

**SACRAMENTO METROPOLITAN  
AIR QUALITY MANAGEMENT DISTRICT**

For Agenda of **May 26, 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:** Amendment to Rule 304 – PLAN FEES

---

**Recommendations**

1. Determine that the rule amendment is categorically exempt from the California Environmental Quality Act (CEQA); and
  2. Approve the attached resolution adopting the amendment to Rule 304.
- 

**Executive Summary**

On April 28, 2005, the Board adopted amendments to Rule 304, Plan Fees. The amendments established fees to recover costs associated with District implementation and enforcement of the state Asbestos Airborne Toxic Control Measure (ATCM) for Construction, Grading, Quarrying, and Surface Mining Operations. District responsibilities under the ATCM include review of dust mitigation plans (DMPs) and geologic evaluations, and inspections to ensure that asbestos-containing dust does not leave the project site.

Fees were established for plan reviews and for inspections. At the April hearing, the Board did not consider a requirement to apply the new inspection fees to projects submitted prior to the adoption of the fee, because this provision had not been publicly noticed for 30 days.

After proper public notice, Staff is proposing that Rule 304 be amended to allow the collection of fees for inspections occurring after May 26, 2005, on projects submitted before the fee requirements were established on April 28, 2005.

---

**Attachments**

The following table identifies the attachments to this memo:

| <b>Attachment</b> | <b>Item</b>                   | <b>Page #</b> |
|-------------------|-------------------------------|---------------|
| A                 | Board Resolution for Rule 304 | 5             |
| B                 | Draft Rule 304                | 8             |
| C                 | Staff Report                  | 14            |
| D                 | Evidence of Public Notice     | 23            |

---

## **Background**

On April 28, 2005, the District's Board of Directors approved amendments to Rule 304, Plan Fees. The amendments established fees to recover the costs associated with District implementation and enforcement of the state Asbestos ATCM for Construction, Grading, Quarrying, and Surface Mining Operations. Projects submitted prior to April 28, 2005, did not pay the established inspection fee of \$20<sup>1</sup> per acre. Staff is proposing to amend Rule 304 to allow the District to collect, at the time of inspection, the per-acre fee for inspections of these projects that occur after May 26, 2005. In cases of financial hardship, the Air Pollution Control Officer may waive the fee.

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. A previous public hearing on the current proposed amendment was conducted by the Board on April 28, 2005. No testimony from the public was received at that hearing. The amendment was not considered for adoption at that time because it had not yet been publicly noticed for 30 days.

---

## **Summary of Changes**

Staff is proposing to add a new paragraph (c) to Section 303.2 of Rule 304. The added paragraph will require that if the inspection fee, as required by Section 303.2(a), was not paid when a DMP was submitted, then it is due and payable upon inspection.

---

## **Business Cost Impacts**

The cost impacts of the proposed amendment are limited to three applicants. Inspection fees for these projects are assessed at \$20 per acre. The affected

---

<sup>1</sup> NOA fees may be adjusted annually to change with the Consumer Price Index (CPI). See Section 303.4 of Rule 304.

parties, together with the total estimated cost to each, are identified in Appendix B of the attached Staff Report (Attachment C).

---

### **District Impacts**

The amendment is not expected to result in an additional need for staff resources.

---

### **Emission Impacts**

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

---

### **Environmental Review and Compliance**

The District's Environmental Coordinator has determined that the proposed action is 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 amendment is for the purpose of meeting operating expenses. The proposed amendment to Rule 304 meets this qualification because its purpose is to recover the expenses of inspecting projects, as required by the Asbestos ATCM for Construction, Grading, Quarrying, and Surface Mining Operations.

---

### **Public Comments**

The text of the proposed amendment was made available to the public on the District website one week prior to the April 28, 2005 Board hearing. No comments were received from the public at that hearing.

