



Air Pollution Control District Governing Board

San Diego County Air Pollution Control District

AGENDA ITEM #E.2

DATE: June 9, 2022

TO: Air Pollution Control District Governing Board

SUBJECT:

ADOPTION OF PROPOSED NEW RULE 45 - FEDERALLY MANDATED OZONE NONATTAINMENT FEES

REQUESTED ACTION:

1. Find that the adoption of proposed new Rule 45 – Federally Mandated Ozone Nonattainment Fees is categorically exempt from the provisions of the California Environmental Quality Act pursuant to California Code of Regulations, Title 14, Section 15308, as an action taken to assure the protection of the environment, and pursuant to Section 15061(b)(3) since it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
2. Adopt the Resolution entitled: RESOLUTION ADOPTING NEW RULE 45 – FEDERALLY MANDATED OZONE NONATTAINMENT FEES, OF REGULATION III OF THE RULES AND REGULATIONS OF THE SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT

OVERVIEW:

Pursuant to the Federal Clean Air Act (CAA), the U.S. Environmental Protection Agency (EPA) has established the National Ambient Air Quality Standards (NAAQS) for six common, yet harmful, outdoor air pollutants (i.e., ozone, particulate matter, sulfur dioxide, lead, carbon monoxide, and nitrogen dioxide) in order to protect public health and the environment. Each area of the nation with air pollution levels exceeding a federal ambient air quality standard must be designated by the EPA as a “Nonattainment Area” for that standard. Further, the EPA classifies these nonattainment areas as Marginal, Moderate, Serious, Severe, or Extreme, depending on the severity and persistence of the air quality problem.

In July 2021, the San Diego Air Basin was reclassified as a Severe Nonattainment Area for both the 2008 and 2015 8-hour Ozone NAAQS, which are 0.075 parts per million (ppm) and 0.070 ppm, respectively. Because of this reclassification, the San Diego region became subject to the requirements of CAA Section 185. Section 185 requires states or regions with Severe or Extreme Ozone Nonattainment Areas to develop a fee collection rule for any federal major stationary source of volatile organic compounds (VOC) and/or oxides of nitrogen (NOx) (ozone precursors), to be implemented only in the event that a region does not attain the ozone NAAQS by the required

attainment date, presumably in 2027 for the 2008 8-hour Ozone NAAQS, and 2033 for the 2015 8-hour Ozone NAAQS. For a Severe Ozone Nonattainment Area, a federal major stationary source is any emission unit, project or stationary source which emits, or has the potential to emit, 25 tons per year or more of VOC or NOx.

Consequently, a fee collection rule for federal major stationary sources is required for both the 2008 and 2015 ozone standards. At this time, the San Diego County Air Pollution Control District (District) is proposing new Rule 45 to fulfill the Section 185 requirement for the 2008 ozone standard only. The federal deadline to submit an approvable fee collection rule to the EPA for the 2008 8-hour Ozone NAAQS is July 20, 2022. Failure to adopt and submit a rule that is approvable by the EPA by the federal deadline could result in regionwide sanctions (including withholding of highway transportation funds) and/or EPA imposing a Federal Implementation Plan (FIP) to collect the same fees. The District will propose a fee collection rule for the 2015 ozone standard in the future as a separate rulemaking prior to federal deadlines.

Computer air modeling predicts that the San Diego Air Basin, with a current ozone concentration of 0.078 ppm, will be at or below the 0.075 ppm by the region's federal deadline at the end of 2026. The proposed fees will only be assessed should the region fail to attain the 2008 ozone standard by the required federal deadline. Should the region not attain by the end of 2026, Rule 45 fee collection would then be required every year, beginning in 2029, from each federal major stationary source. The fee collection would cease if the region is redesignated as attainment by the EPA. Fee collection would not be required for any federal major stationary source that reduces VOC or NOx emissions by 20% when compared to their baseline level of emissions.

Any fees collected, in accordance with proposed new Rule 45, would be used toward actions to reduce emissions in the San Diego region to promote attainment of the 2008 ozone standard. For example, fees collected could potentially be used in programs to provide incentives for additional VOC and/or NOx emission reductions from stationary, areawide, or mobile sources. Expenditure strategies will be addressed in future District planning and budgets if actual fee revenues are collected.

FISCAL IMPACT:

There is no immediate fiscal impact associated with these requested actions at this time since the proposed fees will only be assessed should the region fail to attain the 2008 ozone standard by the required federal deadline. Any future revenues and expenditures resulting from the collection of these fees will be included as part of the District's budget process which includes public input and is subject to Board approval.

ENVIRONMENTAL STATEMENT:

The California Environmental Quality Act (CEQA) requires environmental review of certain actions. District staff conducted a review as to whether CEQA applies to the adoption of proposed new Rule 45. The proposed new rule will not result in greater air pollutant emissions from new and modified federal major stationary sources in San Diego County. Additionally, proposed new Rule 45 is required

by Section 185 of the CAA. District staff therefore determined that the adoption of proposed new Rule 45 is categorically exempt from the provisions of CEQA pursuant to California Code of Regulations, Title 14, Section 15308, as an action taken to assure the protection of the environment, and pursuant to Section 15061(b)(3) since it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

PREVIOUS RELEVANT BOARD ACTIONS:

N/A

PUBLIC ENGAGEMENT AND OUTREACH:

A virtual public workshop was conducted on April 19, 2022, to gather input on proposed new Rule 45 from members of the public, regulated community, and other stakeholders. The public workshop was attended by 24 people. The District received comments related to applicability of the rule, sources potentially subject to the rule, and the consideration of an alternative fee program (pursuant to CAA Section 172(e)). In response to comments submitted, the District has revised the proposed rule to include flexibility to pursue an equivalent alternative Section 185 fee program for the San Diego Air Basin if approved by the EPA.

