

**TUOLUMNE COUNTY  
AIR POLLUTION CONTROL DISTRICT  
RULES AND REGULATIONS**



**July 2021**

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## REGULATION I - DEFINITIONS

Rule 101      Title. These Rules and Regulations shall be known as the Rules and Regulations of the Tuolumne County Air Pollution Control District.

Rule 102      Definitions. Except as otherwise specifically provided in these Rules, and except where the context otherwise indicates, words used in these Rules are used in exactly the same sense as the same words are used in the Health and Safety Code of the State of California.

Air Contaminant or Pollutant. Any discharge, release, or other propagation into the atmosphere directly, or indirectly, caused by man and includes, but is not limited to, smoke, dust, charred paper, soot, grime, carbon, noxious acids, fumes, gases, odors, or particulate matter, or any combination thereof.

Air Pollution Control Officer. The Air Pollution Control Officer of the Air Pollution Control District of Tuolumne County.

Allowable Emissions. The emission rate calculated using the maximum design capacity of the source unless the source is subject to Permit to Operate conditions which limit the operating rate or hours of operation, or both, which is the most stringent of applicable emission limitations contained in these Rules and Regulations or the emission rate, if any, specified as a Permit to Operate condition.

Alteration. Any addition to, enlargement of, replacement of, or any major modification or change of the design, capacity, process, or arrangement, or any increase in the connected loading of equipment or control apparatus, which will significantly increase or affect the kind or amount of air contaminants emitted.

A.R.B. The California Air Resources Board or any person authorized to act on its behalf.

Atmosphere. The air that envelops or surrounds the earth. Where air pollutants are emitted into a building not designed specifically as a piece of air pollution control equipment, such emissions into the building shall be considered to be an emission into the atmosphere.

Attainment Pollutant. A criteria pollutant in an Air Pollution Control District or sub-District zone designated by the Environmental Protection Agency as an attainment area or unclassified area for such pollutant.

Baseline Concentration. The ambient concentration level reflecting actual air quality as monitored or modeled as of (1) January 1, 1981, minus any contribution from major stationary facilities and major modifications on which construction commenced on or after January 5, 1975, for attainment pollutants; and (2) the date an application for an Authority to Construct is deemed complete by the Air Pollution Control Officer for nonattainment pollutants.

Best Available Control Technology. An emission limitation, based on the maximum degree of reduction for a criteria pollutant or precursor which would be emitted from any source or modification which the Air Pollution Control Officer, on a case-by-case basis, taking into account energy, environmental and economic impacts, and other costs, determines is achievable for such source or modification through application of production processes or available control methods, systems, and techniques, for such pollutant. In no case shall application of best available control technology result in emissions of any pollutant or precursor which would exceed the emissions allowed by 40 CFR Part 60 and 61. If the Air Pollution Control Officer determines that technological or economic limitations on the application of measurement technology to a particular class of sources would make the imposition of an emission standard infeasible, he may instead prescribe a design equipment, work practice or operations standard, or combination thereof. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and shall provide for compliance by means which achieve equivalent results.

Board. The Tuolumne County Air Pollution Control Board.

Breakdown Condition. An unforeseeable failure or malfunction of (1) any air pollution control equipment or related operating equipment which causes a violation of any emission limitation or restriction prescribed by these Rules and Regulations, or by State law, or (2) any in-stack continuous monitoring equipment, where such failure or malfunction:

- A. Is not the result of neglect or disregard of any air pollution control law or rule or regulation; and
- B. Is not intentional or the result of negligence; and
- C. Is not the result of improper maintenance; and
- D. Does not constitute a nuisance; and
- E. Is not a recurrent breakdown of the same equipment.

Combustion Contaminant. Any particulate matter discharged into the atmosphere from the burning of any material which contains carbon in either the free or combined state.

Condensed Fumes. Particulate matter generated by the condensation of vapors evolved after the volatilization from the molten liquid state, or generated by sublimation, distillation, calcination or chemical reaction, when these processes create airborne particles.

Criteria Pollutant. An air pollutant regulated by a national ambient air quality standard contained within 40 CFR Part 50.

District. Is the Air Pollution Control District of Tuolumne County.

Dust. Minute solid particles released into the air by natural forces or by mechanical processes such as crushing, grinding, milling, drilling, demolishing, shoveling, conveying, covering, bagging, sweeping, or other similar processes.

Emission. The act of releasing or discharging air contaminants into the ambient air from any source.

Emission Data. Are measured or calculated concentrations or weights of air contaminants emitted into the ambient air. Production data used to calculate emission data are not emission data.

Emission Point. The place, located in a horizontal plane and vertical elevation, at which an emission enters the atmosphere.

Facility. Any source or collection of sources of air contaminants which are located on one or more contiguous or adjacent properties within the District and which is owned, operated, or under shared entitlement to be used by the same person. Items of air contaminant emitting equipment shall be considered aggregated into the same facility and items of non-air contaminant emitting equipment shall be considered associated with air contaminant emitting equipment only if:

- A. The operation of each item of equipment is dependent upon, or affects the process of, the others; and
- B. The operation of all such items of equipment involves a common raw material or product.

Federal Land Manager. The Secretary of the United States Department with authority over applicable federal lands, his authorized representative, or the President of the United States.

Flue. Any duct or passage for air, gases, or the like, such as a stack or chimney.

Fossil Fuel-Fired Generator. Means a furnace or boiler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer. "Fossil fuel" means natural gas, petroleum, coal, and any form of solid, liquid, or gaseous fuel derived from such materials.

Fugitive Dust. Solid particulate matter that becomes airborne, other than that emitted from an exhaust stack, as a direct result of operation of a facility.

Hearing Board. The appellate review board of any county or regional air pollution control district as provided for in the Health and Safety Code of the State of California.



Incineration. An operation in which combustion is carried on for the principal purpose, or with the principal result of, oxidizing a waste material to reduce its bulk or facilitate its removal.

Incinerator. Means any furnace or other closed fire chamber used to dispose of combustible waste by burning and from which the products of combustion are directed through a flue or chimney.

Installation. The placement, assemblage, or construction of equipment or control apparatus at the premises where the equipment or control apparatus will be used, including all preparatory work at such premises.

Institutional Facility. Means any hospital, boarding home, school, or like facility.

Lowest Achievable Emission Rate. For any source, the most stringent of:

- A. The most effective emission limitation which the Environmental Protection Agency certified is contained in the implementation plan of any state approved under the Clean Air Act for such class or category of source, unless the owner or operator of the proposed source demonstrates to the satisfaction of the Air Pollution Control Officer that such limitation is not achievable; or
- B. The most effective emissions control technique which has been achieved in practice, for such category or class of source; or
- C. Any other emission control technique found, after public hearing, by the Air Pollution Control Officer to be technologically feasible and cost effective for such class or category of sources or for a specific source.

In no event shall the application of lowest achievable emission rate allow for emissions in excess of those allowable under 40 CFR Part 60.

Major Facility. Any facility which actually emits or has the potential to emit, when operating at maximum design capacity, 100 tons per year or 1000 pounds per day, or more, or a criteria pollutant or precursor.

Major Modification. Any modification of a facility which increases the actual emission or potential to emit a criteria pollutant or precursor by 100 tons per year or 1000 pounds per day or more. Emission increases shall include all accumulated increases in actual emissions or potential to emit at the facility since January 1, 1981, or since the date of issuance of the most recent Authority to Construct for initial construction or major modification of the facility.

Modification. Any physical change in, change in method of operation of, or addition to an existing stationary source, except that routine maintenance or repair shall not be considered to be a physical change. A change in the method of operation, unless previously limited by a Permit to Operate condition, shall not include:

- A. An increase in the production rate, if such increase does not exceed the operating design capacity of the source.
- B. An increase in the hours of operation.
- C. A change in ownership of a source.

Multiple-Chamber Incinerator. Any article, machine, equipment, contrivance, structure or part of a structure used to dispose of combustible refuse by burning, consisting of three or more refractory-lined combustion furnaces in series, physically separated by refractory walls, inter-connected by gas passage ports or ducts employing adequate design parameters necessary for maximum combustion of the material to be burned.

Nonattainment Pollutant. A criteria pollutant in an air pollution control district or sub-district zone designated by the Environmental Protection Agency as a nonattainment area for that pollutant.

Operation. Any physical action resulting in a change in the location, form or physical properties of a material, or any chemical action resulting in a change in the chemical composition or the chemical properties of a material.

Orchard or Citrus Heaters. Any article, machine, equipment, or other contrivance, burning any type of fuel or material capable of emitting air contaminants, used or capable of being used for the purpose of giving protection from frost damage.

Owner or Operator. Means any person who owns, operates, controls or supervises an affected facility, or a stationary source of which an affected facility is a part.

Particulate Matter. Is any material except uncombined water, which can exist in a finely divided form as a liquid or solid at standard conditions.

Person. Any person, firm, association, organization, partnership, business trust, corporation, company, contractor, supplier, installer, operator, user or owner, any government agency or public district, or any officer or employee thereof.

Potential to Emit. The quantity of emissions that a source is capable of emitting at maximum design capacity calculated on the assumption that air pollution control equipment incorporated into the design of the source will function in the manner reasonably anticipated when the calculation is made.

PPM. Parts per million by volume expressed on a dried gas basis.

Precursor. A directly emitted pollutant that, when released into the atmosphere, forms or causes to be formed or contributes to the formation of a secondary pollutant which is a criteria pollutant. The following precursor-pollutant transformations shall be included in the determination of secondary pollutant concentrations: non-

methane hydrocarbons - ozone; nitrogen oxides - nitrogen dioxide; sulfur oxides - sulfur dioxide.

Process Weight Per Hour. The total weight, including contained moisture, of all materials introduced into any specific process, which process may cause discharge into the atmosphere. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not. (The process weight per hour will be derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, excluding any time during which the equipment is idle.)

Public Record. Means any record made available to the public by law containing information relating to the conduct of the public's business that is prepared, owned, used, or retained by the District, except "trade secrets" as defined in Rule 514.C, Regulation V.

Record. Means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or any combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, drums, and other documents.

Resource Recovery Facility. Any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. Energy conversion facilities must utilize solid waste to provide more than 80% of the heat input to be considered a resource recovery facility.

Secondary Emissions. Emissions within the District from (1) all cargo carriers, excluding motor vehicles as defined in the Vehicle Code, which load or unload at a facility, and (2) all off-site support facilities which would be constructed as a result of construction or modification of a facility.

Section. As used in these Rules and Regulations, unless some other code is specifically mentioned, all section references are to the Health and Safety Code.

Solid Waste Dump. Means any accumulation for the purpose of disposal of any solid waste.

Source. Any machine, equipment, apparatus, device, process, or combination thereof, which emits, or may emit air contaminants to the atmosphere through a common duct or vent to a single emission point.

Source Operation. The last operation preceding the emission of an air contaminant, which operation (a) results in the separation of the air contaminants from the process materials, or in the conversion of the process materials into air contaminants, as in the case of combustion of fuel, and (b) is not an air pollutant abatement operation.

Standard Conditions. As used in these regulations, "Standard Conditions" are a gas temperature of 60 degrees Fahrenheit and a gas pressure of 14.7 pounds per square inch absolute. Results of all analysis and tests shall be calculated and reported at this gas temperature and pressure.

Standard Cubic Foot of Gas. The amount of gas that would occupy a volume of one (1) cubic foot, if free of water vapor, at standard conditions.

Temporary Source. Any source or activity causing emissions which operates within a single air pollution control district for less than two (2) years in any ten (10) year period, including, but not limited to, pilot plants, portable facilities and construction activities.

Total Reduced Sulfur (TRS). Total reduced sulfur contained in hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide or other organic compounds, all expressed as hydrogen sulfide. Sulfur dioxide, sulfur trioxide, or sulfuric acid are not to be included in the determination of TRS.

## **REGULATION II - PROHIBITIONS**

Rule 201      District-Wide Coverage.

Prohibitions as set forth in this Regulation, shall apply in all portions of the Tuolumne County Air Pollution Control District unless otherwise stated.

Rule 202      Visible Emissions.

A person shall not discharge into the atmosphere from any single source of emission whatsoever any air contaminant for a period or periods aggregating more than three (3) minutes in any one (1) hour which is:

- A.      As dark or darker in shade as that designated as No. 1 on the Ringlemann Chart, as published by the United States Bureau of Mines, or
- B.      Of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke described in subsection (A) of this section.

Rule 203      Exceptions. The provisions of Rule 202 do not apply to:

- A.      Smoke from fires set or permitted by any public fire officer, if such fire is set by or permission given in the performance of the official duty of such officer, and such fire in the opinion of such officer is necessary:
  - 1.      for the purpose of the prevention of a fire hazard (or health hazard as determined by the Health Officer) which cannot be abated by any other means, or
  - 2.      the instruction of public employees and/or volunteer firemen in the methods of fighting fires.
- B.      Smoke from fires set pursuant to permit on property used for industrial purposes for the purpose of instruction of employees in methods of fighting fires.
- C.      Open outdoor fires used for recreational purposes or for cooking of food for human consumption.
- D.      The use of an experimental device, system, or method to study or research open burning authorized by Section 41707 and 41805 (b) of the Health and Safety Code and these Rules and Regulations.
- E.      Agricultural operations necessary for the growing of crops or raising of fowl or animals.

- F. Use of any aircraft to distribute seed, fertilizer, insecticides, or other agriculture aids over lands devoted to the growing of crops, or the raising of fowl or animals.
- G. The use of other equipment in agricultural operations necessary for the growing of crops, or the raising of fowl or animals.
- H. Orchard or citrus heaters that are on the approved list published by the State Air Resources Board.
- I. The governing board of the district may by Rule provide for the issuance by the Air Pollution Control Officer of permits for open burning. The provisions of Rule 202 do not apply to smoke from fires set pursuant to such permit.
- J. Smoke emissions from tepee burners operating in compliance with Section 4438 of the Public Resources Code during the disposal of forestry and agricultural residues with supplemental fossil fuels, and burners used to produce energy and fired with such fuels, when such emissions result from startup or shutdown of the combustion process or from the malfunction of emissions of control equipment. This subdivision shall not apply to emissions which exceed a period or periods of time aggregating more than 30 minutes in any 24-hour period. This subdivision shall not apply to emissions which result from the failure to operate and maintain in good working order any emission control equipment.

Rule 204      Wet Plumes.

Where the presence of uncombined water is the only reason for the failure of an emission to meet the limitation of Rule 202 that Rule shall not apply. The burden of proof which establishes the application of this Rule shall be upon the person seeking to come within its provisions.

