

**SACRAMENTO METROPOLITAN
AIR QUALITY MANAGEMENT DISTRICT**

STAFF REPORT

**Rule 311 – REGISTRATION FEES FOR AGRICULTURAL COMPRESSION IGNITION
ENGINES**

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INTRODUCTION

The District is proposing to adopt new Rule 311, REGISTRATION FEES FOR AGRICULTURAL COMPRESSION IGNITION ENGINES. The rule will set fees for recovering the cost of implementing and enforcing a registration program for compression ignition engines used in agricultural operations, as required by the statewide Air Toxic Control Measure for Stationary Compression Ignition Engines.

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.

PROPOSED FEE REQUIREMENTS

The rule establishes the initial registration and annual renewal fees for engines that must submit registration information pursuant to Title 17 of the California Code of Regulations Section 93115.8(c). 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

- Annual renewal fee:
 - First engine registered at a source: \$169
 - All other engines: \$105

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. See Appendix A for a detailed description of the rule provisions.

HEALTH AND SAFETY CODE REQUIREMENTS

California Health and Safety Code (HSC) Section 39659 allows a district board to adopt regulations which are necessary to establish, implement, and enforce programs for the regulations of hazardous air pollutants which have been listed as toxic air contaminants. HSC Section 41512.5 contains requirements that pertain to districts when adopting fees on nonpermitted sources for the evaluation of plans required by law or regulation. Although Section 41512.5 may not be strictly applicable to the adoption of Rule 311, the District will comply with its requirements to hold two public hearings prior to rule adoption, and to ensure that the fees will not exceed the estimated costs for the District to implement and enforce Section 93115.8 of the ATCM.

Rule 311 is being proposed to recover the costs of implementing the agricultural engine registration program and of enforcing the ATCM requirements for agricultural engines. Execution of the District's responsibilities as required by the ATCM for Stationary CI engines will require additional staff time to evaluate the engine registration information, provide assistance and outreach to the affected sources, and to ensure compliance with the ATCM standards. Staff estimates the proposed rule will result in additional need for 0.23 FTE (full time equivalent) in the initial year of the program and 0.3 FTE total every three years for enforcement until approximately 2016, when the majority of engines will be required to meet the ATCM emission standards. Once an engine meets the final emission standards in the ATCM, the District will not be performing inspections for the ATCM-compliant engine and will only be maintaining the registration database information and, therefore, renewal fees will no longer be required. The anticipated Staff costs of the agricultural engine registration program and of enforcing the ATCM requirements for agricultural engines are as follows:

- Initial costs for registrations: \$55,012
- Recurring costs for enforcement: \$72,936 every 3 years
(equivalent to \$24,312 per year)

Initial costs will be incurred primarily in 2008 when existing engines are required to register; however, 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.

Staff estimates that 232 engines will be subject to the registration requirements of the ATCM, based on a survey of agricultural operations that the District conducted in August of 2004. Since both the revenue from fees and the District's costs are proportional to the number of engines that register, the fee revenue will not exceed the District's costs regardless of the number of engines that register.

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 311 is exempt from the requirements of this section because 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 311 will apply to any agricultural operation with CI engines rated over 50 bhp that is required to obtain registration pursuant to Title 17 of the California Code of Regulations Section 93115.8(c). Staff estimates that there are approximately 105 different businesses affected and about 232 engines required to submit registration information.

Range of probable costs: The fees established in this rule are based on the District's costs for administering and enforcing the ATCM. The initial fee is charged when the registration information is submitted for an engine for the first time. The renewal fee is charged to the source yearly to keep the registration valid. Once engines come into compliance with the final emission standards in the ATCM, they will be exempt from paying renewal fees. Engines funded by the Carl Moyer Program and multiple engines at one facility have a reduced fee due to a decreased District workload. Fees for engines that use a control device are equal to the permitted agricultural engine fees from Rule 310, Permit Fees – Agricultural Source.

The table below shows the fees established by the proposed rule for the majority of engines.