The District received additional comments during and after the public workshop and responded to all stakeholder comments in a Workshop Report (Attachment C). In the event the District anticipates that the San Diego Air Basin will fail to attain the 2008 8-hour Ozone NAAQS by the attainment date, the District will commence outreach and coordination with the potentially affected sources in advance of any EPA finding.

A public notice regarding today's hearing was posted in a local newspaper, on the District's website and sent to approximately 3,500 recipients including each air quality permit holder and chambers of commerce in the region, subscribers to the District's email notification service, the EPA and the California Air Resources Board.

RECOMMENDED BY:

Paula Forbis, Air Pollution Control Officer

CONTACT PERSON(S):

Name: Michael Watt, SDAPCD Deputy Director

Phone: (858) 899-0136

Email: Michael.Watt@sdapcd.org

ATTACHMENTS:

[Item E2_AttA_Resolution_Rule 45.pdf](#)

[Item E2_AttB_Rule 45 Background.pdf](#)

[Item E2_AttC_Rule 45 Workshop Report.pdf](#)

Resolution No: 22-012
Meeting Date: 6/9/2022 (E.2)

**RESOLUTION ADOPTING NEW
RULE 45 – FEDERALLY MANDATED OZONE NONATTAINMENT FEES,
OF REGULATION III OF THE RULES AND REGULATIONS OF THE
SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT**

On motion of Member Shu, seconded by Member Medina, the following resolution is adopted:

WHEREAS, the San Diego County Air Pollution Control District Governing Board (Governing Board), pursuant to Section 40702 of the California Health and Safety Code, adopted Rules and Regulations of the San Diego County Air Pollution Control District (District); and

WHEREAS, said Governing Board now desires to amend said Rules and Regulations; and

WHEREAS, notice has been given and a public hearing has been held relating to the amendments of said Rules and Regulations pursuant to Sections 40725 of the California Health and Safety Code and Section 51.102 of Title 40 of the Code of Federal Regulations; and

WHEREAS, pursuant to Section 40727 of the California Health and Safety Code, the Governing Board makes the following findings:

- (1) (Necessity) The adoption of proposed new Rule 45 is necessary in order to implement Section 185 of the Federal Clean Air Act (CAA) which requires states or regions with Severe or Extreme Ozone Nonattainment Areas to develop a fee collection rule for any federal major stationary source of volatile organic compounds (VOC) and/or oxides of nitrogen (NO_x) (ozone precursors), to be implemented only in the event that a region does not attain the 2008 8-hour Ozone National Ambient Air Quality Standards (NAAQS) by the required attainment date;
- (2) (Authority) Adoption of proposed new Rule 45 is authorized by Section 40702 of the California Health and Safety Code;
- (3) (Clarity) Proposed new Rule 45 can be easily understood by persons directly affected by it;
- (4) (Consistency) The adoption of proposed new Rule 45 is in harmony with, and not in conflict with or contrary to, existing statutes, court decisions, and state and federal regulations;

- (5) (Non-duplication) Proposed new Rule 45 will not impose the same requirements as existing District, state, or federal requirements;
- (6) (Reference) Proposed new Rule 45 is necessary in order to implement Section 185 of the CAA which requires states or regions with Severe or Extreme Ozone Nonattainment Areas to develop a fee collection rule for any federal major stationary source of VOC and/or NO_x (ozone precursors), to be implemented only in the event that a region does not attain the 2008 8-hour Ozone NAAQS by the required attainment date; and

WHEREAS, the Governing Board further finds pursuant to California Health and Safety Code Section 40001 that adoption of proposed new Rule 45 will facilitate the attainment and maintenance of ambient air quality standards; and

WHEREAS, the Governing Board further finds that the adoption of proposed new Rule 45 is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to California Code of Regulations, Title 14, Section 15308, as an action taken to assure the protection of the environment, where the regulatory process involves procedures for protection of the environment, and pursuant to Section 15061(b)(3) since it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; and

WHEREAS, the Governing Board further finds that a Comparative Analysis comparing proposed new Rule 45 with applicable requirements of federal and local regulations is not required pursuant to Section 40727.2 of the California Health and Safety Code because the proposed new rule does not impose a new emission limit or standard, make an existing emission limit or standard more stringent, or impose new or more stringent monitoring, reporting, or recordkeeping requirements; and

WHEREAS, the Governing Board further finds that an Incremental Cost-Effectiveness Analysis pursuant to Section 40920.6(a) of the California Health and Safety Code is not required for proposed new Rule 45; and

WHEREAS, the Governing Board further finds that a Socioeconomic Impact Assessment (SIA) of the proposed new Rule 45 is not required pursuant to Section 40728.5 of the California Health and Safety Code as the proposed new rule implements existing federal fee collection requirements.

NOW THEREFORE IT IS RESOLVED AND ORDERED by the San Diego County Air Pollution Control District Governing Board that the Rules and Regulations of the San Diego County Air Pollution Control District be and hereby are revised as follows:

1. Proposed new Rule 45 is to read as follows:

RULE 45. FEDERALLY MANDATED OZONE NONATTAINMENT FEES
(Adopted and 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).

IT IS FURTHER RESOLVED AND ORDERED that proposed new Rule 45 of Regulation III shall take effect on June 9, 2022.

PASSED AND ADOPTED by the Air Pollution Control District Governing Board of the San Diego County Air Pollution Control District, State of California, this 9th day of June, 2022, by the following votes:

AYES: Birkbeck-Garcia, Bush, Elo-Rivera, Gomez, Lawson-Remer, Medina, Shu, Sanchez, Vargas

ABSENT: Martinez

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL

BY: RODNEY LORANG, SENIOR DEPUTY

-- -- --
STATE OF CALIFORNIA)
County of San Diego)^{SS}

I hereby certify that the foregoing is a full, true and correct copy of the Original Resolution entered in the Minutes of the San Diego County Air Pollution Control District Governing Board.