Rule 205      Nuisance.

A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance, or annoyance to any considerable number of persons, or to the public, or which endanger the comfort, repose, health or safety of any such persons, or the public, or which cause, or have a natural tendency to cause injury or damage to business or property.

Exception: The provisions of Rule 205 do not apply to odors emanating from agriculture operations necessary for the growing of crops or raising of fowl or animals.

Rule 206      Incinerator Burning.

Except for the burning of residential rubbish, as defined in Rule 102, a person shall not burn any combustible or flammable waste in any incinerator within the boundaries of the Tuolumne County Air Pollution Control District except in a multiple-chamber incinerator as defined in Rule 102 or in equipment found by the Air Pollution Control Officer to be equally effective for the purpose of air pollution control.

Pathological Incineration: A person shall not burn any pathological waste in any incinerator within the boundaries of the Tuolumne County Air Pollution Control District unless all gases, vapors, and gas-entrained effluents from such an incinerator are:

- A. Incinerated at temperatures of not less than 1,500 degrees Fahrenheit for a period of not less than 0.5 seconds in an incinerator distributing direct flame to pathological waste on a solid grate, or
- B. Processed in such a manner determined by the Air Pollution Control Officer to be equally, or more, effective for the purpose of air pollution control than (A) above.

For the purpose of this Rule, "Pathological Waste" is defined as including, but not limited to, human or animal tissue, or natural constituents thereof, being combusted for reasons of waste reduction, disease control or burial preparation.

Rule 207      Particulate Matter.

A person shall not release or discharge into the atmosphere from any source or single processing unit, exclusive of sources emitting combustion contaminants only, particulate matter emissions in excess of 0.1 grains per cubic foot of dry exhaust gas at standard conditions.

Rule 208      Orchard or Citrus Heaters.

- A. No person shall use any orchard or citrus heater unless it has been approved by the ARB or does not produce more than one (1) gram per minute of unconsumed solid carbonaceous material.
- B. All orchard heaters shall be maintained in reasonably clean condition, good repair and working order. Whenever orchard heaters are burning they must be adequately attended and supervised to maintain the condition, adjustment, and proper operation of the orchard heaters.
- C. It shall be unlawful for any person, for the purpose of frost protection, to burn any rubber, rubber tires, or other substance containing rubber, or to burn oil or other combustible substances in drums, pails, or other containers except orchard heaters.

Rule 209 Fossil Fuel-Steam Generator Facility.

A person shall not build, erect, install, or expand any fossil fuel fired steam generating facility unless the discharge into the atmosphere of contaminants will not and does not exceed any one or more of the following rates:

- A. 200 pounds per hour of sulfur compounds, calculated as sulfur dioxide (SO<sub>2</sub>);
- B. 140 pounds per hour of nitrogen oxides, calculated as nitrogen dioxide (NO<sub>2</sub>);
- C. 10 pounds per hour of combustion contaminants as defined in Rule 102 and derived from the fuel.

Rule 210 Specific Contaminants.

- A. Sulfur Compounds. A person shall not release or discharge into the atmosphere from any source of emission whatsoever, sulfur compounds, calculated as sulfur dioxide (SO<sub>2</sub>), in excess of 2000 parts per million by volume (0.2%) of exhaust gas.
- B. Combustion Contaminants. A person shall not release or discharge into the atmosphere from the following sources or units thereof, combustion contaminants calculated at 12 percent carbon dioxide (CO<sub>2</sub>) in excess of:
  1. Wood Fired Boilers and Incinerators: 0.2 grains per cubic foot of dry exhaust gas at standard conditions.
  2. All Other Sources: 0.1 grains per cubic foot of dry exhaust gas at standard conditions.
- C. Particulate matter emitted from a source or combination of sources in which exhaust gases from a combustion unit or process are used to dry, calcine, pyrolyze, sinter or otherwise thermally condition, exclusive of combusting any process material, shall be excluded from calculation as combustion contaminants.

Rule 211 Process Weight Per Hour.

A person shall not release or discharge into the atmosphere from any source or operation solid particulate matter in excess of that allowed in the table in Rule 212.

- A. The provisions of this Rule shall not apply to:
  1. Portland cement kilns, except that no owner or operator shall release or discharge into the atmosphere from any portland cement kiln



- particulate matter at a rate in excess of 0.30 pounds per ton of dry kiln feed, exclusive of fuel charged.
2. Portland cement clinker coolers, except that no owner or operator shall release or discharge into the atmosphere from any portland cement clinker cooler particulate matter at a rate in excess of 0.10 pounds per ton of dry kiln feed, exclusive of fuel charged.
  3. Sewage sludge incinerators, except that no owner or operator shall release or discharge into the atmosphere from any sewage sludge incinerator particulate matter at a rate in excess of 1.30 pounds per ton of dry sludge input as determined in CFR 40, Part 60.154.
  4. Rotary lime kilns, except that no owner or operator of such source constructed or modified after May 3, 1977, shall release or discharge into the atmosphere from such rotary lime kiln particulate matter at a rate in excess of 0.30 pounds per ton of limestone feed, exclusive of fuel charged.
  5. Lime hydrators, except that no owner or operator of such source constructed or modified after May 3, 1977, shall release or discharge into the atmosphere from such lime hydrator particulate matter in excess of 0.15 pounds per ton of lime feed.
  6. Combustion equipment which derives at least 80% of its fuel input heat content from wood or wood associated waste, except that such equipment shall comply with all other Rules in this Regulation.
  7. Processing equipment used in conjunction with combustion sources, other than those types provided for in other subsections of this Rule, used to dry, calcine, pyrolyze, sinter or otherwise thermally condition any process material, except that such equipment shall comply with all other Rules in this Regulation.
- B. Performance tests undertaken to determine compliance of sources with Part A., Sections 1. through 5. of this Rule shall comply with the provisions of CFR 40, Part 60, Appendix A only.

Rule 212      Process Weight Table.

ALLOWABLE RATE OF EMISSION BASED ON  
PROCESS WEIGHT RATE

Process Weight Rate Lbs/Hr.	Emission Rate Lbs/Hr.
50	0.4
100	0.6
500	1.5
1,000	2.3
5,000	6.3
10,000	9.7
20,000	15.0
60,000	29.6
80,000	31.2
120,000	33.3
160,000	34.9
200,000	36.2
400,000	40.4
1,000,000	46.8

Interpolation of the data for the process weight rates up to 60,000 lbs/hr. shall be accomplished by the use of the following equation:

$$E=3.59 p^{0.62} \quad p \text{ is less than or equal to } 30 \text{ tons/hr.}$$

and interpolation or extrapolation of the data for process weight rates in excess of 60,000 lbs/hr. shall be accomplished by use of the equation:

$$E=17.31 p^{0.16} \quad p \text{ is greater than } 30 \text{ tons/hr.}$$

Where:      E=Emission in pounds per hour.  
                  P=Process weight in tons per hour.

Rule 213      Storage of Petroleum Products.

- A.    1.    Except as provided in subdivision (2), no person shall install or maintain any stationary gasoline tank with a capacity of 250 gallons or more which is not equipped for loading through a permanent submerged fill pipe, unless such tank is a pressure tank, or is equipped with a vapor recovery system, or with a floating roof, or unless such tank is equipped with other apparatus of equal equal efficiency which has been approved by the Air Pollution Control Officer.

2. Subdivision (1) shall not apply to any stationary tanks installed prior to December 31, 1970.
  3. Subdivision (1) shall not apply to any stationary tank which is used primarily for the fueling of implements of husbandry, as such vehicles are defined in Division 16 (commencing with Section 36000) of the Vehicle Code.
  4. For the purpose of this Rule, "gasoline" means any petroleum distillate having a Reid vapor pressure of four pounds or greater.
  5. For the purpose of this Rule, "submerged fill pipe" means any fill pipe which has its discharge opening entirely submerged when the liquid level is six inches above the bottom of the tank. "Submerged fill pipe," when applied to a tank which is loaded from the side, means any fill pipe which has its discharge opening entirely submerged when the liquid level is 18 inches above the bottom of the tank.
  6. A "pressure tank" is a tank which maintains working pressure sufficient at all times to prevent hydrocarbon vapor or gas loss to the atmosphere.
  7. A "vapor recovery system" consists of a vapor gathering system capable of collecting the hydrocarbon vapors and gases discharged and a vapor disposal system capable of processing such hydrocarbon vapors and gases so as to prevent their emission to the atmosphere, with all tank gauging and sampling devices gas-tight except when gauging or sampling is taking place.
  8. A "floating roof" consists of a pontoon-type or double-deck-type roof, resting on the surface of the liquid contents and equipped with a closure seal, or seals, to close the space between the roof edge and tank wall. This control equipment shall not be used if the gasoline or petroleum distillate has a vapor pressure of 11.0 pounds per square inch absolute or greater under actual storage conditions. All tank gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place.
- B. A person shall not place, store or hold in any stationary tank, reservoir or other container of more than 40,000 gallons capacity, any gasoline or any petroleum distillate having a vapor pressure of 1.5 pounds per square inch absolute or greater under actual storage conditions, unless such tank, reservoir or other container is a pressure tank, or equipped with a vapor recovery system, or a floating roof as described in subsection (A) of this Rule, or other equipment of equal efficiency, provided such equipment is approved by the Air Pollution Control Officer.

- C. If a vapor recovery system is required pursuant to Regulation IX Rule 900 BENZENE AIRBORNE TOXIC CONTROL MEASURE - RETAIL SERVICE STATIONS, Rule 900 shall apply.

Rule 214      Reduction of Animal Matter.

A person shall not operate or use any article, machine, equipment or other contrivance for the reduction of animal matter unless all gases, vapors and gas-entrained effluents from such an article, machine, equipment or other contrivance are:

- A. Incinerated at temperatures of not less than 1,200 degrees Fahrenheit for a period of not less than 0.3 seconds, or
- B. Processed in such a manner determined by the Air Pollution Control Officer to be equally, or more, effective for the purpose of air pollution control than (A) above.

A person incinerating or processing gases, vapors, or gas-entrained effluents pursuant to this Rule shall provide, properly install and maintain in calibration, in good working order, and in operation, devices as specified in the Authority to Construct or Permit to Operate or as specified by the Air Pollution Control Officer, for indicating temperature, pressure, or other operating conditions.

For the purpose of this Rule "reduction" is defined as any heated process, including rendering, cooking, drying, dehydration, digesting, evaporating and protein concentrating.

The provisions of this Rule shall not apply to any article, machine, equipment, or other contrivance used exclusively for the processing of food for human consumption.

Rule 215      Abrasive Blasting.

By reference Title 17, Subchapter 6, of the California Administrative Code shall apply.

Rule 216      Enforcement.

These Rules and Regulations shall be enforced by the Air Pollution Control Officer under authority of Section 40001, 40702, 40752, and all officers empowered by Section 40120.

Rule 217      Existing Sources.

In any case where Regulation II imposes standards different than the standards applicable to an existing source of emission (on day before adoption of new Regulation 1974), and the source of emissions was in compliance, under variance, or

authority to construct, with the less restrictive standards applicable on such date, then the source shall remain in compliance with such Rule, until modified or until July 1, 1984, whichever occurs first. In no event is any modification to cause an increase in emissions over that being emitted prior to such modification.

Rule 218      Compliance Tests.

Except as otherwise provided in these Rules and Regulations, performance tests undertaken to determine compliance of sources with Regulation II shall comply with the provisions of CFR 40, Part 60, Appendix A except that Method 5 shall be modified to include the impinger train.

## REGULATION III - OPEN BURNING

### Rule 300      General Definitions.

- A.    Agricultural Operation.    As defined for open burning; the growing and harvesting of crops, or the raising of fowl or animals for the primary purpose of making a profit, or providing a livelihood, or the conduct of agricultural research or instruction by an educational institution and includes the burning of grass and weeds in or adjacent to fields in cultivation or being prepared for cultivation.    Agricultural operations include forest management, range improvement, wildland vegetation management, or disease or pest prevention. (Section 39011)
- B.    Agricultural Wastes.    As defined in open burning:
1.    Unwanted or unsellable material produced wholly from agricultural operations.
  2.    Materials not produced wholly from agricultural operations, but which are intimately related to the growing or harvesting of crops and which are used in the field, such as fertilizer and pesticide sacks or containers are emptied in the fields, except as prohibited in this Regulation.    This does not include such items as shop wastes, demolition materials, garbage, oil filters, tires, pallets, waste oil, etc. (Title 17, 80100)
- C.    APCD.    The Air Pollution Control District of Tuolumne County.
- D.    APCO.    The Air Pollution Control Officer of the Air Pollution Control District of Tuolumne County, or designated representative.
- E.    Approved Ignition Devices.    Those instruments or materials that will ignite open fires without the production of black smoke, including such items as liquid petroleum gas (L.P.G.), butane, propane, or diesel oil burners, flares, or other similar material as approved by the APCO. Tires, tar, tar paper, oil and other similar materials are not approved.
- F.    ARB.    The California Air Resources Board, or any person authorized to act on its behalf.
- G.    Brush Treated.    The material to be burned has been felled, crushed or uprooted with mechanical equipment, has been desiccated with herbicides, or is dead.
- H.    Designated Agency.    Any agency designated by the ARB as having authority to issue agricultural burning permits. The U.S. Forest Service and

the California Department of Forestry are so designated within their respective areas of jurisdiction. (Title 17, 80100)

- I. No-Burn Day. Any day on which Agricultural burning is prohibited by the State board or by a District.
- J. Open Out-Door Fire. As used in this Regulation means: Combustion of any combustible material of any type, outdoors in the open air, where the product of combustion is not directed through a flue.
- K. Permissive Burn Day. Any day on which Agricultural burning is not prohibited by the State board.
- L. Person. Any person, firm, association, organization, partnership, business trust, corporation, company, contractor, supplier, installer, operator, user or owner, any government agency or public district or any officer or employee thereof.
- M. Prescribed Burning. Prescribed Burning is defined in this rule as the planned application of fire to vegetation on lands selected in advance of such application, where any of the purposes of the burning are specified in the definition of agricultural burning as set forth in Section 39011.
- N. Section. As used in these Rules and Regulations, unless some other code is specifically mentioned, all section references are to the California Health and Safety Code.
- O. Silviculture Practices. The establishment, development, care and reproductive of stands of timber.
- P. Timber operations. The cutting or removal of timber or other forest vegetation.

