

**SACRAMENTO METROPOLITAN
AIR QUALITY MANAGEMENT DISTRICT**

For Agenda of **July 24, 2008**

To: Board of Directors
Sacramento Metropolitan Air Quality Management District

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

Subject: Adopt a Resolution Approving New Rule 311, Registration Fees for Agricultural Compression Ignition Engines

Recommendations

1. Determine that the adoption of new Rule 311 is exempt from the California Environmental Quality Act (CEQA);
 2. Decide whether to include one of the options in the proposed rule; and
 3. Approve the attached resolution adopting new Rule 311.
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Executive Summary

Staff is proposing new Rule 311, REGISTRATION FEES FOR AGRICULTURAL COMPRESSION IGNITION ENGINES. The rule will set fees for recovering the cost of implementing and enforcing a state-mandated Air Toxic Control Measure (ATCM) registration program for compression ignition engines used in agricultural operations. This is the second of the two hearings required under Health and Safety Code Section 41512.5 for adoption of a fee rule.

During the first public hearing on April 24, 2008, the Board directed Staff to examine ways to reduce the renewal fees by using alternative enforcement programs; including self-certification. In response to this request, Staff has included two additional options to the original proposal for the Board's consideration.

The ATCM was created to reduce the emissions of diesel particulate, a toxic air contaminant. Additionally, this regulation is expected to reduce NOx by 65 to 150 tons per year for the District. The proposed fees in this rule will be used to support the District's enforcement of the ATCM. Agricultural operations that are not in compliance with the ATCM will pose a health risk to the community. The potential cancer risk caused by emissions from compression ignition engines can range from 183 to 1 per million. Depending upon the enforcement option adopted, agricultural operations could be out of compliance for 3, 6, or 20 years between inspections. Based on other enforcement programs, Staff estimates that noncompliance could range between 10 and 15%.

Staff recommends adoption of the original fee proposal. That is consistent with fees and inspection frequency for programs affecting other businesses. If the Board does not adopt that proposal, staff alternatively recommends Option 1. Option 1 reduces the inspection frequency by half from staff's original proposal. Option 2 reduces the inspection frequency to once in 20 years for self certified sources. Sources that do not self certify will be inspected once every 3 years but will pay higher renewal fees. This program will reduce carcinogenic air contaminants emitted from compression ignition engines by ensuring that older engines are replaced or modified. Staff is not recommending Option 2 because the potential long term non-compliance that may occur because of avoided inspections could cause a possible health risk for the farmer or near by residents.

Attachments

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Background

On November 16, 2006, CARB amended the Air Toxic Control Measure (ATCM) for Stationary Compression Ignition (CI) Engines to include standards for in-use engines used in agricultural operations, which became effective October 18, 2007. In order to ensure compliance with the new standards, the ATCM requires CI engines used in agricultural operations to be registered with the local district. The ATCM (Title 17 of the California Code of Regulations, Section 93115.8(d)) requires the owner/operator of CI engines used in agricultural operations to pay fees necessary to recover the District's costs to implement Section 93115.8 of the ATCM.

Proposed Rule 311 will recover the District's cost of implementing and enforcing Section 93115.8 of the ATCM.

Summary of Proposed Rule and Options

The rule establishes the initial registration and annual renewal fees for engines that must

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submit registration information pursuant to Section 93115.8(c) of the ATCM. An exemption is provided for engines permitted with the District. The rule also exempts engines from paying annual renewal fees once the engine has met the final emissions standards of the ATCM based on the horsepower, certification, and use of that engine. The proposed registration fees are as follows:

- Initial registration fees
 - Carl Moyer Engines: \$151
 - Non-Moyer Engines
 - First engine registered at a source: \$300
 - All other engines: \$155

If an owner/operator chooses to use a control device on an engine to comply with the ATCM requirements, the owner/operator will pay fees equal to those for a permitted agricultural engine (consistent with Rule 310, Permit Fees – Agricultural Source). Additionally, a source testing fee is established for engines with unverified control devices.

Other provisions in the rule include consumer price index adjustments, notification requirements, and fee submission requirements.

