

**SACRAMENTO METROPOLITAN  
AIR QUALITY MANAGEMENT DISTRICT**

For Agenda of **March 25, 2010**

**To:** Board of Directors  
Sacramento Metropolitan Air Quality Management District

**From:** Larry Greene  
Executive Director/Air Pollution Control Officer

**Subject:** Adopt a Resolution Approving Proposed Rule 250 – Sacramento Carbon Exchange Program; Conduct a Public Meeting for Proposed Rule 350 – Greenhouse Gas Program Fees

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**Recommendation**

1. Determine that proposed Rule 250 is exempt from the California Environmental Quality Act (CEQA);
  2. Approve the attached resolution adopting Rule 250; and
  3. Conduct a public meeting on proposed Rule 350.
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**Executive Summary**

In May of 2009, the Board approved a resolution which authorized and directed Staff to develop a rule to implement a greenhouse gas (GHG) emission reduction credit banking program. Staff is proposing Rule 250, Sacramento Carbon Exchange Program, to fulfill that commitment. This rule establishes a voluntary program to encourage early GHG emission reductions and may facilitate compliance with GHG mitigation requirements under CEQA. This program provides a local mechanism to verify GHG emission reductions and ensures that the GHG emission reductions are real, additional, permanent, quantifiable, verifiable, and enforceable.

Under the proposed Rule 250, interested GHG reduction project proponents submit Project Plans to show that projects follow approved protocols in Sacramento County. Project Plans are reviewed and approved by Staff to ensure they comply with proposed Rule 250. After approval has been granted, the project may be implemented to generate emission reductions. GHG emission reductions for the past year are verified for approved projects at the beginning of each calendar year. Verification is performed by Staff or by a third-party verifier. After the emission reductions have been verified and accepted by Staff, certified carbon credits are issued to the owners designated by the Project Plans.

Proposed Rule 250 also governs the registration, transfer, and administrative procedures to retire or register the use of certified carbon credits that are registered with the District. Certified carbon credits may be used for satisfying CEQA or other environmental requirements, retirement to reduce a carbon footprint, or any other use

authorized by local, state, federal or international laws, regulations, or programs. This rule does not specify any requirements for using the credits. Those requirements are spelled out in the laws or regulations the credits are satisfying.

Proposed Rule 350, Greenhouse Gas Program Fees, is a fee rule designed to recover the costs to implement proposed Rule 250. California Health and Safety Code, Section 42311(e) requires that before adopting a regulation establishing fees, the Board shall hold at least one public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Staff is requesting that the Board conduct such a public meeting today for proposed Rule 350, Greenhouse Gas Program Fees. The Board hearing to consider the adoption of proposed Rule 350 is scheduled for April 29, 2010.

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### **Attachments**

The table below identifies the attachments to this memo.

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### **Background**

On March 23, 2006, the Board of Directors established the District Climate Change Protection Program. This program was designed to address climate change and climate protection by providing outreach and education, data collection and analysis, technical assistance, and participation in the Climate Action Registry. This program also included review and comment on proposed legislation, and support and leadership for local efforts in Sacramento County and the region to reduce emissions and to implement mitigation measures such as "Cool Community" actions that contribute to climate protection.

Since the March 2006 action, the Governor of California signed Assembly Bill 32 (AB32), the Global Warming Solution Act. AB32 requires California to reduce GHG emissions through a comprehensive program of regulatory and market mechanisms to the 1990 emission levels by the year 2020. In August 2007, Senate Bill 97, CEQA: Greenhouse Gas Emission, was also signed into law. This bill established that GHG emissions and their associated effects are appropriate subjects for CEQA analysis.

Anticipating that local agencies will need to respond to future state GHG requirements, on August 28, 2008, the Board of Directors authorized the Air Pollution Control Officer to develop a set of proposed enhancements that would assist local agencies in addressing GHG impacts in the CEQA process as well as future AB32 requirements, including evaluation of GHG emission reduction credit options. In May of 2009, the Board

approved a resolution which authorized and directed Staff to develop a rule to implement a GHG emission reduction credit banking program.

There are several GHG banking programs or carbon markets in the United States that have been developed to bank, sell, trade, and/or track carbon credits. However, many technical reviews indicate that some of these carbon markets have problems such as determining additionality or having limited transparency to ensure the credibility of offsets. To minimize uncertainties for local agencies, Staff developed a local GHG emission reduction credit banking program. In addition, a local program may generate co-benefits of reducing criteria or toxic pollutants from GHG emission reduction projects, ensure that local projects meet all regulations and do not undermine the District's effort to protect public health and the environment, and provide an option to mitigate GHG emissions to meet requirements like CEQA.