MARVICE MAZYCK
Clerk of the San Diego County Air Pollution Control District Governing Board

Background of Proposed New Rule 45 – Federally Mandated Ozone Nonattainment Fees

Pursuant to the Federal Clean Air Act (CAA), the U.S. Environmental Protection Agency (EPA) has established the National Ambient Air Quality Standards (NAAQS) for six common, yet harmful, outdoor air pollutants (i.e., ozone, particulate matter, sulfur dioxide, lead, carbon monoxide, and nitrogen dioxide) in order to protect public health and the environment. Each area of the nation with air pollution levels exceeding a federal ambient air quality standard must be designated by the EPA as a “Nonattainment Area” for that standard. Further, the EPA classifies these nonattainment areas as Marginal, Moderate, Serious, Severe, or Extreme, depending on the severity and persistence of the air quality problem.

In July 2021, the San Diego Air Basin was reclassified as a Severe Nonattainment Area for both the 2008 and 2015 8-hour Ozone NAAQS. Because of this reclassification, the San Diego region became subject to the requirements of CAA Section 185. Section 185 requires states or regions with Severe or Extreme Ozone Nonattainment Areas to develop a fee collection rule for any federal major stationary source of volatile organic compounds (VOC) and/or oxides of nitrogen (NO_x) (ozone precursors), to be implemented only in the event that a region does not attain the ozone NAAQS by the required attainment date, presumably in 2027 for the 2008 8-hour Ozone NAAQS, and 2033 for the 2015 8-hour Ozone NAAQS. A federal major stationary source is any emission unit, project or stationary source which emits, or has the potential to emit, 25 tons per year or more (for a Severe Ozone Nonattainment Area) of VOC or NO_x.

CAA Section 182(d)(3) requires Severe or Extreme Nonattainment Areas to adopt and submit an approvable Section 185 fee collection rule to the EPA as a federally enforceable State Implementation Plan (SIP) revision within 10 years of the region’s initial nonattainment designation for the NAAQS. For the purposes of the 2008 8-hour Ozone NAAQS, the EPA’s initial nonattainment designation for all areas in the country, including San Diego County, was July 20, 2012. Thus, all Severe or Extreme Nonattainment Areas have a federal deadline of July 20, 2022, to submit an approvable Section 185 fee collection rule to the EPA for the 2008 8-hour Ozone NAAQS. The District is proposing new Rule 45 to fulfill this Section 185 requirement because the region is classified as a Severe Ozone Nonattainment Area and to avoid possible sanctions for failing to submit an approvable rule to the EPA by the federal deadline.

Computer air modeling predicts that the San Diego Air Basin, with a current ozone concentration of 0.078 ppm, will be at or below the 0.075 ppm by the region’s federal deadline at the end of 2026. The proposed fees will only be assessed should the region fail to attain the 2008 ozone standard by the required federal deadline. In the event the EPA makes a formal finding in the Federal Register that the San Diego Air Basin has failed to attain the 2008 ozone standard by the attainment date, then proposed new Rule 45 would apply to any federal major stationary source of VOC and/or NO_x. Accordingly, beginning as soon as 2029, fee collection would then be required every year from each federal major stationary source until the region is redesignated as attainment by the EPA. Fees would not be required of a federal major stationary source that reduces VOC or NO_x emissions by 20% and maintains that emission reduction when compared to a set baseline level of emissions. In addition, fee collection would not be required during an extension year, which is the year that the EPA may grant, upon the state’s request, to extend the Attainment Date. The CAA allows the region to request up to two extension years after 2026, provided the region has three or fewer exceedances of the 2008 8-hour Ozone NAAQS in 2026.

Based on 2019 District emissions inventory data, fewer than 23 federal major stationary sources of VOC and/or NO_x may be affected by the proposed new rule. This number includes those facilities that have a potential to emit of 25 tons per year or more of VOC or NO_x. Facilities with actual emissions of less than 25 tons per year of VOC or NO_x will have the option to apply for a Synthetic Minor Permit to Operate that would impose an enforceable limit to restrict a source's potential to emit to less than the applicable federal major stationary source threshold. Approximately 10 facilities are currently considered a federal major stationary source for both VOC and NO_x and may be required to pay a separate fee for each pollutant.

If the region does not attain the 2008 ozone standard on time, based on current data, each facility could potentially be subject to fees in the range of \$25,000 to \$275,000 per year per pollutant based on their actual emissions should they not reduce emissions by 20% when compared to their baseline year.

In response to the public workshop held on April 19, 2022, the District received comments requesting clarification on applicability of the proposed new rule, a list of facilities that could be subject to the rule, clarification of deadlines for rule adoption, and consideration of an equivalency program to collect fees from mobile sources (pursuant to CAA Section 172(e)). In addition, a request was submitted to add an exemption stating that no federal major stationary source will be required to pay a fee should the EPA approve an equivalent alternative Section 185 fee program for the San Diego Air Basin that is at least as stringent as proposed new Rule 45 requirements.

Section 172(e) of the CAA allows for alternative fee programs that are not less stringent than the mandated Section 185 program. An alternative fee program would collect an equivalent amount of revenue from sources other than federal major stationary sources (e.g., mobile sources). However, according to the EPA's guidance, an alternative fee program for the 2008 8-hour Ozone NAAQS is not a SIP-approvable element at this time. Currently, alternative fee programs are only allowable and approvable by the EPA for an ozone NAAQS that has been revoked, such as the 1-hour 1979 ozone standard. Should the EPA approve an equivalent alternative Section 185 fee program for the 2008 8-hour Ozone NAAQS for the San Diego Air Basin in the future, the District will consider amending proposed new Rule 45 (if adopted) to incorporate such provisions.

