



San Diego County Air Pollution Control District

April 4, 2022

NOTICE OF PUBLIC WORKSHOP

FOR DISCUSSION OF DRAFT PROPOSED NEW RULE 45 – FEDERALLY MANDATED OZONE NONATTAINMENT FEES

The San Diego County Air Pollution Control District (District) invites you to participate in the following public workshop to provide input regarding draft proposed new Rule 45 – Federally Mandated Ozone Nonattainment Fees. Comments and questions concerning this proposal may be submitted in writing before or during the workshop, which is scheduled as follows:

DATE: Tuesday, April 19, 2022
TIME: 1:00 p.m. to 3:00 p.m.
HOW TO PARTICIPATE: Via web browser or mobile device at:
<https://bit.ly/3CXRxW6> (Webinar ID: 892 8414 4706, Passcode: 345627)

Section 185 of the Federal Clean Air Act requires states with ozone nonattainment areas classified as Severe or Extreme to develop, as a revision to their state implementation plan, a fee collection rule to be implemented in the event that an area fails to attain the National Ambient Air Quality Standard for ozone by the required attainment date. San Diego Air Basin is classified as a Severe Nonattainment Area for the 2008 and 2015 ozone standards. The District is proposing draft new Rule 45 – Federally Mandated Nonattainment Fees to fulfill the Section 185 requirement.

Draft Documents

Copies of draft proposed new Rule 45 are available on the District's Rule Development website at <https://bit.ly/3D0medv>. Those unable to access the document may contact Janet McCue at (858) 586-2712 or Janet.McCue@sdapcd.org.

Comment Deadline

Comments and questions regarding draft proposed new Rule 45 may be made orally during the public workshop, or in writing before or after the workshop. All written comments may be submitted no later than Tuesday, April 26, 2022. Please email all written comments directly to Angela M. Ortega-Fisch at Angela.Fisch@sdapcd.org. Please contact Angela M. Ortega-Fisch at (858) 229-0256 with any questions.

****ASSISTANCE FOR PERSONS WITH DISABILITIES**

Agendas and records are available in alternative formats upon request. Contact Janet McCue at (858) 586-2712 with questions or to request a disability-related accommodation including sign language interpretation. To the extent reasonably possible, requests for accommodation or assistance should be submitted at least 72 hours in advance of the meeting so that arrangements may be made.

RULE 45. **FEDERALLY MANDATED OZONE NONATTAINMENT FEES**
(Adopted and Effective *(date of adoption)*)

(a) **APPLICABILITY**

(1) This rule shall become applicable if and when the U.S. Environmental Protection Agency (EPA) has made the finding that the San Diego Air Basin has failed to attain the 2008 8-hour Ozone National Ambient Air Quality Standard (NAAQS) (0.075 ppm) by the federally mandated attainment date.

(2) Except as otherwise provided in Section (b) Exemptions, this rule is applicable to any major stationary source of volatile organic compounds (VOC) and/or oxides of nitrogen (NO_x) pursuant to Section 185 of the Federal Clean Air Act (42 U.S.C. §7511d).

(b) **EXEMPTIONS**

(1) This rule shall no longer be applicable once the San Diego Air Basin has been redesignated by the EPA as attainment for the 2008 8-hour Ozone NAAQS.

(2) No source shall be required to remit Federally Mandated Ozone Nonattainment Fees under this rule during any calendar year that is considered an extension year for the 2008 8-hour Ozone NAAQS.

(c) **DEFINITIONS**

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

(1) “**Attainment Year**” means the calendar year that contains the attainment date.

(2) “**Attainment Date**” means the EPA-approved date that the San Diego Air Basin must attain the 2008 8-hour Ozone NAAQS.

(3) “**Baseline Emissions**” means the emissions calculated for each pollutant, VOC and/or NO_x, for which the source is classified as a major stationary source.

(i) For a major stationary source that began operation prior to the attainment year and was a major source during the entirety of the attainment year, the baseline emissions shall be the lower of:

(A) the amount of emissions allowed under permit(s) or any applicable rule(s) for the facility during the attainment year, or

(B) the actual emissions for the facility during the attainment year.

