

# **Sacramento Metropolitan Air Quality Management District**

## **STAFF REPORT**

### **RULE 310 – PERMIT FEES – AGRICULTURAL SOURCE**

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## **INTRODUCTION**

The District is proposing to adopt new Rule 310, PERMIT FEES – AGRICULTURAL SOURCE, in order to set fees for recovering the cost of permitting agricultural stationary sources. The rule will set a schedule of fees similar to those currently required of stationary sources. This rule is being adopted in conjunction with new Rule 215, AGRICULTURAL PERMIT REQUIREMENTS AND NEW AGRICULTURAL PERMIT REVIEW.

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## **BACKGROUND**

In September 2003, California signed into law Senate Bill 700 (SB 700) which amended the air pollution control requirements in the California Health and Safety Code, in particular Section 42301.16, to include regulatory requirements for agriculture sources. In order to comply with the requirements of SB700, Staff is developing two new rules for the Board to consider. First, there is a new rule, Rule 215, establishing an agricultural permit system. This rule will require agricultural stationary sources with actual emissions equal to or exceeding one-half of any applicable emissions threshold for a major stationary source to obtain an agricultural permit from the District. It also requires agricultural sources subject to Rule 496, LARGE CONFINED ANIMAL FACILITIES and boilers/process heaters located at agricultural sources that are subject to Rule 411, NOX FROM BOILERS, PROCESS HEATERS AND STEAM GENERATORS that are applying for a low fuel usage exemption to apply for a permit. The second rule, this new Rule 310, establishes a fee schedule that will apply to the new agricultural permits to cost recover administering the permit program. The fee structure is similar to the existing fee schedule for non-agricultural sources, although there are some differences that reflect the differences in the two permitting systems.

Staff held three public meetings in early December 2004 in order to promote public awareness of the proposed rules and rule amendment. Staff presented the rule concepts and outlined the rule impacts for the farmers and growers who attended. A public workshop on the proposed rule language was held on July 6, 2006 (see Attachment B.)

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## **PROPOSED FEE REQUIREMENTS**

The rule sets fee schedules for the permitting and renewal of agricultural sources. There are fee schedules established for each type of equipment/process anticipated to operate at an agricultural stationary source. The rule's structure and fees are based on Rule 301, PERMIT FEES – STATIONARY SOURCES.

Rule 301 was last amended to adjust fees for cost recovery on October 25, 2001. There was an adjustment of 15% across the fees at that time and language was added allowing the Air Pollution Control Officer to adjust fees yearly based on the Consumer Price Index. Rule 301 is

the rule that cost recovers the stationary source permitting program. The new agricultural permitting program is anticipated to have similar program costs to the stationary source program and, therefore, the new fee rule will be based on this similar fee structure. The rule language has only been adjusted for the difference in the two permitting programs. See Attachment A (page 6) for a detailed summary of the rule.

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## HEALTH AND SAFETY CODE REQUIREMENTS

California Health and Safety Code Section 42311 allows a district board to adopt a schedule of annual fees for the evaluation, issuance, and renewal of permits to cover the cost of district programs related to District permitting programs. The fees assessed cannot exceed for any fiscal year, the actual costs for the district program. The District Board is required to hold a public hearing prior to holding a meeting to adopt the regulation. At least 10 days prior to the first meeting, the District Board shall make available information indicating the amount of cost, or estimated cost, required to provide the service for which the fee is charged and the revenue sources anticipated to provide the service.

The agricultural permitting program is a subset of the overall stationary source permitting program. Rule 310 is being proposed to help recover the costs from the agricultural permitting program specifically. Based on the District costs from the staff report for Rule 215, the anticipated staff costs from the agricultural permitting program are as follows:

<b>Agricultural Permitting Program Costs</b>
\$30,224

These costs include engineer and field inspection staff costs fully loaded and include the costs attributable to the program from rule development, air monitoring, emission inventory, Business Environmental Resource Center and the Hearing Board.

The fees that are anticipated to be collected from the new fee rule are:

<b>Initial Permitting</b>	<b>Permit Renewals</b>	<b>Total</b>
\$4,417	\$8,035	\$12,452

The fees collected from the agricultural permitting program will be included in the budget with the fees from the overall District permitting program. Permit fees do not cost recover the overall permitting program. Revenues from EPA 105 Grants and ARB Subvention are used to help fund the overall permitting programs.

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## SOCIOECONOMIC IMPACT/COST IMPACTS

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 new Rule 310 is exempt from the requirements of this

section since the rule is administrative and does not affect air quality or emission limitations. Nonetheless, Staff prepared an overview of the cost impacts associated with the proposed new rule. These impacts are discussed below.