Attaining both the 2008 and 2015 ozone standards is a regionwide effort that will require all sources, stationary and mobile, to do their part in reducing VOC and NO_x emissions as expeditiously as possible. The EPA, the California Air Resources Board (CARB), the San Diego Association of Governments (SANDAG), and other local agencies are currently pursuing many actions to help achieve this. These include CARB actions to reduce emissions from passenger vehicles, heavy-duty trucks, off-road equipment, and commercial harbor craft, which represent the most stringent suite of mobile source regulations in the nation. The District is currently supporting CARB's efforts through a Memorandum of Understanding (MOU) to enforce CARB mobile source regulations. In addition, the District administers a number of incentive programs designed to help reduce mobile source emissions in the region. Also, SANDAG has committed to reduce regionwide on-road emissions by 30% by 2026 and 40% by 2032. Regional partners and stationary sources will also continue to reduce emissions through ridesharing programs, reducing vehicle miles traveled, and implementation of alternative fuel and energy source programs. Collectively, all of these efforts will help achieve the region's goal of attaining the 2008 and 2015 ozone standards.

The District will propose a separate fee collection rule for the 2015 8-hour Ozone NAAQS in a future rulemaking process as required by Section 185. The federal deadline to submit an approvable fee collection rule to the EPA for the 2015 8-hour Ozone NAAQS is August 3, 2028.

Rule Comparisons

District staff finds that an analysis comparing proposed new Rule 45 with applicable requirements of federal and state regulations is not required pursuant to California Health and Safety Code Section 40727.2 because the proposed amendments do not impose a new emission limit or standard, make an existing emission limit or standard more stringent, or impose new or more stringent monitoring, reporting, or recordkeeping requirements.

Socioeconomic Impact Assessment

State law requires the District to perform an assessment of the socioeconomic impacts when adopting, amending, or repealing a rule that will significantly affect air quality or emission limitations. Proposed new Rule 45 implements existing federal fee collection requirements. Accordingly, a socioeconomic impact assessment is not required.

Submittal to EPA

If adopted, the proposed new Rule 45 will become effective on the date of adoption. The new rule will be submitted through CARB to the EPA for approval and inclusion into the San Diego County portion of the SIP for attaining and maintaining air quality standards.

**SAN DIEGO COUNTY
AIR POLLUTION CONTROL DISTRICT**

**DRAFT PROPOSED NEW RULE 45 –
FEDERALLY MANDATED OZONE NONATTAINMENT FEES**

WORKSHOP REPORT

The San Diego County Air Pollution Control District (District) held a public workshop on April 19, 2022, to discuss and receive input on draft proposed new Rule 45 – Federally Mandated Ozone Nonattainment Fees. A meeting notice was mailed to each air quality permit holder, local chambers of commerce, the U.S. Environmental Protection Agency (EPA) and the California Air Resources Board (CARB). Additionally, a meeting notice was posted on the District’s website and distributed to interested parties via the District’s electronic mail service and social media.

The workshop was attended by 24 people. A summary of the comments and District responses are provided below:

1. WORKSHOP COMMENT

Can the applicability of draft proposed new Rule 45 be clarified?

DISTRICT RESPONSE

Draft proposed new Rule 45 would apply to any federal major stationary source of volatile organic compounds (VOC) and/or oxides of nitrogen (NO_x) only if and when the EPA has made a finding that the San Diego Air Basin has failed to attain the 2008 8-hour Ozone National Ambient Air Quality Standard (NAAQS) by the attainment date, presumably 2027. A federal major stationary source is any emission unit, project or stationary source which emits, or has the potential to emit, 25 tons per year or more of VOC or NO_x. The current federal major stationary source threshold for the San Diego Air Basin is 25 tons per year due to the region being currently classified as a Severe Nonattainment Area for the 2008 8-hour Ozone NAAQS.

2. WORKSHOP COMMENT

If a source reduced its emissions to less than the federal major stationary source threshold of VOC or NO_x, would draft proposed new Rule 45 no longer apply to that source, and consequently fees would not be required?

DISTRICT RESPONSE

Draft proposed new Rule 45 would apply to any federal major stationary source of VOC and/or NO_x which emits, or has the potential to emit, 25 tons per year or more of VOC or NO_x. If a source did not meet this criteria, no such fees would be assessed. Optionally, a facility could apply for a Synthetic Minor Permit to Operate that would impose an enforceable limit to restrict a source’s potential to emit to less than the applicable federal major stationary source threshold.

3. WORKSHOP COMMENT

Is there a list of the federal major stationary sources that may be subject to draft proposed new Rule 45 that is available to the public?

DISTRICT RESPONSE

The list of potential current federal major stationary sources of VOC or NO_x subject to draft proposed new Rule 45 are included in an attachment to this workshop report. Based on 2019 emissions inventory data, 23 federal major stationary sources of VOC and/or NO_x (including 10 facilities which emit, or have the potential to emit, both VOC and NO_x in excess of the current threshold) may be affected by draft proposed new Rule 45 if the region fails to attain the 2008 8-hour Ozone NAAQS. This number of sources is subject to change based on future emission inventories. In addition, emissions inventory information is available on the District's website.¹

4. WORKSHOP COMMENT

The District should add an exemption stating that no federal major stationary source will be required to pay a fee, pursuant to draft proposed new Rule 45, should the EPA revoke the 2008 8-hour Ozone NAAQS and the EPA approves an alternative fee demonstration program for the San Diego Air Basin that is at least as stringent as Rule 45 requirements.

DISTRICT RESPONSE

A proposed exemption has been added to Section (b) Exemptions as recommended.

5. WORKSHOP COMMENT

For clarification, the District should include a definition for "Actual Emissions."

DISTRICT RESPONSE

A proposed definition for "Actual Emissions" has been included in Section (c) Definitions, and 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.

