Federal Clean Air Act
Section 185 Nonattainment Fees

Alternative Program Options

February 18, 2010
Federal Clean Air Act – Section 185

- Imposes penalty fees in areas failing to reach attainment
- Section 185 fee applies to Major Stationary Sources of either NOx or VOC
- Intended as a means to force additional controls
- Fee is based on annual emissions in excess of 80% of a ‘baseline amount’
- $5000/ton fee adjusted annually using CPI
SJV Attempts to Satisfy Section 185

- Adopted Rule 3170 on May 16, 2002
- January 2010 – EPA action on Rule 3170 to partially approve and partially disapprove
- Sections disapproved by the EPA:
  - Clean Unit exemption
  - Multi-year emissions averaging
- These provisions were meant to reward well-controlled sources
Consequences of EPA Action

• Sanctions clock started
  – Must receive EPA approval of revised program within 18 months (August 2011)

• Consequences of failure
  – Sanctions (de facto ban on permits for major sources, loss of highway funds)
  – EPA will collect and confiscate nonattainment fees and revenues
Number of Days Over the 1-hour Ozone Standard

2008 ozone levels were affected by wildfire emissions.

DAYS

2000 2001 2002 2003 2004 2005 2006 2007 2008 2009

2009 data as of August 26, 2009.
Timing for Nonattainment Fees

- December 2010 - attainment deadline for the revoked 1-hour ozone standard
- If one or more exceedance in 2010
  - 185 fee is due in 2012 based on 2011 actual emissions
  - Baseline emissions are established in 2010
- Major sources in the Valley will be subject to an annual penalty of approximately $29 million per year until attainment is reached
### Fees by Source Category

<table>
<thead>
<tr>
<th>Source Category</th>
<th>Section 185 Nonattainment Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
<td>$5,511,014</td>
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<tr>
<td>Commercial</td>
<td>$1,385,399</td>
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<tr>
<td>Electric Generation</td>
<td>$4,123,852</td>
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<tr>
<td>Industrial</td>
<td>$9,110,370</td>
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<tr>
<td>Industrial - Oil and Gas</td>
<td>$6,786,434</td>
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<tr>
<td>Industrial - Oil and Gas Area-wide</td>
<td>$1,674,600</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$28,591,668</strong></td>
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Alternatives Provided by EPA

• EPA January 2010 guidance provides for three alternatives:
  – Fee-Equivalent Alternative Programs
  – Emissions-Equivalent Alternative Programs
  – Combination of the above options

• Environmental groups plan legal actions challenging EPA’s authority to provide alternatives

• EPA approval based on case-by-case review

• Staff recommends pursuing the “Combination” alternative
Distribution of Responsibility

- Stationary sources of NOx and VOC reduced by 80 percent since 1980
- Mobile source emissions reduced by 40 percent
- Today, 80 percent of NOx emissions are from mobile sources, outside the District’s regulatory jurisdiction
Alternative Program
Guiding Principles

• Use emission reductions surplus to District’s one-hour Extreme Ozone Attainment Plan.

• Limit use of emission reductions for which credit taken in other State Implementation Plans. Preference for new revenue sources and emission control strategies.

• Reward & credit sources that have installed latest emissions control technology

• Equitable distribution of responsibility to mobile and stationary sources
Alternative Program
Guiding Principles (Cont’d.)
• Prevent federal take over & confiscation of fees
• Minimize reliance on funding sources or emission control strategies out of District control
• Minimize use and secure alternatives for sunsetting revenue sources
• Refrain from using sources with cost-prohibitive administrative burden and those that limit District’s discretion to fund preferred projects
• Strong public reporting and accountability
• Funding-source preference given to those providing co-benefits
Potential Alternative Program
Revenue Sources (existing and new)

• Existing DMV Surcharge - $7/vehicle
• Advanced Emission Reduction Option Fees
• Carl Moyer Program – available through 2015
• Proposition 1B - Goods Movement and School Bus Program
  – Funding expires after 2011-2012 fiscal year
• Federal Earmark, DERA, Stimulus Funding
  – Unclear if federal funds can be used for 185 fee
• AB 118 – new funding source
• New DMV Surcharges under AB2522
  – Authorized to increase DMV surcharge up to $24
  – Ad hoc committee
Recommendations

1. Begin public process to develop, and bring back to Board a proposed alternative program consistent with Board-approved guiding principles.

2. Consistent with the District’s Legislative Platform, pursue legislative remedies to repeal Section 185 or provide for clean unit exemption.