On April 26, 2005, a public notice was issued, stating that the Board would consider the proposed amendment for adoption at the hearing on May 26, 2005. The notice was published in the Daily Recorder, a newspaper of general circulation within the District, and posted on the District website. Copies of the public notice were sent to relevant businesses as identified in the Yellow Pages, to others who requested it, and to applicants who submitted DMPs prior to April 28, 2005. In addition, a copy of the notice was made available to the Building Industry Association for distribution to its members. As of May 9, 2005, no comments have been received from the public in response to this notice.

---

## **Conclusion**

The proposed amendment to Rule 304 is necessary to allow the District to recover the costs of performing future inspections for projects submitted before April 28, 2005. Therefore, Staff recommends that the Board approve this amendment.

---

Respectfully Submitted

---

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

Approved as to form:

---

Kathy Pittard, District Counsel  
Sacramento Metropolitan  
Air Quality Management District

Attachments

# **ATTACHMENT A**

## **Board Resolution for Rule 304**

RESOLUTION NO. AQM\_\_\_\_\_

RULE 304 – PLAN FEES

BOARD OF DIRECTORS  
OF THE SACRAMENTO METROPOLITAN AIR QUALITY  
MANAGEMENT DISTRICT

WHEREAS, the Board of Directors of the Sacramento Metropolitan Air Quality Management District has determined that a need exists for the adoption of amendments to Rule 304 – PLAN FEES in order to recover costs associated with the inspection of naturally occurring asbestos related projects which submitted dust mitigation plans prior to April 28, 2005; and

WHEREAS, the Board of Directors of the Sacramento Metropolitan Air Quality Management District is authorized to adopt rules and regulations by Health and Safety Code Sections 40001, 40702, 40716, 41010, and 41013 (Health and Safety Code Section 40727(b)(2)); and

WHEREAS, the Board of Directors of the Sacramento Metropolitan Air Quality Management District is specifically authorized to adopt this fee schedule by Sections 40702, 41080, 41512.5, and 42311(g) of the California Health and Safety Code, and

WHEREAS, the Board of Directors of the Sacramento Metropolitan Air Quality Management District has determined that Rule 304 – PLAN FEES must be amended to recover the District's costs of administering and enforcing the Asbestos ATCM in Title 17, California Code of Regulations, Section 93105 or an alternative measure as provided in Health and Safety Code 39666(d); and

WHEREAS, the Board of Directors of the Sacramento Metropolitan Air Quality Management District has determined that the meaning of the rule can be easily understood by the persons directly affected by it (Health and Safety Code Section 40727(b)(3)); and

WHEREAS, the Board of Directors of the Sacramento Metropolitan Air Quality Management District has determined that the rule amendments are in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations (Health and Safety Code Section 40727(b)(4)); and

WHEREAS, the Board of Directors of the Sacramento Metropolitan Air Quality Management District has determined that the rule amendments do not impose the same requirements as any existing state or federal rule or regulation that applies to affected industry within the District (Health and Safety Code Section 40727(b)(5)); and

WHEREAS, the Board of Directors of the Sacramento Metropolitan Air Quality Management District recognizes that Rule 304 – PLAN FEES implements, interprets, or makes specific a statute, court decision, or other provision of law (Health and Safety Code Section 40727(b)(6)); and

WHEREAS, the Board of Directors of the Sacramento Metropolitan Air Quality Management District will forward the rule to the California Air Resources Board and affected parties regarding the proposed rule amendment; and

WHEREAS, the Board of Directors of the Sacramento Metropolitan Air Quality Management District has maintained records of the rulemaking proceedings (Health and Safety Code Section 40728); and

WHEREAS, the Board of Directors of the Sacramento Metropolitan Air Quality Management District held duly noticed public hearings on April 28, 2005, and May 26, 2005 and considered public comments on the proposed amendments to the rule (Health and Safety Code Sections 40725, 40726, and 40920.6, 41512.5, and 42311(g)); and

WHEREAS, the Board of Directors of the Sacramento Metropolitan Air Quality Management District has determined that amendments to Rule 304 – PLAN FEES are exempt from CEQA under Public Resources Code section 21080(b)(8) and section 15273;

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Directors of the Sacramento Metropolitan Air Quality Management District approves and adopts the proposed amendments to Rule 304 – PLAN FEES; and

BE IT ORDERED that the amendments to Rule 304 – PLAN FEES be effective as of May 26, 2005.