### Rule 301 Compliance.

- A. Enforcement. This Regulation shall be enforced by the APCO under the authority of Section 40001, 40702, and 40752, and by all officers empowered by Section 40120.
- B. Criminal and Civil Penalties. A violation of this Regulation, or of Section 41800 or 41852, is a misdemeanor punishable in accordance with Sections 42400, 42400.1 and 42400.2, and is subject to civil penalties in accordance with Sections 42401, 42402, 42402.1, 42402.2 and 42403. In addition, the cost of putting out any unauthorized open outdoor fires may be imposed pursuant to Section 42400.5 on any person violating Section 41800 or 41852.
- C. Administrative Civil Penalties. In lieu of any other civil and criminal penalties, administrative civil penalties of up to \$500.00 per violation may be

assessed pursuant to this Subsection and Section 42402.5 for violations of this Regulation or of Section 41800 or 41852.

1. The APCO shall give written notice to the person against whom administrative penalties are proposed to be assessed. The notice shall identify the proposed penalty amount and the nature of the alleged violation. The notice shall also advise the recipient that he or she may review the APCO's evidence pertaining to the alleged violation and may within 10 days of receipt of the notice make a written request for an administrative hearing pursuant to this Subsection. If a hearing is not requested within 10 days, the APCO may issue an order assessing the penalty on the violator.
2. Upon a timely request, an administrative hearing shall be conducted pursuant to the following procedures:
  - a. The hearing shall be conducted by the APCO, provided that an alternative Hearing Officer shall be appointed by the APCO for good cause.
  - b. The person who has requested the hearing shall be given reasonable notice of the time and place of the hearing. The person shall have an opportunity to present oral or written evidence and argument. A tape recording or transcript shall be made of the hearing.
3. Following the hearing, the hearing officer shall render a written notice of decision. The notice of decision shall be delivered or sent certified mail to the person who requested the hearing. The decision shall state whether the hearing officer has determined the person has committed a violation as charged and shall state the basis for that determination. If the hearing officer determines that the person has committed a violation, the notice of decision shall include an order assessing an administrative penalty in accordance with this Subsection. The order shall also notify the person of his or her appeal rights under this Subsection.
4. Within 10 days of receipt of a notice of decision and order, a person may appeal the decision and order to the District's Hearing Board. The appeal need not be formal, but it shall be in writing and signed by the appellant or his or her authorized agent and shall state the grounds for the appeal. Any party may, at the time of filing the appeal or within 10 days thereafter, present written evidence and a written argument to the Board. The Board may grant oral arguments upon application made at the time written arguments are filed. The Board shall decide the appeal on any oral or written argument, briefs, and evidence that has been received. The Board may sustain, modify by reducing the amount of the fine assessed, or reverse the decision of



- the Hearing Officer. A copy of the Board's decision shall be delivered or mailed to the appellant and the APCO.
5. Penalty Schedule. The following schedule shall provide guidelines for the setting of administrative penalties imposed pursuant to this subsection. The penalty may be varied, up to \$500 per violation, in light of exacerbating or mitigating circumstances.
    - a. Rule 302.1 permit requirement; \$50 - \$100 for first offense. \$200 - \$500 for second offense.
    - b. Rule 303.1 burn/no burn day; \$50 - \$100 for first offense, \$200 - \$500 for second offense.
    - c. Rule 310.1 prohibited material; \$100 - \$500 for first offense, \$500 for second offense.
    - d. Multiple violations - \$250 for first offense, \$500 for second offense.
  6. The filing of a complaint for civil or criminal penalties pursuant to Sections 42400 et seq. shall preclude assessment of administrative civil penalties for the same violation. The final assessment of administrative civil penalties pursuant to this subsection shall preclude any subsequent complaint for criminal or civil penalties for the same violations pursuant to Sections 42400 et seq.

Rule 302      Burning Permits.

302.1 Requirements.

- A. No person shall knowingly set or permit open outdoor fires unless that person has been issued a valid permit by the APCO or a designated agency. (Section 41852).
- B. A permit shall not be issued unless information is provided as required by the APCO or a designated agency, including:
  1. Name and address of the applicant.
  2. Location of proposed burn.
  3. Acreage or estimated tonnage, and type of material to be burned.
  4. Any other information the APCO or the designated agency may deem pertinent.
- C. Each permit issued shall bear a statement of warning containing the following words or words of like or similar import: " THIS PERMIT IS

VALID ONLY ON THOSE DAYS DURING WHICH AGRICULTURAL BURNING IS NOT PROHIBITED BY THE STATE AIR RESOURCES BOARD OR THE AIR POLLUTION CONTROL DISTRICT PURSUANT TO SECTION 41855 OF THE HEALTH AND SAFETY CODE." (Section 41854).

- D. The designated agency shall forward the permit information received from applicants to the APCO within 48 hours for permit review.
- E. A designated agency shall not issue an APCD permit to itself or to another designated agency.

302.2 Exception.

Residential and Recreational open burning as described in Rules 310.2 E and F are exempt from burning permits from the APCO. This does not exempt persons from permits required by other agencies in compliance with the Public Resources Code or other ordinances.

Rule 303 Burn or No-Burn Day.

303.1 Prohibition.

No person required to comply with this Rule shall knowingly permit open outdoor fires on days when such burning is prohibited by ARB, the APCO, or the fire agency with appropriate jurisdiction. (Section 41854)

303.2. Permissive Burn or No-Burn Days.

- A. A notice as to whether the following day is a permissive-burn day, or no-burn day, or whether the decision will be announced the following day, shall be provided by the ARB by 3:00 p.m. daily for each of the air basins. If the decision is made by the following day it shall be announced by 7:45 a.m. Such notices shall be based on the Meteorological Criteria for Regulating Agricultural Burning, Article 3, Sections 80180 through 80320 of these Agricultural Burning Guidelines.
- B. Agricultural burning is prohibited on no-burn days, except as specified in Section 80102, subdivisions (d) and (e), and as may be permitted by a provision in an implementation plan adopted pursuant to Section 80150(c)(5).
- C. Upon request from a permittee through a designated agency, seven days in advance of a specific range improvement burn, forest management burn, or wildland vegetation management burn, at any elevation below 6,000 ft. (msl), a permissive-burn or no-burn notice will be issued by the ARB up to 48 hours prior to the date scheduled for the burn. Without further request, a

daily notice will continue to be issued until a permissive-burn notice is issued.

- D. Notwithstanding subdivision (c) of Section 80110, the ARB may cancel permissive-burn notices that have been issued more than 24 hours in advance if the cancellation is necessary to maintain suitable air quality.
- E. A permissive-burn or no-burn advisory outlook will be available up to 72 hours in advance of burns specified in subdivision (c) of Section 80110.

303.3 Exception.

The APCO may issue a special permit to authorize the use of open outdoor fires on No-Burn Days, when denial of such a permit would threaten imminent and substantial economic loss. In authorizing such burning a District shall limit the amount of acreage which can be burned in any one day and only authorize burning downwind of metropolitan areas forecasted by the Air Resources Board to achieve the ambient standards. (Section 41862)

Rule 304 Burning Management Requirements. (Title 17 - Section 80150)

- A. Material to be burned shall be arranged so that it will burn with a minimum of smoke.
- B. Except for large trees (diameter of six or more inches), only the amount that can be reasonably expected to completely burned within the following twenty-four hours shall be ignited in any one day.
- C. All outdoor fires shall be ignited only with approved ignition devices.
- D. Material to be burned shall be ignited as rapidly as practicable within applicable fire control restrictions.
- E. Mitigating measures shall be taken when smoke is drifting into a nearby populated area or creating a public nuisance.
- F. No material shall be burned unless it is free of tires, rubbish, tar paper, plastic, demolition and construction debris; is reasonably free of dirt, soil, and moisture; and is loosely stacked in such a manner to promote drying and insure combustion with a minimum of smoke.
- G. Any other conditions that the APCO may deem pertinent.

Rule 305 Minimum Drying Times.

305.1 Requirements.

As specified in Title 17, 80160; to lower the moisture content of the material being burned, the elapsed time between cutting and burning shall be:

- A. A minimum of three days for green straw and stubble.
- B. Sufficient time for agricultural waste such as orchard prunings, small branches, vegetable tops, and seed screenings to assure rapid and complete combustion with a minimum of smoke.
- C. A minimum of six weeks for trees, stumps, and large branches greater than six inches in diameter.
- D. A minimum of 6 months, if economically and technically feasible for brush. (Applicable to Range Improvement Burning only.)
- E. Material to be windrowed and piled when required. (Applicable to Forest Management Burning only.)

#### 305.2 Exception.

The APCO may, by permit, authorize shorter drying times if the denial of such a permit would threaten imminent and substantial economic loss.

### Rule 306     Agricultural Burning.

#### 306.1 Definition.

Agricultural Burning is defined in this rule as any open outdoor fire used in agricultural operations or in operation or maintenance of a water delivery system for agricultural operations. Burning of material other than material produced from an agricultural operation is not allowed by this rule.

#### 306.2 Agricultural Burning Requirement.

- A. Agricultural burning is allowed by complying with the following Rules:
  - 1. Rule 302 Burning Permit
  - 2. Rule 303 Burn or No-Burn Day
  - 3. Rule 304 Burning Management
  - 4. Rule 305 Minimum Drying Times
- B. Burning conducted by a Public Agency or through a cooperative agreement or contract involving a public agency, shall comply with Rule 307, instead of this Rule.
- C. No burning shall be conducted for the improvement of land for wildlife or game wildlife or game habitat until the person who desires to conduct the burning files with the APCO a written statement from the Department of Fish and Game that certifies that the burning is desirable and proper. If the Department of Fish and Game wishes to conduct the burn itself, it shall, on its own behalf, issue and file the statement. (Section 41861)

306.3 Exception.

The burning of empty sacks or containers which contained pesticides or fertilizers is exempt from 306.2, provided that the sacks or containers are within the definition of Agricultural Waste, Rule 300 (B).(Title 17, 80100)

Rule 307 Wildland Vegetation Management Burning.

307.1 Definition.

Wildland Vegetation Management Burning is defined in this rule as the use of prescribed burning conducted by a public agency or through a cooperative agreement or contract involving a public agency to burn land predominately covered with chaparral (as defined in the California Administrative Code, Title 14, Section 1561.1), trees, grass or standing brush.

307.2 Wildland Vegetation Management Burning Requirements.

- A. This rule applies to all burning which meets the definition as stated in Rule 307, regardless of whether such burning also meets another definition within this regulation.
- B. The APCO may regulate total acreage or tonnage that may be burned each day within the district.
- C. The APCO may regulate burning or require mitigation when the meteorological conditions could otherwise cause smoke to create or contribute to an exceedence of a state or federal ambient air quality standard or cause a public nuisance.
- D. All open outdoor fires shall be ignited as rapidly as practicable with the applicable fire control restrictions and only with approved ignition devices as defined in Rule 300.E.
- E. Vegetation burned under this rule shall be free of tires, rubbish, tar paper or construction debris, and reasonably free of dirt and soil.
- F. Vegetation will be in a condition to facilitate combustion and minimize the amount of smoke emitted during combustion.
- G. Wildland Vegetation Management burning must comply with the requirements:
  - 1. Rule 302 Burning Permit
  - 2. Rule 303 Burn or No-Burn Day
  - 3. Rule 307.3 Burn Plan

### 307.3 Burn Plan.

The following information will be provided to the APCO for review and approval at least 14 days in advance of the proposed burn:

- A. Location and specific objectives of the proposed burn.
- B. Acreage or tonnage, type, and arrangement of vegetation to be burned.
- C. Directions and distance to nearby sensitive receptor areas.
- D. Fuel condition, and combustion and meteorological prescription elements developed for the project.
- E. Projected schedule and duration of project ignition, combustion and burn down.
- F. Specifications for monitoring and verifying critical project parameters.
- G. Specification for disseminating project information.
- H. Other information requested by the APCO.

### 307.4 Exceptions.

- A. The APCO may exempt project burns smaller in area or tonnage than threshold levels established by the District.
- B. The APCO may exempt projects located in zones as established by the District.

## Rule 308 Forest Management Burning

### 308.1 Definition.

Forest Management Burning is defined as the use of open outdoor fires, in forest management, for forest debris removal or for timber operation, silvicultural or forest protection practices.

308.2 Forest Management Burning is allowed by complying with the following Rules:

- A. Rule 302 Burning Permit
- B. Rule 303 Burn and No-Burn Day
- C. Rule 305 Minimum Drying Times

- D. Rule 307.2 Wildland Vegetation Management Burning Requirements
- E. Rule 307.3 Burn Plan
- F. Rule 307.4 Exceptions

Rule 309     Range Improvement Burning

309.1 Definition.

Range Improvement Burning is defined as the use of open fires to remove vegetation for a wildlife, game, or livestock habitat or for the initial establishment of an agricultural practice on previously uncultivated land.

309.2 Range Improvement Burning is allowed by complying with the following Rules:

- A. Rule 302 Burning Permit
- B. Rule 303 Burn and No-Burn Day
- C. Rule 305 Minimum Drying Times
- D. Rule 307.2 Wildland Vegetation Management Burning Requirements
- E. Rule 307.3 Burn Plan
- F. Rule 307.4 Exceptions

309.3 Range Improvement Burning if done primarily for wildlife and game habitat must also comply with Rule 306.2 (C), Fish & Game Certification.

Rule 310     Miscellaneous Burning.

310.1 Prohibition.

Except as otherwise provided in this Regulation, no person shall use open outdoor fires for the purpose of disposal or burning of petroleum wastes, plastics, construction or demolition debris, tires, tar, trees, wood waste, or other combustible or flammable solid or liquid waste; or for metal salvage or burning of motor vehicle bodies. (Section 41800)

310.2 Exceptions.

A. Land Development Clearing.

1. The APCD finds it more economically desirable to dispose of wood waste from trees, vines, and bushes on property being developed for

commercial or residential purposes by burning instead of burial at a sanitary landfill.

2. This material shall be allowed for disposal by burning in compliance with the following Rules:
  - a. Rule 302 Burning Permit
  - b. Rule 303 Burn and No-Burn Day
  - c. Rule 304 Burning Management
  - d. Rule 305 Minimum Drying Times
3. Any other required permits as issued by other agencies shall be obtained and shall be valid.

**B. Ditch and Road Maintenance.**

1. The use of open outdoor fires for right-of-way clearing by a public entity, or utility, or for levee, ditch, or reservoir maintenance shall be allowed in compliance with the following Rules:
  - a. Rule 302 Burning Permit
  - b. Rule 303 Burn and No-Burn Day
  - c. Rule 304 Burning Management
  - d. Rule 305 Minimum Drying Times
2. Any other required permits as issued by other agencies shall be obtained and shall be valid.