6. WORKSHOP COMMENT

All power generation facilities in San Diego County currently utilize Selective Catalytic Reduction to achieve NO_x emissions of 3 parts per million (ppm) or less. The only feasible way to further

¹ <https://www.sdapcd.org/content/sdapcd/permits/toxics-emissions/facility-emissions.html>

reduce emissions from such sources is to operate less. Has the District considered this potential impact of draft proposed new Rule 45?

DISTRICT RESPONSE

The District is required under Section 185 of the Federal Clean Air Act (CAA) to develop a fee collection rule to be implemented in the event that the San Diego Air Basin fails to attain the 2008 8-hour Ozone NAAQS by the required attainment date, presumably 2027. The District is proposing draft new Rule 45 to fulfill this Section 185 requirement because the region is classified as a Severe Nonattainment Area and to avoid possible sanctions from failing to submit an approvable rule to the EPA by the July 20, 2022, deadline.

Current computer modeling indicates that the San Diego Air Basin will be at, or below, the 0.075 ppm by the region's federal deadline by the end of 2026. San Diego Air Basin's current ozone concentration level is 0.078 ppm. In the event the District anticipates that the San Diego Air Basin will fail to attain the 2008 8-hour Ozone NAAQS by the attainment date, the District will commence outreach and coordination with all potentially affected sources in advance of any EPA finding.

7. WORKSHOP COMMENT

Has the District analyzed the impact of VOC and NO_x emissions that originate from areas outside of San Diego County on the region's nonattainment status?

DISTRICT RESPONSE

San Diego County is situated between Mexico, which lacks stringent air quality controls, and the South Coast Air Basin, which is an Extreme Nonattainment Area for ozone. Consequently, air pollution from both regions significantly contributes to ozone levels in the San Diego region under certain weather conditions. Importantly, the South Coast Air Quality Management District (SCAQMD) has implemented effective emissions control programs resulting in a trend of emission reductions and air quality improvements in the South Coast region. Though the region is designated as an Extreme Nonattainment Area for the 2008 and 2015 8-hour Ozone NAAQS, SCAQMD modeling predicts continued ozone reductions through at least 2031 as shown in their State Implementation Plan (SIP) for the 2008 8-hour Ozone NAAQS. In turn, air pollution transported to San Diego County is expected to decrease as a result of their actions. Additional analysis of the impact that emissions originating from Mexico and the South Coast region has in San Diego County can be found in the District's "2020 Plan for Attaining the National Ambient Air Quality Standards for Ozone in San Diego County" document.²

² [https://www.sdapcd.org/content/dam/sdapcd/documents/grants/planning/Att%20A%20\(Attainment%20Plan\)_ws.pdf](https://www.sdapcd.org/content/dam/sdapcd/documents/grants/planning/Att%20A%20(Attainment%20Plan)_ws.pdf)

8. WORKSHOP COMMENT

The District should not provide a 20% discounted fee collection rate to federal major stationary sources subject to draft proposed new Rule 45. These facilities should be charged the full fee rate.

DISTRICT RESPONSE

The 20% threshold referenced in the Fee Determination equation found in Subsection (d)(2) applies to the level of emission reductions that a facility must achieve in order to not be subject to Rule 45 fees.

Proposed new Rule 45 would apply to any federal major stationary source of VOC and/or NO_x. Accordingly, beginning as soon as 2029, fee collection would then be required every year from each federal major stationary source until the region is redesignated as attainment by the EPA, or the federal major stationary source reduces VOC or NO_x emissions by 20% and maintains that emission reduction when compared to a set baseline level of emissions.

9. WORKSHOP COMMENT

The District should work toward meeting the 2022 ozone standards and not stop at only meeting the 2008 8-hour Ozone NAAQS.

DISTRICT RESPONSE

The EPA currently has only two 8-hour Ozone NAAQS in effect, the 2008 and the 2015 standards. The 2008 ozone standard is 0.075 ppm, and the 2015 ozone standard is 0.070 ppm. The San Diego Air Basin is classified as a Severe Nonattainment Area for both of these standards, with the region's current ozone concentration at 0.078 ppm.

The District's 2020 Ozone Attainment Plan for San Diego County demonstrates how the region will further reduce air pollutant emissions in order to attain not only the 2008 ozone standard, but also the more stringent 2015 ozone standard.³ The District is also in the process of updating the Regional Air Quality Strategy to encourage additional emission reductions from measures to be considered/adopted in the future.

The District will propose a separate fee collection rule for the 2015 8-hour Ozone NAAQS in a future rulemaking process as required by CAA Section 185. The federal deadline to submit an approvable fee collection rule to the EPA for the 2015 8-hour Ozone NAAQS is August 3, 2028.

³ 2020 Plan for Attaining the National Ambient Air Quality Standards Ozone in San Diego County, October 2020

10. WORKSHOP COMMENT

Draft proposed new Rule 45 should include equivalency options similar to other California air districts' fee collection rules. The Mojave Desert Air Quality Management District (MDAQMD) recently adopted Rule 315.1 – Federal Clean Air Act Section 185 Penalty (1997 Standard) and Rule 315.2 – Federal Clean Air Act Section 185 Penalty (2008 Standard) to implement Section 185 penalties for nonattainment with the 1997 and 2008 standards. Both rules include Section 185 equivalency provisions.

In addition, SCAQMD and San Joaquin Valley Air Pollution Control District (SJVAPCD) both have equivalency programs. If the District were to adopt draft proposed new Rule 45 without an equivalency option, an unreasonable precedent could be established. It is important for local air districts to have a uniform approach to Section 185 compliance, which would encourage the EPA to draft new guidance clearly allowing for equitable equivalency programs.