The renewal fees will be dictated by the method of enforcement used by the District. Staff has developed two additional rule language options based on different enforcement programs for the Board to consider.

Original Proposal: The original proposal brought before the Board on April 24, 2008 is based on 33% of registered engines being inspected each year. The renewal fees with this type of enforcement would be \$169 per year for the first engine at a facility and \$105 per year for all other engines at that facility. Under this proposal, agricultural operations could be out of compliance with the ATCM for up to three years before receiving an inspection.

Option 1: Inspections would be performed for 15% of registered engines per year. The renewal fees with this type of enforcement would be \$86 per year for the first engine at a facility and \$53 per year for all other engines at that facility. Under this option, agricultural operations could be out of compliance with the ATCM for nearly seven years before receiving an inspection.

Option 2: Staff created Option 2 based on a suggestion from a Board member to examine the self certification provisions of the City of Sacramento's Rental Housing Inspection Program. The purpose of the City of Sacramento Rental Housing Inspection Program is to ensure that rental housing units are in compliance with the minimum health and safety housing codes. An initial inspection is performed for each parcel that contains rental units, and at least 10% of rental units on that parcel are inspected. If the unit passes the initial inspection, the owner will be allowed to self-certify that they will meet the minimum standards for future years and will be given a discounted annual fee. Units that do not pass the initial inspection process are subject to annual inspections.

Five percent of all self-certified parcels will be inspected annually to verify self-certified parcels are maintaining the minimum standards. The Rental Housing Inspection Program is fundamentally different from the one Staff has proposed because the rental housing tenants can file complaints with the City if their housing unit has problems. City staff will conduct physical inspections in response to complaints. Therefore, total inspections performed per year for the Rental Housing Inspection Program is greater than 5%.

Owners/operators who submit an annual self-certification form within 45 days of the date on the invoice would be assessed a renewal fee of \$47 per year for the first engine at a facility and \$26 per year for all other engines at that facility. Inspections would be performed for 5% of all self-certified engines. If a self-certification form is not submitted before the deadline, the original proposed fee and associated 3-year inspection program would apply (\$169/\$105 fee to fund inspection). Under this option, agricultural operations that self-certify could be out of compliance with the ATCM for up to 20 years before receiving an inspection.

Impact on Businesses and Public

Rule 311 will apply to any agricultural operation with engines rated over 50 bhp that are required to obtain registration by California Code of Regulations Section 93115.8(c) of the ATCM. Staff estimates that there are approximately 105 different businesses affected and about 232 engines required to submit registration information.

District Impacts

Rule 311 is being proposed to recover the costs of implementing the agricultural engine registration program and enforcing the ATCM requirements for agricultural engines. Execution of the District's responsibilities as required by the ATCM will require additional staff time to evaluate the engine registration information, provide assistance and outreach to the affected sources, and ensure compliance with the ATCM standards.

Staff estimates the proposed rule will result in additional staff time and costs as shown in the table below.

Enforcement Program	Initial FTE	Enforcement FTE per year	Initial registration costs	Recurring enforcement costs per year
Original Proposal	0.25	0.12	\$59,927	\$28,740
Option 1	0.25	0.053	\$59,927	\$12,933
Option 2	0.25	0.062	\$59,927	\$15,148

Once an engine meets the final emission standards in the ATCM, the District will not be

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performing inspections for the ATCM-compliant engine and will only be maintaining the registration database information; therefore, renewal fees will no longer be required. The annual enforcement staff time and costs will occur until approximately 2016, when the majority of engines will be required to meet the ATCM emission standards.

Initial costs will be incurred primarily in 2008, when existing engines are required to register and be inspected. Additional initial registration costs will be incurred in subsequent years when new engines are installed and when engines are being replaced to meet the new ATCM emission standards. The initial and recurring costs include engineer and field inspection staff costs fully loaded and the administrative support program costs. The proposed fees recover 100% of the District's costs for this program.