**Type of business affected by the rule:** Rule 310 will apply to any agricultural stationary source that is required to obtain a permit pursuant to Rule 215. Staff is estimating that there could be 4 agricultural stationary sources affected by the rule including farming operations with greater than 800 acres using diesel engines to irrigate, a turkey ranch with greater than 100,000 birds, and dairies with greater than 1,000 milking cows.

**Range of probable costs:** There are two fees established in the rule, the initial fee and the renewal fee. The initial fee is what is charged when an application is submitted for an equipment/process for the first time. This fee is generally based on the equipment type and size. The renewal fee is what is charged to the source yearly to keep the permit valid. The annual permit renewal fees can be composed of up to three separate fees.. The annual permit renewal fee will always have an equipment-based (size and type) fee and it may also include an emissions fee, and a re-inspection fee. If source testing or additional analysis is required either during the initial permitting or annually, then both the initial fee and the renewal fee may include those costs.

The table below summarizes the fees that different types of agricultural emission units may anticipate. The cost to an affected agricultural stationary source will vary from one operation to another depending on the type of operation and the number of emission units involved.

<b>POTENTIAL FEES</b>			
<b>Type of Agricultural Stationary Source</b>	<b>Initial Fee Existing Equipment</b>	<b>Initial Fee New Equipment</b>	<b>Renewal Fee</b>
Farm with 800 acres irrigated with diesel engines (assumed one permit for stationary engines)	\$2355	\$4710	\$4083
Poultry Ranch (assumed one confined animal facility permit)	\$589	\$1178	\$1767
Dairy with boiler (assume one boiler permit)	\$295	\$589	\$349
Vineyard with boiler (assume one boiler permit)	\$295	\$589	\$349

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## **ENVIRONMENTAL REVIEW AND COMPLIANCE**

The District's Environmental Coordinator has determined that proposed Rule 310 requirements 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. Proposed Rule 310 establishes a fee schedule to recover the expenses of implementing District responsibilities for the permitting of agricultural stationary sources.

## PUBLIC WORKSHOP

Staff held a public workshop to discuss proposed Rule 310 on July 6, 2006. The meeting was held in the evening and at a location that was more accessible to the affected sources. Staff answered and addressed comments and questions at the workshop as well as in the rule and staff report. Additionally, staff met individually with all affected sources to tour their facilities and discuss the requirements of the rule. All associated comments and responses have been incorporated into Attachment B of the staff report.

## 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.

FINDING	FINDING DETERMINATION
<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, and 42311. (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 proposed rule is required in order to recoup costs of the District's obligation to permit and inspect agricultural operations as required by Health and Safety Code Sections 42301.16, 42301.17, and 42301.18. (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 statutes, court decisions, or state or federal regulations.	The proposed rule does not conflict with and is not contradictory to existing statutes, 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	The District has found this rule amendment does not duplicate any existing state or federal

<b>FINDING</b>	<b>FINDING DETERMINATION</b>
<p>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.</p>	<p>regulations. It is an administrative fee rule. (Health and Safety Code Section 40727(b)(5)).</p>
<p><b>Reference:</b> The District must refer to any statute, court decision, or other provision of law that the District implements, interprets, or makes specific by adopting, amending or repealing the rule.</p>	<p>Health and Safety Codes Sections 41080, and 42311. (Health and Safety Code Section 40727(b)(6)).</p>
<p><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.</p>	<p>Rule 310 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)).</p>

**ATTACHMENT A  
 SUMMARY OF PROPOSED AMENDMENTS**

<b>NEW SECTION NUMBER</b>	<b>EXISTING SECTION NUMBER</b>	<b>PROPOSED CHANGES</b>
101		Set the purpose of the rule to provide a mechanism for collecting fees to recover the cost for implementing Rule 215, AGRICULTURAL PERMIT REQUIREMENTS AND NEW AGRICULTURAL PERMIT REVIEW.
102		Clarifies that public agencies are required to pay fees.
200		This section sets the definitions for the rule to be those terms defined by Rule 215, AGRICULTURAL PERMIT REQUIREMENTS AND NEW AGRICULTURAL PERMIT REVIEW, except where defined within this section of this rule.
201		Defined “canceled application” consistent with Rule 301, PERMIT FEES – STATIONARY SOURCES.
202		Defined “change of location” consistent with Rule 301, PERMIT FEES – STATIONARY SOURCES.
203		Defined “change of ownership” consistent with Rule 301, PERMIT FEES – STATIONARY SOURCES.
204		Defined “emergency/standby equipment” consistent with the exemption for emergency equipment in Rule 202, NEW SOURCE REVIEW. Emergency/standby equipment fall under the general farming/miscellaneous equipment fee schedule rather than the fuel burning/IC Engine fee schedules.
204		Defined “initial permit fee” consistent with Rule 301, PERMIT FEES – STATIONARY SOURCES.
205		Defined “permit renewal fee” consistent with Rule 301, PERMIT FEES – STATIONARY SOURCES.
301		Sets the fee for the initial permit for existing agricultural emission units. Existing agricultural emission units, those that were in operation within the county prior to January 1, 2004 that complied with the application compliance timeframe in Section 402 of Rule 215 AGRICULTURAL PERMIT REQUIREMENTS AND NEW AGRICULTURAL PERMIT REVIEW shall only pay the renewal fee in Section 307 rather than the initial fee.
302		<p>This section requires applicants of new or modified agricultural sources to pay the initial permit fee in Section 307 for the issuance of the permit except in the following cases:</p> <ol style="list-style-type: none"> <li>1. When a complex application is submitted, the applicant will pay an initial fee that is based on the actual hours spent by staff in evaluating and verifying compliance. District staff has to notify the applicant within 30 days of receiving the application and the applicant may request a conference to review the cost estimate.</li> <li>2. When the application involves a modification of a fuel burning device or an IC engine, then the applicant shall pay the initial fee based on the rating of the new equipment or on the increase</li> </ol>