ON A MOTION by Director \_\_\_\_\_, seconded by Director \_\_\_\_\_, the foregoing resolution was passed and adopted by the Board of Directors of the Sacramento Metropolitan Air Quality Management District, State of California, this 26<sup>th</sup> day of May 2005, by the following vote, to wit:

AYES: Directors

NOES: Directors

ABSENT: Directors

\_\_\_\_\_  
Chairperson of the Board  
Sacramento Metropolitan Air  
Quality Management District  
State of California

(SEAL)

ATTEST: \_\_\_\_\_  
CLERK OF THE BOARD  
SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT

# **ATTACHMENT B**

## **Draft Rule 304**

**RULE 304 PLAN FEES**

Adopted 5-31-89

(Amended 9-18-90, 07-19-94, 6-1-95, 3-25-99, 4-28-05, 5-26-05)

**INDEX**

|            |   |
|------------|---|
| <b>100</b> | <b>GENERAL</b>                                    |
| 101        | PURPOSE   |
| 110        | EXEMPTIONS  |
| <b>200</b> | <b>DEFINITIONS (NOT INCLUDED)</b>                 |
| <b>300</b> | <b>STANDARDS</b>                                  |
| 301        | FEE REFUND  |
| 302        | ASBESTOS RENOVATION OR DEMOLITION FEES            |
| 303        | NATURALLY OCCURRING ASBESTOS FEES                 |
| 304        | FLEET INVENTORY REPORT FEE                        |
| 305        | APPLICATION FEE—RULE 1005                         |
| <b>400</b> | <b>ADMINISTRATIVE REQUIREMENTS (NOT INCLUDED)</b> |
| <b>500</b> | <b>MONITORING AND RECORDS (NOT INCLUDED)</b>      |

100 **GENERAL**

101 **PURPOSE:** To establish fees, pursuant to applicable California Health and Safety Code Sections 41512.5, 41080, and 42311(g), to be charged to emission sources, which are deemed not to be subject to Rules 201 and 301, to cover the estimated reasonable costs of evaluating plans required by law or by District rule or regulation, including, but not limited to, review, program implementation, inspection, and monitoring related thereto.

110 **EXEMPTIONS:**

- 110.1 Asbestos-related renovation or demolition fees will not be charged for the renovation or demolition of residences comprised of four or fewer dwelling units, unless such renovation or demolition is subject to the current National Emission Standards for Hazardous Air Pollutants (NESHAP) established by the federal government.
- 110.2 In cases of financial hardship resulting from paying fees specified in Section 303, a conference before the Air Pollution Control Officer may be requested to present adequate evidence of said financial hardship and discuss a waiver of fee payment under these circumstances.

200 **DEFINITIONS (NOT INCLUDED)**300 **STANDARDS**301 **FEE REFUND:**

- 301.1 If a person cancels a plan, report, or application he/she may request a fee refund, provided:
- The person paid the fee for the plan, report, or application pursuant to this rule, and
  - The request is in writing, and
  - The person requests the refund within 10 days following cancellation.
- 301.2 Within thirty days of receiving the refund request, the Air Pollution Control Officer shall refund the portion of the fee that remained unused at the time of the cancellation.
- 301.3 If the Air Pollution Control Officer determines an alternative fee based on cost analysis pursuant to Section 302.6, the Air Pollution Control Officer may refund any fees paid in excess of the alternative fee.

