee is $10,456.67 per ton[9]. Costs for each major stationary source vary depend on the actual amount of VOC and NOx emitted. If a facility reduces emissions to 80% or less of the level emitted in the attainment year, there is no penalty fee assessment.

Formula:

$$\text{Fee} = 5000 \times [E_A - (0.8 \times E_B)] \times (1 + \text{CPI})$$

Where:
- Fee = Clean Air Act penalty fee
- E_A = actual emissions (tons per year, tpy) for the applicable fee assessment year
- E_B = baseline emissions (tpy), as defined in Section 303 of the rule.
- CPI = percent change in the Consumer Price Index since 1990 as determined by Section 403

The baseline inventory depends on the attainment year and is different for each ozone standard EPA has established or may establish. If a source has actual emissions that are less than or equal to 80% of the baseline emissions, no penalty fee is charged. Otherwise, sources pay a penalty fee each year until the penalty fee authority is eliminated, either by EPA redesignating the Sacramento Federal Nonattainment Area for Ozone to attainment, or by EPA terminating the anti-backsliding requirement associated with the Clean Air Act penalty fees. A few example scenarios and calculations are provided below to demonstrate how the penalty fee calculations work.

Source A is a major stationary source of NOx. Source A's baseline emissions in 2019, the attainment year, were 15 tons of NOx. Eighty percent of the 15-ton baseline emissions is 12 tons of NOx. In 2020, the source emitted 20 tons of NOx. The penalty fee for 2020 in this example is based on 8 tons of excess emissions times $10,456.67 per ton, or $83,653.

Source B is a major stationary source of VOC. Source B's baseline emissions in 2019, the attainment year, were 40 tons of VOC. Eighty percent of the 40-ton baseline emissions is 32 tons of VOC. In 2020, the source emitted 30 tons per year of VOC. The penalty fee for this source in 2020 is zero dollars because its 2020 emissions are lower than 32 tons (80% of the baseline emissions). In subsequent years, the source could be assessed a penalty fee if its emissions exceed 32 tons.

Source C is a major stationary source of NOx and VOC. Source C's baseline emissions in 2019, the attainment year, were 30 tons of NOx and 30 tons of VOC. Eighty percent of the 30-ton baseline emissions is 24 tons for each pollutant. In 2020, the source emitted 28 tons of NOx and 22 tons of VOC. In this example, the source would pay a penalty fee in 2020 only for the excess

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[8] Baseline emissions are defined in Section 303 of the rule and depend on when the source began operation. For major stationary sources that began operation prior to the attainment year, the baseline emissions are the lowest of the actual emissions during the attainment year, the emissions allowed under facility's permit, or the emissions allowed under any applicable rules or regulations for the facility during the attainment year.

[9] Clean Air Act Section 185 Fee Rates Effective for Calendar Year 2021. U.S. EPA. September 27, 2021. https://www.epa.gov/system/files/documents/2021-12/memorandum_sec-185-penalty-fees-for-year-2021.pdf

NOx emissions (4 tons) because the VOC emissions are less than 24 tons (80% of the baseline VOC emissions). Therefore, the penalty fee would be 4 tons times $10,456.67 per ton, or $41,827.

Necessity of amending the Clean Air Act penalty fee rule

A Section 185 fee rule is required by the 2008 and 2015 NAAQS Implementation Rules, which set 10-year deadlines to submit a 185 fee rule[10,11]. The February 16, 2023, effective date of EPA's failure to submit action starts a sanctions clock unless EPA approves subsequent SIP revisions to correct the missing plan element. Failure to adopt and submit the required SIP element identified would result in EPA imposing sanctions. If the 18-month deadline is not met, EPA is required to promulgate a FIP within 24 months. In addition, if EPA does not approve a Clean Air Act penalty fee rule, then at the 18-month mark the emission offset ratio applied to stationary sources increases in all cases to at least 2:1, and at the 24-month mark Sacramento would lose its eligibility for federal highway transportation funds. Projects that have already received approval to proceed and had funds obligated at the 24-month mark may proceed.

The proposed rule satisfies the federal mandates and corrects the SIP plan deficiency identified by EPA in the failure to submit action.