		<p>in rating of the modified equipment.</p> <p>3. When the application is filed for a revision of conditions not involving a modification of the equipment, the applicant shall pay a fee of \$294.</p> <p>4. When an application is file for a modification to an emission unit subject to the fee schedule for confined animal facilities or general farming/miscellaneous equipment, the applicant shall pay a fee equivalent to the renewal fee column.</p>
303		<p>This section requires every holder of a permit to pay an annual renewal fee. The annual renewal fee is the total of the permit renewal fee from the schedules in Section 307 and the emission fee based on the tons per year emitted by the source in the prior year. This section also allows the permit holder to request a common renewal date and in that case the renewal fees will be prorated accordingly.</p>
304		<p>This section states that there will be no refunds for cancellation or denying of the permit. Additionally, these fees cannot be applied to any other application. The District, however, will refund upon request by the owner or operator of an agricultural source, any fees that were deposited under Section 302.2 that are not used prior to an application being withdrawn.</p>
305		<p>This section states that if the permit is revoked, the permit renewal fee applicable to that portion of the year during which the permit is invalid will be not refunded nor will it be applied to any other application.</p>
306		<p>This section states that when an application for a change of ownership/location is filed for a valid permit, the applicant shall pay a permit fee equivalent to the permit renewal fee in Section 303.</p>
307		<p>This section contains the initial and permit renewal fee schedules.</p>
307.1		<p>This section states that if more than one fee schedule is applicable, then the governing schedule shall be the higher. It also states that when a group of machines are on a single permit, then the fee shall be based on the total rating of the group.</p>
307.2		<p>This section sets the fee schedule for fuel burning equipment such as boilers and incinerators. It does not include IC engines in this schedule. The fees that would be due under this schedule would be the total of the fees due from the other fuel burning equipment (Section 307.2.a.) and the total of the incinerator (Section 307.2.b.).</p>
307.3		<p>This section sets the fee schedule for IC engines.</p>
307.4		<p>This section sets the fee schedule for confined animal facilities. The fee was set equivalent to the fee for an IC engine permit with 250 to 499 hp since the anticipated work load is similar.</p>
307.5		<p>This section sets the fee schedule for general farming/miscellaneous equipment. This schedule would apply to any equipment that was not covered under the fuel burning schedule or the IC engine schedule. This fee is made up of a fee for any other equipment, except gasoline dispensing, and a fee for gasoline dispensing based on whether the exempt is exempt from Phase II vapor recovery. The</p>

