September 16, 2022

MEMORANDUM

SUBJECT: Clean Air Act Section 185 Fee Rates Effective for Calendar Year 2022

FROM: Scott Mathias, Director
Air Quality Policy Division

TO: Air Program Managers, Regions I-X

Enforcing attainment within Severe and Extreme ozone nonattainment areas requires owners/operators of major stationary sources of volatile organic compounds (VOC) and nitrogen oxides (NOx)[1] to pay a fee to the state as a penalty for failing to timely attain the ozone standard. The fee, established under Clean Air Act (CAA) section 185, shall be applied per ton of VOC and NOx emitted by the source when emissions per calendar year exceed 80 percent of the baseline emissions computed under CAA section 185(b)(2). Each year, the EPA Office of Air Quality Planning and Standards (OAQPS) calculates the annual section 185 fee rate to be used by states to calculate each source's total annual fee for the calendar year. The fee rate for calendar year 2022 is $11,122.00 per ton of VOC and NOx emissions, which was computed in accordance with the adjustment procedures for CAA part 70 (title V) permit fees, consistent with the approach used in prior years. For reference, the annual section 185 fee rates from 1991 through 2022 are provided in Table 1.

The calculation of the annual section 185 fee rate is based on the 40 CFR part 70 permit program *Presumptive Minimum Fee Rate*. The part 70 fee rate is updated each year by OAQPS/Air Quality Policy Division (AQPD) to adjust for inflation using the Consumer Price Index (for "All Urban Consumers") as reported by the U.S. Bureau of Labor Statistics, and in accordance with CAA section 502(b)(3)(B)(v)(I). The fee for September 1, 2022, through August 31, 2023, is $58.09.[2] Adjustment of fee rates to account for inflation is also applicable to the section 185 fee rate under CAA section 185(b)(3). Accordingly, the calculation of the section 185 fee rate begins by scaling the inflation-adjusted part 70 fee rate ($/ton of pollutant) proportionally to section 185 using the ratio of fee rates initially established under section 185 ($5,000 per ton) and part 70 ($25 per ton), where $5,000/25 = 200$. Thus, the part 70 fee rate for each 12-month period from

---

[1] CAA section 185 references only VOC emissions, however, CAA section 182(f) provisions extend the section 185 requirements to include NOx emissions, unless the nonattainment area has an EPA-approved NOx waiver granted under the conditions specified in CAA section 182(f).

[2] Memorandum dated September 15, 2022, from Corey Sugerik, Operating Permits Group, AQPD, OAQPS to Operating Permits Contacts, Regions I-X.

September 1 to August 31 is first multiplied by 200. However, unlike the part 70 fee rates, section 185 fee rates are based on a calendar year—January through December. To reconcile the difference, the scaled section 185 fee rate for a given calendar year is adjusted to reflect two-thirds of a year at the old (*i.e.,* 2021-22) part 70 fee (scaled to $10,874), and one-third at the current (*i.e.,* 2022-23) part 70 fee (scaled to $11,618). Thus, the resulting CAA section 185 fee rate for calendar year 2022 is $11,122.00. For questions regarding this memorandum or the table of fee rates, please contact Michael Ling, at (919) 541-4729 or by email at *ling.michael@epa.gov*.