302 **ASBESTOS RENOVATION OR DEMOLITION FEES:**

- 302.1 Upon submitting a plan for each unit where renovation or demolition occurs to the Air Pollution Control Officer, the owner or operator shall pay a fee for each plan submitted to the District. For each plan subject to the requirements of Rule 902-**ASBESTOS**, the following fee schedule shall apply:

| <b>ASBESTOS PLAN FEE SCHEDULE—RENOVATION AND DEMOLITION PROJECTS</b> |                    |                   |              |
|--|--------------------|-------------------|--------------|
| <b>Units of Asbestos to be Removed/Disturbed</b>                     |                    |                   | <b>Fee**</b> |
| <b>Linear Feet</b>   | <b>Square Feet</b> | <b>Cubic Feet</b> |              |
| 0-259*   | 0-159*             | 0-34*             | \$435*       |
| 260-499  | 160-499            | 35-109            | \$435        |
| 500-999  | 500-999            | 110-218           | \$635        |
| 1,000-2,499  | 1,000-2,499        | 219-547           | \$935        |
| 2,500-4,999  | 2,500-4,999        | 548-1,094         | \$1,335      |
| 5,000-9,999  | 5,000-9,999        | 1,095-2,188       | \$1,835      |
| 10,000 or more   | 10,000 or more     | 2,189 or more     | \$2,335      |

\* This category applies to demolition projects only.

\*\* If materials are in more than one category, the higher fee will apply.

- 302.2 For planned renovation projects as defined in Rule 902- ASBESTOS, involving multiple containments where each containment is less than 160 linear feet/260 square feet/35 cubic feet of asbestos to be removed/disturbed, but cumulatively exceed 160 linear feet/260 square feet/35 cubic feet of asbestos to be removed/disturbed, one fee will be established based on the total amount asbestos to be removed/disturbed.
- 302.3 No plan shall be accepted unless accompanied by the appropriate plan fee, except that no fee shall be required for emergency renovation projects as defined in Rule 902 - ASBESTOS, Section 223, as long as the removal involves less than 260 lineal feet of pipe or 160 square feet of material.
- 302.4 If in the course of a demolition or renovation project pursuant to Rule 902, it is determined that the project belonged in a higher fee category than was initially determined, the owner or operator shall pay the balance of the fee for the higher category.
- 302.5 If an owner or operator fails to report a change in any date as required by Rule 902, and the Air Pollution Control Officer determines that such failure necessitated expenditure of additional time by the District, over and above the time expenditure upon which the plan fee is based, then the owner or operator shall pay an additional fee of \$50 per hour of additional time, billable in quarter hour segments, with a minimum charge of \$25.
- 302.6 **Petition for an Alternative Plan Fee:** An owner or operator of a facility as defined in Rule 902 - ASBESTOS may submit a petition to the Air Pollution Control Officer for an alternative plan fee. The petition shall be submitted one month prior to submittal of the plan fees. This deadline shall not apply to petitions where the alternative fee relates to a plan fee paid on or after August 25, 1998. The petition shall include but is not limited to the following:
- a. A survey pursuant to Rule 902, Section 401.4.
  - b. Number of containments.
- 302.7 **Review and Approval of an Alternative Plan Fee:** The Air Pollution Control Officer may approve a plan fee as an alternative to that required by Section 302.1 subject to the following guidelines. These guidelines are set to discourage petitions except where the circumstances are unique, that is only the largest of projects where unforeseen efficiencies can be adopted to minimize District program costs.
- a. When determining the alternative plan fees, the Air Pollution Control Officer may consider the fees required for 150 containments per a 12-month period as a minimum guideline when deciding whether to set an alternative fee. The alternative fee shall be no less than the plan fees previously paid for comparable size containments (e.g., number of containments and units of asbestos to be removed/disturbed).
  - b. The alternative fee shall be determined based on the estimated costs including but not limited to; plan review time, conducting inspections, monitoring, associated overhead, and any other cost associated with the plan.
  - c. The Air Pollution Control Officer shall have 30 days to review the petition. The Air Pollution Control Officer's decision shall be in writing. The decision of the Air Pollution Control Office shall be final.
- 303 **NATURALLY OCCURRING ASBESTOS FEES:** The following fee schedule shall apply to persons required to comply with Title 17 of the California Code of Regulations, Section 93105, Asbestos Air Toxic Control Measure for Construction, Grading, Quarrying, and Surface Mining Operations or a control measure adopted pursuant to Health and Safety Code Section 39666(d):
- 303.1 Each plan or evaluation submitted shall be accompanied by a fee.
- a. For each asbestos dust mitigation plan submitted to the District, the fee shall be \$350.

