

# **SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT**

## **STAFF REPORT**

### **RULE 304 – PLAN FEES**

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## **INTRODUCTION**

The state's Asbestos Airborne Toxics Control Measure (ATCM) for Construction, Grading, Quarrying, and Surface Mining Operations affects areas where naturally occurring asbestos may be found, including the eastern portion of Sacramento County. The ATCM requires the Sacramento Metropolitan Air Quality Management District to review and approve asbestos dust mitigation plans, geologic evaluations, and to inspect sites to ensure that the plans are being followed. At this time, the District has no way of recovering costs associated with the program requirements. Staff is proposing to amend the plan fee rule to establish a fee schedule for the naturally occurring asbestos (NOA) program. Staff is also proposing a provision for annual fee adjustments to be based on the Consumer Price Index (CPI).

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## **BACKGROUND**

In 2001, the California Air Resources Board adopted an Asbestos ATCM for Construction, Grading, Quarrying, and Surface Mining Operations. Asbestos is a term used for several types of naturally-occurring fibrous minerals found in many parts of California. Serpentine rock often contains chrysotile asbestos. Serpentine rock, and its parent material, ultramafic rock, are abundant in the Sierra foothills. It is typically grayish-green to bluish-black in color and may have a shiny appearance. The amount of asbestos that is typically present in these rocks range from less than 1% up to about 25%, and sometimes more. Asbestos is released from ultramafic and serpentine rock when it is broken or crushed. This can happen when cars drive over unpaved roads or driveways which are surfaced with these rocks, when land is graded for building purposes, or at quarrying operations. It is also released naturally through weathering and erosion. Once released from the rock, asbestos can become airborne and may stay in the air for long periods of time.

Asbestos is classified as a known human carcinogen by State, federal, and international agencies. State and federal health officials consider all types of asbestos to be hazardous. No safe asbestos exposure level has been established. Asbestos fibers can penetrate body tissues and remain in the lungs and the tissue lining of the lungs and abdominal cavity. The fibers that remain in the body are thought to be responsible for asbestos-related diseases. The illnesses caused by asbestos may not be observed for twenty or more years.

The SMAQMD is responsible for protecting public health by ensuring the ATCM requirements are met. For areas subject to the ATCM, this involves reviewing dust mitigation plans to ensure they are correct and adequate, performing regular site inspections to verify that each dust mitigation plan is being followed, and inspecting sites that are subject to the ATCM's requirements even though they are not required to submit a dust mitigation plan. The SMAQMD has been made aware of the presence of naturally-occurring asbestos (NOA) in the Empire Ranch area of Folsom, but it may also be present in other parts of the county.

In areas where naturally-occurring asbestos is likely to be found, best available dust mitigation measures must be employed during road construction and maintenance activities, quarrying and surface mining operations, as well as construction and grading operations. Road construction and maintenance operations must use dust control measures for a specified set of emission sources and prevent visible emissions crossing the project boundaries. Some requirements apply only to projects over one (1.0) acre, but many apply to projects of all sizes, from major residential or commercial developments to installing a swimming pool.

SMAQMD approval of the dust mitigation plan is necessary before a local construction or grading permit will be issued. Projects in areas subject to the ATCM also have the option of conducting a

geologic evaluation. If it shows no NOA, that site is not subject to many of the ATCM's requirements. These geologic evaluations must also be submitted to the SMAQMD for review and approval.

Implementing and enforcing the asbestos ATCM creates an additional workload on the District for which there is currently no means of recovering costs. The proposed changes to Rule 304—Plan Fees seek to remedy the situation by recovering costs associated with the ATCM.