(ii) For a major stationary source that began operation prior to the attainment year but transitioned to major source status during the attainment year, the baseline emissions shall be the lower of:

(A) the amount of emissions allowed under permit(s) or any applicable rule(s) for the facility during the operational period as a major source, extrapolated over the entire attainment year, or

(B) the actual emissions for the facility during the operational period as a major source, extrapolated over the entire attainment year.

(iii) For a major stationary source that begins operation during the attainment year, the baseline emissions shall be the lower of:

(A) the amount of emissions allowed under permit(s) or any applicable rule(s) for the facility during the attainment year, extrapolated over the entire attainment year, or

(B) the actual emissions for the facility during the operational period, extrapolated over the entire attainment year.

(iv) For a major stationary source that begins operation or transitions to major source status after the attainment year, the baseline emissions shall be the lower of:

(A) the amount of emissions allowed under permit(s) or any applicable rule(s) for the facility during the first year of operation or the operational period as a major source, extrapolated over the entire first year as a major source, or

(B) the actual emissions for the facility during the first year of operation or the operational period as a major source, extrapolated over the entire first year as a major source.

(4) **“Extension Year”** means the year that the EPA may grant, pursuant to Section 181(a)(5) of the Clean Air Act and upon the state’s request, to extend the attainment date.

(5) **“Fee Assessment Year”** means a calendar year in which emissions occurred for which Federally Mandated Ozone Nonattainment Fees are being calculated and assessed under the provisions of this rule. The Fee Assessment Year is the calendar year prior to the Fee Collection Year.

(6) **“Fee Collection Year”** means a calendar year in which Federally Mandated Ozone Nonattainment Fees are being invoiced, generally the calendar year following the Fee Assessment Year.

(7) **“Major Stationary Source”** means the same as a “Federal Major Stationary Source” as defined in Rule 20.1 – New Source Review (NSR)-General Provisions, Section (c) Definitions.

(8) **“Oxides of Nitrogen (NO_x)”** means the same as defined in Rule 2 – Definitions.

(9) **"Volatile Organic Compound (VOC)"** means the same as defined in Rule 2 – Definitions.

(d) **ADMINISTRATIVE REQUIREMENTS**

(1) Annual Assessment of Fees for the 2008 8-hour Ozone NAAQS

Except as provided in Section (b) Exemptions, the Air Pollution Control Officer shall assess annual Federally Mandated Ozone Nonattainment Fees, beginning the second year after the Attainment Year, for emissions in the previous calendar year (the Fee Assessment Year). The fee(s) shall be determined, pursuant to Subsection (d)(2) below, using Attainment Year (baseline) emissions and Fee Assessment Year emissions.

(2) Fee Determination

The fee shall be \$5,000 (in 1990 dollars), adjusted pursuant to Subsection (d)(3), per ton of actual VOC or NO_x emissions during the Fee Assessment year that exceed 80% of the baseline emissions.

$$\begin{aligned} \text{Fee (NO}_x\text{)} &= 5000 * [E_A - (0.8 * E_B)] * (1 + \text{CPI}) \\ \text{Fee (VOC)} &= 5000 * [E_C - (0.8 * E_D)] * (1 + \text{CPI}) \end{aligned}$$

Where: Fee = Federally Mandated Ozone Nonattainment Fee (in dollars)
E_A = actual NO_x emissions for the applicable Fee Assessment year (in tons per year)
E_B = baseline NO_x emissions (in tons per year)
E_C = actual VOC emissions for the applicable Fee Assessment year (in tons per year)
E_D = baseline VOC emissions (in tons per year)
CPI = percent change in the Consumer Price Index since 1990, as determined by Subsection (d)(3)

(3) Fee Adjustment

The fee shall be adjusted annually by the change in the Consumer Price Index pursuant to Federal Clean Air Act Section 185(b)(3) (42 U.S.C. §7511d(b)(3)) and Federal Clean Air Act Section 502(b)(3)(B)(v) (42 U.S.C. §7661a(b)(3)(B)(v)).