PUBLIC OUTREACH/COMMENTS

Staff held a public workshop to discuss the proposed rule on February 9, 2023. A notice for the workshop was e-mailed to interested parties, including the affected sources and all those who have requested rulemaking notices. The notice was also published on the District's website, and and the draft rule and Statement of Reasons were made available at that time. In addition, Staff contacted representatives from each of the affected sources prior to the workshop, briefed them on the impact to their sources, gave them the opportunity to ask questions, and in some cases, held meetings with their staff.

The version of the rule posted for the workshop contained an exemption that would have relieved sources from having to pay multiple fees if penalty fees were in effect for two or more ozone standards at the same time. However, prior to the workshop, Staff received initial comments from EPA stating that that such an exemption is not consistent with EPA's interpretation of the Clean Air Act and is not approvable. The workshop attendees were informed that the multiple fee exemption would be removed from the rule prior to it being proposed at the Board hearing.

At the workshop, Staff received comments on Rule 307 suggesting minor changes to clarify the language in Section 203.1, and Staff revised the section for clarity. Staff received written comments from EPA. In response to EPA comments, Staff formally removed the multiple fee exemption and revised several sections of the rule for clarity.

All comments and responses are included in Appendix B.

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[10] "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements", Federal Register 80:44 (March 6, 2015) p. 12317.

[11] "Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements", Federal Register 83:234 (December 6, 2018) p. 63036.

ENVIRONMENTAL REVIEW

Staff finds that the proposed amendments to Rule 307 are exempt from the California Environmental Quality Act (CEQA). Public Resources Code Section 21080(b)(8) and Section 15273 of the State CEQA Guidelines provide that the adoption or amendment of fee rules is not subject to CEQA. To claim this exemption, the District must find that the amendments are for the purpose of meeting operating expenses. Any Clean Air Act penalty fees collected will allow the District to implement clean air and/or planning programs.

FINDINGS

The California Health and Safety Code (HSC), Division 26, Air Resources, requires local districts to comply with a rule adoption protocol as set forth in §40727 of the Code. This section contains six findings that the District must make when developing, amending, or repealing a rule. These findings and their definitions are listed in the following table.

Finding	Finding Determination
Authority: The District must find that a provision of law or of a state or federal regulation permits or requires the District to adopt, amend, or repeal the rule. [CHSC Section 40727(b)(2)].	The District is authorized to amend Rule 307 by California Health and Safety Code (CHSC) Sections 40001, 40702, and 41010 and Sections 182(d) and 185(a-d) of the Federal Clean Air Act.
Necessity: The District must find that the rulemaking demonstrates a need exists for the rule, or for its amendment or repeal. [CHSC Section 40727(b)(1).]	The proposed amendment to Rule 307 is necessary to meet Federal Clean Air Act Section 185 planning requirements for severe nonattainment areas.
Clarity: The District must find that the rule is written or displayed so that its meaning can be easily understood by the persons directly affected by it. [CHSC Section 40727(b)(3)].	Staff has reviewed the proposed rule and determined that it can be understood by the affected parties. In addition, the record contains no evidence that people directly affected by the rule cannot understand the rule.
Consistency: The rule is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations. [CHSC Section 40727(b)(4)].	The proposed rule does not conflict with, and is not contradictory to, existing statutes, court decisions, or state or federal regulations.
Non-Duplication: The District must find that either: 1) The rule does not impose the same requirements as an existing state or federal regulation; or (2) that the duplicative requirements are necessary or proper to execute the powers and duties granted to, and imposed upon the District. [CHSC Section 40727(b)(5)].	The proposed rule does not duplicate any existing state or federal regulations.
Reference: The District must refer to any statute, court decision, or other provision of law that the District implements, interprets, or makes specific by adopting, amending or repealing the rule. [CHSC 40727(b)(6).]	The District is implementing the requirements of Sections 182(d) and 185(a-d) of the Federal Clean Air Act.
Additional Informational Requirements: In complying with HSC Section 40727.2, the District must identify all federal requirements and District rules that apply to the same equipment or source type as the proposed rule or amendments. [CHSC Section 40727.2].	Rule 307 is a fee rule and does not set or amend emissions standards, monitoring, reporting, or recordkeeping requirements. Therefore, a written analysis of federal regulations and other District rules is not required.

