

**SACRAMENTO METROPOLITAN
AIR QUALITY MANAGEMENT DISTRICT**

For Agenda of **March 24, 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: Amendments to Rule 304 – Plan Fees

Recommendations

1. Open the public hearing on the proposed rule amendments.
 2. After hearing testimony, continue the public hearing to April 28, 2005 to consider the adoption of the proposed changes.
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Executive Summary

Naturally-occurring asbestos (NOA) was discovered in Folsom in July 2004. The District is required to enforce the California Air Resources Board Asbestos Air Toxic Control Measure (ATCM) in all NOA areas. The District reviews dust mitigation plans and conducts inspections to ensure that asbestos-containing dust is not leaving the project site. At the present time, the District is not recovering the costs of implementing the ATCM. The proposed amendments to Rule 304 establish fees to recover costs associated with the NOA program.

California Health and Safety Code requires a fee rule to be heard at two public meetings before the Board of Directors may consider it for adoption. This meeting represents the first opportunity for the Board to take public testimony into consideration, although the rule will not be considered for adoption until the April 28, 2005 Board meeting.

Attachments

The table below identifies the attachments to this memo:

Item	Attachment
Rule 304—Plan Fees	A
Staff Report	B
Comments and Responses	C
Evidence of Public Notice	D
Resolution—Rule 304 (for consideration on April 28, 2005)	E

Background

Rule 304—Plan Fees was originally adopted in 1990 to establish fees for plans related to renovation and demolition of asbestos-containing structures. It was later amended to include fees for fleet inventory reports and mobile source emission reduction credit applications. The proposed amendments make no alteration of the existing fee structures established in the rule. The current amendments are proposed to add a new fee schedule for the naturally-occurring asbestos (NOA) program.

The requirements of the ATCM distinguish between projects that are one (1.0) acre or less and those that are larger than one acre. Larger projects must have the District approve dust mitigation plans; the proposed fee is \$350. These projects must then comply with the plan, and the District conducts inspections to verify compliance. The base inspection fee proposed for these projects is \$20 per acre. If more than 18 hours of staff time per 100 acres is required for inspection-related activities, an hourly rate of \$116 applies to additional time. This is the hourly time and materials rate established by Rule 301—Permit Fees.

Projects of one (1.0) acre or less are not required to submit dust mitigation plans, although they are required to comply with the ATCM. As proposed in the amended rule, when these projects are inspected the hourly rate of \$116 applies. However, this provision would not take effect until one year after the rule's adoption date.

As proposed, the rule amendments also include an analysis fee in the event additional sampling or analytical work is required; a consumer price index (CPI)-based adjustment; and a fee waiver provision in the instance that the fees impose undue financial hardship.

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. This March 24 Board hearing is to take public testimony on the proposed rule amendments. At the Board meeting on April 28, the Board may consider the rule for adoption. The proposed resolution to adopt the rule amendments is included in this Board package for review before consideration at the April meeting.

Summary of Changes

- Exemption provides the opportunity to discuss possible waiver of fee payment with the APCO
- Dust mitigation plan fee of \$350
- Geologic evaluation fee of \$450
- Plans not yet approved by rule adoption date are subject to the fees

- Projects for which a DMP has been submitted pay \$20/acre inspection fee; if time for inspection and related activity exceeds 18 hours per 100 acres, rate of \$116 per hour applies
 - Increase in the acreage is subject to the per-acre fee
 - Inspection rate of \$116/hour for projects without a DMP
 - Costs for analysis, sampling, and testing required by the APCO to be paid by applicant
 - NOA plan fees can be adjusted annually according to the change in the Consumer Price Index
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Business Cost Impacts

Since the proposed fee schedule for projects submitting a dust mitigation plan includes a per-acre fee to cover the District's cost of inspections, the total charged would depend on the project size. For example, a 200-acre project would be charged \$4350. This includes \$350 for review and approval of the dust mitigation plan plus \$20 per acre for 200 acres, or \$4000.

Projects not submitting a DMP would pay an hourly inspection rate only when inspected. Typical cost for this inspection is expected to be \$348.

In cases where this fee presents a financial hardship, a conference may be scheduled with the APCO to discuss a waiver of the fee payment.

District Impacts

The amendments are proposed to recover the District's costs of implementing the asbestos ATCM. They are not expected to result in an additional need for staff resources.

Emission Impacts

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

Environmental Review and Compliance

The District's Environmental Coordinator has determined that the proposed amendments to Rule 304 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. The proposed amendments to Rule 304 establish a fee schedule to recover the expenses of implementing District responsibilities for the Asbestos ATCM for Construction, Grading, Quarrying, and Surface Mining Operations.

Public Comments

A public workshop was held on February 17, 2005 to discuss changes to the Rule. Notice of the workshop was published in the newspaper, copies of the public notice were sent to businesses that may be affected as identified in the Yellow Pages and to others who requested it, and notification was made through the BIA's weekly electronic newsletter. The notice, rule, and staff report were also posted on the District's website. Staff received comments at the public workshop. Comments and responses from are included in *Attachment C, Comments and Responses*.

Comments Received since the Public Notice

As of March 1 2005, no further comments have been received.

Conclusion

The proposed amendments to Rule 304 are necessary to enable the naturally occurring asbestos program to provide the resources to ensure compliance with the Asbestos Air Toxic Control Measure, protect public health, and improve air quality in the Sacramento region. Therefore, Staff recommends that the Board take these amendments into consideration and approve them at the next Board hearing

Respectfully Submitted

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

Attachments

ATTACHMENT A

Rule 304 – Plan Fees

ATTACHMENT B

Staff Report Rule 304 – Plan Fees

ATTACHMENT C

Comments and Responses

ATTACHMENT D

Evidence of Public Notice Rule 304 – Plan Fees

ATTACHMENT E

Resolution—Rule 304

(for consideration on April 28, 2005)