

RULE 315

Federal Clean Air Act Section 185 Penalty (1979 Ozone Standard)

(A) General

(1) Purpose

The purpose of this rule is to implement the mandatory penalty pursuant to Section 185 of the Federal Clean Air Act (FCAA) (42 U.S.C. §7511d) within the District portion of the Southeast Desert Modified Air Quality Maintenance Area (AQMA) for the 1979 one-hour ozone (0.12 ppm) National Ambient Air Quality Standards (NAAQS).

(2) Applicability

- (a) This rule is applicable to any Major Facility within the District Portion of the AQMA.
- (b) This rule shall become applicable if and when the AQMA is determined to have failed to attain the 1979 one-hour ozone NAAQS, not before the applicable attainment date (2007).
- (c) This rule shall cease to be applicable when the EPA takes a final action to terminate the anti-backsliding requirement associated with the Section 185 penalty for the 1979 one-hour ozone NAAQS.

(3) Exemption

- (a) No Facility otherwise subject to this rule shall be required to remit a FCAA Section 185 penalty under this rule for any calendar year in which the Facility emits verified Actual Emissions equal to or less than 80 percent of its Baseline Emissions.
- (b) No Facility otherwise subject to this rule shall be required to remit a Federal Clean Air Act Section 185 penalty during any calendar year in which the District has demonstrated fee equivalency in accordance with the procedures contained in Section (E) below

(B) Definitions

For the purposes of this rule the definitions contained in District Rule 1301 shall apply unless otherwise defined below.

- (1) “Actual Emissions” - Actual total Facility calendar year emissions to atmosphere of each of NO_x and VOC reported to the District through a verified emission inventory. Fugitive Emissions from a Facility shall not be included in the calculation unless the Facility belongs to one of the twenty-seven major source categories listed under subsection (2) of the definition of “major source” in 40 CFR 51.165(a)(1)(iv)(C).
- (2) “Baseline Emissions” - Baseline emissions are calculated for each of NO_x and VOC Facility emissions to the atmosphere for which the source is classified as a Major Facility, in accordance with Section (D) below.
- (3) “District Portion of the AQMA” - The entirety of the District is located within the AQMA.
- (4) “Major Facility” - Any Facility which emits or has the Potential to Emit (PTE) NO_x or VOC in an amount greater than or equal to 25 tons per year. The Fugitive Emissions of a Facility shall not be included in the determination of whether a Facility is a Major Facility unless the Facility belongs to one of the twenty-seven (27) categories of Facilities as listed in 40 CFR 51.165(a)(1)(iv)(C).
- (5) “Southeast Desert Modified Air Quality Maintenance Area (AQMA)” – That area as described in 40 CFR 81.305 (Ozone one-hour standard).
- (6) “State Implementation Plan (SIP)” – The federally approved body of regulations representing control strategies to minimize air pollution adopted by state and local air pollution control agencies in compliance with Section 110 of the Clean Air Act, 42 U.S.C. §7410.

(C) Requirements

- (1) Verification of Actual Emissions

By June 1, on an annual basis (calendar year), any Facility subject to the provisions of this rule shall submit a verified inventory of Actual Emissions for the previous calendar year in accordance with Rule 107 – *Certification of Submissions and Emission Statements* and Federal Clean Air Act Section 182(a)(3)(B).

(D) Calculations

- (1) Baseline Emissions for a Facility shall be calculated as specified below:
 - (a) For a Facility that began operation prior to 2007, the Baseline Emissions shall be the lower of:
 - i. The Actual Emissions during 2007; or

- ii. The amount of emissions allowed by permit condition during 2007, or if no permit has been issued for 2007, the allowable emissions under the applicable implementation plan.
- (b) For a Facility that began operation during 2007, the Baseline Emissions shall be the lower of:
- i. The amount of emissions allowed by permit condition during 2007; or
 - ii. The Actual Emissions from the operation period extrapolated over calendar year 2007 using the inverse of the fraction of the duration of actual operation in days over 365.
- (c) For a Facility that begins operation after 2007, the Baseline Emissions shall be the amount allowed under the applicable implementation plan for the first year of operation, extrapolated for the full year.

(2) Penalty Determination

- (a) The penalty for a Facility shall be \$5,000, adjusted pursuant to subsection (D)(2)(b), per ton of Actual Emissions during a calendar year that exceed 80 percent of the baseline emissions, as specified below:

$$P = 5000 \times [E_a - (0.8 \times E_b)] \times (1 + C)$$

Where:

P	=	Penalty (in dollars)
E _a	=	Actual Emissions
E _b	=	Baseline Emissions
C	=	Percent change in the Consumer Price Index since 1990 as determined by subsection (D)(2)(b)

- (b) The change in the Consumer Price Index shall be determined in accordance with the provisions of 42 U.S.C. §7511d(b)(3) (Federal Clean Air Act §185(b)(3)) and 42 U.S.C. §7661a(b)(3)(B)(v) (Federal Clean Air Act §502(b)(3)(B)(v)).