- b. For each geologic evaluation submitted to the District, the fee shall be \$450.
- 303.2 **Inspection Fees:** The following inspection fees shall apply:
- a. For each project greater than one (1.0) acre for which a dust mitigation plan is submitted, the inspection fee shall be \$20 per acre, due at the time the plan is submitted. Once a project has begun, an increase in the acreage may be made and the corresponding per-acre fee paid. If actual inspections require more than 18 hours per 100 acres, an additional fee of \$116 per hour may be assessed.
- b. For each project for which a dust mitigation plan has not been submitted, the time and materials rate for inspections shall be \$116 per hour. This fee shall not apply to projects of one (1.0) acre or less until April 28, 2006.
- c. If the inspection fee was not paid when the dust mitigation plan was submitted, then it is due and payable upon inspection.
- 303.3 **Analysis Fee:** Whenever the Air Pollution Control Officer finds that analysis or sample collection is necessary, the cost of making the analysis, collecting samples, and preparing the necessary reports shall be charged against the owner or operator. The Air Pollution Control Officer shall provide an estimate of the actual cost of such work. The owner or operator may request a conference with the Air Pollution Control Officer to review the cost estimate and may provide additional information that would reduce the time spent by the Air Pollution Control Officer in performing an analysis. The Air Pollution Control Officer's cost estimate shall be reduced accordingly.
- 303.4 **Consumer Price Indexing of Fees:** Naturally occurring asbestos fees may be adjusted on an annual basis. If the Air Pollution Control Officer anticipates the need for a change, the adjustment must initially be proposed as part of the annual budget process. The proposed rate change must meet the requirements of the California Health and Safety Code, including sections 41512.5, 42311(e), and 42311(g). The rate change must be noticed as part of the proposed and final budgets. If the Board of Directors approves a fee change with the final budget, the Air Pollution Control Officer may adjust fees by up to the maximum rate approved by the Board.
- 304 **FLEET INVENTORY REPORT FEE:** Each fleet operator subject to the fleet inventory requirements of Rule 1002--FLEET INVENTORY--shall annually pay a fee on the submittal date defined and stipulated pursuant to that rule.
- 304.1 The fee amount per fiscal year shall be \$190.
- 304.2 If the fleet operator fails to pay the fee by the submittal date, the fee shall increase by one half the amount. The Air Pollution Control Officer shall notify the fleet operator by mail of the fee increase. The fleet operator shall pay the increased fee within 30 days after the notice is mailed.
- 305 **APPLICATION FEE—RULE 1005:** Any application submitted pursuant to Rule 1005—MOBILE SOURCE EMISSION REDUCTION CREDITS/BANKING shall be accompanied by a fee.
- 305.1 The fee shall reflect the actual labor costs incurred by the District in processing the application, based on the District's standard hourly rate schedule. Notwithstanding the provisions of other rules, the District's standard hourly rate shall be the Time and Materials Labor Rate, as set forth in Rule 301—PERMIT FEES - STATIONARY SOURCE.
- 305.2 The Air Pollution Control Officer shall provide the applicant with an estimate of the time to process the application, and the cost that will be incurred.
- 305.3 The applicant may request a conference with the Air Pollution Control Officer to review the cost estimate. If the applicant provides additional information that will reduce the amount of time the District staff needs to process the application, the cost estimate for the application fee shall be reduced accordingly.