Rule 311 Fees		
Engine Type	Initial Fee	Annual Renewal Fee
Moyer Engines	\$151	-
First Registered Engine	\$300	\$169
Other Registered Engines	\$155	\$105

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 WORKSHOPS

Staff held two public workshops to discuss proposed Rule 311 on February 11, 2008, in Wilton and on February 12, 2008, in Walnut Grove. The meetings were held in the evening and at locations that were accessible to the affected sources. Staff received and addressed comments and questions at the workshops. Staff made the appropriate changes to the rule and Staff Report in response to some of the comments received. Additionally, Staff made two presentations about proposed Rule 311 to the Sacramento County Farm Bureau Board of Directors and addressed all comments and questions. All associated comments and responses have been included in Appendix B of this Staff Report.

FINDINGS

Six required findings: According to Section 40727(a) of the California Health and Safety Code, prior to adopting or amending a rule or regulation, an air district’s board must make findings of necessity, authority, clarity, consistency, non-duplication, 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 and Safety Code; and
3. Relevant information presented at the Board’s hearing for the rule.

The table below sets the finding and the basis for making the finding.

FINDING	FINDING DETERMINATION
Authority: 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 (HSC) Sections 40702, 41080, and 39659 and Title 17 of the California Code of Regulations, Section 93115.8(d). [HSC Section 40727(b)(2)].
Necessity: 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 recover costs of the District to implement and enforce Title 17 of the California Code of Regulations Section 93115.8. [HSC Section 40727(b)(1)].
Clarity: 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 proposed rule and determined that it can be understood by the affected parties. In addition, the record contains no evidence that people directly affected by the rule cannot understand the rule. [HSC Section 40727(b)(3)].
Consistency: The rule is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations.	The District has found that the proposed rule does not conflict with, and is not contradictory to, existing statutes, court decisions, or state or federal regulations. [HSC Section 40727(b)(4)].

FINDING	FINDING DETERMINATION
Non-Duplication: 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 proposed rule does not duplicate any existing state or federal regulations [HSC Section 40727(b)(5)].
Reference: 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.	Title 17 of the California Code of Regulations, Section 93115; HSC Section 39659. [HSC Section 40727(b)(6)].
Additional Informational Requirements: 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 311 is a fee rule and does not affect emissions. Therefore, a written analysis of federal regulations and other District rules is not required. [HSC Section 40727.2(g)].

**APPENDIX A
 SUMMARY OF PROPOSED RULE**

SECTION NUMBER	DISCUSSION
101	Set the purpose of the rule to provide a mechanism for collecting fees to recover the cost for implementing and enforcing Title 17 of the California Code of Regulations (CCR) Section 93115.8.
102	Sets the applicability to any person who owns or operates an engine that is subject to the registration requirements of 17 CCR 93115.8(c).
103	Sets the severability language of the rule consistent with existing language in Rule 202, NEW SOURCE REVIEW.
104	Exempts engines that are permitted with the District from the provisions of this rule.
105	Exempts an engine, unless it is using a control device, from renewal fees if it is meeting the final emission standards in the ATCM for the corresponding horsepower, certification, and use of the engine. Emergency standby generator sets must meet the final emission standards for generator sets in order to be exempt from renewal fees. Other emergency generators are subject to ATCM record requirements that will be verified by inspectors.
200	Sets the terms in this rule to be defined as in Rule 215, AGRICULTURAL PERMIT REQUIREMENTS AND NEW AGRICULTURAL PERMIT REVIEW unless otherwise defined in this rule. Other emergency generators are subject to ATCM record requirements that will be verified by inspections.
201	Sets the definition of the "Carl Moyer Program" to be a grant program that funds the incremental costs of cleaner-than-required engines, equipment, and other sources of air pollution, and is administered through California's local air districts, consistent with the California Health and Safety Code, Section 44275 et seq.
202	Sets the definition of control device consistent with Rule 450, GRAPHIC ARTS OPERATIONS.
203	Sets the definition of District as the Sacramento Metropolitan Air Quality Management District.
204	Sets the definition of in-use engine consistent with 17 CCR 93115.4(a)(41).
205	Sets the definition of new engine consistent with 17 CCR 93115.4(a)(50).
301	Sets the requirement to pay an initial fee for every engine requiring registration pursuant to the ATCM.
301.1	Sets the initial fees for an engine that uses a control device to comply with the emission standards in the ATCM, consistent with Rule 310, PERMIT FEES – AGRICULTURAL SOURCE, Section 307.3.
301.2	Sets the initial fee for an engine funded by the Carl Moyer Program at \$151 for the first hour of District work. No additional on-site inspection is expected to be needed.
301.3	Sets the initial fee for engines other than those described in Sections 301.1 and 301.2 as \$300 for the first 3 hours for the first engine at an agricultural stationary source and \$155 for the first hour for all other engines at that source.