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## **ANALYSIS OF PROPOSED FEE SCHEDULE**

The proposed fee schedule is as follows:

1. In cases of financial hardship, a conference with the Air Pollution Control Officer may be requested to discuss a waiver of fee payment.
2. Dust Mitigation Plan (DMP) review and project inspection: \$350 review fee plus \$20 per acre inspection fee. If inspection and related activities require time in excess of 18 hours per 100 acres, a rate of \$116/hour applies.
3. Geologic evaluation review: \$450.
4. Inspection rate of \$116/hour applies when an inspection is conducted on a project not submitting a DMP, including those that have submitted a geologic evaluation or are smaller than one (1.0) acre. For projects of one acre or less, this fee will take effect one year from the rule adoption date.
5. Plans submitted but not yet approved as of the rule adoption date are subject to the fee requirements.
6. If the project size increases from the acreage stated in the DMP, the increase in acreage is subject to the per-acre inspection fee.
7. The cost of additional sampling or analysis deemed necessary by the Air Pollution Control Officer (APCO) shall be charged to the applicant.
8. NOA fees may be adjusted annually to change with the Consumer Price Index (CPI).

Staff is responsible for reviewing DMPs for adequacy and thoroughness. The DMP helps to ensure that asbestos dust is minimized and does not cross the project boundaries, which would endanger the public's health. DMP review typically includes reviewing the initial plan submittal, providing feedback, and reviewing additional submittals or changes until the DMP is complete and ready for approval. Since the ATCM only requires the submittal of a DMP for projects greater than one acre, this fee will only apply to those projects. A typical DMP will require approximately 3 hours of staff time for review and comment until it is suitable for final approval. Based on the time and materials rate established in Rule 301 of \$116 per hour for 3 hours of staff time, the proposed DMP review fee is \$350.

The rule includes a provision that allows the APCO to consider waiving fees in cases of financial hardship. A conference with the APCO may be requested to discuss a waiver of fee payment.

### **Fees for Projects Greater than One Acre**

In addition to review of the DMP, staff must ensure that the stipulations in an approved DMP are being followed at the construction site. The proposed rate to cover necessary inspections and follow-up is \$20 per acre for projects greater than one acre plus an hourly rate of \$116 if actual inspection time exceeds the time allotted. The proposed fee was established by calculating the minimum amount of time that staff expects to spend on inspections, based on the project size, and then determining the cost per-acre. In some cases, more intensive monitoring and inspection is required or the number of weeks for which inspections will be necessary increases. When

inspections are required over and above the base case, the rate of \$116/hour will be charged. (See Appendix for additional data.)

### **Fees for Projects of One Acre or Less**

Projects less than one acre in size are required to comply with the dust mitigation provisions of the ATCM. Staff anticipates inspecting randomly-chosen projects to ensure that they are in compliance with the ATCM. As a result, the proposed rule establishes that projects not required to submit a DMP but required to comply with the ATCM will be charged an hourly rate of \$116 if they are inspected. This fee will take effect one year from the date the rule is adopted.

### **Other Fees and Rule Amendments**

A geologic evaluation of the project site may be submitted that determines no serpentine or ultramafic rock is likely to be found, allowing the project to become exempt from the ATCM's requirements. The necessary review, analysis, and approval are expected to take about 4 hours of staff time for each geologic evaluation. Based on a rate of \$116 per hour, staff is proposing a flat rate of \$450 for each geologic evaluation submitted for approval.

In some instances, the APCO may determine that additional analysis or sampling must be performed. While this is not expected to be a regular occurrence, it may be necessary to re-test or verify samples provided by the applicant or to retain the services of a licensed geologist. In instances such as these, the applicant will be responsible for the cost of the services required by the APCO.

If a project increases in acreage, the per-acre fee must be paid on the additional acreage to cover the additional incremental increase in the cost of the inspections. If project is cancelled or changes are made to the project, refunds will be granted as the rule currently specifies.

By instituting an annual Consumer Price Index (CPI) adjustment of the permit fees, recovery of program costs will be maintained. The CPI adjustment will be incorporated into the annual budget process in the same manner as the Rule 301 fees, which require public notification and two Board hearings. Any fee increase that is approved with the budget will be effective once it has been approved by the Board and APCO. The CPI-based fee increase will be based on the previous year's CPI data since current information may not be available at the time of the Board hearing.

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## **SUMMARY OF RULE AMENDMENTS**

**Section 101:** Remove incorrect reference to Health and Safety Code Section 39612.

**Sections 110 and 302:** Amended to differentiate between fees associated with renovation and demolition and naturally occurring asbestos. Added exemption that provides the opportunity to discuss a possible waiver of fee payment with the APCO.

