

OPTION C – OPTIONAL BASELINE & BACT EXEMPTION

PROPOSED AMENDED RULE 317. CLEAN AIR ACT NON-ATTAINMENT FEES

(a) Purpose

The purpose of this rule is to satisfy mandatory requirements as specified in Sections 182(d), 182(e), 182(f) and 185 of the 1990 amendments to the federal Clean Air Act (CAA).

(b) Applicability

This rule applies to major stationary sources of VOC or NO_x as defined in this rule. As required by Section 182(f) of the CAA, major stationary sources of NO_x are also subject to this rule in addition to major stationary sources of VOC. The fees required pursuant to this rule shall be in addition to any permit fees and any other fees required under other District Rules and Regulations. This rule shall become effective when the Administrator of the United States Environmental Protection Agency (U.S. EPA) or the Executive Officer, makes a finding that a Basin is not in attainment with the federal one-hour standard for ozone and the deadline for compliance as specified in the 1990 amendments to the Clean Air Act has passed. This rule shall cease to be effective when the Administrator of the U.S. EPA designates a Basin to be in attainment of the federal one-hour standard for ozone.

(c) Definitions

~~(B)(1)~~ (1) ATTAINMENT YEAR is the calendar year that the Basin is mandated to reach attainment of the federal one-hour ozone standard pursuant to the CAA. Under the Severe 17 area designation, the attainment year is 2007. Under the Extreme area designation, the attainment year is 2010.

(2) BACT PERMIT UNIT is a permit unit that has an emission rate or limitation that meets or exceeds the requirements of Health and Safety Code 40405 as of December 31, 2010, or the date the permit unit was placed in service, whichever is later.

~~(2)~~(3) BASELINE EMISSIONS for a major stationary source, are calculated for each air contaminant, VOC and NO_x (including major stationary source

OPTION C – OPTIONAL BASELINE & BACT EXEMPTION

fugitive and unpermitted emissions) separately, using source information as reported to or amended by the District, through the District's Annual Emissions Report (AER) program. For existing major stationary sources prior to the attainment year, the baseline emissions shall be the amount of the actual emissions, including fugitives and unpermitted, during the attainment year (permitted emissions not to exceed permitted allowables).

For sources that become subject to this rule during or after the attainment year:

- (i) For a non-RECLAIM major stationary source the baseline emissions shall be the amount of emissions allowed under the applicable implementation plan (annual emissions including fugitives and emissions from unpermitted equipment).
- (ii) For an existing RECLAIM source that subsequently qualifies as a major stationary source for the purposes of this rule the baseline emissions shall be the higher of the RTC holdings at the beginning of the year available for use during the same calendar year or actual emissions during the calendar year the source becomes a major stationary source that do not exceed the RTC holdings at the end of the reconciliation period.
- (iii) For a new RECLAIM source that qualifies as a major stationary source for the purposes of this rule the baseline emissions shall be the higher of RTC credits purchased at the beginning of the attainment year or the initial calendar year of operation, as applicable, or actual emissions during the calendar year, not to exceed RTC holdings at the end of the reconciliation period.

If a major stationary source is operational for a period of less than one calendar year in the attainment year or initial year of operation, as applicable, the emissions from the operational period shall be extrapolated over one full calendar year. Once established, the baseline is fixed and cannot be changed.

OPTION C – OPTIONAL BASELINE & BACT EXEMPTION

~~(3)~~(4) BASIN means, for the purposes of this rule, the Riverside county portion of the Salton Sea Air Basin (SSAB) or the South Coast Air Basin (SOCAB). The boundaries of each air basin shall be as defined by California Code of Regulations, Section 60104, Title 17, in which a major stationary source is located.

~~(4)~~(5) FEE ASSESSMENT YEAR means the year for which CAA fees are being calculated and assessed under the provisions of this rule.

~~(5)~~(6) MAJOR STATIONARY SOURCE shall, for the purposes of this rule:

- (A) For a non-RECLAIM source have the same meaning as in Sections 181(b)(4)(B) and 182(d) of the CAA, if applicable, or a Major Polluting Facility as defined in Rule 1302(s) – Definition of Terms.
- (B) For a RECLAIM source have the same meaning as in paragraph (b)(2) of Rule 3001 - Applicability where the potential to emit for a RECLAIM facility is the higher of:
 - (i) the starting allocation plus nontradeable credits; or
 - (ii) RECLAIM Trading Credits (RTCs) held in the allocation account after trading.

RTC's held in the certificate account are not part of the allocation.

~~(6)~~(7) NITROGEN OXIDES (NO_x) means any compound that is an oxide of nitrogen.

~~(7)~~(8) RECLAIM is the Regional Clean Air Incentives Market established by Regulation XX – Regional Clean Air Incentives Market (RECLAIM) which for the purposes of this rule is comprised of:

- (A) Existing RECLAIM sources with a District issued facility identification number prior to the attainment date; or
- (B) New RECLAIM sources with a District issued facility identification number issued during or after the attainment year; or
- (C) An existing source with a District issued facility identification number prior to the attainment date that subsequently becomes a RECLAIM source shall be treated as an existing RECLAIM source for the purposes of determining baseline emissions for the attainment year or the initial year of operation as applicable.