SECTION NUMBER	DISCUSSION
301.4	Sets the requirement that the owner/operator shall pay the time and materials rate in Section 305 for each extra hour the District spends on the initial registration.
302	Sets the requirement to pay a renewal fee for every engine requiring registration pursuant to the ATCM.
302.1	Sets the renewal fees for an engine using a control device to comply with the emission standards in the ATCM, consistent with Rule 310, PERMIT FEES – AGRICULTURAL SOURCE, Section 307.3.
302.2	Sets the renewal fees for engines other than those described in Sections 302.1 as \$169 for the first engine at an agricultural stationary source and \$105 for all other engines at that source.
303	Sets the condition if a reinspection is required due to conditions beyond the control of the District, the owner/operator will pay the actual costs of the reinspection according to the time and materials rate in Section 305.
304	Sets a fee of \$1227 for source test observation and report evaluation to determine compliance with the emission standards in the ATCM, consistent with Rule 310, PERMIT FEES – AGRICULTURAL SOURCE, Section 309.
305	Sets the time and materials labor rate at \$160 per hour.
401	Requires that the initial registration fee be paid at the time when the registration information is submitted to the District. For engines where the registration information was submitted before Rule 311 was adopted, the initial fee must be paid within 30 days after the adoption of Rule 311.
402	This section sets the procedure for notifying an owner/operator that an annual renewal fee is due and payable. If an owner/operator 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 of the increased fee, which must be paid within 30 days of such notice.
403	This section sets the procedure for the Air pollution Control Officer to make an annual CPI-based fee adjustment upon Board approval of the District's budget.

APPENDIX B PUBLIC COMMENTS

Wilton Public Workshop Comments (February 11, 2008)

Participants: Justin Carney Tim Nilsen
Michael Carney Jim Utterback
Pat Braziel

Comment #1: How will owner/operators know when fees are due?

Response: Owner/operators submitting their registration before the adoption of Rule 311 will have 30 days after the adoption of Rule 311 to submit the initial fees as required by Section 401 of the rule. Following rule adoption, staff will notify identified owner/operators to advise them of when initial fees are due. For engines registered after the adoption of the rule the owner/operators are required to submit fees with the registration. District staff will notify owner/operators of the due date for renewal fees as required by Section 402 of the rule.

Comment #2: Is there a discount for multiple engines located at one site?

Response: Staff re-evaluated the workload for sites with multiple engines and created a fee structure that gives a reduced fee for more than one engine at a site. The first engine registered from an agricultural stationary source will pay an initial fee of \$300 and a renewal fee of \$169. All other engines at the source will pay an initial fee of \$155 and a renewal fee of \$105.

Comment #3: With an annual renewal fee will there be annual inspections?

Response: No, inspections will occur once every three years. Renewal fees are assessed every year instead of only when inspections occur to lower the amount paid at one time. The renewal fee also covers annual costs such as compliance assistance and overhead costs.

Comment #4: Will annual fees be due at the same time every year?

Response: Yes, the District will keep the due date for renewal fees the same for all registered engines.

Walnut Grove Public Workshop Comments (February 12, 2008)

Participants: Rick Dolk
Rob Celli
Topper van Loben Sels
Steve Barsoon
Topher Chan
Charles McDowell
Wallace Chan
Brian Vanderspek
Doug Chan
Gary Elliott
Ed Dowell

Comment #1: The goal of the ATCM is to reduce toxic air emissions; therefore fees should be based on the engine's emission rate.

Response: Staff is recommending that the fees be based on the staff workload needed to administer and enforce the requirements of the ATCM on a per engine basis. Due to the nature of the ATCM requirements, engine size, emission rate, and usage will not affect the staff workload per engine. This is consistent with the requirements of Health and Safety Code, Section 41512.5.

Comment #2: The District should have most of the registration information for engines funded through the Carl Moyer Program and therefore these engines should have lower fees.