Emission Impacts

Rule 311 is an administrative rule and therefore does not directly impact emissions. The fees from this rule will be used to enforce the agricultural portion of the ATCM, which has an impact on air emissions through the regulation of diesel particulate and NOx. It is important for the District to enforce the ATCM because exposure to the level of diesel particulates emitted from noncompliant engines will pose a serious health risk to the community. Based on estimates done by CARB it is expected that this regulation will achieve 65 to 150 tons per year of NOx and 3.5 to 8.1 tons per year of diesel particulate for the District.

Environmental Review and Compliance

Staff finds that proposed Rule 311 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 311 establishes a fee schedule to recover the expenses of implementing District responsibilities for the registration of agricultural compression ignition engines.

Public Outreach

Since the first public hearing Staff has done the following outreach:

- Staff met with Charlotte Mitchell, executive director, and Ken Oneto, president, of the Sacramento County Farm Bureau on June 16, 2008 to discuss to their (June 16, 2008) comments made about the rule and the additional rule options being proposed.
- A notice for the second public hearing was published in the Sacramento Bee on June 23, 2008. The notice was also mailed to attendees of the public workshops, applicable facilities in the 2006 Sacramento County Agricultural Commissioner's pesticide use database, persons who have requested rulemaking notices, those who

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participated in the agricultural permitting rulemaking process and owners/operators who had already submitted engine registration information. The notice was also sent to the Sacramento County Farm Bureau to be distributed to their members.

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Below is a summary of the public outreach undertaken before the first public hearing by Staff to ensure that affected businesses and sources are aware of the Stationary Compression Ignition Engine ATCM and new Rule 311.

- A notice of public workshop was sent on January 12, 2008 to applicable facilities in the 2006 Sacramento County Agricultural Commissioner's pesticide use database, persons who have requested rulemaking notices, those who participated in the agricultural permitting rulemaking process, and to the Sacramento County Farm Bureau for distribution to their members. The notice was also posted as a display ad in the Galt Herald and the Elk Grove Citizen on February 6, 2008.
- Staff presented a summary of the ATCM requirements, engine replacement incentive programs, and distributed proposed Rule 311 and the staff report to the Sacramento County Farm Bureau Board of Directors on January 22, 2008.
- Staff conducted two public workshops on February 11, 2008 in Wilton and on February 12, 2008 in Walnut Grove. The workshops were held in the evening to promote attendance. Additionally, the workshop on February 12th was followed by special hour-long session on incentives for engine replacements.
- Staff discussed the public response from the workshops for proposed Rule 311 with the Sacramento County Farm Bureau Board of Directors on February 19, 2008. Staff also took comments and questions from the Board on the proposed rule.
- Staff presented a revised Rule 311 to the Sacramento County Farm Bureau Board of Directors on March 25, 2008. This version of the rule incorporated changes based on comments received from the workshops and the previous board meeting.
- A notice for the first public hearing was published in the Sacramento Bee on March 24, 2008. The notice was also mailed to attendees of the public workshops, applicable facilities in the 2006 Sacramento County Agricultural Commissioner's pesticide use database, persons who have requested rulemaking notices, those who participated in the agricultural permitting rulemaking process and owners/operators who had already submitted engine registration information. The notice was also sent to the Sacramento County Farm Bureau to be distributed to their members.
- The Board held the first public hearing on April 24, 2008. Staff received comments from the Sacramento County Farm Bureau, local farmers, and Board members.

Changes Made in Response to Comments Prior to First Public Hearing

Staff received several comments from the workshops and the Farm Bureau meetings regarding the anticipated District workload for the registration program and the required enforcement of the ATCM. Staff re-examined the District workload for special groups of engines and reduced fees for engines funded by the Carl Moyer Program and multiple engines located at one facility. Staff also exempted owners and operators from paying renewal fees for engines meeting the final emission standards of the ATCM. All comments, together with the Staff responses, are presented in Appendix B of the June 23, 2008 Staff Report (page 31 of this Board Package). The table below shows a summary of the changes to the fee structure.