**Section 303:** Adds the fee schedule as follows:

**Section 303.1:**

- DMP fee of \$350
- Geologic evaluation fee of \$450
- Plans not yet approved by rule adoption date are subject to the fees

**Section 303.2:**

- Projects for which a DMP has been submitted pay \$20/acre inspection fee
- Increase in the acreage is subject to the per-acre fee
- Specifies inspection times for projects of different sizes; if inspection time exceeds that, rate of \$116 per hour applies
- Inspection rate of \$116/hour for projects without a DMP

**Section 303.3:** Adds an analysis, sampling, and testing fee.

**Section 303.4:** Specifies that the NOA plan fees shall be adjusted annually according to the change in the Consumer Price Index.

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**SOCIOECONOMIC IMPACT**

**Cost to Industry:** California Health and Safety Code Section 40728.5 requires a district to perform an assessment of socioeconomic impacts before adopting, amending, or repealing a rule that will significantly affect air quality or emission limitations. The district board is required to actively consider the socioeconomic impact of the proposal and make a good faith effort to minimize adverse socioeconomic impacts. Proposed amendments to Rule 304 are exempt from the requirements of this section since the amendments are administrative and do not affect air quality or emission limitations.

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**COST IMPACTS**

**Type of Industry or Business, Including Small Business, Affected:** The rule affects construction and development projects in eastern and southeastern Sacramento County, including housing, shopping centers, as well as city, county, and state projects. Large projects will primarily be impacted by the rule, but inspection fees applied to projects smaller than one acre may impact small businesses. Since that fee only applies if the project is actually inspected, few of the total affected projects are likely to be small businesses. The average expected cost to a small contractor or a small business is expected to be one 3-hour inspection at \$116/hour for a total cost of \$348. This fee is not scheduled to be implemented until one year after the rule's adoption.

It is expected that primarily large projects will be impacted by the fees proposed in the rule amendment. The proposed fees needed to recover the costs of the SMAQMD's naturally occurring asbestos program are very small in comparison to the overall project budget for the vast majority of projects expected to be impacted. While the inspection cost to small projects not submitting a DMP would be a larger percentage of the project cost than for a large project, only a fraction of the total number of projects will actually be inspected. The resulting impact on employment and economy of the region would be minimal.

**Range of Probable Costs:** Projects not submitting a DMP would pay an hourly inspection rate only when inspected. Typical cost for this inspection is expected to be \$348. The smallest project affected by the proposed DMP fees would be one acre. This project would pay a fee of \$370 for review and approval of a dust mitigation plan including the \$20/acre inspection fee. If the project owner or operator chose to complete a geologic evaluation to become exempt from the requirements of the ATCM, the fee for review and approval of the geologic evaluation would be \$450.

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. If a geologic evaluation were submitted for this same project, the fee would be a flat \$450. However, the cost to have a geologic evaluation prepared would be significant, and approval of the geologic evaluation is dependent on a determination that the area is not likely to contain any asbestos or serpentine or ultramafic rock anywhere in the project area. Staff expects that most larger projects subject to the ATCM and located in an area where asbestos or asbestos-containing rock may be found would submit a dust mitigation plan, thus paying the review fee plus the per-acre fee.

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.

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### **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.

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### **HEALTH AND SAFETY CODE REQUIREMENTS**

California Health and Safety Code Section 41512.5 allows a district board to "adopt a schedule of fees applicable to emission sources not included within a permit system....The fees shall not exceed the estimated costs of reviewing, monitoring, and enforcing the plan for which the fees are charged." As such, fees for reviewing dust mitigation plans for naturally-occurring asbestos are limited to what the vast majority of plans will cost the District to review and enforce. The rule establishes a flat fee for review of DMPs. Inspection fees for projects submitting DMPs are on a sliding, per-acre scale. Some projects may incur larger costs for more inspections, thus additional fees on a per-hour basis may be assessed to recover the cost to the district of implementing the ATCM.