REFERENCES

"Finding of Failure to Submit State Implementation Plan Revisions Required Under Clean Air Act Section 185; California; Sacramento Metro Area", Federal Register 88:10 (January 17, 2023) p. 2541.

"Implementation of the 2008 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements", Federal Register 80:44 (March 6, 2015) p. 12264.

"Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements", Federal Register 83:234 (December 6, 2018) p. 62998.

U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards. *Clean Air Act Section 185 Fee Rates Effective for Calendar Year 2021.* Research Triangle Park, NC. September 27, 2021. https://www.epa.gov/system/files/documents/2021-12/memorandum_sec-185-penalty-fees-for-year-2021.pdf

U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards. *Guidance on Developing Fee Programs Required by Clean Air Act Section 185 for 1-hour Ozone NAAQS.* Research Triangle Park, NC. January 5, 2010.
https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/20100105_page_section_185_fee_programs.pdf

APPENDIX A
LIST OF CHANGES TO RULE 307

NEW SECTION NUMBER	EXISTING SECTION NUMBER	PROPOSED CHANGES
N/A	N/A	Revise rule title to reference the fee as a penalty fee.
Same	101	Revise the rule purpose to establishing fees pursuant the Clean Air Act.
Same	102	Revise the rule applicability to any major stationary source of VOC or NOx. Remove the specifics of the penalty fee that are contained in the administrative requirement sections. Penalty fees will be assessed for any federal air quality standard for ozone where the Sacramento Federal Nonattainment Area for Ozone (SFNA) is listed as Severe or Extreme in 40 CFR Section 81.305. That would include the revoked standards of 1979 and 1997, the 2008 and 2015 standards, and any future standard enacted by EPA.
Same	103	Revise the severability clause to be consistent with current District rulemaking practice.
Same	110	Add “Extension Year” label and update fee refence to the Clean Air Act penalty fee. An exemption from fees for an extension year for a particular ozone standard is only specific to that standard and no others.
111	N/A	Add “Cessation of Fees” exemption to stop the remittance of Clean Air Act penalty fees for an ozone standard when the SFNA is redesignated as attainment or when that standard is revoked and any anti-backsliding requirements associated with that standard are terminated, consistent with EPA policy.
112	N/A	Add “Nonattainment Status” exemption to not require payment of Clean Air Act penalty fees until EPA makes a finding of failure to attain an ozone standard.
201	N/A	Add “Attainment Date” definition to identify what is considered the attainment date. In such case where no EPA approval exists, the date will be the maximum statuary attainment date for that standard.
202	201	Revise “Attainment Year” definition to the year that contains the attainment date.
203	202	Revise “Baseline Emissions” definition to better describe how emissions are calculated for sources that transition to major stationary source status during or after the attainment year. Baseline emissions will be calculated separately for each applicable ozone standard.
204	203	Revise “Extension Year” definition as a request that is EPA-approved under the Clean Air Act. The District can request up to two one-year extensions.
205	204	Section renumbered.
206	205	Revise reference to new source review to the State Implementation Plan approved Rule 214, Federal New Source Review.
207	N/A	Add definition of “Sacramento Federal Nonattainment Area for Ozone,” consistent with Rule 214 and 40 Code of Federal Regulations Section 81.305.

NEW SECTION NUMBER	EXISTING SECTION NUMBER	PROPOSED CHANGES
Same	401	Revise section to include references to added sections that exempt sources from paying penalty fees. Tied the beginning of fee assessment to the attainment year of any current or future ozone standard, not just the 1979 ozone standard.
Same	402	Revise section to add references to Clean Air Act section that defines the Clean Air Act penalty fee and add a trigger to automatically adjust the penalty fee if revised under Section 185, and an adjustment by the Consumer Price Index as specified in Section 403. Revised the formula description to show more precisely the adjustment relative to the 1990 CPI. Revise fee references to the Clean Air Act penalty fee.
Same	403	Revise section to specify the Clean Air Act penalty fee will be adjusted by consumer price index adjustment to the base fee is relative to 1990. The fee for 2021 is $10,663.33 per ton of excess emissions.