Response: Staff has evaluated the workload for engines funded by the District's Carl Moyer Program. Because the majority of the required registration information was submitted with the Moyer applications and verified with an initial inspection, Staff is recommending a lower initial fee than originally proposed for engines funded by the Carl Moyer Program. The fee is reduced from \$300 to \$151.

Comment #3: If an engine is used in multiple air districts does the engine need to be registered and pay fees in each district?

Response: Health and Safety Code, Section 39666(d) states that local air districts are responsible for implementing and enforcing the requirements of the ATCMs on nonvehicular sources within their own jurisdiction. Therefore, regardless of whether the engine is registered with a different air district, any engine operating within Sacramento County must be registered with SMAQMD and must pay fees to recover the costs of ATCM enforcement for that engine.

In addition to the Health and Safety Code requirements Title 17 of the California Code of Regulations, Section 93115.8(d) states that the owner/operator must submit registration to the District. The Staff report for the ATCM clarifies that engines are required to be registered with their local air district.

Sacramento Farm Bureau Board Meeting (February 19, 2008)

- Participants:** Charlotte Mitchell
Ken Oneto
Russell van Loben Sels
Other Board Members (detailed list unavailable)
- Comment #1:** The District should consider holding inspections during the winter when engines are in not in use and being stored in a centralized location to help cut down on inspection costs.
- Response:** Staff considered this when calculating inspection times and it is reflected in the fees.
- Comment #2:** The fees the District is proposing are much higher than some of the surrounding districts, such as those for Butte County AQMD.
- Response:** The fees are based on the cost for the District to administer the ATCM. The administration costs of the ATCM are based on a once every three year inspection cycle which is consistent with the State's Portable Equipment Registration Program inspection cycle. Staff reduced fees wherever possible, such as for Moyer engines and multiple engines at a single site. In addition, Staff recommends an exemption from paying renewal fees for engines meeting the final emission standards of the ATCM.

Letter from Topper Van Loben Sels (March 6, 2008)

- Comment #1:** Why are portable irrigation pumps now called stationary pumps?
- Response:** The Air Resources Board released an advisory on January 25, 2008, stating that portable engines used in agricultural operations would be subject to the Stationary Compression Ignition Engine ATCM instead of the Portable Compression Ignition Engine ATCM. Rental engines used at an agricultural operation will still be subject to the Portable Compression Ignition Engine ATCM and the rental agency is required to maintain compliance with the portable ATCM. The advisory was endorsed by the agricultural community because classifying portable agricultural engines as stationary allows them to be applicable for Carl Moyer Funding.
- Comment #2:** Why do portable pumps used in both Sacramento County and San Joaquin County require double registration fees?
- Response:** See the response to Comment #3 from the Walnut Grove Public Workshop.

Comment #3: Why are the proposed fees for the District so much higher than those for Butte County AQMD?

Response: See the response to Comment #2 from the Sacramento Farm Bureau Board meeting.

Comment #4: The proposed fee structure is just plain shocking! My application should not take more than one hour to enter into the database. Staff is proposing a fee of \$160 per hour and therefore my total cost for my application should be only \$160.

Response: For a typical engine at a facility the initial registration process should take approximately 3 hours, which includes entering the data, determining compliance with the ATCM, travel to the facility, and the actual inspection of the engine to verify the registration information. For engines funded by the Carl Moyer program, the initial inspection has been eliminated due to the engine information already being verified through this program. Also, for multiple engines located at one facility, travel time has been reduced and registration processing time has been reduced.

Renewal fees are assessed to cover the costs of staff inspecting the engine once every three years. Additionally, because Staff has determined that engines complying with the ATCM emission standards will not require continued inspections, these ATCM-compliant engines will be exempt from paying further renewal fees.

Any reductions in Staff time identified in the registration process have been reflected in the proposed fees.

Comment #5: All of my engines are part of the Carl Moyer program and are new technology units. We made the conversion at considerable out of pocket expense (\$50,000), and now we are being penalized with this outrageous new proposed fee!

Response: Staff appreciates your participation in the Moyer programs that accelerate air quality benefits from engine replacements. See the response to Comment #2 from the Walnut Grove Public Workshop for a discussion of fee reductions for participation in the Carl Moyer program, proposed in response to these and other similar comments.