**C. Hazard Reduction.**

1. The burning of vegetation such as, vines, bushes and waste from trees produced by fire safe clearing on property where grown will be allowed when this burning is done in compliance with State and local law ordinance to reduce a fire hazard. (Section 41802)
2. The burning shall be done in compliance with the following Rules:
  - a. Rule 302 Burning Permit
  - b. Rule 303 Burn and No-Burn Day
  - c. Rule 304 Burning Management
  - d. Rule 305 Minimum Drying Times
3. Any other required permits as issued by other agencies shall be obtained and shall be valid.
4. If a fire officer with jurisdiction determines that a condition exists in which a fire hazard will have an imminent effect on life, or property, or where other authorized officials determine that a health hazard



exists and that there is no alternative to burning, all other provisions of this Regulation shall be waived.

D. Fire Suppression and Training.

Nothing in these Rules and Regulations shall be construed as limiting the authority of any public fire official granted under provisions of law to:

1. Set or permit a fire when such fire is, in his opinion, necessary for the instruction of public employees, and/or volunteer firemen, or on property used for industrial purposes, when instructing employees in the methods of fighting fires.
2. The burning shall be done in compliance with Rule 302, Burning Permit Requirements, and prior approval of the APCO.
3. Set or cause to be set backfires necessary to save lives, or valuable property pursuant to Section 4426 of the Public Resources Code. (Section 41801)

E. Residential Maintenance.

The burning of residential rubbish, that which originates from a single or two family dwelling, limited to untreated wood, paper, cardboard, tree trimmings, leaves, lawn clippings, and plants shall be allowed under the following conditions:

1. Burning shall be allowed only on the premises where the material originated.
2. Burning is allowed by complying with the following Rules:
  - a. Rule 303 Burn and No-Burn Day
  - b. Rule 304 Burning Management
  - c. Rule 305 Minimum Drying Times
3. Any other required permit as issued by other agencies shall be obtained and shall be valid.

F. Recreational Activity.

The use of open outdoor fires in recreational activities shall be allowed under the following conditions:

1. Material to be burned shall be limited to charcoal, untreated wood, or cooking fuels.

2. Burning shall be managed in compliance with Rule 304, Burning Management.
3. Any other required permit as issued by other agencies shall be obtained and shall be valid.

G. Mechanized Burner Requirements.

The APCO may authorize, by permit, open outdoor fires for the purpose of disposing agricultural wastes, or wood waste from trees, vines, bushes, or other wood debris free of non-wood materials, in a mechanized burner such that no air contaminant is discharged for a period or periods aggregating more than 30 minutes in any eight hour period which is:

1. As dark or darker in shade as that designated No.1 on the Ringlemann Chart, as published by the United States Bureau of Mines, or
2. Of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke described in subsection A of these rules.

In authorizing the operation of a mechanized burner, the APCO may make the permit subject to whatever conditions he determines are reasonably necessary to assure conformance with the standards prescribed in this Regulation. (Section 41812)

Rule 310.2 H. Non-Industrial Wood Waste by City or County.

The disposal by a city or county of non-industrial wood waste from trees, vines and brush at sites located above 1500 feet elevation mean sea level will be allowed. Burning under this subdivision requires a permit from the Air Pollution Control Officer, approval by the Air Resources Board, and is further subject to the conditions specified in Section 41803, 41804 and 41804.5 of the Health and Safety Code. (TCAPCD Rule 310 - *Miscellaneous Burning*, approved by U.S. EPA 64CFR45170, 08/19/1999)

## REGULATION IV - AUTHORITY TO CONSTRUCT REGULATIONS

### Rule 401      Permit Required.

Any person building, altering, or replacing any source of air contaminants shall first obtain an Authority to Construct from the Air Pollution Control Officer. An Authority to Construct shall remain in effect until the Permit to Operate for that source for which the application was filed is either granted or denied or until termination pursuant to other provisions of this Regulation.

### Rule 402      Exemptions to Rule 401. An Authority to Construct shall not be required for:

- A.
  - 1. Vehicles as defined by the Vehicle Code of the State of California.
  - 2. Vehicles other than those contained within the provisions of subsection 1. used to transport passengers or freight.
  - 3. The exemption allowed under this Section shall not be extended to include any article, machine, equipment, or other contrivance mounted on such vehicle contained within the provisions of subsection 1. and 2. that would otherwise require an Authority to Construct under the provisions of this Regulation.
- B. Equipment utilized exclusively in connection with any structure, which structure is designed for, and used exclusively as a dwelling for not more than two families.
- C. The following equipment:
  - 1. Comfort air conditioning, or comfort ventilating systems, which are not designed to remove air contaminants generated by or released from specific units or equipment.
  - 2. Refrigeration units except those used as, or in conjunction with, air pollution control equipment.
  - 3. Piston type internal combustion engines used on other than vehicles for transporting passengers or freight, and fired with natural gas or liquefied petroleum gas, or those having 1,000 cubic inches cylinder displacement or less and fired with diesel oil or gasoline.

4. Water cooling towers and water cooling ponds not used for evaporative cooling of water from barometric jets or from barometric condensers.
  5. Equipment used exclusively for steam cleaning.
  6. Equipment used in eating establishments for the purpose of preparing food for human consumption.
  7. Equipment used exclusively to compress or hold dry natural gas.
- D. The following equipment or any other exhaust system or collector serving exclusively such equipment:
1. Laboratory equipment used exclusively for chemical or physical analysis and bench scale laboratory equipment.
  2. Brazing, soldering or welding equipment.
- E. Steam generators, steam superheaters, water boilers, water heaters, and closed heat transfer systems that have a maximum heat input rate of less than 50,000,000 British Thermal Units (BTU) per hour gross, and are fired exclusively with one of the following:
1. Natural gas;
  2. Liquefied petroleum gas;
  3. A combination of natural gas and liquefied petroleum gas.
- F. Self-propelled mobile construction equipment other than pavement burners.
- G. Implements of husbandry used in agricultural operations.
- H. Repairs or maintenance not involving structural changes to any equipment for which a Permit to Operate has been granted.
- I. Other sources emitting less than 1 ton per year of any criteria pollutant or precursor which may be specified by the Air Pollution Control Officer.

Rule 403      Applications.

Every application for a Authority to Construct required under this Regulation shall be filed in the manner and form prescribed by the Air Pollution Control Officer and shall give all the information necessary to enable the Air Pollution Control Officer to make the determination on the approvability of the application. The Air Pollution Control Officer may require that such information be certified by a professional engineer registered in the State of California.

Rule 404      Application Criteria.

The Air Pollution Control Officer shall maintain, periodically review, and update a list of information which may be required of applicants seeking an Authority to Construct. The information list shall be transmitted to the applicant with the requested application for Authority to Construct. The Air Pollution Control Officer may conduct a pre-application conference with the applicant to ascertain the information to be required in the application.

Rule 405      Determination of Requirements.

Upon request for an application for an Authority to Construct, the Air Pollution Control Officer shall determine in which District zone the source is proposed for location and whether the facility or modification will be a major facility or a major modification impacting attainment and nonattainment pollutants. The Air Pollution Control Officer shall advise the applicant on the basis of this preliminary determination which requirements of this Regulation will apply. Special studies necessary to provide information in the application shall be borne at the expense of the applicant. The Air Pollution Control Officer shall base a final determination of requirements under this Regulation upon information contained in the complete application for Authority to Construct.

Rule 406      Completeness of Application.

Within 30 days after receiving an application for Authority to Construct, the Air Pollution Control Officer shall advise the applicant in writing whether the application is complete. If an application is deemed incomplete, the Air Pollution Control Officer shall notify the applicant of the additional information requirements. Failure to notify the applicant in writing of the completeness of the application shall be deemed acceptance of the application as complete. If the applicant fails to submit such requested information, the Air Pollution Control Officer may deny the application. Upon resubmission of an application, a new 30 day review period shall commence. After the Air Pollution Control Officer accepts an application as complete, he shall not subsequently request of an applicant any new or additional information which was not specified in the application form and information list. While an application is being processed after being deemed complete, the Air Pollution Control Officer may require the applicant to clarify, amplify, or supplement the information supplied.

Rule 407      Pollutant Modeling.

The Air Pollution Control Officer, in consultation with other Air Pollution Control Districts in the Mountain Counties Air Basin, shall designate air quality simulation models for use in determining air quality impacts of emissions from new and existing facilities and modifications. Each model shall utilize information relating to emission quantities and meteorological conditions for areas within and adjacent to the District. Each model designated shall be consistent with the requirements provided in the "Guidelines on Air Quality Models, OAQPS 1.2-080", unless the Air

Pollution Control Officer finds that such model is inappropriate for use in the District. After making such finding, the Air Pollution Control Officer may designate an alternate model only after allowing for public comment and only after consultation with other Air Pollution Control Districts in the Mountain Counties Air Basin, the Air Resources Board and the Environmental Protection Agency.

Rule 408      Attainment Pollutant Air Quality Analysis.

Utilizing the air quality simulation model designated in Rule 407, the Air Pollution Control Officer shall determine the increases in attainment pollutant concentrations in downwind District zones and other Air Pollution Control Districts that will occur as a result of operation of proposed facilities or modifications. The Air Pollution Control Officer may require that the modeling cost be borne by the applicant. The model shall consider air quality impacts projected for the area as a result of general commercial, residential, industrial, and other growth associated with the facility if such facility or modification is proposed to employ more than 2,000 new residents. The applicant shall provide an analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the new or modified facility's associated growth, except that such analysis of impacts on vegetation having no significant commercial or recreational value need not be provided. The Air Pollution Control Officer may require the applicant to monitor applicable pollutants for a maximum of one year prior to consideration of an application for Authority to Construct, and for a period determined by the Air Pollution Control Officer to be necessary after issuance of the Permit to Operate for the facility or modification to determine compliance with national ambient air quality standards or attainment pollutant increments contained in Rule 413. Such monitoring shall comply with 40 CFR, Part 53, and the Air Resources Board Quality Assurance Plan for Ambient Air Monitoring.

Rule 409      Exemptions to Rule 408.

The Air Pollution Control Officer may exempt from the provisions of Rule 408 any of the following facilities or modifications, or portions thereof, with respect to attainment pollutants:

- A.      Portable facilities being relocated which have received Permits to Operate after January 1, 1981, and temporary sources of emissions if:
  1.      Emissions from the facility would not exceed emissions limitations provided in these Rules and Regulations and would not cause or contribute to a violation of a national ambient air quality standard; and
  2.      Such operation would impact no Class I area and no area where an applicable increment is known to be violated; and
  3.      Notice is given to the Air Pollution Control Officer at least 90 days prior to a relocation identifying the proposed new location and the probable duration of operation at such location.

- B. Modification of a source for the sole purpose of converting from the use of petroleum products, natural gas, or both, by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act or the Federal Energy Supply, and Environmental Coordination Act of 1974 (or any superseding legislation). An exemption for such modification shall not apply for more than five (5) years after the effective day of such plan.
- C. Any modification which causes no net increase in the quantity of emissions from a facility, or any facility which causes no net increase in the quantity of emission within a District zone. Emission offset eligibility shall be determined through the provisions of Rule 411. No exemption shall be allowed if the facility or modification would impact a nonattainment area or an attainment pollutant increment violation area for such pollutant.
- D. Sources of fugitive dust.
- E. Any facility or modification which is not a major facility or major modification except any which would have the potential to emit an increase of emissions in excess of:
  - 1. 5.0 tons per year of lead;
  - 2. 0.02 tons per year of asbestos;
  - 3. 0.001 tons per year of beryllium;
  - 4. 0.3 tons per year of mercury;
  - 5. 3.0 tons per year of vinyl chloride;
  - 6. 3.0 tons per year of fluorides;
  - 7. 7.0 tons per year of sulfuric acid;
  - 8. 10.0 tons per year of hydrogen sulfide;
  - 9. 10.0 tons per year of total reduced sulfur.
- F. Any source of carbon monoxide which the Air Pollution Control Officer determines would not cause a violation of any national ambient air quality standard for such pollutant at the point of maximum ground level impact.

Rule 410      Calculation of Emissions.

- A. The maximum design capacity of a new facility or modification shall be used to determine the emissions from the new facility or modification unless the applicant, as a condition to receiving Authorities to Construct and Permits to Operate for such new facility or modification, agrees to a limitation on the

operation of the new facility or modification. Such limitation shall be used to establish the maximum emissions from the new facility or modification and shall be attached as a condition to the Permits to Operate. Allowable emissions shall be calculated on the basis of the emissions limitation contained in these Rules and Regulations as of the date the Air Pollution Control Officer deems the application for Authority to Construct complete.

- B. The maximum emissions for an existing facility shall be based on the actual operating conditions averaged over the two year period preceding the date of application, or such other averaging period as determined by the Air Pollution Control Officer if the source did not operate, or operated irregularly, during the preceding two year period. If violation of laws, rules, regulations, permit conditions or orders of the District, the Air Resources Board or the Environmental Protection Agency occurred during the period used to determine the actual operating conditions, then adjustments to the operating conditions shall be made to determine the emissions the existing facility would have caused without such violations.
- C. When computing the net increases in emissions for modifications, the Air Pollution Control Officer shall take into account the cumulative net emissions changes which are represented by Authorities to Construct associated with the existing facility, and issued after January 1, 1981, excluding any emissions reductions required to comply with federal, state, or District laws, rules or regulations.

Rule 411      Emission Offset Eligibility.