- 305.4 The estimated application fee shall be paid in full, to the District, prior to District staff processing the application.
- 305.5 The Air Pollution Control Officer shall bill the applicant for any application processing costs—based on actual District labor costs—that exceed the estimated fee amount. The applicant shall pay the additional fee amount prior to the Air Pollution Control Officer's:
- a. Issuance to the applicant of a certificate of advance placement or a mobile source emission reduction credit, or
  - b. Approval of a contractual agreement with the applicant.
- 305.6 The District will refund any unused portion of the application fee if:
- a. The applicant withdraws the application, or
  - b. Actual labor costs from processing the application are less than estimated.

# **ATTACHMENT C**

## **Staff Report for Rule 304**

**SACRAMENTO METROPOLITAN  
AIR QUALITY MANAGEMENT DISTRICT**

**STAFF REPORT**

**RULE 304  
PLAN FEES**

**PROPOSED AMENDMENT  
May 5, 2005**

Prepared by: Kevin J. Williams, Ph.D.  
Program Coordinator

Reviewed by: Aleta Kennard  
Program Supervisor

Approved by: Brigette Tollstrup  
Manager, Program Coordination Division

## INTRODUCTION

On April 28, 2005, the District's Board of Directors approved amendments to Rule 304, Plan Fees. The amendments established fees to recover the costs associated with District implementation and enforcement of the Naturally Occurring Asbestos (NOA) program. The following fee schedule was adopted:

1. Dust Mitigation Plan (DMP) review and project inspection: \$350 review fee plus \$20 per acre inspection fee, due when the plan is submitted. If actual inspection and related activities require more than 18 hours per 100 acres, an additional fee of \$116/hour may be assessed.
2. Geologic evaluation review: \$450.
3. 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 date of rule adoption.
4. If the project size increases from the acreage stated in the DMP, the increase in acreage is subject to the per-acre inspection fee.
5. The cost of additional sampling or analysis deemed necessary by the Air Pollution Control Officer (APCO) shall be charged to the applicant.
6. NOA fees may be adjusted annually to change with the Consumer Price Index (CPI).
7. In cases of financial hardship, a conference with the Air Pollution Control Officer may be requested to discuss a waiver of fee payment.

Currently, the DMP review and per-acre inspection fees described in Item 1, above, are paid only by applicants who submit a DMP after the date of adoption of the fee amendments (April 28, 2005). Applicants who submitted a DMP prior to April 28, 2005, did not pay these fees. Staff is proposing to amend Rule 304 to allow collection of the per-acre inspection fee for these projects at the time of inspection.

---

## BACKGROUND

In 2001, the California Air Resources Board adopted the Asbestos Airborne Toxic Control Measure (ATCM) for Construction, Grading, Quarrying, and Surface Mining Operations<sup>1</sup>. 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.

---

<sup>1</sup> Title 17, California Code of Regulations, Section 93105.

State law<sup>2</sup> requires that the SMAQMD implement and enforce the ATCM within the District. 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 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.

Since the asbestos ATCM took effect, District implementation and enforcement has created an additional workload for the District. The April 28, 2005 amendments to Rule 304 established fees to recover the added costs of the ATCM-required activities. The current proposal will allow the District to also recover the costs of performing required inspections on projects for which a DMP was submitted prior to April 28, 2005.

---

### **NECESSITY OF AMENDMENT**

Under the asbestos ATCM, the District is required to perform inspections on projects which have submitted a DMP. For projects for which a DMP was submitted before April 28, 2005 (for which an inspection fee was not paid), the District will incur significant future costs, estimated to be approximately \$33,480, to perform inspections on these projects. The proposed amendment is necessary to allow the District to recover the cost of performing these inspections.

---

### **SUMMARY OF AMENDMENT**

Staff is proposing to add a new paragraph (c) to Section 303.2 of Rule 304. The added paragraph will require that if the inspection fee, as required by Section 303.2(a), was not paid when a DMP was submitted, then it is due and payable upon inspection.

---

### **EMISSIONS IMPACT**

The proposed amendment to Rule 304 concerns the collection of fees and is administrative in nature. There are no impacts on emissions or air quality that would result from this amendment.

---

<sup>2</sup> California Health and Safety Code, Section 39666(d).

