



March 29, 2024

Sent via email to: Britney Gallivan, bgallivan@aqmd.gov
Neil Fujiwara, nfujiwara@aqmd.gov
Kalam Cheung, kcheung@aqmd.gov
Michael Krause, mkrause@aqmd.gov

South Coast Air Quality Management District
Attn: Planning, Rule Development, and Implementation
21865 Copley Drive
Diamond Bar, CA 91765

Re: PROPOSED RULE 317.1 – CLEAN AIR ACT NONATTAINMENT FEES FOR 8-HOUR OZONE STANDARDS

Clean Water SoCal appreciates the opportunity to comment on the Proposed Rule 317.1– Clean Air Act Nonattainment Fees for 8-hour Ozone Standards.

Clean Water SoCal represents over 80 public water/wastewater agencies in Southern California. Clean Water SoCal members provide essential water supply and wastewater treatment for approximately 20 million people in San Diego, Orange, Los Angeles, Santa Barbara, Riverside, San Bernardino, and Ventura counties. Our wastewater members provide environmentally sound, cost-effective management of more than two billion gallons of wastewater each day and, in the process, convert wastewater into resources for beneficial uses such as recycled water and renewable energy.

Proposed Rule 317.1 will require major stationary sources, including publicly owned wastewater facilities, to pay for the regions inability to achieve attainment with the 1997 and 2008 federal 8-hour ozone standards pursuant to Section 185 of the Clean Air Act (CAA). This makes little sense today because most of the pollution leading to nonattainment is caused by mobile and federal sources such as cars, trucks, trains, boats, and planes. These sources are regulated by State and Federal agencies beyond the control of the SCAQMD, but only the major stationary sources will be required to pay these penalties. Even with the elimination of all stationary sources, the South Coast Air Basin will not achieve the 1997 or 2008 federal 8-hour ozone standards. Instead, the penalty should be imposed upon ozone precursor sources that lack adequate emission controls (i.e., mobile and federal sources). Proposed Rule 317.1 places an unnecessary burden on the wastewater facilities in the SCAQMD that are classified as major stationary sources. These facilities provide essential wastewater treatment to the communities in the South Coast Air Basin; therefore, they cannot relocate or reduce treatment capacity to avoid the inequitable penalties that Proposed Rule 317.1 will impose. Moreover, these facilities are already required to meet



stringent SCAQMD Best Available Control Technology standards and cannot reduce emissions to avoid this penalty. It is unfortunate that the fees imposed on these essential public service facilities won't even address the source of the subject pollution, as intended by the CAA.

As Congressman Henry Waxman, one of the primary authors of the 1990 CAA amendments, told us in 2010, it was never the intent of the CAA to penalize stationary sources when mobile and federal sources, beyond the control of air districts, are the reason for nonattainment. Due to this disconnect, USEPA accepted the concept of "not less stringent" fee or emission reduction programs in response to nonattainment with the 1-hour federal ozone standard. To our knowledge, USEPA has not performed a critical high-level review of the 8-hour nonattainment problem and the principles contained in their 2010 Section 185 Guidance¹ should be considered to avoid illogical results. In other words, Congress never intended to penalize sources that were not responsible for ozone nonattainment. Even with the complete closure of all major stationary sources in the South Coast Air Basin, attainment of the 8-hour standards would not be possible due to the fact that the majority of ozone-forming emissions are derived from mobile and federal sources.

The Mojave Desert Air Quality Management District (MDAQMD) adopted Rules [315.1](#), [315.2](#) and [315.3](#) to implement Section 185 penalties for nonattainment with the 1997, 2008, and 2015 ozone standards. All three rules include Section 185 equivalency provisions for USEPA's consideration. As described in [MDAQMD's staff report](#) USEPA expressed concerns about the approvability of these rules, but further discussions with USEPA are needed to determine whether potential "not less stringent" requirements could be acceptable. The San Joaquin Valley Air Pollution Control District (SJVAPCD) nonattainment fee rules also have equivalency language. We respectfully request the inclusion of language in Proposed Rule 317.1 that allows SCAQMD to implement equivalency in the event that USEPA develops new equivalency guidance. We understand that SCAQMD staff believe equivalency criteria cannot be met for the 1997 and 2008 standards, however the exclusion of such language could set an unreasonable precedence. It is important for local air districts to have a uniform approach to Section 185 compliance which would encourage USEPA to draft new guidance clearly allowing for equitable equivalency programs.

