# Rule 315.1
# Federal Clean Air Act Section 185 Penalty
# (1997 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 Western Mojave Desert 8-hour Federal Ozone Non-Attainment Area (FONA) for the 1997 8-hour ozone (0.08 ppm) National Ambient Air Quality Standards (NAAQS).

### (2) Applicability

(a) This Rule is applicable to any Major Facility within the District portion of the FONA.

(b) This Rule shall become applicable if and when the FONA is determined to have failed to attain the 1997 8-hour ozone NAAQS, not before the applicable attainment date (2019).

(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 1997 8-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 FCAA Section 185 penalty under this rule for any calendar year in which the District has demonstrated fee equivalency for the FONA in accordance with the procedures contained in Section (E) below.

(c) No Facility otherwise subject to this Rule shall be required to remit a FCAA Section 185 penalty for more than one Federal ozone standard for any specific calendar year. A Facility's applicable FCAA Section 185 penalty for any calendar year shall be the largest of all such applicable penalties.

## (B) Definitions

For the purposes of this Rule the definitions contained in District Rule 102 – *Definition of Terms* shall apply unless otherwise defined below.

(1) "Actual Emissions" - Actual total Facility calendar year emissions to Atmosphere of each of Oxides of Nitrogen ($NO_x$) and Volatile Organic Compounds (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 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) "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).

(4) "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 FCAA, 42 U.S.C. §7410.

(5) "Western Mojave Desert 8-hour Federal Ozone Non-Attainment Area" (FONA) - That portion of the State of California as described in 40 CFR 81.305 (1997 8-Hour Ozone NAAQS).

## (C) Requirements

(1) Verification of Actual Emissions

By June 1, on an annual (calendar year) basis, 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 FCAA 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 2019, the Baseline Emissions shall be the lower of:

(i) The Actual Emissions during 2019; or
(ii) The amount of emissions allowed by permit condition.

(b) For a Facility that began operation during 2019, the Baseline Emissions shall be the lower of:

(i) The amount of emissions allowed by permit condition; or
(ii) The Actual Emissions from the operation period extrapolated over calendar year 2019 using the inverse of the fraction of the duration of actual operation in days over 365.

(c) For a Facility that begins operation after 2019, the Baseline Emissions shall be the amount allowed under the applicable implementation plan.

(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) Federal Clean Air Act Section 185 Equivalency "Tracking Account"

(a) The APCO shall establish and maintain a FCAA Section 185 Equivalency "Tracking Account." Such Tracking Account 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 for the 1997 8-hour ozone NAAQS;
(ii) Have been certified in writing by the APCO, the Executive Officer of the California Air Resources Board (CARB) and United States Environmental Protection Agency (USEPA) as being surplus to the SIP; and
(iii) Are designed to result in direct, or to facilitate future, $NO_x$ or VOC reductions within the District as approved by USEPA.

(b) Expenditures credited to the FCAA Section 185 Equivalency "Tracking Account" 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) FONA Accounting

(a) By July 1, on an annual basis, the AVAQMD 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 FONA that are under the jurisdiction of the District to the APCO of MDAQMD.

(b) By July 1, on an annual basis, the AVAQMD APCO shall submit an accounting of the applicable penalty obligation for the previous calendar year, as determined in subsection (D)(2), for sources within the portions of the FONA that are under the jurisdiction of the District to the APCO of MDAQMD.

(c) By July 1, on an annual basis, the AVAQMD APCO shall submit an accounting of the applicable penalty fees collected for the previous calendar year within the portions of the FONA that are under the jurisdiction of the District to the APCO of the MDAQMD.

(d) The annual applicable expenditures made within the portions of the two (2) districts that are within the FONA together during a given calendar year shall be referred to as the "Combined FONA Equivalency Tracking Account" for that calendar year.

(e) The annual applicable penalty obligations determined within the portions of the two (2) districts that are within the FONA together during a given calendar year shall be referred to as the "Combined FONA Penalty" for that calendar year.

(3) Equivalency Determination

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

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

Where:

$B_i$ = The initial balance of the FCAA Section 185 Combined FONA Equivalency Tracking Account as existing at the beginning of the calendar year for which the equivalency determination is being made.

E = The expenditures credited to the FCAA Section 185 Combined FONA Equivalency Tracking Account during the calendar year for which the equivalency determination is being made.

AP = The Combined FONA Penalty amount determined by the APCO pursuant to subsections (E)(2)(b) and (E)(2)(e) above.

$B_f$ = The balance of the FCAA Combined FONA 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 FONA 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 equivalency tracking account for calendar year y as calculated in subsection (E)(3)

$AP_y$ = Sum of Combined FONA $P_y$ as calculated in subsection (D)(2)

(b) No later than August 15, on an annual basis as required, the APCO shall thereafter notify the Facility by mail of the penalty amount due and payable as calculated on a Facility basis in subsection (E)(4)(a), and selected as required in accordance with subsection (A)(3)(c), 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) Commencing in 2020, and on or before the last day of each calendar year thereafter, 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 FONA Penalty for the prior calendar year;

(c) The balance of the FCAA Section 185 Combined FONA 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 FONA 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.

See SIP Table at www.avaqmd.ca.gov