APPENDIX B
COMMENTS AND RESPONSES

Public Workshop for Rule 307
February 9, 2023, 10:00 a.m.

Attendees:
Nick Jones, NTT Global Data Centers Americas, Inc.
Glen Lobacz, NTT Global Data Centers Americas, Inc.
Alfredo Nieto, Procter and Gamble Manufacturing Company
Peter Cable, Procter and Gamble Manufacturing Company
Luci Dooley, Sacramento County Department of Water Resources
Dan Wittenberg, Kinder Morgan Products Pipelines
Rene Toledo, SMUD
Erica Olaguez, UC Davis Health
Andrew Peng
Marsha Erickson

Oral Comments from the Public Workshop

Comment #1: When will a final version of the rule be posted after the workshop?

Response: A public notice for the SMAQMD Board of Directors meeting will be posted at least 30 days before the meeting date. The proposed rule and Statement of Reasons to be considered at the meeting will be posted with the notice at that time.

Comment #2: Can we reduce our potential to emit (PTE) to get out of Title V?

Response: Yes, you can reduce your PTE to less than 25 tons to leave Title V. For some sources this may not be possible due to business needs but if you are considering changes to your facility's permits, please contact the Stationary Source Division or your source's permit engineer.

Comment #3: What is being done by non-major sources to make sure the region meets attainment?

Response: The District is responsible to address emissions from local commercial and industrial businesses, agricultural sources, and from residents. The District has prohibitory rules that limit emissions from various industrial and commercial equipment, such as boilers and turbines, residential wood burning, and residential and industrial paints. The District continues to evaluate control measures and regulations for emissions reductions, as required by State and Federal planning requirements.

In addition to regulatory requirements, the District offers various incentive programs for residents, businesses, and public agencies to improve air quality in the Sacramento region and potentially reduce the cost of less polluting equipment and vehicles. More details of the District's available incentive programs can be found at:

https://www.airquality.org/Businesses/Incentive-Programs

Question #4: Does the Governor's Proclamation of a State of Emergency concerning electricity reliability for summer and fall exempt our sources emissions from the penalty fee? Can there be an exemption from the Rule 307 fees due to future proclamation of emergency?

Response: The Proclamation of State Emergency concerning electricity reliability suspended state and local permitting requirements and does not impact federal requirements. The requirement to assess Clean Air Act penalty fees is a federal requirement and all emissions exceeding 80% of the baseline emissions are subject to Rule 307 penalty fees. There are no exemptions under the CAA for state proclamations.

Written Comments

Luci Dooley, Sacramento County Department of Water Resources (February 9, 2023)

Comment #1: How does the District determine how much NOx is being emitted at a facility?

Response: Each permitted stationary source is required to report an annual emissions inventory to the District each year for the prior calendar year.

Comment #2: Do my source's permits to operate need to be updated for the rule amendments?

Response: No changes are needed to any permits to operate due to Rule 307.

Ling Li, Kinder Morgan (February 14, 2023)

Comment #1: What is a baseline year? Is the baseline year reset each time for a new ozone standard?

Response: Currently there are 4 ozone standards, the old 1979 and 1997 standards, and the current 2008 and 2015 standards with planned attainment dates of 2024 and 2032 (baseline years). Each ozone standard has a different attainment year, and each attainment year is a baseline year.

Comment #2: Will the District assess fees based on emission inventories evaluated by the District?

Response: Yes, fees are based on emissions provided to the District by the sources in their annual emissions inventory reports.

Comment #3 How will the fees be collected? Will fees be required retroactively, or will the fees only apply after the rule is amended?

Response: Fees would be collected concurrently with annual permit fees. Fees would begin to accrue the first year after the attainment deadline and continue to accrue each subsequent year. If penalty fees are triggered by an EPA finding that our region

has failed to attain a standard, this will almost always result in some level of back fees because EPA makes decisions on these findings after the attainment date.

