

**SACRAMENTO METROPOLITAN
AIR QUALITY MANAGEMENT DISTRICT**

For Agenda of **April 28, 2005**

To: Board of Directors
Sacramento Metropolitan Air Quality Management District

From: Larry Greene, Air Pollution Control Officer
Sacramento Metropolitan Air Quality Management District

Subject: Amendments to Rule 304 – Plan Fees

Recommendations

1. Determine that the Rule amendment is Categorically Exempt from the California Environmental Quality Act (CEQA),
 2. Determine which version of the rule should be considered for adoption, and
 3. Approve one of the three attached resolutions adopting amendments to Rule 304; Staff recommends Version B with the Board considering amendments to Version C at the May, 26, 2005 Hearing
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Executive Summary

Naturally-occurring asbestos (NOA) was discovered in Folsom in July 2004. The District is required to enforce the California Air Resources Board Asbestos Air Toxic Control Measure (ATCM) in all NOA areas. The District reviews dust mitigation plans and conducts inspections to ensure that asbestos-containing dust is not leaving the project site. At the present time, the District is not recovering the costs of implementing the ATCM. The proposed amendments to Rule 304 establish fees to recover costs associated with the NOA program.

California Health and Safety Code requires a fee rule to be heard at two public meetings before the Board of Directors may consider it for adoption. The first was March 24, 2005, at which some Board members requested an alternate version of the rule that would not require plans submitted but not accepted before rule adoption to pay the fees. Other Board members also requested a report about the affected plans, which is included in Attachment F. At the April 28 meeting the Board may consider adoption of either version of the proposed amendments to the rule.

Version A of the rule was presented at the March Board hearing. It allows fees to be collected for plans that have been submitted but not yet approved by the date of the rule's adoption. This would allow collection of fees for work that would be occurring after the rule adoption.

Version B allows no fees to be collected for plans submitted before the rule's adoption date. Staff's primary goal is to collect fees for inspections which will take place after the rule has been adopted. After additional discussions, Staff has developed an additional version of the rule that would allow for fees to be collected for inspections that continue to occur after the rule is adopted. Neither Version A nor Version B would allow for inspection fees to be collected for work done after rule adoption if the dust mitigation plans were received prior to the rule adoption. There are considerable ongoing inspection costs from some of these projects.

Staff cannot recommend adoption of Version C at this meeting because the rule has not been

publicly noticed for thirty days. Staff is recommending that the Board consider adopting Version B of the rule today, and then consider amending the rule to Version C at the May Board Hearing.

Staff has also included in the adopting resolution, as was requested by Board members, a requirement to report quarterly to the Board on the District's less than one-acre inspection program during the first year.

Attachments

The table below identifies the attachments to this memo:

Item	Attachment
Rule 304—Plan Fees Version A	A
Rule 304—Plan Fees Version B	B
Rule 304—Plan Fees Version C	C
Staff Report	D
Comments and Responses	E
Report of Plans Submitted but Not Yet Accepted	F
Evidence of Public Notice	G
Resolution—Rule 304 Version A	H
Resolution—Rule 304 Version B	I

Background

Rule 304—Plan Fees was originally adopted in 1990 to establish fees for plans related to renovation and demolition of asbestos-containing structures. It was later amended to include fees for fleet inventory reports and mobile source emission reduction credit applications. The proposed amendments make no alteration of the existing fee structures established in the rule.

The current amendments are proposed to add a new fee schedule for the naturally-occurring asbestos (NOA) program.

The requirements of the ATCM distinguish between projects that are one (1.0) acre or less and those that are larger than one acre. Larger projects must have the District approve dust mitigation plans; the proposed fee is \$350. These projects must then comply with the plan, and the District conducts inspections to verify compliance. The base inspection fee proposed for these projects is \$20 per acre. If more than 18 hours of staff time per 100 acres is required for inspection-related activities, an hourly rate of \$116 applies to additional time. This is the hourly time and materials rate established by Rule 301—Permit Fees.

Projects of one (1.0) acre or less are not required to submit dust mitigation plans, although they are required to comply with the ATCM. As proposed in the amended rule, when these projects are inspected the hourly rate of \$116 applies. However, this provision would not take effect until one year after the rule's adoption date.

As proposed, the rule amendments also include an analysis fee in the event additional sampling or analytical work is required; a consumer price index (CPI)-based adjustment; and a fee waiver provision in the instance that the fees impose undue financial hardship.

Sections 41512.5 and 42311(e) of the California Health and Safety Code require at least two

Board meetings to be held for fee rules such as Rule 304—Plan Fees. This provides an opportunity for public testimony to be heard by the Board before the rule is considered for adoption. No testimony from the public was received at the March 24 Board Hearing and the item was continued until April 28. Board members made two requests of Staff:

1. Prepare an alternative version of the rule for consideration that would exempt plans submitted but not yet approved by the rule's adoption date from paying fees.
2. Commit to providing a quarterly report to the Board detailing progress made toward determining how projects less than one acre and subject to fees will be chosen. The fee that applies to these projects is proposed to take effect one year after the rule's adoption date.