- A. Except in the case of seasonal sources, emissions offset quantities shall be calculated on annual, and daily bases. For seasonal sources, emission offset quantities shall be calculated on the basis of the season date span of operation, and daily emission rate, either estimated for proposed sources or averaged over the two year period preceding the date of application, or other appropriate periods as determined by the Air Pollution Control Officer, for existing sources.
- B. Emission offsets may be developed by the reduction of emissions from existing stationary and non-stationary sources. Offsets from stationary sources not exempt from the provisions of Rule 501 shall be certified by the Air Pollution Control Officer through conditions attached to the Permits to Operate of the emission-reducing sources. Offsets from non-stationary sources, and exempt stationary sources shall be certified by the Air Pollution Control Officer through new facility Permit to Operate conditions, contracts, or other means deemed adequate by the Air Pollution Control Officer. Such emissions offsets shall take effect no later than 120 days after initial operation of the new facility or modification.
- C. The ratio of emission offsets to the emission from a new facility or modification shall be:



1. 1.0:1 for offsets within the facility;
  2. 1.2:1 for offsets upwind in the same or adjoining Air Pollution Control District, or within a 15 mile radius of the proposed new facility or modification.
  3. Sufficient to demonstrate an air quality benefit through modeling in the area affected by emissions from the new facility or modification for offsets located in areas other than those of 1. or 2. above
- D. If an applicant certifies that the proposed new facility or modification is a replacement for a facility or source which was shut down or curtailed after January 1, 1981, emission reductions associated with such shutdown or curtailment may be used as offsets for the proposed facility or modification. Sources which were shut down or curtailed prior to January 1, 1981, may be used to offset emissions increases for replacements for such sources, provided that:
1. The shutdown or curtailment was made in good faith pursuant to an established plan with the Air Pollution Control Officer for replacement and emission control, and in compliance with air pollution laws, rules and regulations at the time; and
  2. The applicant demonstrates to the satisfaction of the Air Pollution Control Officer that there was good cause for delay in construction of the replacement sources.
- E. Notwithstanding any other provisions of this rule, any emissions reductions not otherwise authorized by this Rule may be used as offsets or emission increases from the proposed facility or modification provided that the applicant demonstrates to the satisfaction of the Air Pollution Control Officer that such reductions will result in a net air quality benefit in the area affected by emissions from the new facility or modification.
- F. Emissions reductions resulting from measures required by adopted federal, state, or District laws, rules or regulations shall not be allowed as emissions offsets unless a complete application incorporating such offsets was filed with the District prior to the date of adoption of the laws, rules or regulations.
- G. Emissions reductions of one precursor may be used to offset emissions increases of another precursor of the same secondary pollutant provided that the applicant demonstrates to the satisfaction of the Air Pollution Control Officer that the net emission increase of the latter precursor will not cause a new violation, or contribute to an existing violation, of any national ambient air quality standard. The ratio of emission reductions between precursor pollutants of the same secondary pollutant shall be determined by the Air Pollution Control Officer based upon existing air quality data.

Rule 412      Emission Reduction Credit.

- A.      The Air Pollution Control Officer shall allow emissions reductions which exceed those required by these Rules and Regulations to be banked for use in the future by a source owner or by others through agreement with the source owner. Reductions approved under this Rule shall be certified by the Air Pollution Control Officer and maintained for offset eligibility in an emission reduction bank. Banked emissions shall be used only for emission offsets pursuant to this Regulation.
- B.      Emission reductions eligible for credit under this Rule shall be actual emissions averaged over a two year period from sources holding Permits to Operate, reduced through the modification of equipment, modification of operations schedules, or shutdowns occurring after January 1, 1981. Eligible reductions shall be real, permanent, and enforceable, and shall not derive from enactment of more restrictive emission regulations. Emission reductions produced by modifications of operations schedules or equipment shall be secured by the Air Pollution Control Officer through conditions of Permits to Operate. No emission reduction shall be eligible for credit unless the applicant can demonstrate that the reduction will produce no corresponding emission increase within the District or impacting the District. Emission reductions shall be substantiated by source test, emission monitor, operating record or other data as required by the Air Pollution Control Officer. Engineering data may be substituted for source test data upon approval of the Air Pollution Control Officer.
- C.      Eligible emission reductions shall be banked pursuant to the following provisions:
1.      Applications for reduction credit shall be submitted on forms or pursuant to guidelines approved by the Air Pollution Control Officer. Failure to provide all required information shall constitute denial of the application.
  2.      The Air Pollution Control Officer shall publish a public notice once in a newspaper of general circulation in the District at least thirty (30) days prior to making a final decision on an application. The notice shall state the location of the application available for public review, the quantity, and type of pollutant proposed for reduction, and instructions for submitting comments.
  3.      If after review of public comments, the application is approved by the Air Pollution Control Officer, the emission reductions shall be certified by return of a certificate to the applicant identifying the

- pollutant type, and daily average, and annual quantities approved for banking.
4. Certified emission reductions shall continue to be banked until withdrawn pursuant to the provisions of this Rule.
- D. Emission reductions certified for banking shall be withdrawn pursuant to the following provisions:
1. The use, sale, or exchange of certified reductions shall be at the discretion of the depositor, provided that exclusive right to use, and authorize use shall not constitute an unrestricted right. Certified reductions shall only be used as emission offsets within the District, or outside the District with the approval of the Air Pollution Control Officer, pursuant to the provisions of this Regulation. If the Air Pollution Control Board determines that emission reductions contained within an approved Nonattainment Plan or other applicable air quality maintenance plan are not being met within established schedules, the Air Pollution Control Board may declare a moratorium on or restrict the withdrawal of certified reductions until the applicable plan is modified or the reduction schedule is met. The Air Pollution Control Officer shall notify all affected depositors of the declaration of a moratorium or restriction and its cancellation.
  2. Certified reduction on deposit for less than two (2) years shall comply with offset requirements in existence on the date of deposit when withdrawn. The use of all other withdrawn reductions shall comply with offset requirements in existence on the date of issuance of an Authority to Construct.
  3. If there is more than one owner of the source of the certified reduction, initial title to that reduction shall be deemed to be owned by such co-owners in the same manner as they hold title to the source of the reduction at the time the reduction was certified by the Air Pollution Control Officer.
  4. Certified emission reductions shall be reduced by that quantity required by any applicable emission limitation adopted by the Air Pollution Control District within two (2) years succeeding the issuance of the reduction certificate.
  5. Withdrawal of the certified reductions may be made in whole, or in part, upon application to, review, and determination of withdrawal availability by the Air Pollution Control Officer. Prior to the use of certified reductions, applicable certificates shall be surrendered by the depositor to the Air Pollution Control Officer.

- E. In the event that the Air Pollution Control Officer disapproves the certification or withdrawal of emission reductions the affected applicant or depositor shall have the right to appeal such decision to the Hearing Board of the District within 30 days after receipt of the notice of disapproval. The Hearing Board shall conduct a public hearing to consider the appeal pursuant to the provision of Regulation VII - Procedure Before the Hearing Board.

Rule 413 Attainment Pollutant Increments.

The Air Pollution Control Officer shall deny an Authority to Construct for a proposed facility or modification which, pursuant to an analysis performed in accordance with the provisions of Rules 408 and 415, causes an ambient pollutant concentration to exceed the following increments of increase above the baseline concentration:

<u>Pollutant: Monitoring Interval</u>	<u>Maximum Allowable Increase (micrograms per cubic meter)</u>		
	<u>Class I</u>	<u>Class II</u>	<u>Class III</u>
Particulate Matter: Annual Geometric Mean	5	19	37
24-hour Maximum	10	27	75
Sulfur Dioxide: Annual Geometric Mean	2	20	40
24-hour Maximum	5	91	182
3-hour Maximum	25	512	700
Ozone: 1-hour Maximum	20	40	80
Oxides of Nitrogen: Annual Average	10	20	40
Hydrocarbons (corrected for methane): 3-hour Maximum	20	40	80
Lead: Calendar Quarter Average	0.15	0.3	0.6

For any monitoring period other than an annual period, the applicable maximum allowable increase may be exceeded during one such monitoring period per year at any one location.

Rule 414 Sources Impacting Class I Areas.

- A. The Air Pollution Control Officer shall accept, and consider comments offered by the Federal Land Manager of any lands contained within a Class I area impacted by a proposed major facility or major modification. If the Federal Land Manager demonstrates that the emissions from a proposed major facility or major modification would have an adverse impact on the air quality-related values (including visibility) of any federal mandatory Class I areas, notwithstanding that the change in air quality resulting from emissions

from such facility or modification would not cause or contribute to concentrations which would exceed the maximum allowable increase for a Class I area, and if the Air Pollution Control Officer concurs with such demonstration, then he shall deny the Authority to Construct.

- B. If the applicant demonstrates, and the affected Federal Land Manager of a Class I area concurs, that the emissions from a proposed major facility or major modification would have no adverse impact on the air quality-related values (including visibility) of such federal mandatory Class I area, and providing that all District Rules and Regulations are otherwise met, the Air Pollution Control Officer may issue an Authority to Construct with such emission limitations as he may deem necessary to assure that emissions of sulfur dioxide and particulate matter would not exceed the following maximum allowable increases over the baseline concentrations:

<u>Zone Pollutant</u>	<u>Maximum Allowable Increase (micrograms per cubic meter)</u>
Class I	
Particulate Matter:	
Annual Geometric Mean	19
24-hour Maximum	37
Sulfur Dioxide:	
Annual Arithmetic Mean	20
24-hour Maximum	91
3-hour Maximum	325

- C. If the applicant demonstrates, and the Air Resources Board, and the affected Class I Federal Land Manager concur, that the proposed major facility or major modification cannot be constructed in compliance with Section B. above as it relates to sulfur dioxide increments and that such facility or modification would not adversely affect air quality-related values (including visibility) of any affected federal mandatory Class I area, and provided that the District Rules and Regulations are otherwise met, the Air Pollution Control Officer may issue an Authority to Construct with such emission limitations as he may deem necessary to assure that emissions of sulfur dioxide would not exceed the following maximum allowable increase over the baseline concentration:

<u>Zone Pollutant</u>	<u>Maximum Allowable Increase (micrograms per cubic meter)</u>
Class I	
Sulfur Dioxide:	
24-hour Maximum	62
3-hour Maximum	221

The emission limitation contained in the Authority to Construct under this Section shall also prohibit the exceedence of the maximum allowable increases contained in Rule 413 for period of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period.

Rule 415      Attainment Pollutant Increment Consumption.

Every two years, the Air Pollution Control Officer shall estimate emissions from all sources in the District and utilize available information on emissions from upwind Air Pollution Control Districts to calculate the portion of each increment specified in Rule 413 having been consumed, provided the necessary computer resources are provided by the Air Resources Board or others. The Air Pollution Control Officer shall estimate the difference between actual emissions, averaged over the two year period prior to the date of calculation, or other reasonable period as determined by the Air Pollution Control Officer, and maximum allowable emissions for each source operating under Permits to Operate prior to January 1, 1981, and shall reserve that difference and its attendant increment portion for use by the permitted source.

Rule 416      Violation of National Ambient Air Quality Standards.

- A.      The Air Pollution Control Officer shall deny an Authority to Construct for a facility or modification or, pursuant to an analysis performed in accordance with the provisions of Rule 408, causes a violation of a national ambient air quality standard.
- B.      The Air Pollution Control Officer shall deny an Authority to Construct for a facility or modification which, pursuant to an analysis performed in accordance with the provisions of Rule 408, contributes to a violation of a national ambient air quality standard in a downwind non-attainment area. The Air Pollution Control Officer may exempt sources from this Section that comply with the provisions of Rule 421, Sections A. and B.

Rule 417      Violation of Emission Limitation.

The Air Pollution Control Officer shall deny an Authority to Construct for a source unless the source as proposed complies with all District emission limitation and all other Rules and Regulations.

Rule 418      Attainment Pollutant Control Technology.

- A.      The Air Pollution Control Officer shall deny an Authority to Construct for a facility or modification subject to review under the provisions of Rule 408 unless the facility or modification is designed to apply best available control technology for each applicable attainment pollutant or precursor. For an existing facility this requirement shall apply only to new or modified sources.
- B.      For applicable phased construction projects, the determination of best available control technology shall be reviewed, and modified as appropriate,

at the latest reasonable time prior to commencement of each independent phase of the proposed facility or modification.

- C. In the case of a major facility or major modification which the applicant proposed to construct in a Class III area, emissions from which would cause or contribute to air quality exceeding the maximum allowable increase that would be applicable if the area were a Class II area and where no new source performance standard under 40 CFR 60 has been promulgated for such source category, the Air Pollution Control Officer shall submit the determination of best available control technology to the Environmental Protection Agency for concurrence.
- D. For those facilities or modifications required to meet the provisions of Section A of this Rule, the Air Pollution Control Officer may approve with the consent of the Air Resources Board the use of innovative control technology in lieu of best available control technology, provided that:
  - 1. The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function, or cause emissions in excess of any standard contained in these Rules and Regulations or in 40 CFR Parts 60 and 61; and
  - 2. The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that achieved by the application of best available control technology by a date specified by the Air Pollution Control Officer. Such date shall not be later than 4 years from the time of startup or 7 years from the date of issuance of the Authority to Construct.
- E. The Air Pollution Control Officer shall withdraw any approval to employ a system of innovative control technology approved under this Rule if:
  - 1. The proposed system fails by the specified date to achieve the required continuous emission reduction rate; or
  - 2. The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare or safety; or
  - 3. The Air Pollution Control Officer decides at any time that the proposed system is unlikely to achieve the required level of control, or to protect the public health, welfare, or safety.
  - 4. If a source or modification fails to meet the required level of continuous emissions reduction within the specified time period, or its approval is withdrawn pursuant to this Section, the Air Pollution Control Officer may allow the source or modification up to an additional 3 years to meet the requirements of best available control technology through use of a demonstrated control system.

- F. In the event that the Air Pollution Control Officer withdraws approval of such a system of innovative control technology, the affected operator shall have the right to appeal such decision to the Hearing Board of the District within 30 days after receipt of the notice of withdrawal of approval.

Rule 419      Nonattainment Pollutant Air Quality Analysis.

- A. Utilizing the air quality simulation model designated pursuant to Rule 407, the Air Pollution Control Officer shall determine the increases in ambient nonattainment pollutant concentrations in downwind District zones and other Air Pollution Control Districts that will occur as a result of operation of the proposed facility or modification. Also, the Air Pollution Control Officer may require that the cost of modeling be borne by the applicant. The model shall consider air quality impacts projected for the area from source emissions and secondary emissions.
- B. Where a facility or modification is constructed in phases which individually do not emit more than 100 tons per year of a nonattainment pollutant or precursor, the allowable emissions from all such phases granted an Authority to Construct after December 21, 1976, shall be added together and this Rule shall be applicable when a proposed phase would cause the sum of the allowable emissions to exceed 100 tons per year of such nonattainment pollutant or precursor.
- C. For sources of nitrogen oxides, the initial determination of whether such facility or modification would cause or contribute to a violation of the national ambient air quality standard for nitrogen dioxide shall be made using the model designated pursuant to the provisions of Rule 407 and assuming that all nitric oxide emitted is oxidized to nitrogen dioxide by the time the plume reaches ground level. The initial concentration estimates may be adjusted by the Air Pollution Control Officer if adequate data are available to account for the expected oxidation rate.
- D. The determination as to whether a facility would cause or contribute to a violation of the national ambient air quality standards shall be made as of the new or modified facility's startup date.

Rule 420      Exemptions to Rule 419.