DISTRICT RESPONSE

Section 172(e) of the CAA allows for alternative programs that are not less stringent than the mandated Section 185 program. According to the EPA's 2010 Guidance,⁴ fee equivalent and emissions equivalent programs were identified as possible approaches under Section 172(e). However, the District has confirmed with the EPA that an alternative fee program for the 2008 8-hour Ozone NAAQS is not a SIP-approvable element at this time. Alternative fee programs are only allowable and approvable by the EPA if an ozone NAAQS has been revoked by the EPA, such as the 1-hour 1979 ozone standard. Should the EPA revoke the 2008 8-hour ozone standard and also publish guidance for an alternative fee program associated with the 2008 8-hour ozone standard in the future, the District will consider amending draft proposed new Rule 45 (if adopted) to incorporate such provisions, provided such actions are consistent with the Governing Board's direction at that time. A proposed exemption has been added to Section (b) Exemptions to address this potential situation. See District Response to Comment No. 4.

The existence of an equivalent fee program in another air district's CAA Section 185 fee rule(s) applicable to an 8-hour ozone standard should not be construed as being an indicator that such rules will be approvable in the SIP by the EPA. MDAQMD has acknowledged in writing that its CAA Section 185 fee Rule 315.1 (1997 8-hour standard) and Rule 315.2 (2008 8-hour standard), which provide for alternative fee programs, may not be fully approvable by the EPA at the time of their local board consideration.⁵

The SCAQMD⁶ and SJVAPCD⁷ fee collection rules, which provide for fee equivalency programs, are for the revoked 1-hour 1979 ozone standard only. Both air districts do not have fee collection rules for the 8-hour ozone standards.

⁴ "Guidance on Developing Fee Programs Required by Clean Air Act Section 185 for the 1-hour Ozone NAAQS", Stephen D. Page, January 5, 2010.

⁵ <https://www.mdaqmd.ca.gov/home/showpublisheddocument/9292/637835283042130000>. Page 153.

⁶ SCAQMD, Rule 317 - Clean Air Act Non-Attainment Fees, February 4, 2011

⁷ SJVAPCD, Rule 3170 - Federally Mandated Ozone Nonattainment Fee, May 19, 2011

Furthermore, the District does not expect to set new precedence by not including an alternative equivalent fee program at this time. Feather River Air Quality Management District (FRAQMD) recently amended its respective CAA Section 185 fee collection rule, and it does not contain an equivalency option for the 1-hour or 8-hour ozone standards.⁸ Similarly, the Sacramento Metropolitan Air Quality Management District (SMAQMD) fee collection rule also does not contain an equivalency option for the 1-hour ozone standard, and hasn't contained such a provision since its adoption in 2002.⁹ Thus, adoption of draft proposed new Rule 45 would be consistent with other air districts' CAA Section 185 fee collection rules. It is the District's intent to submit a SIP-approvable rule to the EPA through CARB if adopted by the Governing Board.

11. WORKSHOP COMMENT

IEA respectfully suggests that implementation of Rule 45 is both inequitable and detrimental to jobs and the quality of life in San Diego. Attainment with the ozone NAAQS can only be achieved when the EPA, CARB, and local air districts all do their part to reduce emissions of ozone precursors, VOC and NO_x. More than 80% of these emissions are from mobile sources that fall under EPA's and CARB's responsibilities. The District, SCAQMD, and other California air districts simply cannot attain the 2008 8-hour ozone standard without massive emission reductions from federally regulated mobile sources.

DISTRICT RESPONSE

Though stationary source emissions are outweighed by those of mobile sources on a regionwide basis for ozone, such stationary sources are nevertheless still a contributor to ozone nonattainment. Also, while more than 80% of NO_x emissions are generated from mobile sources today, anticipated emission reductions from mobile sources in the future may change this dynamic, thereby increasing the proportion of stationary sources in comparison.

Emissions from off-road mobile sources, which are generally in the regulatory authority of the EPA, are projected to remain constant through 2032 in San Diego County. Current computer modeling indicates that the San Diego Air Basin is forecasted to attain both the 2008 and 2015 ozone standards by the end of 2026 and 2032, respectively, without additional emission reductions from mobile sources. Therefore, for the San Diego Air Basin, substantial reductions from federally regulated mobile sources, while helpful, are not imperative to the attainment of the 2008 and 2015 ozone standards in San Diego County.

In addition, attaining both ozone standards are a regionwide effort that will require all sources, stationary and mobile, to do their part in reducing VOC and NO_x emissions as expeditiously as possible. The EPA, CARB, the San Diego Association of Governments (SANDAG), and other local agencies are currently pursuing many actions to help achieve this. These include CARB actions to reduce emissions from passenger vehicles, heavy-duty trucks, off-road equipment, and commercial harbor craft regulations, comprising of the most stringent suite of mobile source regulations in the nation. Also, SANDAG has committed to reduce regionwide on-road emissions

⁸ FRAQMD, Rule 7.15 - Clean Air Act Nonattainment Fees, April 4, 2022

⁹ SMAQMD, Rule 307 – Clean Air Act Fees, September 26, 2002

by 30% by 2026 and 40% by 2032. Regional partners and stationary sources will also continue to reduce emissions through ridesharing programs, reducing vehicle miles traveled, and implementation of alternative fuel and energy source programs. The District is currently supporting CARB's efforts through a Memorandum of Understanding to enforce CARB mobile source regulations. In addition, the District administers a number of incentive programs designed to help reduce mobile source emissions in the region. Collectively, all of these efforts will help achieve the region's goal of attaining the 2008 and 2015 ozone standards.

12. WORKSHOP COMMENT

The fees required in draft proposed new Rule 45, unless mitigated, will have an adverse economic impact on both operations and jobs in our community. Further, implementation of Rule 45 exposes essential public facilities in San Diego, including wastewater treatment plants and landfills to enormous fines, some ranging up to six figures; costs that will likely be passed on to the public and businesses.