## **SOCIOECONOMIC IMPACT**

California HSC Section 40728.5 requires a district to perform an assessment of the 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. The proposed amendment to Rule 304 is exempt from this requirement because the amendment does not affect air quality or emission limitations.

---

## **COST IMPACTS**

### Types of Affected Business and Industry Including Small Business

The cost impacts of the proposed amendment are limited to three applicants who submitted DMPs prior to April 28, 2005, and did not pay inspection fees at the time of submittal. A summary of these projects is included in Appendix B. The affected parties are:

- Elliot Homes
- Dunmore Communities
- Folsom Cordova Unified School District

The list of affected parties includes two developers and a public school district. None of the affected parties is a small business.

### Range of Probable Costs

The affected parties would be required to pay an inspection fee of \$20 per acre at the time of the first inspection after rule adoption. The cost is, therefore, dependent on the size of the project. Project costs range from \$280 for a 14-acre Natoma subdivision (Dunmore Communities) to \$31,000 for 1,550 affected acres at Empire Ranch (Elliot Homes).

---

## **ENVIRONMENTAL REVIEW AND COMPLIANCE**

The District's Environmental Coordinator has determined that the proposed action is 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 amendment is for the purpose of meeting operating expenses. The proposed amendment to Rule 304 meets this qualification because its purpose is to recover the expenses of inspecting projects, as required by the Asbestos ATCM for Construction, Grading, Quarrying, and Surface Mining Operations.

---

## **ADDITIONAL REQUIREMENTS FOR FEE RULES**

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." 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."

When the NOA fees were adopted with the amendments to Rule 304 on April 28, 2005, it was established that the NOA inspection fees meet these Health and Safety Code requirements. The proposed amendment merely extends the applicability of these fees to projects for which a DMP was submitted prior to April 28, 2005.

---

## TABLE OF 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 Health and Safety Code, and
3. Relevant information presented at the Board's hearing for the rule.

The following table shows the required findings for the proposed amendment to Rule 304.

| 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, 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 or 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 cannot 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 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>FINDING</b>  | <b>FINDING DETERMINATION</b>  |
|---|---|
| <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.                                    | 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 A LIST OF CHANGES TO RULE 304

|               |   |
|---------------|---|
| Section 303.2 | Added paragraph (c) to require that if the inspection fee, as required by paragraph (a), was not paid when a DMP was submitted, then it is due and payable upon inspection. |
|---------------|---|

**APPENDIX B  
 DUST MITIGATION PLANS RECEIVED BEFORE 4/28/05 AND APPROVED**

| <b>Submitted by:</b>  | <b>Name/Location of Plan</b>                             | <b>Total Acreage</b> | <b>Application Received Date</b> | <b>Approval Date</b> | <b>Estimated Per-Acre Inspection Fee to be Collected</b> |
|---|--|----------------------|----------------------------------|----------------------|--|
| Elliot Homes  | Empire Ranch/<br>Broadstone & Iron Point                 | 1700                 | 10/14/04                         | 10/18/04             | \$31,000*  |
| Elliot Homes  | Broadstone Unit 2, Palladio Mall/<br>East Bidwell Street | 60                   | 3/7/05                           | 3/7/05               | \$1,200  |
| Folsom Cordova<br>Unified School<br>District  | Lago Vista High School/<br>Broadstone & Gold Links       | 50                   | 1/14/05                          | 1/27/05              | \$1,000  |
| Dunmore<br>Communities  | Natoma Valley Subdivision                                | 14                   | 4/20/05                          | 5/4/05               | \$280  |
| <b>ESTIMATED PER-ACRE INSPECTION FEE FOR INSPECTIONS THAT CONTINUE AFTER<br/>RULE ADOPTION DATE</b> |  |                      |                                  |                      | <b>\$33,480</b>  |

\*Part of this acreage has already been capped and inspection work would not be needed for that acreage. The estimate of capped acreage is 150 acres as of April 11, 2005. The actual fee collected will be based on the actual remaining acreage minus the capped acreage at time of rule adoption.

