

October 31, 2012

Deborah Jordan, Director  
Air Division  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

**Re: Rule 3170 Annual Fee Equivalency Demonstration Report,  
Fee Assessment Basis Year 2011**

Dear Ms. Jordan:

As required by District Rule 3170, *Federally Mandated Ozone Nonattainment Fee*, the San Joaquin Valley Air Pollution Control District hereby submits the annual Fee Equivalency Demonstration Report for the Fee Assessment Basis Year 2011.

As you are aware, the District adopted Rule 3170 to implement the ozone non-attainment penalty requirements of Section 185 of the federal Clean Air Act (CAA). In doing so, the District followed EPA guidance on implementing an equivalent program that collects fees from alternative sources, which fees are at least equal to those that would be collected under a direct implementation of Section 185. The District's goals in implementing an equivalent program were to avoid further penalties on facilities that had done all they could to reduce air pollution, and to collect the penalty in a way that closely corresponds with the sources of ozone-causing air pollution in the San Joaquin Valley.

To that end, Rule 3170 assesses a penalty from major sources of air pollution only to the extent that such sources have not installed the best available air pollution control technology (BACT). Recognizing that this approach will result in a shortfall in penalty collection compared to Section 185, the District committed to making up the difference in one of two ways: first, we would attribute fees collected under Section 9250.17 of the California Vehicle Code (VC) (to the extent those fees were authorized by AB 2522 (Arambula, 2008), herein referred to as the AB 2522 VC fees), and; second, if the above is insufficient to cover the shortfall, the District would assess the

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necessary fees to cover the remaining shortfall in a second round of fee collection from major sources of air pollution, per section 7.3 of Rule 3170.

Section 7.2 of Rule 3701 requires the District to demonstrate on an annual basis an accounting of this equivalency effort. Specifically, we are required to produce this report demonstrating that the fees required by Rule 3170 that are collected from major sources of air pollution, plus the AB 2522 VC fees collected, are at least equal to the fees that would have been collected had the District directly implemented Section 185.

This initial report is for the Fee Assessment Basis Year of 2011. The District's accounting of ozone precursor emissions demonstrated 2,822 tons of nitrogen oxides and volatile organic compounds were emitted in excess of 80% of the 2010 baseline emissions from major sources in the calendar year 2011. Using the required CPI-adjusted fee assessment rate of \$8,967.33 per ton of emissions, the District determined that a total penalty fee of \$25.3 million is due under Section 185 of the CCA. See attached for additional information.

Emissions fees collected from major sources under Rule 3170, for pollution emitted during the calendar year 2011 from equipment that has not been equipped with BACT, results in a total fee collected of \$2.9 million.

The AB 2522 VC fees collected by the Department of Motor Vehicles and forwarded to the District in 2011 were \$4.4 million.

Therefore, the total fees collected for 2011 are \$7.3 million, resulting in a shortfall of approximately \$18 million (\$25.3 million minus \$7.3 million).

To cover that shortfall for the Fee Assessment Basis Year of 2011, \$18 million of the \$26.4 million in AB 2522 VC fees that have been received thus far by the District in 2012, and have not been used for past equivalency determinations, are being used per Rule 3170, section 7.2.1.2, to cover the shortfall.

Per District Rule 3170, Section 7.2.1.2, AB 2522 VC fees used in an Annual Fee Equivalency Demonstration Report are no longer available to demonstrate equivalency for equivalency reports for future Fee Assessment Basis Years.

As demonstrated in this report, the fees collected under District Rule 3170, plus the Vehicle Code fees collected under the authorization of AB 2522 to date in 2012,

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exceed the total fees that would have been collected under a direct implementation of Section 185 of the Clean Air Act. We have therefore successfully demonstrated the Rule 3170 Annual Fee Equivalency for the Fee Assessment Basis Year of 2011.

If you have any questions regarding this matter, or if you would like to review additional details of our equivalency demonstration, please call me at (559) 230-5900.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Warner", with a long horizontal flourish extending to the right.

David Warner  
Director of Permit Services

Attachment: Table of Rule 3170 Equivalency Information

Attachment:

Rule 3170 Equivalency Information

Fee description	Fee Amount	Rule 3170 Equivalency Accounting
Total Section 185 fees under a direct implementation of the Federal Ozone Nonattainment Fee:	\$25,306,401	\$25,306,401
Total fees collected under District Rule 3170, not reported in a prior annual Fee Equivalency Demonstration Report:	\$2,852,645	(\$2,852,645)
Total AB 2522 VC fees collected in 2011, not used to demonstrate equivalency in a prior annual Fee Equivalency Demonstration Report:	\$4,423,202	(\$4,423,202)
Total AB 2522 VC fees collected to date in 2012, not used to demonstrate equivalency in a prior annual Fee Equivalency Demonstration Report:	\$26,358,129	(\$18,030,554)
<b>Surplus/Shortfall for 2011:</b>	---	<b>\$0</b>