District staff and Governing Board members should note the actions already taken by other California air districts. Over the past twelve years, several district boards have taken the initiative to consult with the EPA and encourage the federal agency to develop new guidance or equivalency provisions and avoid placing the burden unfairly on the stationary sources. SCAQMD and SJVAPCD both have equivalency programs in their respective fee collection rules. MDAQMD recently adopted rules that include Section 185 equivalency provisions. Adopting draft proposed new Rule 45 without an equivalency provision would set an unnecessary precedent that places significant economic burden on San Diego businesses.

DISTRICT RESPONSE

An alternative fee program for the 2008 8-hour Ozone NAAQS is not a SIP-approvable element at this time, and consequently cannot be included in draft proposed new Rule 45. See District Response to Comment No. 10.

13. WORKSHOP COMMENT

Should an equivalent program become available in the future, what potential alternative funding sources would the District anticipate utilizing for the purposes of fulfilling CAA Section 185 fee equivalency?

DISTRICT RESPONSE

As noted previously, the District cannot include a CAA Section 185 fee equivalent program in draft proposed new Rule 45 at this time. See District Response to Workshop Comment No. 10.

If the 2008 ozone standard is revoked and the EPA issues guidance on an alternative fee equivalent program in the future, the District will consider amending draft proposed new Rule 45 (if adopted) to include an alternative fee equivalent program. A proposed exemption has been added to Section (b) Exemptions to address this potential situation. See District Response to Comment No. 4. At that time, the District would evaluate existing and possible new funding sources that would satisfy possible alternative fee equivalent provisions. Example funding sources may include, but are not limited to, the Carl Moyer Program and Department of Motor Vehicle registration fees.

14. WORKSHOP COMMENT

What is the regulatory basis for the deadline of having draft proposed new Rule 45 adopted in June 2022?

DISTRICT RESPONSE

CAA Section 182(d)(3) requires Severe or Extreme Nonattainment Areas to adopt and submit an approvable Section 185 fee collection rule to the EPA as a federally enforceable SIP revision within 10 years of the region's initial nonattainment designation for the NAAQS. For the purposes of the 2008 8-hour Ozone NAAQS, the EPA's initial nonattainment designation for all areas in the country, including San Diego County, was July 20, 2012. Therefore, all Severe or Extreme Nonattainment Areas have a federal deadline of July 20, 2022, to submit an approvable CAA Section 185 fee collection rule to the EPA for the 2008 8-hour Ozone NAAQS. Though San Diego County was only reclassified as a Severe Nonattainment Area in 2021, the CAA deadline of "10 years from initial nonattainment designation" still applies. The District plans on taking draft proposed new Rule 45 to the Governing Board for their consideration on June 9, 2022.

15. WORKSHOP COMMENT

What would be the ramifications if draft proposed new Rule 45 is not adopted and/or delayed?

DISTRICT RESPONSE

If the District's draft proposed new Rule 45 is not adopted or adopted with substantial deficiencies, the EPA would be required to issue either a "Finding of Failure to Submit" or a "Disapproval" action in the Federal Register. Once finalized, either action would start an 18-month sanction clock after the effective date of the final EPA action for the District to submit (and for the EPA to approve) a CAA Section 185 fee collection rule in the SIP. Otherwise, San Diego County would face sanctions for failing to comply with the Federal Register action. These sanctions could result in a de facto ban on new and expanding major businesses in San Diego County, and the withholding of federal highway funds throughout the region. Additionally, the EPA would be required to set up its own CAA Section 185 fee collection program via a Federal Implementation Plan to collect such fees directly from San Diego County businesses. The funds would then be transferred to the federal treasury rather than being spent in the San Diego region.

16. WORKSHOP COMMENT

SCAQMD has recently notified the EPA of its intent to sue the EPA for its failure to reduce federal emissions that prevent the South Coast Air Basin from attaining the 1997 8-hour ozone standard.¹⁰ The Governing Board should consider the action being taken by SCAQMD and likewise take steps to ensure that the San Diego region is not unfairly burdened for ozone standards over which stationary sources have very little control.

DISTRICT RESPONSE

The SCAQMD sent a Notice of Intent (NOI) to sue the EPA for failing to timely act on a SIP submittal on contingency measures submitted by the SCAQMD on December 31, 2019. One of the arguments specified in the NOI is that the South Coast Air Basin cannot attain the 1997 8-hour ozone standard without massive emission reductions from federally regulated sources (ships, locomotives, aircraft, and on-road heavy-duty trucks) totaling as much as 69 tons per day of NO_x. However, the NOI does not reference CAA Section 185 fee requirements.

The San Diego Air Basin attained the 1997 8-hour ozone standard effective July 5, 2013.¹¹ In addition, current computer modeling indicates that the San Diego Air Basin is forecasted to attain both the 2008 and 2015 ozone standards by the end of 2026 and 2032, respectively, without additional emission reductions from mobile sources in the regulatory control of the EPA. See District Response to Comment No. 11.

The District is required under CAA Section 185 to develop a fee collection rule to be implemented in the event that the San Diego Air Basin fails to attain the 2008 8-hour Ozone NAAQS by the required attainment date, presumably 2027. The District is proposing draft new Rule 45 to fulfill this CAA Section 185 requirement. San Diego County would face sanctions for failing to submit an approvable CAA Section 185 fee collection rule to the EPA by the July 20, 2022, deadline. See District Response to Comment No. 15.