Inspection fees for projects less than one acre not required to submit a DMP will be charged on an hourly basis for time actually spent. Section 42311(g) of the Health and Safety Code allows a district to adopt, "by regulation, a schedule of fees to be assessed on areawide or indirect sources of emissions which are regulated, but for which permits are not issued, by the district to recover the costs of district programs related to these sources." Projects undertaken in areas likely to contain NOA are unpermitted areawide sources of emissions that are regulated by the ATCM. The proposed rule authorized by this section of the Health and Safety Code will establish a fee that charges these sources of emissions based on actual time spent.

**FINDINGS**

According to Section 40727(a) of the California Health & Safety Code, prior to adopting or amending a rule or regulation, an air district's board must make findings of necessity, authority, clarity, consistency, nonduplication, and reference. The findings must be based on the following:

1. Information presented in the District's written analysis, prepared pursuant to Health and Safety Code Section 40727.2,
2. Information contained in the rulemaking records pursuant to Section 40728 of the California Health & Safety Code, and
3. Relevant information presented at the Board's hearing for the rule.

<b>FINDING</b>	<b>FINDING DETERMINATION</b>
<b>Authority:</b> The District must find that a provision of law or of a state or federal regulation permits or requires the District to adopt, amend, or repeal the rule.	The District is authorized to adopt a fee cost recovery rule by Health and Safety Code Sections 40702, 41080, 41512.5, and 42311(g). (Health and Safety Code Section 40727(b)(2)).
<b>Necessity:</b> The District must find that the rulemaking demonstrates a need exists for the rule, or for its amendment or repeal.	The rule amendment is required in order to recoup costs of the District's obligation to enforce the Asbestos ATCM put forth in the California Code of Regulations, Title 17, Section 93105 as required by Health and Safety Code Section 39666 of an alternative measure as provided in 39666(d). (Health and Safety Code 40727(b)(1))
<b>Clarity:</b> The District must find that the rule is written or displayed so that its meaning can be easily understood by the persons directly affected by it.	The District has reviewed the rule and determined that it is clear. In addition, there is no evidence that the persons affected by the rule can not understand the rule. (Health and Safety Code Section (40727(b)(3))
<b>Consistency:</b> The rule is in harmony with, and not in conflict with or contradictory to, existing statues, court decisions, or state or federal regulations.	The proposed rule does not conflict with and is not contradictory to existing statues, court decisions, or state or federal regulations. (Health and Safety Code Section 40727(b)(4))
<b>Non-Duplication:</b> The District must find that either: 1) The rule does not impose the same requirements as an existing state or federal regulation; or (2) that the duplicative requirements are necessary or proper to execute the powers and duties granted to, and imposed upon the District.	The District has found this rule amendment does not duplicate any existing state or federal regulations. It is an administrative fee rule. (Health and Safety Code Section 40727(b)(5)).
<b>Reference:</b> The District must refer to any statue, court decision, or other provision of law that the District implements, interprets, or makes specific by adopting, amending or repealing the rule.	Health and Safety Codes Sections 41080, 41512.5, and 42311(g). (Health and Safety Code Section 40727(b)(6)).
<b>Additional Informational Requirements:</b> In complying with HSC Section 40727.2, the District must identify all federal requirements and District rules that apply to the same equipment or source type as the proposed rule or amendments.	Rule 304 is a fee rule and does not affect emissions. Therefore, a written analysis of federal regulations and other District rules is not required. (Health and Safety Code Section 40727.2(g)).

## **APPENDIX—Cost Calculations**

The per-acre fee was developed as described below:

100 acre project size  
Two projects inspected concurrently for a total inspected area of 200 acres  
1 inspection per week  
12 weeks on average expected for grading  
3 hours per inspection  
\$116 per hour time and materials rate

Total projected cost: \$4176  
( $\$116/\text{hr} * 3 \text{ hours/inspection} * 1 \text{ inspection/week} * 12 \text{ weeks}$ )

Divide cost by 200 acres =  $\$4176/200 = \$20.88$  per acre, which has been rounded down to \$20.

A baseline inspection time of 18 hours per 100 acres was developed as follows:

$(3 \text{ hours/inspection} * 1 \text{ inspection/week} * 12 \text{ weeks}) = 36$  total hours for inspecting 200 acres, or 18 hours per 100 acres.