(4) Collection of Fees

Federally Mandated Ozone Nonattainment Fees shall be billed and remitted during the Fee Collection Year. Fee(s) will be invoiced electronically or by mail and must be paid within 60 days of the invoice date. If the fee(s) is not paid within 60 days, the fees shall be increased in accordance with Rule 40 – Permit and Other Fees, Subsection (g)(2) (Late Fees).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

September 27, 2021

MEMORANDUM

SUBJECT: Clean Air Act Section 185 Fee Rates Effective for Calendar Year 2021

FROM: Scott Mathias, Director
Air Quality Policy Division

TO: Air Program Managers, Regions I-X

Enforcing attainment within Severe and Extreme ozone nonattainment areas requires owners/operators of major stationary sources of volatile organic compounds (VOC) and nitrogen oxides (NO_x)¹ to pay a fee to the state as a penalty for failing to timely attain the ozone standard. The fee, established under Clean Air Act (CAA) section 185, shall be applied per ton of VOC and NO_x emitted by the source when emissions per calendar year exceed 80 percent of the baseline emissions computed under CAA section 185(b)(2). Each year, the EPA Office of Air Quality Planning and Standards (OAQPS) calculates the annual section 185 fee rate to be used by states to calculate each source's total annual fee for the calendar year. The fee rate for calendar year 2021 is \$10,663.33 per ton of VOC and NO_x emissions, which was computed in accordance with the adjustment procedures for CAA part 70 (title V) permit fees, consistent with the approach used in prior years. For reference, the annual section 185 fee rates from 1991 through 2021 are provided in Table 1.

The calculation of the annual section 185 fee rate is based on the 40 CFR part 70 permit program *Presumptive Minimum Fee Rate*. The part 70 fee rate is updated each year by OAQPS/AQPD to adjust for inflation using the Consumer Price Index (for "All Urban Consumers") as reported by the U.S. Bureau of Labor Statistics, and in accordance with CAA section 502(b)(3)(B)(v)(I). The fee for September 1, 2020, through August 31, 2021, is \$54.37.² Adjustment of fee rates to account for inflation is also applicable to the section 185 fee rate under CAA section 185(b)(3). Accordingly, the calculation of the section 185 fee rate begins by scaling the inflation-adjusted part 70 fee rate (\$/ton of pollutant) proportionally to section 185 using the ratio of fee rates initially established under section 185 (\$5,000 per ton) and part 70 (\$25 per ton),

¹ CAA section 185 references only VOC emissions, however, CAA section 182(f) provisions extend the section 185 requirements to include NO_x emissions, unless the nonattainment area has an EPA-approved NO_x waiver granted under the conditions specified in CAA section 182(f).

² Memorandum dated September 16, 2021, from Corey Sugerik, Operating Permits Group, AQPD, OAQPS to Operating Permits Contacts, Regions I-X.

where $5,000/25 = 200$. Thus, the part 70 fee rate for each 12-month period from September 1 to August 31 is first multiplied by 200. However, unlike the part 70 fee rates, section 185 fee rates are based on a calendar year—January through December. To reconcile the difference, the scaled section 185 fee rate for a given calendar year is adjusted to reflect two-thirds of a year at the old (*i.e.*, 2020) part 70 fee (scaled to \$10,558), and one-third at the current (*i.e.*, 2021) part 70 fee (scaled to \$10,874). Thus, the resulting CAA section 185 fee rate for calendar year 2021 is \$10,663.33. For questions regarding this memorandum or the table of fee rates, please contact Michael Ling, at (919) 541-4729 or by email at ling.michael@epa.gov.