The Air Pollution Control Officer may exempt from the provisions of Rule 419 any of the following facilities or modifications with respect to a particular nonattainment pollutant or precursor:

- A. Any new facility or modification which is not a major facility or major modification, providing such facility or modification will meet all other District Rules and Regulations, any applicable new source performance standard in 40 CFR Part 60 and any applicable national emission standard for hazardous air pollutants in 40 CFR Part 61.



- B. Any source of non-methane hydrocarbons, providing the owner or operator can demonstrate to the satisfaction of the Air Pollution Control Officer that the emissions from the proposed source will have no impact upon any area that exceeds the national ambient air quality standard for ozone. This exemption shall be considered only for sources locating in rural areas where source emissions would not be likely to interact with other significant sources of non-methane hydrocarbons or nitrogen oxides to form additional ozone.
- C. Any new facility or modification, providing the applicant can demonstrate to the satisfaction of the Air Pollution Control Officer that the proposed facility location will not be in violation of an applicable national ambient air quality standard as of the new facility or modification startup date. Such an exemption shall be granted by the Air Pollution Control Officer only if the applicant presents a substantial and relevant argument (including any necessary monitoring data gathered in compliance with the provisions of 40 CFR Part 53) to substantiate the attainment status of the proposed source location. To qualify for such exemption, the applicant must notify the Air Pollution Control Officer no less than 30 days prior to the initiation of any air quality monitoring effort.
- D. Any temporary source of emissions.
- E. Any source of carbon monoxide which the Air Pollution Control Officer determines would not cause a violation of any national ambient air quality standard for such pollutant at the point of maximum ground level impact.

Rule 421      Contribution to Violation of National Ambient Air Quality Standard.

The Air Pollution Control Officer shall deny an Authority to Construct for a new facility or modification for which an analysis was required and performed in accordance with the provisions of Rule 419 and which would contribute to concentrations which exceed a national ambient air quality standard as of the new or modified facility's startup date unless the following conditions are met:

- A. Each new source or modification within the facility shall meet an emission limitation which is equivalent to the lowest achievable emission rate for such source and such nonattainment pollutant or precursor.
- B. The applicant shall certify that all existing major facilities owned or operated by the applicant in the State of California are in compliance or are on approved schedules of compliance with all applicable emission limitations or standards which are part of the State Implementation Plan approved by the Environmental Protection Agency.
- C. Emission reductions (offsets) from existing facilities in the area of the new facility or modification shall be secured pursuant to the provisions of Rule

411. The emission reductions shall be sufficient to provide a net positive air quality benefit consistent with the provisions of the approved Nonattainment Plan.

Rule 422      Exemptions to Rule 421.

The Air Pollution Control Officer may exempt from any of the requirements of Rule 421.C. any of the following facilities or modifications: (1) Resource recovery sources burning refuse-derived or biomass-derived solid waste fuels; (2) sources which must switch fuels due to a lack of adequate fuel supplies; and (3) sources required to be modified as a result of Environmental Protection Agency regulations where no exemption from such regulation is available to the source. An exemption under this Rule shall not be granted unless:

- A. The applicant demonstrated that it made its best efforts to obtain sufficient emission offsets to comply with Rule 421.C. and that such efforts were unsuccessful; and
- B. The applicant has secured all available emission offsets and will continue to seek the necessary offsets and apply them when they become available.

Rule 423      Power Plants.

This Rule shall apply to all power plants proposed to be constructed in the District and for which a Notice of Intention (NOI) or Application for Certification (AFC) has been accepted by the California Energy Commission. The Air Pollution Control Officer, pursuant to Section 25538 of the Public Resources Code, may apply for reimbursement of all costs, including lost fees, incurred in order to comply with the provisions of this Section.

- A. Within fourteen days of receipt of an NOI, the Air Pollution Control Officer shall notify the Air Resources Board and the Energy Commission of the District's intent to participate in the NOI Proceeding. If the Air Pollution Control Officer chooses to participate in the NOI proceeding, he shall prepare and submit a report to the Air Resources Board and the Energy Commission prior to the conclusion of the nonadjudicatory hearings specified in Section 25509.5 of the Public Resources Code. That report shall include, at a minimum:
  - 1. A preliminary specific definition of best available control technology and where applicable, lowest achievable emission rate for the proposed facility;
  - 2. A preliminary discussion of whether there is a substantial likelihood that the requirement of these Rules and Regulations can be satisfied by the proposed facility;

3. A preliminary list of conditions which the proposed facility must meet in order to comply with these Rules and Regulations.

The preliminary determinations contained in the report shall be as specific as possible within the constraints of the information contained in the NOI.

- B. Upon receipt of an Application of Certification (AFC) for a power plant, the Air Pollution Control Officer shall conduct a Determination of Compliance review. This determination shall consist of a review identical to that which would be performed if an application for an Authority to Construct had been received for the power plant. If the information contained in the AFC does not meet the requirements of Rule 403, the Air Pollution Control Officer shall, within 20 calendar days of receipt of the AFC, so inform the Energy Commission, and the AFC shall be considered incomplete and returned to the applicant for resubmittal.
- C. The Air Pollution Control Officer shall consider the AFC to be equivalent to an application for an Authority to Construct during the Determination of Compliance review and shall apply all provisions of this Regulation.
- D. The Air Pollution Control Officer may request from the applicant any information necessary for the completion of the Determination of Compliance review. If the Air Pollution Control Officer is unable to obtain the information, the Air Pollution Control Officer may petition the presiding Commissioner for an order directing the applicant to supply such information.
- E. Within 180 days of accepting an AFC as complete, the Air Pollution Control Officer shall make a preliminary decision on:
  1. Whether the proposed power plant meets the requirements of this Regulation and all other applicable District Rules; and
  2. In the event of compliance, what permit conditions will be required, including the specific emission control requirements and a description of required emission offset measures.
- F. The preliminary written decision made under Section E. above shall be treated as a preliminary decision under Rule 424.A. and shall be finalized by the Air Pollution Control Officer only after being subject to the notice and comment requirements of Rule 424. The Air Pollution Control Officer shall not issue a Determination of Compliance unless all requirements of this Regulation are met.
- G. Within 240 days of the filing date of the complete AFC, the Air Pollution Control Officer shall issue and submit to the Commission a Determination of Compliance or, if such a determination cannot be issued, shall so inform the Commission. A Determination of Compliance shall confer the same rights and privileges as an Authority to Construct only when and if the Energy

Commission approves the AFC, and the Energy Commission certificate includes all conditions of the Determination of Compliance.

Rule 424      Authority to Construct Decision.

- A. The Air Pollution Control Officer shall issue a preliminary decision on whether the Authority to Construct should be approved, approved with conditions, or disapproved no later than one year after an application has been deemed complete by the Air Pollution Control Officer. The preliminary decision, together with a copy of all materials the applicant submitted and a copy or summary of all other materials, if any, considered in making the preliminary decision, shall be made available in at least one location in the District for public inspection. The Air Pollution Control Officer may exempt from the provisions of this Section any source with the potential to emit less than 100 tons per year of each criteria pollutant or precursor.
- B. Within ten (10) calendar days following the preliminary decision in the case of an Authority to Construct for a facility or modification with the potential to emit 100 tons per year or more of any criteria pollutant or precursor, the Air Pollution Control Officer shall publish a notice in at least one newspaper of general circulation in the District stating the preliminary decision and where the public may inspect the information required to be available in Section A. above. The notice shall provide 30 days from the date of publication for the public to submit written comments on the preliminary decision. For a major facility or major modification of attainment pollutants or precursors, the notice shall include (1) the degree of increment consumption that is expected from the facility or modification, and (2) the date and place of a public hearing to accept public comment on the preliminary decision.
- C. The Air Pollution Control Officer shall send copies of any notice of preliminary decision to the applicant, the Air Resources Board, the Environmental Protection Agency, and to any appropriate Federal Land Manager and Air Pollution Control District affected by emissions from the proposed source or modification.
- D. The Air Pollution Control Officer shall consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing in making a final decision on the approvability of the application. Such comments shall be made available for public inspection in the same location as the available application information relating to the proposed facility or modification.
- E. The Air Pollution Control Officer shall make a final decision as to whether a Authority to Construct should be approved with conditions or disapproved. Such decision shall be transmitted to the applicant and made available for

public inspection. If the application is denied, the Air Pollution Control Officer shall not accept a further application unless the application has complied with the objections or deficiencies specified by the Air Pollution Control Officer as reasons for denial of the Authority to Construct.

- F. Within ten (10) days after notice by the Air Pollution Control Officer of a denial or conditional approval of an Authority to Construct, the applicant may petition the Hearing Board, in writing, for public hearing. The Hearing Board, after notice and public hearing held within 30 days after filing the petition, may sustain or reverse the action of the Air Pollution Control Officer, provided that in reversing an action the Hearing Board shall make the finding that the action of the Air Pollution Control Officer was not proper. Such orders of the Hearing Board may be made subject to specified conditions.

Rule 425      Cancellation of Authority to Construct.

An Authority to Construct shall be cancelled one year from the date of issuance unless reasonable progress on facility or modification can be demonstrated to the satisfaction of the Air Pollution Control Officer.

Rule 426      Transfer of Authority to Construct.

An Authority to Construct shall not be transferable, whether by operation of law or otherwise, either from one location to another or from one piece of equipment to another.

Rule 427      Construction or Reconstruction of Major Stationary Sources that Emit Hazardous Air Pollutants (adopted 06/01/99)

A.      Purpose

To require all owners and operators of stationary sources that emit hazardous air pollutants (HAPs) to install best available control technology for toxics (T-BACT) to any constructed or reconstructed major source. All T-BACT determinations shall be controlled to a level that the Air Pollution Control Officer (APCO) has determined to be, at a minimum, no less stringent than new source maximum achievable control technology (MACT) as required by the federal Clean Air Act (CAA), §112 (g)(2)(B) and implemented through 40 CFR §§63.40-63.44, of subpart B.

B.      Applicability

The requirements of this rule shall apply to all owner or operators that construct or reconstruct a major source of HAPs, unless the major source is exempt pursuant to section C.

Compliance with this rule does not relieve any owner or operator of a major source of HAPs from complying with all other District rules or regulations, any applicable State airborne toxic control measure (ATCM), or other applicable State and federal laws.

C. Exemptions

This rule does not apply to any of the following exclusions:

1. Any major source that is subject to an existing National Emissions Standard (NESHAPs) for HAPs pursuant to sections 112(d), 112(h) or 112(j) of the CAA.
2. Any major source that has been specifically exempted from regulation under a NESHAP issued pursuant to sections 112(d), 112(h) or 112(j) of the CAA.
3. Any major source that has received all necessary air quality permits for such construction or reconstruction project before June 29, 1999.
4. Electric utility steam generating units, unless and until such time as these units are added to the source category list pursuant to federal CAA, §112(c)(5).
5. Stationary sources that are within a source category that has been deleted from the source category list pursuant to federal CAA, §112(c)(9).
6. Research and development activities, as defined in 40 CFR §63.41 Definitions.
7. Any other stationary source exempted by section 112 of the CAA.

D. Effective Date

This rule is effective on date of rule adoption, but no later than June 29, 1999.

E. Definitions

Terms used in this rule that are not defined in this section have the meaning given to them in 40 CFR §63.40 through §63.44.

Best Available Control Technology for Toxics (T-BACT): the most effective emissions limitation or control technique which:

1. has been achieved in practice for such permit unit category or class of source; or

2. is any other emissions limitation or control technique, including process and equipment changes of basic and control equipment, found by the Air Pollution Control Officer to be technologically feasible for such class or category of sources, or for a specific source.

Construct a Major Source: the same as defined in 40 CFR §63.41 63.51? Definitions.

Hazardous Air Pollutants (HAPS): any air pollutant listed in or pursuant to federal CAA, §112(b).

Major Source of HAPs: any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of hazardous air pollutants or 25 tons per year or more of any combination of hazardous air pollutants.

Potential to Emit: the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitations or the effect it would have on emissions are incorporated into the applicable permit as enforceable permit conditions.

Reconstruct a Major Source: the same as defined in 40 CFR §63.41 Definitions.

F. T-BACT Requirements

T-BACT shall be installed on any source that meets the definition of "construct a major source" or "reconstruct a major source" as defined in 40 CFR §63.41. The potential to emit of a constructed or reconstructed major source shall be calculated pursuant to section G.

G. Calculation Procedures

The potential to emit for a source of HAPs shall equal the sum of the potentials to emit of the constructed or reconstructed source of HAPs. All fugitive HAP emissions associated with the construction or reconstruction shall be included in the potential to emit determination.

H. Administrative Procedures

An application for authority to construct a major source or reconstruct a major source of HAPs shall be subject to the administrative procedures contained in Tuolumne County Air Pollution Control District Rule 403 - Applications.

Rule 428      Emissions Statements (adopted July 21, 2020)

I.      PURPOSE

This Rule establishes the requirements for the submittal from specified stationary sources in accordance with the requirements of the 1990 Clean Air Act Section 182(a)(3)(B).

II.     APPLICABILITY

The requirements of this Rule are applicable to any stationary source which emits or may have the potential to emit oxides of nitrogen (NO<sub>x</sub>) or volatile organic compounds (VOC)

III.    DEFINITIONS

- A.      Actual Emissions: Measured or estimated emissions which most accurately represent the emissions from an emissions unit , including fugitive emissions.
- B.      Emissions Statement Information Request: An annual information request by the APCO to each affected source subject to this Rule for emissions data, including but not limited to, actual emissions or operational data allowing the District to estimate actual emissions.
- C.      Volatile Organic Compounds (VOCs): Reactive Organic Compounds (ROCs), and Reactive Organic Gases (ROGs) are any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.
- D.      Responsible Official: An individual who is responsible for the data presented in the emissions statement, and who accepts legal responsibility for the emission statement's accuracy. The responsible official is liable to legal review, or in case of fault, to penalties.

IV.    REQUIREMENTS

- A.      The owner or operator of any stationary source that is subject to this Rule shall provide the Tuolumne County Air Pollution Control District (District) with a written emissions statement showing actual emissions or operational data allowing the District to estimate actual emissions from that source. Emissions calculations shall be based on emissions factors approved by the



Air Pollution Control Officer (APCO) and the United State Environmental Protection Agency (EPA).

- B. The emissions statement shall be on a form or in a format specified by the APCO and shall contain emissions or data for the time period specified by the APCO. Emissions statements shall be submitted annually.
- C. The owner or operator of the stationary source shall maintain records for a period of up to five years from the date of submittal. All records shall be submitted indicating the nature and amounts of emissions from that source and/or any other information as may be necessary or requested by the APCO to determine whether such source is in compliance with applicable emissions limitations, control measures, and permit conditions.

