

RULE 4.5 FEDERAL CLEAN AIR ACT SECTION 185 PENALTY FEES

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100 GENERAL

- 101 **PURPOSE:** To establish fees pursuant to the Clean Air Act Sections 182(d) and 185(a) through 185(d).
- 102 **APPLICABILITY:** This Rule applies to any major stationary source of volatile organic compounds or nitrogen oxides in the District. Clean Air Act penalty fees will be assessed if the SFNA for ozone fails to demonstrate attainment of any 8-hour federal air quality standard for ozone promulgated by the United States Environmental Protection Agency (EPA) on or after March 12, 2008 by the respective attainment year and only for an ozone standard for which the SFNA is listed as Severe or Extreme in 40 CFR Section 81.305.
- 103 **SEVERABILITY:** If any section, subsection, sentence, clause, phrase, or portion of this Rule is, for any reason, held invalid, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion is deemed to be a separate, distinct, and independent provision, and such holding does not affect the validity of the remaining portions of this Rule.
- 104 **EXEMPTION – EXTENSION YEAR:** No source will be required to remit Clean Air Act penalty fees for an ozone standard during any extension year for that standard.
- 105 **EXEMPTION – CESSATION OF FEES:** No source will be required to remit Clean Air Act penalty fees for an ozone standard if the SFNA has been redesignated by the EPA to attainment for that standard or if the EPA has terminated the anti-backsliding requirement associated with Clean Air Act Section 185 for that standard. The penalty fees will cease in the same calendar year as the redesignation or termination.
- 106 **EXEMPTION – NONATTAINMENT STATUS:** No source will be required to remit Clean Air Act penalty fees for an ozone standard until the EPA has determined the SFNA has failed to attain the respective ozone standard.

200 DEFINITIONS

- 201 **ATTAINMENT DATE:** The EPA-approved date by which the SFNA must attain a federal air quality standard for ozone. Where no such EPA approval exists, the date of the area's maximum statutory attainment date for that standard.
- 202 **ATTAINMENT YEAR:** The year that contains the attainment date.
- 203 **BASELINE EMISSIONS:** Baseline emissions are calculated for each pollutant — volatile organic compounds or nitrogen oxides — for which the source is classified

as a major stationary source. Baseline emissions are calculated separately for each applicable ozone standard.

203.1 For major stationary sources that began operation prior to the attainment year, the baseline emissions are the lowest of:

- a. the actual emissions during the attainment year, or
- b. the emissions allowed under the facility's permit during the attainment year, or
- c. the emissions allowed under any applicable rules or regulations for the facility during the attainment year.

203.2 For a major stationary source that begins operation during the attainment year or that becomes a major stationary source during the attainment year, the baseline emissions are the lower of:

- a. the emissions allowed under permit during the operational period as a major source, extrapolated over the entire attainment year, or
- b. the actual emissions from the period the source operated as a major stationary source, extrapolated over the entire attainment year.

203.3 For a major stationary source that begins operation after the attainment year or that becomes a major stationary source after the attainment year, the baseline emissions are the lower of:

- a. the emissions allowed under permit or any applicable rules for the facility during the first year of operation or the operational period as a major stationary source, extrapolated over the entire first year as a major stationary source, or
- b. the actual emissions from the first year of operation or the operational period as a major stationary source extrapolated over the year.

204 **EXTENSION YEAR:** An EPA-approved attainment year deferral requested under Section 181(a)(5) of the Clean Air Act.

205 **PENALTY FEE ASSESSMENT YEAR:** The year for which Clean Air Act penalty fees are being calculated and assessed.

206 **MAJOR STATIONARY SOURCE:** For the purposes of this Rule, "major stationary source" has the same meaning as in Section 181(b)(4)(B) of the Clean Air Act, if applicable, or as in Rule 3.4, NEW SOURCE REVIEW. As required by Section 182(f) of the Clean Air Act, major stationary sources of nitrogen oxides are subject to this Rule in addition to major stationary sources of volatile organic compounds.

207 **SACRAMENTO FEDERAL NONATTAINMENT AREA FOR OZONE (SFNA):** The Sacramento Metro, CA nonattainment area defined in 40 CFR Section 81.305 for an ozone standard, as amended.

300 STANDARDS (NOT INCLUDED)

400 ADMINISTRATIVE REQUIREMENTS

401 **COLLECTION OF PENALTY FEES:** Except as provided in Sections 104 through 106, if the SFNA fails to meet an attainment year deadline each major stationary source must pay an annual Clean Air Act penalty fee for each calendar year following the attainment year. Notification will be made by mail of the penalty fee due and payable and the date it is due. If the fee is not paid by the specified due date, the District shall assess a non-compliance penalty of not more than 50% of the fee due, but in an amount sufficient, in the District's determination, to pay the District's additional expenses incurred by the permittee's non-compliance. The permittee shall be notified by mail of the fee and penalty. If the fee and penalty are not paid within 30 days after notice, the federal operating permit will be canceled and the permittee will be notified by mail. A canceled federal operating permit may be reinstated by payment of the applicable Clean Air Act penalty fee plus non-compliance penalties.

402 **PENALTY FEE DETERMINATION:** The Clean Air Act penalty fee established in 1990 by Clean Air Act Section 185(b)(2) is \$5,000 per ton of volatile organic compound and nitrogen oxide emissions that exceed 80% of the baseline emissions for each calendar year following the attainment year. The \$5,000 penalty fee multiplier will automatically be adjusted if revised under Clean Air Act Section 185(b)(2). The penalty fee will also be adjusted annually pursuant to Section 403.

$$Fee = 5000 * [E_A - (0.8 * E_B)] * (1 + CPI)$$

Where:

Fee	=	Clean Air Act penalty fee
E_A	=	actual emissions for the applicable penalty fee assessment year
E_B	=	baseline emissions
CPI	=	percent change in the Consumer Price Index since 1990 as determined by Section 403

403 **PENALTY FEE ADJUSTMENT:** The Clean Air Act penalty fee will be adjusted annually by the change in the Consumer Price Index, beginning in the year after 1990, pursuant to Clean Air Act Sections 185(b)(3) and 502(b)(3)(B)(v).

500 MONITORING AND RECORDS (NOT INCLUDED)