~~(8)~~(9) VOLATILE ORGANIC COMPOUND (VOC) is as defined in Rule 102 – Definitions.

OPTION C – OPTIONAL BASELINE & BACT EXEMPTION

(d) Requirements

- (1) An Annual VOC ~~Clean Air Act~~CAA Non-Attainment Fee shall be assessed for a major stationary source of VOC and an Annual NOx CAA Non-Attainment Fee shall be assessed for, a major stationary source of NOx (a source may be a major stationary source for either NOx or VOC or both and subject to the applicable fee) payable to the District for excess emissions of these air contaminants in accordance with Section 185 (b) of the CAA as follows:

Annual VOC CAA Non-Attainment Fee = \$5,000 x CPIF x [A – (0.8 x B)], and

Annual NOx CAA Non-Attainment Fee = \$5,000 x CPIF x [D – (0.8 x E)]

Where:

A = The total amount of VOC emissions actually emitted during the applicable fee assessment year, in tons per year. If A is less than or equal to 80% of B; then there shall be no annual VOC CAA non-attainment fee assessed for the subject year.

B = The VOC baseline emissions as defined in this rule in tons per year.

D = The total amount of NOx emissions actually emitted during the applicable fee assessment year, in tons per year. If D is less than or equal to 80% of E; then there shall be no annual NOx CAA non-attainment fee assessed for the subject year.

E = The NOx baseline emissions as defined in this rule in tons per year.

CPIF = The annual Consumer Price Index (CPI) adjustment factor which is equivalent to the cumulative increase in the CPI beginning with the 1989 change in the index up to and including the change in year prior to the year for which the fees are due. For any calendar year the CPI is the average of the CPI for all-urban consumers published by the Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year or the revision of the CPI which is most consistent with the CPI for calendar year 1989 in accordance with Sections 502(b)(3)(B)(v) and 185(b)(3) of the CAA.

OPTION C – OPTIONAL BASELINE & BACT EXEMPTION

(2) Beginning with the second year after the attainment year and thereafter until the Administrator of the U.S. EPA designates the Basin to be in attainment of the federal one-hour standard for ozone, both the VOC and NO_x annual CAA fees shall be remitted in accordance with the annual emissions fee billing requirements as established in paragraphs (e)(2) and (e)(10) of Rule 301 – Permit Fees. A major stationary source that does not pay any or all of the required CAA fees, by the specified due date, shall be subject to the late payment surcharge and permit revocation provisions of subdivision (e) of Rule 301 and is also in violation of this rule and subject to the civil and criminal penalties as provided for in Health and Safety Code 42400 et seq.

(e) **Clean Air Act Non-Attainment Fee Programs**

Clean Air Act non-attainment fees shall be used to fund stationary and/or mobile source VOC and NO_x emission reduction programs based on criteria established by the South Coast Air Quality Management District Governing Board or its designee. Up to five percent of the program revenues can be used for administrative costs.

(f) Optional Baseline Calculation Procedure

Notwithstanding paragraph (c)(2), a source may petition to the Executive Officer by filing a plan subject to the fee provisions of Rule 306 including all of the information identified below on or before the later of March 31, 2011 or March 31 of the year following the initial attainment year for a BACT permit unit exemption or a alternative baseline period.

(1) BACT Permit Unit.

Analysis of the annual emissions from the permit unit for the year(s) under consideration and an analysis demonstrating the permit unit meets BACT as defined by Health & Safety Code 40405 as of December 31 of the attainment year, or the date the permit to construct was issued for the unit, whichever is later. Emissions from a BACT Permit Unit are exempt from Rule 317 fees.

OPTION C – OPTIONAL BASELINE & BACT EXEMPTION

(2) Alternative Baseline Period

An alternative baseline period reflecting the average of two consecutive years within the last ten (10) years prior to and including the attainment year may be substituted for emissions from the attainment year subject to the following analysis:

- (A) Emission data for the ten (10) years preceding and including the attainment year; and
- (B) Analysis of adopted local, state, and federal rules or regulations that would have restricted the source's ability to either operate or emit a particular pollutant, had they been in effect during the consecutive two (2) years selected; and/or
- (C) Adjusted annual emissions considering the impact of subparagraph (f)(2)(B) above.
- (D) Certification by a representative of the source that the source's emissions are irregular, cyclical, or otherwise vary significantly from year to year.

Nothing in this provision shall guarantee that review of a plan filing shall constitute acceptance by the District of the source's petition to exempt a BACT permit unit or alternative baseline unless and until such time that a plan submitted by the source is so approved by the Executive Officer.

- (g) If the Administrator of the US EPA finds that the fees provisions of this rule does not meet the fees requirements of Section 185, or the SCAQMD is not administering and enforcing the fee as required, unpaid fees required plus interest required under Section 185 as specified in 26 United States Code §6621(a)(2) may be collected by the Administrator.
- (h) This rule shall become inoperative at such time as the US EPA approves an equivalent program submitted by the District or Congress amends the Clean Air Act such that Section 185 fees, or an equivalent program, are no longer required.