

Meeting Date: 3/23/2023
Report Type: PUBLIC HEARINGS
Report ID: 2023-0323-6.

Title: Adopt Amendments to Rule 307 - Clean Air Act Fees

Recommendation: Conduct a public hearing for the adoption of amendments to Rule 307 - adding Clean Air Act (CAA) Penalty Fees, and: 1) determine that the adoption of amendments to Rule 307 is exempt from the California Environmental Quality Act (CEQA); 2) adopt a resolution approving amendments to Rule 307; and 3) direct Staff to forward Rule 307 and all necessary supporting documents to the California Air Resources Board (CARB) for submittal to the U.S. Environmental Protection Agency (EPA).

Rationale for Recommendation: On January 17, 2023, EPA issued a finding that the Sacramento Federal Ozone Nonattainment Area (SFNA) has failed to submit a required State Implementation Plan (SIP) element for the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS). The missing plan element is an adopted rule to assess and collect penalty fees, as specified in CAA Section 185, from major stationary sources of oxides of nitrogen (NOx) and volatile organic compounds (VOC) if the area fails to attain the ozone standard by the applicable deadline. EPA's finding started a clock that will impose sanctions on the region unless EPA approves SIP revisions that implement the CAA penalty fees.

The proposed amendments to Rule 307, once approved by EPA, will implement the required Clean Air Act penalty fees for the 2008 ozone standard and stop the sanctions clock.

Contact: Marc Cooley, Associate Air Quality Engineer, 279-207-1151

Presentation: Yes

ATTACHMENTS:

[Resolution - Rule 307 Clean Air Act Penalty Fees](#)
[Exhibit A - Proposed Rule 307](#)
[Attachment 1 - Proposed Rule 307, Underline/Strikeout Version](#)
[Attachment 2 -Statement of Reasons](#)
[Attachment 3 - Evidence of Public Notice](#)
[Presentation - Proposed Amendments to Rule 307 Clean Air Act Penalty Fees](#)

Approvals/Acknowledgements

Executive Director or Designee: Alberto Ayala, Report Approved 3/16/2023

District Counsel or Designee: Kathrine Pittard, Approved as to Form 3/15/2023

Discussion / Justification: The District is part of the SFNA, which is designated as a "severe" nonattainment area for the 1997, 2008 and 2015 federal 8-hour ozone standards. Section 185 of the CAA requires areas classified as severe nonattainment or worse to implement penalty fees on major stationary sources of NOx and VOC if an area fails to meet the applicable attainment date for the standard. Currently, Rule 307 applies only to the revoked 1979 1-hour NAAQS.

EPA's January 17, 2023 finding started a clock that would impose sanctions on the region unless the District submits, and EPA approves, SIP revisions that implement CAA penalty fees for the 2008 federal 8-hour ozone standard. These sanctions are: 1) an emissions offset sanction that would increase the emission offset ratio to a minimum of 2:1, to be imposed on August 16, 2024, and 2) a highway fund sanction, in which our region would lose funding for transportation projects if the funds have not been obligated by the Federal Highway Administration, to be imposed on February 16, 2025.

The proposed amendments to Rule 307 implement CAA penalty fees for the 2008 8-hour ozone standard and address EPA's finding. If approved by the Board, Staff will forward Rule 307 to CARB for submittal to EPA as a revision to the SIP.

Summary of Plan / Rule / Amendment: Staff is proposing to amend Rule 307 to apply to all existing and future ozone NAAQS for which the District is classified as severe or extreme nonattainment. This includes the 2008 8-hour ozone NAAQS that EPA's finding specifically found to be missing. CAA Section 185 fees are also required to be included in the SIP for the 1997 and 2015 8-hour ozone NAAQS.

The proposed amendments also add exemptions for cessation of penalty fees and include minor language changes for clarity. The proposed amendments do not change the existing rule procedures but clarify how fees are terminated and how penalty fees are

calculated. No penalty fees will be assessed unless EPA issues a finding of failure to attain a standard by its applicable attainment date.

Financial Considerations: Rule 307 will potentially result in costs to twelve existing major sources of VOC and NO_x in the District. The actual amount of the fees each year depends on the amount of emissions from the source relative to its emissions in the attainment year. No financial impacts to the District are expected.

Emissions Impact: The proposed amendments to Rule 307 are administrative and do not establish emission standards. There will be no impact on emissions.

Economic Impact: There are twelve existing major sources of VOC and NO_x in the District affected by the proposed amendments to Rule 307. If any fees are assessed and collected due to an EPA finding of failure to attain an ozone standard, the fees that a source may pay are based on the magnitude of a source's emissions compared to its emissions in the attainment year. "Excess emissions" are those that exceed 80% of the emissions in the attainment year.

The cost for excess emissions was set at \$5,000 per ton of excess emissions in 1990 and the fee is adjusted each year. The adjusted fee is for 2022 is \$11,618 per ton of excess emissions. Potential costs are variable from year to year but could range from a few thousand dollars to hundreds of thousands of dollars for the larger emitting sources.

Public Outreach/Comments:

Staff held a public workshop on February 9, 2023. A public notice was emailed to interested parties (including the affected major stationary sources) and posted on the District website. The draft rule and Statement of Reasons were made available for public review at that time. Staff also contacted each major stationary source by telephone and when requested, held meetings with company representatives.

Staff received written comments on the proposal from EPA Region 9 stating that a proposed multiple fees exemption in Section 112 is not approvable under the Clean Air Act or EPA policy. In response to EPA's comments, Staff removed the exemption from the proposed rule.

At the workshop, Staff presented a proposal to amend Rule 307 - Clean Air Act Penalty Fees (New Title). Staff received comments suggesting minor nonsubstantive changes to clarify the language in Section 203.1, and Staff revised the section for clarity.

The noticing for today's hearing included:

- A public notice in the Sacramento Bee on February 20, 2023.
- A notice posted on the District website with links to the proposed rule and Statement of Reasons.
- Email notices to:
 - CARB and EPA;
 - Interested parties and potentially affect major stationary sources; and
 - All persons who have requested rulemaking notices.

No comments from members of the public have been received after the notice for today's hearing.

On March 6, 2023, District staff met with staff from EPA Region 9 to discuss two additional comments on the version of Rule 307 that was posted with the notice for public hearing. EPA's comments were:

1. In Section 204, all text after the first sentence was an explanation of the process by which EPA grants an extension year, is not binding on EPA, and not a definition of an extension year itself. Staff agreed and removed this text in the version of Rule 307 proposed for adoption at today's public hearing. The District Counsel has determined that the change is nonsubstantial and may be made without another 30-day public notice.
2. In Section 401, the first sentence stated "...if the District fails to meet an attainment year deadline each major stationary source must pay...". To be precise, the attainment status applies to the entire SFNA, not just the District. Staff agreed and replaced District with SFNA in the version of Rule 307 proposed for adoption at today's public hearing. The District Counsel has determined that the change is nonsubstantial and may be made without another 30-day public notice.

Environmental Review: Staff finds that the proposed amendments to Rule 307 are exempt from the California Environmental Quality Act (CEQA). Public Resources Code Section 21080(b)(8) and Section 15273 of the State CEQA Guidelines provide that the adoption or amendment of fee rules is not subject to CEQA. To claim this exemption, the District must find that the amendments are for the purpose of meeting operating expenses. Any Clean Air Act penalty fees collected will allow the District to implement clean air and/or planning programs.