

SCAP

SOUTHERN CALIFORNIA ALLIANCE OF
PUBLICLY OWNED TREATMENT WORKS



May 3, 2022

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San Diego Air Pollution Control District
10124 Old Grove Road
San Diego, CA 92131

Re: PROPOSED RULE 45 – FEDERALLY MANDATED OZONE NONATTAINMENT FEES

The Southern California Alliance of Publicly Owned Treatment Works (SCAP) appreciates the opportunity to comment on the proposed Rule 45 – Federally Mandated Ozone Nonattainment Fees.

SCAP represents over 80 public water/wastewater agencies in Southern California. SCAP 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. SCAP's 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 45 will require major stationary sources, including publicly owned wastewater facilities, to pay for the regions inability to achieve attainment with the 2008 federal 8-hour ozone standard pursuant to Section 185 of the Clean Air Act (CAA). This makes little sense today because the vast majority 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 SDAPCD, but only the major stationary sources will be required to pay this penalty. Several of these sources would be publicly funded wastewater treatment facilities. These stationary sources are already required to have maximum feasible controls and already pay administrative fees. Proposed Rule 45 places an extreme economic burden on San Diego major stationary sources and won't even address the source of the subject pollution. Proposed Rule 45 is not equitable.

As Congressman Henry Waxman 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, EPA 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, EPA has not performed a critical high-level review of the 8-hour nonattainment problem and the principles contained in EPA's 2010 Guidance should be

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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 San Diego, attainment with the 8-hour standard would not be possible due to the fact that the majority of ozone-forming emissions are derived from mobile and federal sources. Accordingly, SDAPCD Rule 45 should include equivalency options for EPA's consideration to avoid absurd results.

The Mojave Desert Air Quality Management District (MDAQMD) recently adopted Rules [315.1](#) & [315.2](#) to implement Section 185 penalties for nonattainment with the 1997 and 2008 standards. Both rules include Section 185 equivalency provisions for EPA's consideration. As described in [MDAQMD's staff report](#) EPA expressed concerns about the approvability of these rules, but further discussions with EPA are needed to determine whether potential "not less stringent" requirements could be acceptable.

The South Coast Air Quality Management District (SCAQMD) and San Joaquin Valley Air Pollution Control District (SJVAPCD) both have equivalency programs. If the SDAPCD were to adopt proposed Rule 45 without an equivalency option, an unreasonable precedent could be established. It is important for local air districts to have a uniform approach to Section 185 compliance which would encourage EPA to draft new guidance clearly allowing for equitable equivalency programs.

We respectfully request that Proposed Rule 45 mimic MDAQMD's Rules 315.1 and 315.2. To avoid absurd results, we believe that air districts should work with SCAP and other stakeholders to identify equitable solutions that will actually improve air quality for the residents we all serve.

If there are any questions regarding these comments, please contact the SCAP Air Quality Committee Chair, David Rothbart directly at (714) 878-9655 drothbart@lacsdc.org or contact me directly at (760) 415-4332 sjepsen@scap1.org

Sincerely,

Steve Jepsen

Executive Director - SCAP

cc: SCAP Air Quality Committee

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