As such, SCAQMD Proposed Rule 317.1 should include additional provision language for the Cessation of Fees if either of the following occur:

1. If the USEPA approves an equivalent alternative Section 185 fee program.
2. If the USEPA provides guidance for acceptable fee equivalency for non-revoked standard and/or revoked standards for which the SCAQMD can demonstrate fee equivalency.

¹ Although this guidance was vacated by the D.C. Circuit Court of Appeals in [NRDC v. EPA, 643 F.3d 322 \(D.C. Cir. 2011\)](#) on procedural grounds, the Court did not prohibit alternative programs.



In addition, Clean Water SoCal requests some additional clarifications in the rule language related to the fee applicability for synthetic minor source facilities, and the applicability for multiple fees. The MDAQMD rules include provisions limiting the fee collection to a single standard. Clean Water SoCal requests a similar approach in Proposed Rule 317.1 to reduce the economic burden and ratepayer impact to public wastewater facilities that will be magnified by the collection of fees for multiple standards.

Recommended Rule Language:

Clean Water SoCal requests the addition of the following language to the “*Exemptions*” section of the “*Preliminary Draft Rule Language-Version 2024/03/22*” to further clarify the rule.

Cessation of Fees:

- The owner or operator of a Major Stationary Source shall not be required to remit CAA Nonattainment Fees, if the USEPA has approved an equivalent alternative Section 185 fee program for the Applicable Ozone Standard for the Basin. The CAA Nonattainment Fees will cease in the same calendar year as the approved alternative program approval.
- The owner or operator of a Major Stationary Source shall not be required to remit CAA Nonattainment Fees if the District has demonstrated fee equivalency in accordance with USEPA guidance for acceptable fee equivalency for the Basin. The CAA Nonattainment Fees will cease in the same calendar year as the demonstrated fee equivalency.

Additional clarifying exemption language:

- No Major Stationary Source permitted as a Synthetic Minor Source facility shall be required to remit CAA Nonattainment Fees under this rule.
- No facility otherwise subject to this rule shall be required to remit CAA Nonattainment Fees 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
- No Facility otherwise subject to this Rule shall be required to remit CAA Nonattainment Fees for more than one Federal ozone standard for any specific calendar year. A Facility’s applicable CAA Nonattainment Fees for any calendar year shall be the largest of all such applicable CAA Nonattainment Fees.

Use of Funds:

In addition, affected Clean Water SoCal agencies strongly urge the SCAQMD to develop a fee distribution program that would facilitate the use of funds collected from the public wastewater sector to return to the sector for use towards Clean Air Projects implemented by public wastewater agencies. Clean Water SoCal understands that the focus of the current rule development for



Proposed Rule 317.1 is on the regulatory framework for collection of the CAA nonattainment fees and not the use of funds, however a mechanism for the funds collected from public wastewater agencies for CAA nonattainment fees to be allocated towards Clean Air Projects by public wastewater agencies should be considered as part of the program for the use of funds collected from CAA nonattainment fees.

If there are any questions regarding these comments, please contact the Clean Water SoCal Air Quality Committee Chair, David Rothbart directly at (714) 878-9655 drothbart@lacsdc.org or contact me directly at (760) 415-4332 sjepson@cleanwatersocal.org

Sincerely,

Steve Jepsen

A handwritten signature in blue ink, appearing to read 'Steve Jepsen', is written in a cursive style.

Executive Director – Clean Water SoCal

cc: Clean Water SoCal Air Quality Committee