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## **Summary of Proposed Rules**

### **Rule 250 – Sacramento Carbon Exchange Program**

Proposed Rule 250 is voluntary program to encourage early GHG emission reductions. This program allows any person to voluntarily certify GHG emission reductions from projects in Sacramento County. To be certified by Rule 250, the GHG emission reductions must meet the requirements of an approved protocol and consider any Sacramento specific conditions or requirements to be real, additional, permanent, quantifiable, verifiable, and enforceable. The following steps outline the process to be certified as carbon credits:

- **Project Plan Submittal and Evaluation:** The applicant must submit a Project Plan to begin the process to certify GHG emission reductions. The Project Plan describes the GHG emission reduction project and how it will meet the approved protocol. Approved protocols are methods to accurately quantify reductions of greenhouse gases for a specific project type that has been adopted by the Environmental Protection Agency, Climate Action Reserve or a similar entity approved by the Air Pollution Control Officer or have been reviewed by California Air Resources Board (CARB). A similar entity means another agency, organization, or business with sufficient expertise and other characteristics likely to develop approvable project protocols. Staff will review the Project Plan to ensure that it complies with Rule 250. After review, if the decision is to approve the Project Plan, Staff will solicit comments on the preliminary decision and publish final approval through notices in a local newspaper.
- **Generation of Emission Reductions:** After the Project Plan has been approved, the applicant implements the Project Plan to generate GHG emission reductions. Greenhouse gas emission reductions that were generated prior to approval of the Project Plan are also eligible to be certified provided they meet the requirements of the Project Plan as well as all other requirements of the rule.
- **Emission Reduction Verification:** After the project generates GHG emission reductions, the emission reductions must be verified prior to the issuance of the GHG emission reduction credits. Verification will be performed by Staff unless Staff requires that the applicant use a third-party verifier. In the event that the

District does not require a third-party verifier, the applicant may request to use a third-party verifier. A third-party verifier may be any person who is not affiliated with or related to the project or applicant and is not associated with the District. Verification will occur at the beginning of each calendar year for the emission reductions resulting from the past calendar year.

- Issue and Register Carbon Credits: After the emissions reductions have been verified, Staff will issue a certificate for the GHG emission reductions. All certified carbon credit certificates will be registered with the District. The registry will be available to the public. Registered certificates may be transferred from one person to another if the certificate owner submits a written agreement and surrenders the original certificate to the District.

Staff anticipates that certified carbon credits may be used for CEQA or other required mitigations, retirement to reduce carbon footprint by an individual, household, facility, corporation, community, city, or other group, or other use authorized by local, state, federal or international laws, regulations, or programs. Once a credit is retired, it cannot be reactivated.

CARB-Approved Protocols: Staff had initially proposed to only allow CARB-approved protocols because these protocols have been reviewed by CARB to ensure that the project will not be regulated by current or future state regulations or cause GHG emissions to increase elsewhere (leakage). However, CARB withdrew their approval from all previously approved protocols on February 25, 2010. As such, Staff reviewed other feasible protocols that would generate high quality credits to be used in the District's banking program. Staff has revised the proposal to allow protocols that are approved by the Environmental Protection Agency, Climate Action Reserve or a similar entity approved by the APCO or have been reviewed by CARB. In addition, proposed Rule 250 will require Staff to include in the written evaluation of each Project Plan that follows an approved protocol a determination of whether the emission reductions are real, additional, quantifiable, verifiable, permanent, and enforceable.

Compatibility with State Regulations: The AB32 Scoping Plan requires that carbon credits or offsets used for compliance with AB32 requirements be quantified using CARB-adopted methodologies and verified and enforced through the state regulations. The CARB intends to develop regulations for the use of offsets during the rulemaking process for the Cap-and-Trade program. In addition, the resolution for the Scoping Plan specifically states that the implementation of future Cap-and-Trade regulations, including the reporting and verification of offsets, should be administered at the state level. As such, the role of local districts is limited in the state program, and district-operated GHG emission reduction credit banking programs, like the one in proposed Rule 250, may not be compatible with the state Cap-and-Trade/offset program. However, the California Air Resources Board has requested comments on the draft Cap-and-Trade regulation regarding the requirements to allow external credit programs to be used with the state program.

