

RULE 45. FEDERALLY MANDATED OZONE NONATTAINMENT FEES
(Adopted & Effective June 9, 2022)

(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 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.

(3) No source shall be required to remit Federally Mandated Ozone Nonattainment Fees, pursuant to this rule, during any year if the EPA has approved an equivalent alternative Section 185 fee program for the 2008 8-hour Ozone NAAQS for the San Diego Air Basin.

(c) **DEFINITIONS**

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

(1) “**Actual Emissions**” means the mass of emissions which are emitted by a facility to the atmosphere during an associated calendar year and reported to the District pursuant to Rule 19.3 – Emission Information.

(2) “**Attainment Year**” means the calendar year that contains the Attainment Date.

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

(4) “**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 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 a stationary source that 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.

(5) “**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.

(6) **“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 generally the calendar year prior to the Fee Collection Year.

(7) **“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.

(8) **“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.

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

(10) **“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).