Table 1. CAA Section 185 Fee Rates by Calendar Year

Part 70 Fee Rates Effective Dates	Part 70 Permit Fee Rate [a]	Scaled Section 185 Fee Rate [b]	Annual CAA Section 185 Fee Rate [c]	
Sep. 1, 1989 – Aug. 31, 1990	$25.00	-	$5,000.00	1990
Sep. 1, 1990 – Aug. 31, 1991	$26.21	$5,242.00	$5,334.00	1991
Sep. 1, 1991 – Aug. 31, 1992	$27.59	$5,518.00	$5,574.00	1992
Sep. 1, 1992 – Aug. 31, 1993	$28.43	$5,686.00	$5,744.00	1993
Sep. 1, 1993 – Aug. 31, 1994	$29.30	$5,860.00	$5,911.33	1994
Sep. 1, 1994 – Aug. 31, 1995	$30.07	$6,014.00	$6,071.33	1995
Sep. 1, 1995 – Aug. 31, 1996	$30.93	$6,186.00	$6,242.67	1996
Sep. 1, 1996 – Aug. 31, 1997	$31.78	$6,356.00	$6,414.00	1997
Sep. 1, 1997 – Aug. 31, 1998	$32.65	$6,530.00	$6,567.33	1998
Sep. 1, 1998 – Aug. 31, 1999	$33.21	$6,642.00	$6,682.67	1999
Sep. 1, 1999 – Aug. 31, 2000	$33.82	$6,764.00	$6,834.00	2000
Sep. 1, 2000 – Aug. 31, 2001	$34.87	$6,974.00	$7,051.33	2001
Sep. 1, 2001 – Aug. 31, 2002	$36.03	$7,206.00	$7,244.00	2002
Sep. 1, 2002 – Aug. 31, 2003	$36.60	$7,320.00	$7,375.33	2003
Sep. 1, 2003 – Aug. 31, 2004	$37.43	$7,486.00	$7,543.33	2004
Sep. 1, 2004 – Aug. 31, 2005	$38.29	$7,658.00	$7,737.33	2005
Sep. 1, 2005 – Aug. 31, 2006	$39.48	$7,896.00	$7,998.67	2006
Sep. 1, 2006 – Aug. 31, 2007	$41.02	$8,204.00	$8,266.67	2007
Sep. 1, 2007 – Aug. 31, 2008	$41.96	$8,392.00	$8,511.33	2008
Sep. 1, 2008 – Aug. 31, 2009	$43.75	$8,750.00	$8,755.33	2009
Sep. 1, 2009 – Aug. 31, 2010	$43.83	$8,766.00	$8,809.33	2010
Sep. 1, 2010 – Aug. 31, 2011	$44.48	$8,896.00	$8,967.33	2011
Sep. 1, 2011 – Aug. 31, 2012	$45.55	$9,110.00	$9,188.67	2012
Sep. 1, 2012 – Aug. 31, 2013	$46.73	$9,346.00	$9,398.67	2013
Sep. 1, 2013 – Aug. 31, 2014	$47.52	$9,504.00	$9,554.00	2014
Sep. 1, 2014 – Aug. 31, 2015	$48.27	$9,654.00	$9,668.67	2015
Sep. 1, 2015 – Aug. 31, 2016	$48.49	$9,698.00	$9,724.00	2016
Sep. 1, 2016 – Aug. 31, 2017	$48.88	$9,776.00	$9,840.67	2017
Sep. 1, 2017 – Aug. 31, 2018	$49.85	$9,970.00	$10,050.67	2018
Sep. 1, 2018 – Aug. 31, 2019	$51.06	$10,212.00	$10,276.67	2019
Sep. 1, 2019 – Aug. 31, 2020	$52.03	$10,406.00	$10,456.67	2020
Sep. 1, 2020 – Aug. 31, 2021	$52.79	$10,558.00	$10,663.33	2021
Sep. 1, 2021 – Aug. 31, 2022	$54.37	$10,874.00	**$11,122.00**	**2022**
Sep. 1, 2022 – Aug. 31, 2023	$58.09	$11,618.00		

[a] Taken from the appropriate reference for the inflation-adjusted part 70 fee rate. For September 1, 2022, to August 31, 2023, this value comes from the memo cited in Footnote 2. Prior years are unchanged.

[b] Using the equation: (part 70 permit fee $_t$ × 200), where t reflects the 12-month period from September 1 of the prior year to August 31 of the current year.

[c] Using the equation: [(2/3 × scaled section 185 fee $_t$) + (1/3 × scaled section 185 fee $_{t+1}$)], where t reflects the 12-month period from September 1 of the prior year to August 31 of the current year and $t+1$ reflects the 12-month period from September 1 of the current year to August 31 of the upcoming year.