## **ATTACHMENT D**

### **Evidence of Public Notice**

THE DAILY RECORDER  
~ SINCE 1911 ~

This space for filing stamp only

901 H ST STE 312, SACRAMENTO, CA 95814  
Telephone (916) 444-2355 / Fax (916) 444-0636

Kevin J. Williams  
SAC. METRO AIR QUALITY MGMT DIS  
777 12TH ST., THIRD FLOOR  
SACRAMENTO, CA - 95814

SC #: 809072

**PUBLIC NOTICE  
SACRAMENTO METROPOLITAN AIR  
QUALITY MANAGEMENT DISTRICT  
COUNTY OF SACRAMENTO  
STATE OF CALIFORNIA  
BOARD HEARING**

By this notice, all interested parties are specifically requested to testify on the proposed amendments to the rule. Oral and written testimony may be directed to the Board of Directors at the public hearing on May 26, 2005, or by May 25, 2005, to the Sacramento Metropolitan Air Quality Management District, 777 12<sup>th</sup> Street, 3<sup>rd</sup> Floor, Sacramento, CA 95814, ATTENTION: Kevin J. Williams (916) 874-4851.  
04/26/2005

SC-809072#

**PROOF OF PUBLICATION**

(2015.5 C.C.P.)

State of California )  
County of SACRAMENTO ) ss

Notice Type: HRG - NOTICE OF HEARING

Ad Description: Rule 304 Hearing May 2005

I am a citizen of the United States and a resident of the State of California; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of the printer and publisher of the THE DAILY RECORDER, a newspaper published in the English language in the city of SACRAMENTO, county of SACRAMENTO, and adjudged a newspaper of general circulation as defined by the laws of the State of California by the Superior Court of the County of SACRAMENTO, State of California, under date 05/02/1913, Case No. 10038. That the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

04/26/2005

Executed on: 05/16/2005  
At Los Angeles, California

I certify (or declare) under penalty of perjury that the foregoing is true and correct.



Signature

The Board of Directors of the Sacramento Metropolitan Air Quality Management District (SMAQMD) will conduct a public hearing on Thursday, May 26, 2005, at 9:30 a.m. in Room 1450 (Board of Supervisors Chambers), County Administration Building, 700 H Street, Sacramento, California. The purpose of the hearing is to consider the adoption of amendments to SMAQMD Rule 304, PLAN FEES. The proposed amendments affect builders, contractors, graders and others who perform work that disturbs areas containing naturally occurring asbestos (NOA) in eastern Sacramento County.

The state's Asbestos Airborne Toxic Control Measure (ATCM) for Construction, Grading, Quarrying, and Surface Mining Operations requires the SMAQMD to review and approve asbestos dust mitigation plans and geologic evaluations, and to inspect sites to ensure the plans and ATCM are being followed. At this time, the SMAQMD has no way of recovering costs associated with the program requirements. The proposed amendments to Rule 304 establish a fee schedule for the NOA program.

The proposed fee schedule is as follows:

- Dust Mitigation Plan (DMP) review and project inspection: \$350 review fee plus \$20 per acre inspection fee. If actual inspection and related activities require more than 18 hours per 100 acres, an additional fee of \$116/hour may be assessed.

- Geologic evaluation review: \$450.
- 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 date of rule adoption.

- If the project size increases from the acreage stated in the DMP, the increase in acreage is subject to the per-acre inspection fee.

- The cost of additional sampling or analysis deemed necessary by the Air Pollution Control Officer (APCO) shall be charged to the applicant.

- NOA fees may be adjusted annually to change with the Consumer Price Index (CPI).

- In cases of financial hardship, a conference with the Air Pollution Control Officer may be requested to discuss a waiver of fee payment.

- If an inspection fee was not paid at the time a dust mitigation plan was submitted, it will be due and payable upon inspection.

The public notice and proposed amendments to the rule will be posted on the SMAQMD website (www.airquality.org), and may be downloaded. These documents may also be viewed at the SMAQMD office at the address listed below.