

Rule 315

Federal Clean Air Act Section 185 Penalty

(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 (42 U.S.C. §7511d) within the Southeast Desert Modified Air Quality Maintenance Area (AQMA).

(2) Applicability

- (a) This rule is applicable to any Facility within the AQMA which emits or has the potential to emit nitrogen oxides (NO_x) or volatile organic compounds (VOC) in an amount sufficient to make it a Major Facility as defined in District Rule 1301.
- (b) This rule shall be applicable if the AQMA fails to demonstrate attainment of the federal one-hour ambient air quality standard for ozone by 2007.
- (c) This rule shall cease to be applicable when the AQMA is designated as attaining either the one-hour or eight-hour national ambient air quality standard for ozone.

(3) Exemption

No facility otherwise subject to this rule shall be required to remit Federal Clean Air Act Section 185 penalty during any calendar year in which all Facilities subject to such penalties within the AQMA cumulatively emit verified actual emissions equal to or less than 80 percent of their combined Baseline Emissions amounts.

(B) Definitions

For the purposes of this rule the definitions contained in District Rule 1301 shall apply unless otherwise defined below.

- (1) “Actual Emissions” - Actual total facility calendar year emissions to atmosphere of each of NO_x and 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 subsection (2) of 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 for which the source is classified as a Major Facility, in accordance with Section D below.
- (3) “Clean Unit” - A Permit Unit that is complying with permit conditions that have been determined to meet the definition of Best Available Control Technology and/or Lowest Achievable Emission Rate for NO_x and VOC.
- (4) “Southeast Desert Modified Air Quality Maintenance Area (AQMA)” - That portion of the District south of latitude 35 degrees, 10 minutes north, and west of longitude 115 degrees, 45 minutes west.

(C) Requirements

- (1) Verification of Actual Emissions

Any facility subject to the provisions of this rule shall, upon written request by the APCO, submit a verified inventory of Actual Emissions.

- (2) Collection of Penalty

Beginning in the year this rule is adopted, the APCO shall, for each facility subject to the provisions of this rule, notify the facility by mail of the penalty amount due and payable and the date the penalty is due. 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. A suspended permit may be reinstated by payment of the applicable penalty.

(D) Calculations

- (1) Baseline Emissions for a Facility shall be calculated as specified below:
 - (a) For a Facility that began operation prior to 2007, the Baseline Emissions shall be the lower of the Actual Emissions during 2007 or the amount of emissions allowed by permit condition.
 - (b) For a facility that began operation during 2007, 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 2007.
 - (c) For a facility that begins operation after 2007, the Baseline Emissions shall be the amount allowed under the applicable implementation plan.
 - (d) For an irregular, cyclical or otherwise significantly varying Facility that began operation prior to 2003, Baseline Emissions may be calculated as the average of the verified Actual Emissions for any two years of the years 2003 through 2007 that the APCO determines are the most representative of operation, if the facility demonstrates in writing to the satisfaction of the APCO and USEPA that they are not a regular Facility.

- (e) For a facility that includes a Clean Unit, Baseline Emissions may be calculated pursuant to subsection (a) through (d) above excluding the emissions from all Clean Units, if the Facility demonstrates in writing to the satisfaction of the APCO and USEPA that the Facility includes a Clean Unit.

(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% of the baseline emissions, as specified below:

$$P = 5000 \times [E_a - (0.8 \times E_b)] \times C$$

- P = Penalty (in dollars)
- E_a = Actual Emissions
- E_b = Baseline Emissions
- C = Percent change in the Consumer Price Index 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)).

See SIP Table at <http://www.mdaqmd.ca.gov/Modules/ShowDocument.aspx?documentid=45>

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