AMO:jl
05/11/22

Attachment

¹⁰ <https://www.epa.gov/system/files/documents/2022-04/scaqmd-noi-04152022.pdf>

¹¹ <https://www.govinfo.gov/content/pkg/FR-2013-06-04/pdf/2013-13064.pdf#page=1>

**Attachment – List of Possible Stationary Sources Potentially Subject to
Draft Proposed New Rule 45**

Table 1 – Stationary Sources of VOC in San Diego County

	APCD Source ID #	Facility Name	Facility Description	VOC Emissions (2019 Data) ^{1, 2, 3}
<i>1</i>	<i>0019</i>	<i>NASSCO / General Dynamics</i>	<i>Shipbuilder</i>	<i>128.5</i>
<i>2</i>	<i>0091</i>	<i>SFPP LP / Santa Fe Pacific Pipeline</i>	<i>Fuel Terminal</i>	<i>66.9</i>
<i>3</i>	<i>96387</i>	<i>Minnesota Methane San Diego LLC / Neo San Diego LLC⁴</i>	<i>Power Generation</i>	<i>50.3</i>
<i>4</i>	<i>4845</i>	<i>USN Naval Station (minus TSE)⁴</i>	<i>Military</i>	<i>42.2</i>
<i>5</i>	<i>0221</i>	<i>USMC Camp Pendleton⁴</i>	<i>Military</i>	<i>40.4</i>
<i>6</i>	<i>3680</i>	<i>City of San Diego Metro Wastewater Dept.⁴</i>	<i>Wastewater</i>	<i>32.9</i>
<i>7</i>	<i>0094</i>	<i>Fleet Readiness Center Southwest (minus TSE)⁴</i>	<i>Military</i>	<i>30.0</i>
<i>8</i>	<i>0478</i>	<i>BAE Systems SDSR</i>	<i>Shipbuilder</i>	<i>25.1</i>
9	6068	Toro Energy of California ⁴	Power Generation	23.4
10	4824	USMC Air Station – Miramar ⁴	Military	19.2
11	5985	Encina Wastewater Authority ⁴	Wastewater Treatment	18.3
12	96224	Minnesota Methane LLC ⁴	Power Generation	17.9
13	1795	Solar Turbines - Ruffin Rd. ⁴	Turbine Mfr.	15.9
14	0201	Tesoro Logistics Operations LLC	Fuel Terminal	13.4

NOTES:

1. ***Bold and Italic*** denotes a federal major stationary source with actual emissions of 25 tons per year or more, based on 2019 District emissions inventory data.
2. ***Grey*** denotes a facility with a possible potential to emit of 25 tons per year or more, based on 2019 District emissions inventory data.
3. This list of potentially affected facilities is subject to change as more recent emission inventories are evaluated and approved by the Air Pollution Control Officer.
4. Stationary source that may be subject to fees for both VOC and NOx.

Table 2 – Stationary Sources of NO_x in San Diego County

	APCD Source ID #	Facility Name	Facility Description	NO _x Emissions (2019 District) ^{1, 2, 3}
<i>1</i>	<i>1795</i>	<i>Solar Turbines-Ruffin Rd.⁴</i>	<i>Turbine Mfr.</i>	<i>91.8</i>
<i>2</i>	<i>0221</i>	<i>USMC Camp Pendleton⁴</i>	<i>Military</i>	<i>55.7</i>
<i>3</i>	<i>96387</i>	<i>Minnesota Methane San Diego LLC / Neo San Diego LLC⁴</i>	<i>Power Generation</i>	<i>48.7</i>
<i>4</i>	<i>0118</i>	<i>CP Kelco</i>	<i>Kelp Processing</i>	<i>33.5</i>
<i>5</i>	<i>5985</i>	<i>Encina Wastewater Authority⁴</i>	<i>Wastewater Treatment</i>	<i>32.5</i>
<i>6</i>	<i>7263</i>	<i>Otay Landfill, Inc.</i>	<i>Flares</i>	<i>30.4</i>
<i>7</i>	<i>3680</i>	<i>City of San Diego Metro Wastewater Dept.⁴</i>	<i>Wastewater</i>	<i>29.7</i>
<i>8</i>	<i>8013</i>	<i>SDG&E Palomar Energy Center</i>	<i>Power Generation</i>	<i>27.7</i>
9	4845	USN Naval Station (minus TSE) ⁴	Military	23.5
10	0351	SD State University	College	21.4
11	6257	Sycamore Energy LLC	Power Generation	19.6
12	96224	Minnesota Methane LLC ⁴	Power Generation	19.0
13	10882	Otay Mesa Energy Center	Power Generation	18.7
14	4824	USMC Air Station – Miramar ⁴	Military	18.2
15	89296	SD Metro Pumping Station #2	Wastewater Treatment	17.7
16	6068	Toro Energy of California ⁴	Power Generation	17.3
17	88196	Miramar Landfill	Flares	15.1
18	0094	Fleet Readiness Center Southwest (minus TSE) ⁴	Military	14.1
19	8719	Sycamore Landfill Inc.	Flares	14.1

NOTES:

1. ***Bold and Italic*** denotes a federal major stationary source with actual emissions of 25 tons per year or more, based on 2019 District emissions inventory data.
2. Grey denotes a facility with a possible potential to emit of 25 tons per year or more, based on 2019 District emissions inventory data.
3. This list of potentially affected facilities is subject to change as more recent emission inventories are evaluated and approved by the Air Pollution Control Officer.
4. Stationary source that may be subject to fees for both VOC and NO_x.

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.

(3) No source shall be required to remit Federally Mandated Ozone Nonattainment Fees, pursuant to this rule, during any year if ~~the EPA revokes the 2008 8-hour Ozone NAAQS and~~ the EPA has approved an *equivalent* alternative *Section 185 fee demonstration 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 ~~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 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.

~~(4-5)~~ **“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 ~~the~~ Attainment ~~the~~ Date.

~~(5-6)~~ **“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.

~~(6-7)~~ **“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.

~~(7-8)~~ **“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.

~~(8-9)~~ **“Oxides of Nitrogen (NO_x)”** means the same as defined in Rule 2 – Definitions.

~~(9-10)~~ **“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.

$$\text{Fee (NO}_x\text{)} = 5000 * [E_A - (0.8 * E_B)] * (1 + \text{CPI})$$

$$\text{Fee (VOC)} = 5000 * [E_C - (0.8 * E_D)] * (1 + \text{CPI})$$

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).