The original rule proposed by Staff on March 24 is identified as Version A. Fees would be assessed for review of dust mitigation plans submitted before the rule's adoption. Version B was noticed for public hearing and does not allow for any fee collection for plans submitted before the rule's adoption date.

Subsequent to publishing that hearing notice for Versions A and B, Staff created a third proposal for your Board's consideration. Staff recommends Version C which will assess the inspection fee for inspections that occur after rule adoption. Attached in this Board Package as Attachment F is a report on the projects that would be subject to the fees. Since this version of the rule can not be considered for adoption at this Board hearing due to the noticing issue, staff is proposing to return in May for the Board to consider adopting Version C.

To address the Board's request for quarterly reporting on the progress made towards determining which projects less than one acre would be inspected and subject to fees, this additional requirement has been added to the resolution and attached.

At the Board meeting on April 28, the Board may consider Version A or B of the rule for adoption. The adoption of the rule at this time would allow staff to collect both plan review fees and any inspection fees for plans that would be submitted after the rule adoption date. Staff is proposing to return at the May 26, 2005 Hearing for the Board to consider amending to Version C to allow for the collection of inspection fees for work that continues to occur from plans approved prior to the rule adoption.

Summary of Changes

- Exemption provides the opportunity to discuss possible waiver of fee payment with the APCO
- Dust mitigation plan (DMP) fee of \$350
- Geologic evaluation fee of \$450
- Projects for which a DMP has been submitted pay \$20/acre inspection fee; if time for inspection and related activity exceeds 18 hours per 100 acres, rate of \$116 per hour applies
- Increase in the acreage is subject to the per-acre fee
- Inspection rate of \$116/hour for projects without a DMP
- Costs for analysis, sampling, and testing required by the APCO to be paid by applicant
- NOA plan fees can be adjusted annually according to the change in the Consumer Price Index

Version A: Plans not yet approved by the rule adoption date are subject to the per-acre inspection

fees and plan review fees.

Version B: Fees are not assessed for projects received before the rule's adoption. Section 303.1.c. has been removed.

Version C: For projects with plans submitted before rule adoption fees are assessed only for inspections occurring after rule adoption. Section 303.1.c. has been removed and Section 303.2.c. has been added.

Business Cost Impacts

Since the proposed fee schedule for projects submitting a dust mitigation plan includes a per-acre fee to cover the District's cost of inspections, the total charged would depend on the project size. For example, a 200-acre project would be charged \$4350. This includes \$350 for review and approval of the dust mitigation plan plus \$20 per acre for 200 acres, or \$4000.

Projects not submitting a DMP would pay an hourly inspection rate only when inspected. Typical cost for this inspection is expected to be \$348.

In cases where this fee presents a financial hardship, a conference may be scheduled with the APCO to discuss a waiver of the fee payment.

District Impacts

The amendments are proposed to recover the District's costs of implementing the asbestos ATCM. They are not expected to result in an additional need for staff resources.

Emission Impacts

Rule 304 is a fee rule and its amendment is not expected to impact emissions.

Environmental Review and Compliance

The District's Environmental Coordinator has determined that the proposed amendments to Rule 304 are exempt from CEQA. Public Resources Code section 21080(b)(8) and section 15273 of the state CEQA Guidelines provide that the adoption or amendments of fee rules are not subject to CEQA. To claim this exemption the District must find that the amendments are for the purpose of meeting operating expenses. The proposed amendments to Rule 304 establish a fee schedule to recover the expenses of implementing District responsibilities for the Asbestos ATCM for Construction, Grading, Quarrying, and Surface Mining Operations.

Public Comments

A public workshop was held on February 17, 2005 to discuss changes to the Rule. Notice of the workshop was published in the newspaper, copies of the public notice were sent to businesses that may be affected as identified in the Yellow Pages and to others who requested it and notification was made through the BIA's weekly electronic newsletter. The notice, rule, and staff report were also posted on the District's website. Staff received comments at the public workshop. Comments and responses from the public workshop are

included in Attachment D, Comments and Responses.

Comments Received since the Public Notice

As of April 7 2005, no further comments have been received.

Conclusion

The proposed amendments to Rule 304 are necessary to enable the naturally occurring asbestos program to provide the resources to ensure compliance with the Asbestos Air Toxic Control Measure, protect public health, and improve air quality in the Sacramento region. Therefore, Staff recommends that the Board approve Version B of Rule 304 and continue consideration of approval of Version C to the May 26, 2005 meeting.

Respectfully Submitted

Larry Greene; Air Pollution Control Officer
Sacramento Metropolitan Air Quality Management District

Attachments

ATTACHMENT A

Rule 304 – Plan Fees

Version A

ATTACHMENT B

Rule 304 – Plan Fees

Version B

ATTACHMENT C

Rule 304 – Plan Fees

Version C

ATTACHMENT D

Staff Report Rule 304 – Plan Fees

ATTACHMENT E

Comments and Responses

ATTACHMENT F

**Report of Plans Submitted but Not Yet Accepted
Prior to April Board Hearing**

ATTACHMENT G

Evidence of Public Notice Rule 304 – Plan Fees

ATTACHMENT H
Resolution—Rule 304
Version A

ATTACHMENT I
Resolution—Rule 304
Version B