		fee is the total of the two components. This fee schedule would also include standby/emergency equipment, including standby/emergency IC engines.
307.6		This section sets the fee for the rate for time and materials which is used for complex permit applications, additional hours for source test reports, reinspection fees, and large confined animal facility emission mitigation plan updates.
308		This section state that any permit granted by the Hearing Board after denial by the Air Pollution Control Officer is subject to this Rule.
309		This section sets a fee of \$1178 for observing the source test and evaluating the source test results thereafter. If there are multiple source tests performed and the results submitted in one consolidated report, then a source test fee of \$1178 will apply to the first 10 hours of District work. Each additional hour or portion thereof required for reviewing the source test will be charged the time and materials labor rate established in Section 307.5.
310		This section requires an applicant to pay the cost of collecting samples, making the analysis and preparing the necessary reports if the Air Pollution Control Officer finds that an analysis is required. The applicant shall receive an estimate of the actual cost of the work and the applicant may provide additional information that would reduce the time spent by District staff. The fee shall be reduced accordingly.
311		This section requires the applicant to pay a fee if staff is unable to verify compliance while on an inspection if it is due to circumstances beyond the District's control. The fee to be paid is assessed at the time and materials rate in Section 307.5.
312		This section requires that owner/operator of an agricultural source that is subject to Rule 496, LARGE CONFINED ANIMAL FACILITY, to pay a fee based on the time spent in evaluating the mitigation plan update and the time and materials labor rate in Section 307.5.
313		This section requires permit applicants that are subject to public notification requirements under Rule 215, AGRICULTURAL PERMIT REQUIREMENTS AND NEW AGRICULTURAL PERMIT REVIEW or Rule 496, LARGE CONFINED ANIMAL FACILITIES to pay the cost of publishing the notice.
401		This section sets the procedure for notifying an applicant that a fee is due and payable. If an applicant does not pay by the due date , then the fee is increased by one half the amount and the applicants will be notified by mail. If the fee is still unpaid after 30 days of the notification, then the application/permit will be canceled. The canceled application/permit will be re-instated if the fees are paid.
402		This section sets the procedure for the Air pollution Control Officer to make an annual CPI-based permit fee adjustment upon Board approval of the District's budget.
403		This section sets a process for an applicant to request a negotiated payment schedule with the Air Pollution Control Officer when there is an undue financial hardship.

## **ATTACHMENT B PUBLIC COMMENTS**

### **Public Workshop Comments (July 6, 2006)**

**Comment #1:** The new rules require more permits and fees, when is it going to stop? The fees start out low and go up and up. What about cars and other sources of pollution?

**Response:** The District is required to adopt the proposed rules by state and federal laws. The fees are necessary to recover the costs of implementing the permit programs. Staff is proposing to recover only part of the costs of implementing this program to be consistent with the fees established for other, similar equipment at industrial and commercial sources. The District has rules to reduce emissions from many other stationary sources of air pollution. However, the District has limited authority over cars and other mobile sources, although we have incentive programs to reduce emissions from these sources. The state and federal air quality agencies have required significant control of vehicular emissions but clearly growth in the number and use of motor vehicles is a significant (about 70% of ozone) part of our air quality problem here in Sacramento.

**Comment #2:** What is the “public notification fee” for? Will it include a public hearing - we get more concerned about that requirement.

**Response:** State law requires public notification of preliminary and final decisions on certain permit actions. The fee covers the cost of publishing the notices in the newspaper. Currently that cost is about \$400. There is no specific public hearing requirement or approval by the Board of Directors, although a public meeting could be requested by interested public.

**Comment #3:** How much state and federal funding does the District receive, and what is the revenue used for?

**Response:** The District budget for the upcoming fiscal year is approximately \$37,700,000. We receive approximately \$1,354,000 in federal funding and we negotiate an agreement with EPA as to what air quality programs that grant will support. We also receive state grants that can be used more broadly and do support the permit and compliance programs. Many funding sources are restricted and must be used to support specific program areas including the mobile source incentive programs. Permit fees are used to recover the costs to implement state and federal laws pertaining to stationary sources including agricultural sources. These permit fees are set based on the hours associated with permitting and inspecting agricultural sources.

**Comment #4:** If I need to get a permit what fees will apply to my facility?

**Response:** Please refer to the table titled “Potential Fees” on page 4 of the Rule 310 Staff Report.

**Comment #5:** When will the rule be adopted?

**Response:** The four proposed rules are scheduled to be considered for adoption by the Board of Directors at a public hearing on August 24, 2006.

**Comment #6:** Can sources set up one-on-one meetings with District staff?

**Response:** Yes. We have contacted all of the affected sources, and visited all but two before the workshop, to discuss the specific requirements. We will arrange additional individual meetings if requested.

**Comment #7:** Are there more rules coming for agricultural sources?

**Response:** As part of SB700 a particulate control measure that applies to emissions of particulate matter from agricultural practices such as tilling, disking, cultivation, and the raising of animals will be proposed later this year. We are evaluating the control measure adopted by San Joaquin Valley APCD as a basis for our proposal.

#### **One-on-one meeting with Nilsen Farms (July 6, 2006)**

**Comment:** The permit fees should recognize the difference between a facility that has fully implemented measures to reduce odors and emissions and is in full compliance and a facility that is not as clean. The proposed fee of \$2355 is too high for a compliant facility.

**Response:** After visiting the affected large confined animal facilities, staff agrees that the original cost estimate is too high. Staff has revised the cost estimate and is proposing a fee of \$589, with an additional hourly fee if the actual hours spent exceed 10 hours for an initial permit and 5 hours for a renewal. This additional fee would potentially recognize the difference between compliant facilities and non-compliant facilities.