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		Workshop	After Workshop
Initial Fee	First Registered Engine	\$300/engine	\$300/engine
	Multiple Registered Engines		\$155/engine
	Moyer Engines		\$151/engine
	Engines with a control device		Agricultural Engine Permit Fees from Rule 310 per engine
Renewal Fee	First Registered Engine	\$169/engine	\$169/engine (one inspection every 3 years)*
	Multiple Registered Engines		\$105/engine (one inspection every 3 years)*
	Engines with a control device		Agricultural Engine Permit Fees from Rule 310 per engine

* An engine meeting the final emission standards in the ATCM, based on its horsepower, certification, and use, will be exempt from paying these renewal fees

Fee Comparison to SJVUAPCD and Other Districts

SJVUAPCD Rule 4702, Internal Combustion Engines – Phase 2 was adopted before the ATCM on 6/21/03 and set standards for agricultural engines as well as requiring registration. Engines used in agricultural operations must apply for permit-exempt equipment registration pursuant to SJVUAPCD Rule 2250. Fees for registration are \$72 for the initial registration and an annual fee of \$48 pursuant to Rule 3155, Permit-Exempt Equipment Registration Fees. Based on conversations with SJVUAPCD staff, the inspection of registered engines occurs once every five years, which is built onto a previous agricultural operation inspection program. The table below shows the fees adopted by some of the SMAQMD other air districts.

	SJVUAPCD	YSAQMD	SBCAPCD	FRAQMD
Initial Fee	\$72	\$174	\$200	\$113
Renewal Fee	\$48 per year	\$87 per year	\$200 per year	\$81 per year
Transfer Fee	NA	\$87	NA	\$33

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Public Hearing Comments

A number of questions and comments that arose during the public hearing concerned the Stationary Compression Ignition Engine ATCM and engine replacement incentive programs. These comments and questions will be addressed in a separate item at of the July 24, 2008 Board meeting.

Staff received a letter from the Sacramento County Farm Bureau (sent by email) on June 16, 2008. Staff met with Farm Bureau representatives that day to discuss the issues addressed in the letter. The Districts responses to this letter are on page 33 of this Board package. Staff has also worked with the Farm Bureau to create a fact sheet that explains in plain English the ATCM requirements, which can be found on page 42 of this Board package.

Rule Language Changes Since Public Notice

Staff has made some changes to the rule language for proposed Option 2 since the public notice for clarification purposes. California Health and Safety Code Section 40726 allows for changes to be made to the rule language if those change are not substantial to significantly affect the meaning of the proposed rule without noticing 30 days before the final board hearing and staff has determined the changes are not substantial. The proposed rule options can be found in appendix C of this board package.

Conclusion

Proposed new Rule 311 will recover the District's cost of administering the requirements of the agricultural portion of the Stationary Compression Ignition Engine ATCM, Section 93115.8, by setting fees for registering an agricultural compression ignition engine with the District. Staff conducted extensive outreach with the agricultural community and reduced many fees in response to comments and suggestions received.

Rule 311 fees will fund an ATCM enforcement program designed to reduce the carcinogenic air contaminants emitted from outdated engines. It is estimated that this regulation will achieve 65 to 150 tons per year of NOx and 3.5 to 8.1 tons per year of diesel particulate for the District. The original proposal would fund an enforcement program consistent with the programs for other businesses. At the previous public hearing the Board had asked Staff to examine alternative enforcement options. Option 1 would reduce inspection frequency by almost half of the original proposal. Option 2, reduces this inspection frequency to once in 20 years for sources that self certify. Because of the potential long term noncompliance that may occur due to avoided inspections, Option 2 provides the least protection for the health of the farmer and nearby residents. Option 1 provides an increased level of protection, but less than the protection afforded by the original proposal. Therefore, Staff is recommending that the Board adopt Rule 311 as originally proposed.

Respectfully Submitted

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

Approved as to form:

Kathrine Pittard, District Counsel
Sacramento Metropolitan
Air Quality Management District

Attachments

Attachment A

Board Resolution

Attachment B

Draft Rule 311

Attachment C

Rule Options

Attachment D

Staff Report

Attachment E

Written Comments

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Evidence of Public Notice

Attachment G

ATCM Fact Sheet