### **Rule 350 – Greenhouse Gas Program Fees**

Proposed Rule 350 establishes fees to recover all District costs to implement the GHG emission reduction credit banking program. Staff's time will be used to process and

review plans, verify proposed projects, issue carbon credits, monitor carbon credit transactions, and maintain an updated carbon registry. The following are the proposed fees to recover the cost to implement proposed Rule 250:

- Project Plan Fees: An initial Project Plan fee of \$960 will be required with the submittal of the Project Plan and to begin the Project Plan evaluation. The initial Project Plan fee is based on 5 hours at an hourly rate of \$192. If the complexity of the project causes the Project Plan evaluation to exceed 5 hours, an additional fee based on the actual hours spent by District Staff to evaluate the Project Plan will be required and will be assessed at \$192 per hour. This fee rate includes administrative costs including Staff's salary and benefits, overhead costs, and other related program costs. A deposit of this additional fee, based upon the estimated additional hours to be spent by District Staff, will be required prior to evaluation of the Project Plan. The applicant is also required to pay additional fees for the cost to prepare CEQA documents, and, if required, the actual cost of a contractor. These additional fees are required before CEQA documents are prepared or a contractor is hired. The applicant is also responsible for the actual costs for publishing preliminary and final notices of approval in a local newspaper.
- Verification and Credit Fees: The initial Verification and Credit Fee sets two fees: one if the District verifies the emission reductions and a lower fee if the applicant uses a third-party verifier. The initial fee for Staff verification is \$1,920, which will cover up to 10 hours of Staff work. The initial fee for third-party verification is \$960, which will cover up to 5 hours of Staff work. If the complexity of the project causes the verification process to exceed 10 hours for District verification or 5 District Staff hours for third party verification, an additional fee based on the actual hours spent by District Staff to verify the emission reductions will be assessed at \$192 per hour. A deposit of this additional fee, based upon the estimated additional hours to be spent by District Staff, will be required prior to verification. In some cases, the District may need to use a contractor who specializes in a field that relates directly to the project. The applicant will be required to pay additional fees to cover the cost of the contractor.
- Transfer Fee: A fee of \$192 is required to transfer a credit certificate.
- Retirement of Certificate: There is no fee to register the use or retire a GHG certificate.

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## **Environmental Review and Compliance**

Staff conducted a Review for Exemption for proposed Rule 250 pursuant to section 15061 of the State CEQA guidelines. Proposed Rule 250 establishes a program to quantify and certify voluntary GHG emission reductions, and is similar to other GHG credit programs, such as the Climate Action Reserve, which operates in California. The District is not involved with funding or generating emission reductions under proposed Rule 250. Staff finds that proposed Rule 250 is exempt from CEQA under Section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that it may have a significant effect on the environment.

Section 15273(a)(1) of the State CEQA Guidelines provides that CEQA does not apply

to the establishment of fees by public agencies for the purpose of meeting operating expenses. Proposed Rule 350 establishes fees to recover the District's costs to implement proposed Rule 250. Therefore, Staff finds that proposed Rule 350 is exempt from CEQA.

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### **Public Outreach and Comments**

Staff held a public workshop to discuss the proposed Rules 250 and 350 on January 7, 2010. The noticing for this workshop included:

- Mailing a notice to:
  - interested parties including all permitted stationary sources;
  - local county and city agencies and officials; and
  - individuals who have requested to receive rulemaking notices.
- The notice was published in the Sacramento Bee Our Region section.
- The notice was also posted on the District web site. The draft rules and staff report were made available for public review at that time.

Staff received several comments and questions at the workshop, as well as written comments from the public and California Air Resources Board. All comments and responses are included in Appendix B of the Staff Report (Attachment C).

Several comments and questions were concerning the acceptance or use of Rule 250 credits. Staff indicated that the program ensures the credits are real, additional, quantifiable, verifiable, permanent, and enforceable. The acceptance or use of the credit will depend on the requirements or regulations of the agency accepting the carbon credits.

In addition, Staff received written comments from CARB. CARB stated that credits from district-operated GHG banking program may not be recognized or used under the state Cap-and-Trade Program. Rule 250 states that certified carbon credits may be used "for any use authorized by a local, state, federal, or international law, regulation or program." Therefore, credits registered with the District will be allowed for the Cap-and-Trade program only if the state Cap-and-Trade regulation recognizes and allows the use of those credits. Nevertheless, credits may be used for other purposes, such as CEQA mitigation.

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## **Conclusion**

Proposed Rule 250 satisfies Board direction from May 28, 2009, and encourages early local GHG emission reductions that are real, additional, quantifiable, verifiable, permanent, and enforceable. It may also assist local agencies in addressing GHG impacts in the CEQA process. Proposed Rule 350 is intended to recover the cost of implementing Rule 250. Therefore, Staff recommends that the Board determine that proposed Rule 250 is exempt from CEQA and approve the attached resolution adopting Rule 250. Staff also recommends that the Board conduct a public meeting for proposed Rule 350 so that it can be considered for adoption at the next Board meeting.

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Respectfully submitted,

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Larry Greene  
Executive Director/Air Pollution Control Officer

Approved as to form:

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Kathrine Pittard  
District Counsel

**Attachment A**

**Board Resolution for Rule 250**



**Attachment B**

**Draft Rules 250 and 350**

**Attachment C**

**Staff Report**

**Attachment D**  
**Written Comments**

**Attachment E**

**Evidence of Public Notice**