## V. ADMINISTRATIVE REQUIREMENTS

### A. District Requirements

- 1. The APCO may waive the requirements of Section D of this Rule to any class or category of permitted stationary source which emits less than 25 tons per year of NOx or VOCs if the District provides the California Air Resources Board (ARB) with an emissions inventory of permitted sources emitting less than 25 tons per year of NOx or VOCs, based on the use of emissions factors established by or other methods acceptable to the EPA.
- 2. All official documents submitted to the District shall contain a certification signed and dated by a responsible official of the company attesting that the information contained in the submitted documents is accurate to the best knowledge of the individual certifying the submission. The requirements of this Section apply to, but are not limited to, the emission statement required in Section D of this Rule.

### B. Failure to Submit

- 1. A failure by a responsible official to submit an Emissions Statement by the date required, shall be deemed a willful failure to furnish information required to disclose the nature and quantity of emissions discharged by the stationary source. In such case, the APCO may take action in the form of the following:
  - a. The APCO may suspend the Permit(s) of such source.
  - b. The APCO shall serve notice in writing of such suspension and the reasons for the suspension upon the permittee.
  - c. The APCO will reinstate the suspended Permit(s) when furnished with the required information.

- d. The APCO may choose as an alternative to suspending the Permit, to levy a monetary penalty of \$500 per day until furnished with the required information. The APCO may waive this penalty for reasons beyond the responsible official's control.

Rule 429      Federal New Source Review (adopted July 6, 2021)

I.      PURPOSE AND GENERAL REQUIREMENTS OF RULE 429

Rule 429 (Rule) implements applicable requirements of 40 CFR Part 51 Subpart I and Section 173 of the federal Clean Air Act (CAA). Tuolumne County was designated nonattainment for the 2015 8-hour Ozone National Ambient Air Quality Standard (NAAQS) in 2018. As part of the Air Pollution Control District's (District) responsibilities in implementing the planning requirements due to its nonattainment designation, a State Implementation Plan (SIP) is required to be submitted to EPA. As part of the SIP, a New Source Review (NSR) program is required to be adopted and implemented by the District for major stationary sources; those sources that emit or have the potential to emit 100 tons per year of any nonattainment pollutant.

This Rule protects air quality by requiring new major stationary sources or existing major stationary sources making major modifications to obtain an Authority to Construct air pollution permit. The facility must then meet stringent conditions designed to ensure that the new or modified source's emissions will be controlled to the greatest degree possible. Stationary sources subject to NSR are also required to offset their emissions increases with federally enforceable emission reduction credits.

II.      APPLICABILITY PROCEDURES

A.      Preconstruction Review Requirements

1. The preconstruction review requirements of this Rule apply to the proposed construction of any new major stationary source or major modification within the District that is major for a nonattainment pollutant, if the stationary source or modification is located anywhere within the designated nonattainment area, except as provided in Section X of this Rule.
2. Sources subject to this Rule may also be subject to other District Rules and Regulations. For purposes of the implementation and enforcement of this Rule, this Rule's provisions and requirements, including but not limited to the requirements for obtaining an Authority to Construct, application submittal and content, conditional approval, public participation, and granting an Authority to Construct, shall take precedence over any other such provisions and requirements in other District rules and regulations. To the extent that other District rules or regulations may affect the stringency or

applicability of this Rule, such other rules and regulations shall not apply for purposes of the implementation or enforcement of this Rule.

B. Authority to Construct Requirement

No new major stationary source or major modification to which the requirements of this Rule apply shall begin actual construction without first obtaining an Authority to Construct from the Air Pollution Control Officer, pursuant to this Rule.

C. Emission Calculation Requirements to Determine NSR Applicability

1. New Major Stationary Sources

The definition of *Major Stationary Source*, as incorporated by reference in Section III.A of this Rule, shall be used to determine if a new or modified stationary source is a new major stationary source. Different pollutants, including individual precursors, are not summed to determine applicability of a major stationary source.

2. Major Modifications

The provisions set out in paragraphs a through e below shall be used to determine if a proposed project will result in a major modification. Different pollutants, including individual precursors, are not summed to determine applicability of a major modification. These provisions shall not be used to determine the quantity of offsets required for a project subject to the requirements of this Rule. In no case shall actual construction of a proposed project begin before calculating, in accordance with the requirements of this Rule, whether a significant emissions increase or a significant net emissions increase would result from the proposed project.

- a. Except as otherwise provided in Section II.D, a project is a major modification for a nonattainment pollutant if it causes two types of emissions increases: a significant emissions increase and a significant net emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.
- b. The procedure for calculating whether a significant emissions increase will occur depends upon the type of emissions units being added or modified as part of the project, according to paragraphs c through e of this Section. The procedure for calculating whether a significant net emissions increase will occur at a major stationary source is contained in the definition of *Net Emissions Increase* in 40 CFR

51.165(a)(1)(vi). Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

- c. **Actual-to-Projected-Actual Applicability Test for Projects that Only Involve Existing Emissions Units.** A significant emissions increase of a nonattainment pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, for each existing emissions unit, equals or exceeds the significant amount for that pollutant.
- d. **Actual-to-Potential Test for Projects that Only Involve Construction of a New Emissions Unit(s).** A significant emissions increase of a nonattainment pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.
- e. **Hybrid Test for Projects that Involve Multiple Types of Emissions Units.** A significant emissions increase of a nonattainment pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs c or d of this Section, as applicable, with respect to each emissions unit, equals or exceeds the significant amount for that pollutant.

D. Major Sources with Plant-wide Applicability Limitations (PAL)

For any major stationary source with a PAL permit for a nonattainment pollutant, the major stationary source shall comply with the requirements in Section X of this rule.

E. Projects That Rely on a Projected Actual Emissions Test

Except as otherwise provided in paragraph 7.c of this Section, the provisions of this Section shall apply with respect to any nonattainment pollutant that is emitted from projects at existing emissions units located at a major stationary source, other than a source with a PAL permit, when there is a reasonable possibility, within the meaning of paragraph 7 of this Section, that a project that is not part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in paragraphs (B)(1) through (B)(3) of the definition of *Projected Actual Emissions* at 40 CFR 51.165(a)(1)(xxviii) to calculate projected actual emissions.

1. Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:
  - a. A description of the project;
  - b. Identification of the emissions unit(s) whose emissions of a nonattainment pollutant could be affected by the project; and
  - c. A description of the applicability test used to determine that the project is not a major modification for any nonattainment pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph (B)(3) of the definition of *Projected Actual Emissions* at 40 CFR 51.165(a)(1)(xxviii), and an explanation for why such amount was excluded, including any netting calculations, if applicable.
2. If the emissions unit is an existing emissions unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in paragraph 1 of this Section to the APCO. Nothing in this paragraph shall be construed to require the owner or operator of such an existing unit to obtain any determination from the APCO concerning compliance with this Rule before beginning actual construction. However, such owner or operator may be subject to the requirements of District Regulation IV - *Authority to Construct Regulations*, and Rule 500 - *Additional Procedures for Issuing Permits to Operate for Sources Subject to Title V of the 1990 Federal Clean Air Act Amendments*, in addition to other applicable requirements.
3. The owner or operator shall monitor the emissions of any nonattainment pollutant that could increase as a result of the project and that are emitted by any emissions unit identified in paragraph 1 of this Section; and calculate and maintain a record of the annual emissions, in tons per year (tpy), on a calendar year basis for a period of five years following resumption of regular operations after the change, or for a period of ten years following resumption of regular operations after the change, if the project increases the design capacity or potential to emit that nonattainment pollutant at such emissions unit.
4. If the emissions unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the APCO within sixty days after the end of each calendar year during which records must be generated under paragraph 3 of this Section, setting out the

unit's annual emissions during the calendar year that preceded submission of the report.

5. If the emissions unit is an existing emissions unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the APCO if the annual emissions, in tpy, from the project identified in paragraph 1 of this Section exceed the baseline actual emissions by a significant amount for that nonattainment pollutant, and if such emissions differ from the projected actual emissions (prior to exclusion of the amount of emissions specified in paragraph (B)(3) of the definition of *Projected Actual Emissions* at 40 CFR 51.165(a)(1)(xxviii) as documented and maintained pursuant to paragraph 1.c of this Section. Such report shall be submitted to the APCO within sixty days after the end of such year. The report shall contain the following:
  - a. The name, address, and telephone number of the major stationary source;
  - b. The annual emissions, as calculated pursuant to paragraph 3 of this Section; and
  - c. Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).
6. The owner or operator of the source shall make the information required to be documented and maintained pursuant to this Section available for review upon a request for inspection by the APCO or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).
7. A "reasonable possibility" under this Section occurs when the owner or operator calculates the project to result in either:
  - a. A projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as defined in this Rule (without reference to the amount that is a significant net emissions increase), for the nonattainment pollutant; or
  - b. A projected actual emissions increase that, added to the amount of emissions excluded under paragraph (B)(3) of the definition of *Projected Actual Emissions* at 40 CFR 51.165(a)(1)(xxviii), sums to at least 50 percent of the amount that is a "significant emissions increase," as defined in this Rule (without reference to the amount that is a significant net emissions increase), for the nonattainment pollutant.

- c. For a project in which a reasonable possibility occurs only within the meaning of paragraph 7.b, and not also within the meaning of paragraph 7.a, the provisions of paragraphs 2 through 5 of this Section do not apply to the project.

F. Secondary Emissions

Secondary emissions shall not be considered in determining whether a stationary source would qualify as a major stationary source. If a stationary source is subject to this Rule on the basis of direct emissions from the stationary source, the requirements of Section V must also be met for secondary emissions.

G. Stationary Sources

For purposes of this Rule, the term stationary source does not refer to the source of emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in Section 216 of the Clean Air Act.

H. Environmental Protection Agency Determination

Notwithstanding any other requirements of this Rule governing the issuance of an Authority to Construct, the APCO shall not issue an Authority to Construct to a new major stationary source or major modification subject to the requirements of this Rule if the federal Environmental Protection Agency has determined that the SIP is not being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified in accordance with the requirements of Title I, Part D of the Clean Air Act.

III. DEFINITIONS

For the purposes of this Rule, the definitions and references provided in paragraphs A, B, C, and D of this Section apply to the terms used in this Rule. In the event any discrepancies exist between the definitions in the paragraphs below in Section III, the definition in the paragraph that is listed first shall control.

- A. The definitions contained in 40 CFR 51.165(a)(1) shall apply, and are hereby incorporated by reference, with the exception of the definition of “Reviewing Authority” at 40 CFR 51.165 (a)(1)(xxxviii), which has the meaning specified in paragraph B below.

- B. The following definitions shall also apply:

“*Air Pollution Control Officer (APCO)*” means the Air Pollution Control Officer of the Tuolumne County Air Pollution Control District.

“*Class I area*” means any area listed as Class I in 40 CFR Part 81 Subpart D, including Section 81.405, or an area otherwise specified as Class I in the legislation that creates a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, or a national lakeshore or seashore.

“*Clean Air Act (CAA)*” means the federal Clean Air Act, 42 U.S.C. 7401 *et seq.*, as amended.

“*Complete*” means, in reference to an application, that the application contains all of the information necessary for processing.

“*District*” means the Tuolumne County Air Pollution Control District.

“*Emission reduction credit (ERC)*” means reductions of actual emissions from emissions units that are certified by a California air district in accordance with applicable district rules and issued by the air district in the form of ERC certificates.

“*Internal emission reductions*” means emission reductions which have occurred or will occur at the same major stationary source where the proposed emissions increase will occur.

“*Nonattainment pollutant*” means any regulated NSR pollutant for which the District, or portion of the District, has been designated as nonattainment, as codified in 40 CFR 81.305, as well as any precursor of such regulated NSR pollutant specified in 40 CFR 51.165(a)(1)(xxxvii)(C).

“*Permanent*” means an emission reduction which is federally enforceable for the life of a corresponding increase in emissions.

“*Reviewing authority*” means the Air Pollution Control Officer (APCO).

“*Shutdown*” means the cessation of operation of any air pollution control equipment or process equipment for any purpose.

“*Startup*” means the setting into operation of any air pollution control equipment or process equipment for any purpose except routine phasing in of process equipment.

“*State Implementation Plan (SIP)*” means the State Implementation Plan approved or promulgated for the State of California under Section 110 or 172 of the Clean Air Act.

“*Surplus*” means the amount of emission reductions that are, at the time of generation or use of an emission reduction credit (ERC), not otherwise required by federal, state, or local law, not required by any legal settlement or consent decree, and not relied upon to meet any requirement related to the



California State Implementation Plan (SIP). However, emission reductions required by a state statute that provides that the subject emission reductions shall be considered surplus may be considered surplus for purposes of this rule if those reductions meet all other applicable requirements. Examples of federal, state, and local laws, and of SIP-related requirements, include, but are not limited to the following:

1. The federally-approved California SIP;
2. Other adopted state air quality laws and regulations not in the SIP, including but not limited to, any requirement, regulation, or measure that: (1) the District or the State has included on a legally required and publicly available list of measures that are scheduled for adoption by the District or the State in the future; or (2) is the subject of a public notice distributed by the District or the State regarding an intent to adopt such revision;
3. Any other source or source-category specific regulatory or permitting requirement, including, but not limited to RACT, New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), Best Available Control Measures (BACM), BACT, and LAER; and
4. Any regulation or supporting documentation that is required by the CAA, but is not contained or referenced in 40 CFR Part 52, including but not limited to: assumptions used in attainment and maintenance demonstrations (including Reasonable Further Progress demonstrations and milestone demonstrations), including any proposed control measure identified as potentially contributing to an enforceable near-term emission reduction commitment; assumptions used in conformity demonstrations; and assumptions used in emissions inventories.

*“Temporary source”* means an emission source such as a pilot plant or a portable facility which will be located outside the nonattainment area after less than a cumulative total of 90 days of operation in any 12 continuous months.

*“Tons per year (tpy)”* means annual emissions in tons.

- C. The definitions contained in 40 CFR 51.100 shall apply, and are hereby incorporated by reference.
- D. The definitions contained in 40 CFR 51.301 shall apply, and are hereby incorporated by reference.

#### IV. APPLICATION REQUIREMENTS

- A. Application Submittal

The owner or operator of any proposed new major stationary source or major modification required to obtain an Authority to Construct pursuant to this Rule shall submit a complete application to obtain an Authority to Construct on forms provided by the APCO and include in the application submittal the information listed in Section IV.B as well as the demonstrations listed in Sections IV.C through IV.F. Designating an application complete for purposes of permit processing does not preclude the APCO from requesting or accepting any additional information.