Mae Wang, U.S. Environmental Protection Agency Region 9 (February 15, 2023)

Comment #1 (Section 101): We recommend moving the second sentence to Section 102.

Response: Staff agrees. Change made.

Comment #2 (Section 102): We recommend adding the second sentence from Section 101 and clarifying that the fees are assessed for any federal air quality ozone standard for which the nonattainment area is listed as Severe or Extreme in 40 CFR 81.305 if the nonattainment area fails to attain by its applicable attainment date.

Response: Staff agrees. Change made.

Comment #3 (Section 103): The wording of this paragraph is unclear. We recommend revising the sentence to read, "…any court of competent jurisdiction, and that portion is deemed to be a separate, distinct, and independent provision, and then the holding will not affect the validity of the remaining portions of this rule."

Response: Staff agrees there was missing language. Section revised consistent with other District rules.

Comment #4 (Section 110): We recommend clarifying that the exemption only applies according to the applicable standard. For example, during an extension year for one standard, fee payments should not be exempted for other applicable standards. In other words, sources could be exempt from penalty fees for an ozone standard during any extension year for that standard. As an alternative, it may be simpler to clarify that an extension would simply change the relevant attainment year for a particular standard. With this approach, it may not be necessary to include this specific exemption, since it is understood that a change in attainment year shifts the baseline year and the year for which fees must first be paid.

Response: Staff agrees. Exemption revised to apply only to the applicable standard.

Comment #5 (Section 111): The word "any" in this paragraph could give the impression that the fee obligation for all ozone standards would cease upon EPA's redesignation or termination action for one standard. We recommend clarifying that this exemption applies to penalty fees for an ozone standard in the case of redesignation to attainment for that standard, or in the case of a revoked standard, if EPA has terminated the anti-backsliding requirements for that standard.

Response: Staff agrees. Change made.

Comment #6 (Section 112): This provision is not approvable. Facilities must pay Section 185 penalty fees for any standard for which the fee is due.

Response: Multiple fees exemption removed.

Comment #7 (Section 113): We recommend replacing the phrase “any ozone standard” with “an ozone standard.”

Response: Staff agrees. Change made.

Comment #8 (Section 201): We suggest adding some language to clarify that, in the absence of an EPA-approved date, the attainment date would be the maximum statutory attainment date.

Response: Staff agrees. Change made.

Comment #9 (Section 202): For clarity, we suggest defining the attainment year as the calendar year that contains the attainment date. This would eliminate confusion with some situations where the calendar year preceding the attainment date is referred to as the attainment year.

Response: Staff agrees. Change made.

Comment #10 (Section 203): We recommend specifying that baseline emissions are calculated for each applicable ozone standard.

Response: Staff agrees. Change made.

Comment #11 (Section 203.1): We suggest clarifying that the emissions allowed under the facility’s permit is referring to those allowed by the permit during the attainment year.

Response: Staff agrees. Change made.

Comment #12 (Section 203.2a): We suggest clarifying that the emissions allowed under permit are during the operational period as a major source, extrapolated over the entire attainment year.

Response: Staff agrees. Change made.

Comment #13 (Section 204): For simplicity, the second sentence could be deleted.

Response: Staff disagrees. Inclusion of the sentence gives context to how an extension year is relevant. No change made.

Comment #14 (Section 207): We suggest defining this term as the Sacramento Metro, CA nonattainment area defined in 40 CFR Section 81.305 for an ozone standard.

Response: Staff agrees. Change made.

Comment #15 (Section 401): This section is not approvable as drafted. We recommend deleting the phrase “and no extension year is requested or granted.” As drafted, this provision gives the impression that once an extension year is requested (or granted), the rule would not require sources to pay fees. As noted in Comment

#4, a clarification elsewhere that an extension year simply changes the attainment year would address all of the issues surrounding extension years, without needing to provide specific exemptions or provisions here or elsewhere in the rule.

Response: Staff agrees. Phrase removed and attainment year redefined to include attainment date.

Comment #16 (Section 402): We recommend revising the first sentence to read, "The Clean Air Act penalty fee established in 1990…"

Response: Staff agrees. Change made.