



Legislation Text

File #: 24-0108, Version: 1

HEARING - Air Quality Management District (AQMD) recommending the Board, acting as the AQMD Board of Directors:

- 1) Adopt and authorize the Chair to sign Resolution **013-2024**, approving the adoption of Rule 611 Clean Air Act Nonattainment Fees; and
- 2) Direct staff to forward the rule to the California Air Resources Board for transmittal to the U.S. Environmental Protection Agency as a revision to the State Implementation Plan.

FUNDING: N/A

DISCUSSION / BACKGROUND

The Sacramento Federal Nonattainment Area (SFNA) comprises Sacramento and Yolo counties, the western portion of El Dorado and Placer counties, the southern portion of Sutter County, and the northeastern portion of Solano County. AQMD is the agency responsible for maintaining the National Ambient Air Quality Standards (NAAQS) in El Dorado County (EDC). Western EDC is designated as severe nonattainment for the 1997 ozone NAAQS and the 2008 ozone NAAQS. The SFNA is currently classified as serious for the 2015 ozone NAAQS. However, air quality photochemical modeling conducted by the CARB forecasts that the SFNA will not attain the 2015 ozone NAAQS by the serious attainment date of August 2027. The SFNA air districts have requested to be reclassified to severe to extend the attainment date to August 2033. EPA is expected to reclassify the SFNA to severe in a final rule.

Ground level ozone is a secondary pollutant formed from photochemical reactions of ozone precursors nitrogen oxides (NOx) and volatile organic compounds (VOCs) in the presence of sunlight. The 1990 Federal Clean Air Act (CAA) amendments included, for the first time, penalty fee assessments for nonattainment areas that fail to meet ozone standards. This provision was included to address a shortcoming in the CAA that allowed areas to miss attainment deadlines without substantial consequences. The Federal Clean Air Act (42 U.S.C. 7511d CAA) Section 185 requires the imposition of a penalty, on major sources, of \$11,922 (for 2023) per ton of ozone precursors in excess of the emissions produced in the attainment date year in areas classified as severe or extreme non-attainment for the ozone NAAQS that do not attain the NAAQS by the applicable deadlines. The penalty amount is adjusted annually for inflation. A major source is that which annually emits 25 tons or more of NOx or VOCs. Major sources that reduce their ozone precursor emissions by at least twenty percent (20%) below the attainment year total will not be subject to the fee. The EPA has indicated that such penalty provisions must be adopted by areas classified as severe nonattainment for any of the ozone standards and imposed if the areas fail to meet an attainment date. If adopted, proposed Rule 611, Clean Air Act Nonattainment Fees, will impose fees on any major stationary sources in the EDC portion of the SFNA, if the SFNA fails to attain an ozone NAAQS by the respective deadlines. Currently, there are no major sources operating in EDC; as such, if adopted by the Board, Rule 611 will not result in any new requirements for the sources currently operating in EDC.

Below is summary of proposed rule, the proposed rule is also discussed in the attached staff report.

- Rule 611 would apply to any major sources of NOx and VOCs in the SFNA portion of EDC if the SFNA fails to attain any ozone NAAQS for which the SFNA has been designated as a severe or extreme nonattainment. Rule 611 may be triggered by the failure to attain existing and any future ozone NAAQS, and EPA issues a finding of failure to attain. Major sources of NOx and VOC would be required to either pay a fee or reduce their emissions by 20% below baseline.
- The fee payment is based on the difference between the amount of actual emissions in the post-attainment years and the actual emission in the Attainment Year. The CAA does not specify how the AQMD must use the fees. The Board could determine the fees shall be used for grants to reduce emissions of NOx and VOCs.
- The proposed Rule 611 has a mechanism for the cessation of penalty fees. Penalty fees may be terminated by 1) the EPA redesignating the SFNA to attainment for an ozone standard, or 2) the EPA terminating the anti-backsliding requirements associated with the section 185 penalty for a revoked standard.
- The fee was established to be \$5,000 per ton of NOx and VOC in 1990 by the CAA. The fee is adjusted annually by consumer price index (CPI). For 2023 the fee was \$11,922 per ton of emissions. The EPA publishes the CPI adjusted fee annually.

If all the SFNA air districts do not adopt section 185 fee rules prior to August 16, 2024, then two sanctions will be implemented on February 16, 2025. The EPA will also promulgate a Federal Implementation Plan.

The first sanction would be increased offset ratios imposed by the air districts New Source Review Rules. This would require new major sources and major sources wishing to modify their permitted equipment to purchase more emission reduction credits (2:1) than are currently required (1.3:1).

The second sanction would be a federal highway fund sanction. If the highway fund sanction were to take effect, the SFNA region would lose any federal transportation project funding for projects that have not already had funding obligated.

In addition to the sanctions, if the EPA determines that the SFNA has failed to comply with the Section 185 requirements, they will adopt a Federal Implementation Plan (FIP). The FIP will supersede the SIP and dictate the measures the SFNA air districts and the State must take to attain the NAAQS.

AQMD staff have reviewed all current and pending permit applications and determined that there are no current nor anticipated applicable major sources of NOx and VOC located in the EDC portion of the SFNA. However, if a large major source facility is established in the EDC SFNA area, it would likely be subject 185 fees unless emission control technology was utilized to keep the ozone precursor emissions below the emissions produced during the attainment year.

AQMD staff propose to stop the sanctions clock by adopting Rule 611. If the SFNA does achieve all ozone NAAQS by the attainment dates and EPA redesignates the SFNA to attainment for all ozone NAAQS, then Rule 611 would no longer apply.

If approved, the rule will be forwarded to CARB and the EPA for inclusion in the State Implementation Plan.

ALTERNATIVES

The Board of Directors may wholly approve, deny, or make further revisions to the proposed rules.

OTHER DEPARTMENT / AGENCY INVOLVEMENT

County Counsel approved the Resolution

CAO RECOMMENDATION

Approve as recommended.

FINANCIAL IMPACT

No financial impact to AQMD, the County or sources operating in the County.

CLERK OF THE BOARD FOLLOW UP ACTIONS

- 1) Clerk to obtain the Board Chair's signature on three (3) original Resolutions, and
- 2) Clerk to provide AQMD with two (2) signed copies of the Resolution to be forwarded to the California Air Resources Board.

STRATEGIC PLAN COMPONENT

Healthy Communities

CONTACT

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