Table 1. CAA Section 185 Fee Rates by Calendar Year

Part 70 Fee Rates Effective Dates	Part 70 Permit Fee Rate ^a	Scaled Section 185 Fee Rate ^b	Annual CAA Section 185 Fee Rate ^c	
Sept. 1, 1989 – Aug. 31, 1990	\$25.00	-	\$5,000.00	1990
Sept. 1, 1990 – Aug. 31, 1991	\$26.21	\$5,242.00	\$5,334.00	1991
Sept. 1, 1991 – Aug. 31, 1992	\$27.59	\$5,518.00	\$5,574.00	1992
Sept. 1, 1992 – Aug. 31, 1993	\$28.43	\$5,686.00	\$5,744.00	1993
Sept. 1, 1993 – Aug. 31, 1994	\$29.30	\$5,860.00	\$5,911.33	1994
Sept. 1, 1994 – Aug. 31, 1995	\$30.07	\$6,014.00	\$6,071.33	1995
Sept. 1, 1995 – Aug. 31, 1996	\$30.93	\$6,186.00	\$6,242.67	1996
Sept. 1, 1996 – Aug. 31, 1997	\$31.78	\$6,356.00	\$6,414.00	1997
Sept. 1, 1997 – Aug. 31, 1998	\$32.65	\$6,530.00	\$6,567.33	1998
Sept. 1, 1998 – Aug. 31, 1999	\$33.21	\$6,642.00	\$6,682.67	1999
Sept. 1, 1999 – Aug. 31, 2000	\$33.82	\$6,764.00	\$6,834.00	2000
Sept. 1, 2000 – Aug. 31, 2001	\$34.87	\$6,974.00	\$7,051.33	2001
Sept. 1, 2001 – Aug. 31, 2002	\$36.03	\$7,206.00	\$7,244.00	2002
Sept. 1, 2002 – Aug. 31, 2003	\$36.60	\$7,320.00	\$7,375.33	2003
Sept. 1, 2003 – Aug. 31, 2004	\$37.43	\$7,486.00	\$7,543.33	2004
Sept. 1, 2004 – Aug. 31, 2005	\$38.29	\$7,658.00	\$7,737.33	2005
Sept. 1, 2005 – Aug. 31, 2006	\$39.48	\$7,896.00	\$7,998.67	2006
Sept. 1, 2006 – Aug. 31, 2007	\$41.02	\$8,204.00	\$8,266.67	2007
Sept. 1, 2007 – Aug. 31, 2008	\$41.96	\$8,392.00	\$8,511.33	2008
Sept. 1, 2008 – Aug. 31, 2009	\$43.75	\$8,750.00	\$8,755.33	2009
Sept. 1, 2009 – Aug. 31, 2010	\$43.83	\$8,766.00	\$8,809.33	2010
Sept. 1, 2010 – Aug. 31, 2011	\$44.48	\$8,896.00	\$8,967.33	2011
Sept. 1, 2011 – Aug. 31, 2012	\$45.55	\$9,110.00	\$9,188.67	2012
Sept. 1, 2012 – Aug. 31, 2013	\$46.73	\$9,346.00	\$9,398.67	2013
Sept. 1, 2013 – Aug. 31, 2014	\$47.52	\$9,504.00	\$9,554.00	2014
Sept. 1, 2014 – Aug. 31, 2015	\$48.27	\$9,654.00	\$9,668.67	2015
Sept. 1, 2015 – Aug. 31, 2016	\$48.49	\$9,698.00	\$9,724.00	2016
Sept. 1, 2016 – Aug. 31, 2017	\$48.88	\$9,776.00	\$9,840.67	2017
Sept. 1, 2017 – Aug. 31, 2018	\$49.85	\$9,970.00	\$10,050.67	2018
Sept. 1, 2018 – Aug. 31, 2019	\$51.06	\$10,212.00	\$10,276.67	2019
Sept. 1, 2019 – Aug. 31, 2020	\$52.03	\$10,406.00	\$10,456.67	2020
Sept. 1, 2020 – Aug. 31, 2021	\$52.79	\$10,558.00	\$10,663.33	2021
Sept. 1, 2021 – Aug. 31, 2022	\$54.37	\$10,874.00		

^a Taken from the appropriate reference for the inflation-adjusted part 70 fee rate. For September 1, 2020, to August 31, 2021, this value comes from the memo cited in Footnote 2. Prior years are unchanged.

^b Using the equation: (part 70 permit fee $t \times 200$), where t reflects the 12-month period from September 1 of the prior year to August 31 of the current year.

^c Using the equation: $[(2/3 \times \text{scaled section 185 fee } t) + (1/3 \times \text{scaled section 185 fee } t+1)]$, where t reflects the 12-month period from September 1 of the prior year to August 31 of the current year and $t+1$ reflects the 12-month period from September 1 of the current year to August 31 of the upcoming year.