(E) Equivalency Determination

- (1) Expenditures used for the Federal Clean Air Act Section 185 Fee Equivalency Determination

- (a) The Air Pollution Control Officer (APCO) shall establish and maintain a record of actual expenditures as described in this section. The expenditures record shall be credited with actual expenditures occurring in

calendar years beginning the first calendar year in which fees are due on qualified programs that are designed to fund projects which:

- (i) Are surplus to the SIP, and;
 - (ii) Have been certified by the APCO, the Executive Officer of CARB and USEPA as being surplus to the SIP; and
 - (iii) Are designed to result in direct, or to facilitate future, VOC or NO_x reductions within the District from uses as approved by USEPA.
- (b) Expenditures credited to the Federal Clean Air Act Section 185 Equivalency Determination need not actually be held by or disbursed by the District provided the source of the expenditures is an eligible project in a qualified program.
- (c) Expenditures shall be credited on a dollar for dollar basis and shall not be discounted due to the passage of time.
- (d) If expenditures credited for a given year are greater than those necessary for the demonstration of equivalency for that year the surplus may accumulate and be used as needed to demonstrate equivalency in subsequent years.
- (2) AQMA Accounting
- (a) By July 1, on an annual basis, the APCO shall submit an accounting of applicable expenditures for the previous calendar year, as defined in subsection (E)(1)(a), made within the portions of the AQMA that are under the jurisdiction of the District to the APCO of Mojave Desert Air Quality Management District (MDAQMD)
 - (b) By July 1, on an annual basis, the APCO shall submit an accounting of the applicable penalty obligations for the previous calendar year, as determined in subsection (D)(2), for sources within the portions of the AQMA that are under the jurisdiction of the District to the APCO of the MDAQMD
 - (c) By July 1, on an annual basis, the APCO shall submit an accounting of the applicable penalty fees collected for the previous calendar year within the portions of the AQMA that are under jurisdiction of the District to the APCO of MDAQMD.
 - (d) The annual applicable expenditures made within the portions of the two districts that are within the AQMA together during a given calendar year shall be referred to as the “Combined AQMA Expenditures” for that calendar year.
 - (e) The annual applicable penalty obligations determined within the portions of the two districts that are within the AQMA together during a given

calendar year shall be referred to as the “Combined AQMA Penalties” for that calendar year.

(3) Equivalency Determination

- (a) By August 1, on an annual basis, the APCO shall also make a determination of equivalency according to the following formula:

$$B_f = (B_i + E) - AP$$

Where:

- B_i = The balance of the FCAA Section 185 Combined AQMA Equivalency Tracking Account as existing at the beginning of the calendar year for which the equivalency determination is being made.
- E = The Combined AQMA Expenditures during the calendar year for which the equivalency determination is being made. Such expenditures are pursuant to sections (E)(2)(a) and (E)(2)(d)
- AP = The Combined AQMA Penalty amount determined by the APCO pursuant to subsections (E)(2)(b) and (E)(2)(e) above.
- B_f = The balance of the FCAA Section 185 Combined AQMA Equivalency Tracking Account to be carried over into the subsequent calendar year as B_1 if such amount is greater than zero. The remaining penalty to be allocated to applicable Facilities pursuant to subsection (E)(4) below if such amount is less than zero.

(4) Partial Equivalency Determination and Calculation of Penalty

- (a) If the balance of the FCAA Section 185 Combined AQMA Equivalency Tracking Account is less than zero in any particular year then the APCO shall determine the penalty amount owed by each Facility as follows:

$$P_{ry} = P_y \times \left(\frac{|B_{fy}|}{AP_y} \right)$$

Where:

- P_{ry} = Residual penalty for calendar year y.
- P_y = Penalty amount for calendar year y as calculated in subsection (D)(2).

$|B_{fy}|$ = Absolute value of negative balance of FCAA Section 185 Combined AQMA Equivalency Tracking Account for calendar year y as calculated in subsection(E)(3).

AP_y = Combined AQMA Penalties as determined pursuant to subsections (E)(2)(b) and (E)(2)(e) for calendar year y

- (b) No later than August 15, on an annual basis as required, the APCO shall notify the Facility by mail of the penalty amount due and payable as calculated on a Facility basis in (E)(4)(a), with the penalty due within 30 days. If the penalty is not paid by the due date specified in the notice, the subject Facility permits will be suspended and a suspension notification will be made by mail within 15 days of the due date. A suspended permit may be reinstated by payment of the applicable penalty.

(F) Reporting Requirements

- (1) The APCO shall file a report for the prior year accounting with CARB and USEPA that contains the following:
- (a) A listing of all Facilities subject to this rule and the potential penalty obligation as calculated pursuant to Section (D) above for the prior calendar year;
 - (b) The Combined AQMA Penalties for the prior calendar year;
 - (c) The balance of the FCAA Section 185 Combined AQMA Equivalency Tracking Account, if any, at the beginning of the prior calendar year;
 - (d) A listing of all qualified programs, program descriptions, description of funding, certification of eligibility for each program, and expenditures associated with each program that were credited into the FCAA Section 185 Combined AQMA Equivalency Tracking Account during the prior calendar year;
 - (e) The results of the calculation pursuant to subsection (E)(3)(a) above; and
 - (f) The results of the remaining penalty allocation calculation pursuant to subsection (E)(4)(a) if any.

[SIP: See AV Full SIP Table at <https://avaqmd.ca.gov/rules-plans>]