#### B. Application Content

At a minimum, an application for an Authority to Construct shall contain the following information related to the proposed new major stationary source or major modification:

1. Identification of the applicant, including contact information, address, and location of the new or modified source.
2. An identification and description of all emission points, including information regarding all nonattainment pollutants emitted by all emissions units included in the new source or modification.
3. A process description of all activities, including design capacity, which may generate emissions of nonattainment pollutants in sufficient detail to establish the basis for the applicability of standards and fees.
4. A projected schedule for commencing construction and operation for all emissions units included in the new source or modification.
5. A projected operating schedule for each emissions unit included in the new source or modification.
6. A determination as to whether the new source or modification will result in any secondary emissions.
7. The emission rates of all nonattainment pollutants, including fugitive and secondary emission rates, if applicable. The emission rates must be described in tons per year and for such shorter term rates as are necessary to establish compliance using the applicable standard reference test method or other methodology specified (i.e., grams/liter, ppmv or ppmw, lbs/MMBtu).
8. The calculations on which the emission rate information is based, including fuel specifications, if applicable and any other assumptions used in determining the emission rates (e.g., HHV, sulfur content of natural gas).

9. The calculations, pursuant to Section II.C, used to determine applicability of this rule, including the emission calculations (increases or decreases) for each project that occurred during the contemporaneous period.
10. The calculations, pursuant to Section V.C, used to determine the quantity of offsets required for the new source or modification.
11. Identification of existing emission reduction credits or identification of internal emission reductions, including related emission calculations and proposed permit modifications required to ensure emission reductions meet the offset integrity criteria of being real, surplus, quantifiable, permanent and federally enforceable or enforceable as a practical matter.
12. If applicable, a description of how performance testing will be conducted, including test methods and a general description of testing protocols.

C. Lowest Achievable Emission Rate (LAER)

The applicant shall submit an analysis demonstrating that LAER has been proposed for each emissions unit included in the new major stationary source or major modification that emits a nonattainment pollutant for which the new stationary source or modification is classified as major.

D. Statewide Compliance

The applicant shall submit a certification that each existing major stationary source owned or operated by the applicant (or any entity controlling, controlled by, or under common control with the applicant) in the State is in compliance with all applicable emission limitations and standards under the CAA or is in compliance with an expeditious compliance schedule which is federally enforceable.

E. Analysis of Alternatives

The applicant shall submit an analysis of alternative sites, sizes, production processes, and environmental control techniques for the proposed source that demonstrates the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

F. Sources Impacting Class I Areas

The applicant for a proposed new major source or major modification that may affect visibility of any Mandatory Class I Federal Area shall provide the APCO with an analysis of impairment to visibility that would occur as a

result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification, as required by 40 CFR 51.307(b)(2).

G. Application Fees

The applicant shall pay the applicable fees specified in District Regulation VI: *Fees*.

V. EMISSIONS OFFSETS

A. Offset Requirements

1. The emission increases of a nonattainment pollutant for which the new stationary source or modification is classified as major, shall be offset with federally enforceable ERCs or with internal emission reductions.
2. ERCs from one or more sources may be used, alone or in combination with internal emission reductions, in order to satisfy offset requirements.
3. Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours may only be credited for offsets if such reductions are surplus, permanent, quantifiable, and federally enforceable; and
4. The shutdown or curtailment occurred after the last day of the base year for the attainment plan for the specific pollutant; or
5. The projected emissions inventory used to develop the attainment plan explicitly includes the emissions from such previously shutdown or curtailed emissions units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.

B. Timing

1. Internal emission reductions used to satisfy an offset requirement must be federally enforceable prior to the issuance of the Authority to Construct, which relies on the emission reductions.
2. Except as provided by paragraph 3 of this Section, the decrease in actual emissions used to generate ERCs or internal emission reductions must occur no later than the commencement of operation of the new or modified major stationary source.

3. Where the new emissions unit is a replacement for an emissions unit that is being shut down in order to provide the necessary offsets, the APCO may allow up to one hundred eighty (180) calendar days for shakedown or commissioning of the new emissions unit before the existing emissions unit is required to cease operation.

C. Quantity

The quantity of ERCs or internal emission reductions required to satisfy offset requirements shall be determined in accordance with the following:

1. The unit of measure for offsets, ERCs, and internal emission reductions shall be tons per year (tpy). All calculations and transactions shall use emission rate values rounded to the nearest one-hundredth (0.01) tpy.
2. The quantity of ERCs or internal emission reductions required shall be calculated as the product of the amount of increased emissions, as determined in accordance with paragraph 3 of this Section, and the offset ratio, as determined in accordance with Table 1 of paragraph 4 of this Section.
3. The amount of increased emissions shall be determined as follows:
  - a. When the offset requirement is triggered by the construction of a new major stationary source, the amount of increased emissions shall be the sum of the PTE of all emissions units.
  - b. When the offset requirement is triggered by a major modification of an existing major stationary source, the amount of increased emissions shall be the sum of the differences between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.
  - c. The amount of increased emissions includes fugitive emissions.
4. The ratios listed in Table 1 shall be applied based on the District’s designation for each pollutant, as applicable. The offset ratio is expressed as a ratio of emissions increases to emission reductions.

Table 1. Federal Offset Ratio Requirements by Area Designation and Pollutant for Tuolumne County

Area Designation	Pollutant	Offset Ratio
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Marginal Ozone Nonattainment Area	NO <sub>x</sub> or VOC	1:1.1
Moderate Ozone Nonattainment Area	NO <sub>x</sub> or VOC	1:1.15

D. Emission Reduction Requirements

1. Internal emission reductions or ERCs used to satisfy an offset requirement shall be:
  - a. Real, surplus, permanent, quantifiable, and federally enforceable; and
  - b. Surplus at the time of issuance of the Authority to Construct containing the offset requirements.
2. Permitted sources whose emission reductions are used to satisfy offset requirements must appropriately amend or cancel their Authority to Construct or Permit to Operate to reflect their newly reduced PTE, including practicably enforceable conditions to limit their PTE.
3. Emission reductions must be obtained from the same nonattainment area, however, the APCO may allow emission reductions from another nonattainment area if the following conditions are met:
  - a. The other area has an equal or higher nonattainment classification than the area in which the source is located; and
  - b. Emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located.
4. The use of ERCs shall not provide:
  - a. Authority for, or the recognition of, any pre-existing vested right to emit any nonattainment pollutant;
  - b. Authority for, or the recognition of, any rights that would be contrary to applicable law; or
  - c. An exemption to a stationary source from any emission limitations established in accordance with federal, state, or county laws, rules, and regulations.

E. Restrictions on Trading Pollutants

1. The emission offsets obtained shall be for the same nonattainment pollutant.
2. In no case shall the compounds excluded from the definition of *Volatile Organic Compounds* be used as offsets for Volatile Organic Compounds.

## VI. ADMINISTRATIVE REQUIREMENTS

### A. Visibility

1. The APCO shall provide written notice and conduct any necessary review and consultation with the federal land manager regarding any proposed major stationary source or major modification that may impact visibility in any Mandatory Class I Federal Area, in accordance with the applicable requirements of 40 CFR 51.307.
2. The APCO may require monitoring of visibility in any Class I area near the proposed new stationary source or major modification for such purposes and by such means as the APCO deems necessary and appropriate.

### B. Ambient Air Quality Standards

The APCO may require the use of an air quality model to estimate the effects of a new or modified stationary source. The analysis shall estimate the effects of the new or modified stationary source, and verify that the new or modified stationary source will not prevent or interfere with the attainment or maintenance of any ambient air quality standard. In making this determination, the APCO shall take into account the mitigation of emissions through offsets pursuant to this Rule, and the impacts of transported pollutants on downwind pollutant concentrations. The APCO may impose, based on an air quality analysis, offset ratios greater than the requirements of paragraph 4 of Section V.C.

### C. Air Quality Models

All estimates of ambient concentrations required, pursuant to this Rule, shall be based on applicable air quality models, databases, and other requirements specified in 40 CFR Part 51, Appendix W (“Guideline on Air Quality Models”). Where an air quality model specified is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis. Written approval from the EPA must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to public notification and the opportunity for public comment given.

#### D. Stack Height Procedures

The degree of emission limitation required of any source for control of any air pollutant must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique, except as provided in 40 CFR 51.118(b). For the purposes of this Section, the definitions in 40 CFR 51.100 shall apply.

1. Before the APCO issues an Authority to Construct under this rule to a source with a stack height that exceeds good engineering practice (GEP) stack height, the APCO shall notify the public of the availability of the demonstration study and provide opportunity for a public hearing.
2. Any field study or fluid model used to demonstrate GEP stack height and any determination concerning excessive concentration must be approved by the EPA and the APCO prior to any emission limit being established.
3. The provisions of Section VI.D do not restrict, in any manner, the actual stack height of any stationary source or facility.

### VII. AUTHORITY TO CONSTRUCT DECISIONS

#### A. Preliminary Decision

Following acceptance of an application as complete, the APCO shall perform the evaluations required to determine if the proposed new major stationary source or major modification will comply with all applicable District, State and federal rules, regulations, or statutes, including but not limited to the requirements under Section IV of this Rule, and shall make a preliminary written decision as to whether an Authority to Construct should be approved, conditionally approved, or denied. The decision shall be supported by a succinct written analysis. The decision shall be based on the requirements in force on the date the application is deemed complete, except when a new federal requirement, not yet incorporated into this Rule, applies to the new or modified source.

#### B. Authority to Construct - Preliminary Decision Requirements

1. Prior to issuance of a preliminary written decision to issue an Authority to Construct for a new major stationary source or major modification, the APCO shall determine:
  - a. That each emissions unit(s) that constitutes the new source or modification will not violate any applicable requirement of the District's portion of the California State Implementation Plan (SIP); and



- b. That the emissions from the new or modified stationary source will not interfere with the attainment or maintenance of any applicable national ambient air quality standard; and
- c. That the emission limitation for each emissions unit that constitutes the new source or modification specifies LAER for units.

If the APCO determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an enforceable numerical emission standard infeasible, the APCO may instead prescribe a design, operational or equipment standard. In such cases, the APCO shall make its best estimate as to the emission rate that will be achieved and must specify that rate in the application review documents.

Any Authority to Construct issued without an enforceable numerical emission standard must contain enforceable conditions which assure that the design characteristics or equipment will be properly maintained or that the operational conditions will be properly performed to continuously achieve the assumed degree of control. Such conditions shall be enforceable as emission limitations by private parties under Section 304 of the CAA. The term "emission limitation" shall also include such design, operational, or equipment standards; and

- d. The quantity of ERCs or internal emission reductions required to offset the new source or modification, pursuant to Section V.C; and
  - e. That all ERCs or internal emission reductions required for the new major source or modification have been identified and have been made federally enforceable or legally and practicably enforceable; and
  - f. That the quantity of ERCs or internal emission reductions determined under paragraph 2 of Section V.C will be surrendered prior to commencing operation.
2. Temporary sources and emissions resulting from the construction phase of a new source are exempt from paragraphs d, e, and f of paragraph 1 of this Section.

#### C. Authority to Construct Contents

1. An Authority to Construct for a new major stationary source or major modification shall contain terms and conditions:

- a. Which ensure compliance with all applicable requirements and which are enforceable as a legal and practical matter.
  - b. Sufficient to ensure that the major stationary source or major modification will achieve LAER in accordance with paragraphs 2 and 3 of this Section.
2. A new major stationary source shall achieve LAER for each nonattainment pollutant for which the source is classified as major.
  3. A major modification shall achieve LAER for each nonattainment pollutant for which the modification would result in a significant net emissions increase. This requirement applies to each proposed emissions unit at which a net emissions increase in the nonattainment pollutant would occur as a result of a physical change or change in the method of operation of the emissions unit.

D. Authority to Construct - Final Decision

1. Prior to making a final decision to issue an Authority to Construct for a new major stationary source or major modification, the APCO shall consider all written comments that are submitted within 30 days of public notification and all comments received at any public hearing(s) in making a final determination on the approvability of the application and the appropriate Authority to Construct conditions. The District shall make all comments available, including the District's response to the comments, for public inspection in the same locations where the District made preconstruction information relating to the proposed source or modification available.
2. The APCO shall deny any application for an Authority to Construct if the APCO finds that the new source or modification would not comply with the standards and requirements set forth in District, State, or federal rules or regulations.
3. The APCO shall make a final decision whether to issue or deny the Authority to Construct after determining that the Authority to Construct will or will not ensure compliance with all applicable emission standards and requirements.
4. The APCO shall notify the applicant in writing of the final decision and make such notification available for public inspection at the same location where the District made preconstruction information and public comments relating to the source available.

E. Permit To Operate

The applicable terms and conditions of an issued Authority to Construct shall be included in any Permit to Operate subsequently issued by the APCO for the same emissions units.

## VIII. SOURCE OBLIGATIONS

### A. Enforcement

Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this Rule, any changes to the application as required by the APCO, or the terms of its Authority to Construct or Permit to Operate, shall be subject to enforcement action.

### B. Termination

Approval to construct shall terminate if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The APCO may extend the 18 month period once, upon a satisfactory showing of good cause why an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

### C. Compliance

Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the SIP and any other requirements under local, State, or federal law.

### D. Relaxation in Enforceable Limitations

At such time that a particular stationary source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the stationary source or modification to emit a pollutant, then the requirements of this Rule shall apply to the stationary source or modification as though construction had not yet commenced on the stationary source or modification.

## IX. PUBLIC PARTICIPATION

After the APCO has made a preliminary written decision to issue an Authority to Construct for a new major stationary source or major modification, as specified in Sections VII.A and VII.B, the APCO shall:

- A. Publish, in at least one newspaper of general circulation in the District, a notice stating the preliminary decision of the APCO, noting how pertinent information can be obtained, including how the public can access the information specified in paragraph (B) of this Section, and inviting written public comment for a 30 day period following the date of publication. The notice shall include the time and place of any hearing that may be held, including a statement of procedure to request a hearing (unless a hearing has already been scheduled).
- B. No later than the date the notice of the preliminary written determination is published, make available in at least one location in each region in which the proposed source would be constructed, a copy of all materials the applicant submitted, a copy of the preliminary decision, a copy of the proposed Authority to Construct and a copy or summary of other materials, if any, considered in making the preliminary written decision.
- C. Send a copy of the notice of public comment to the applicant, EPA Region 9, any persons requesting such notice and any other interested parties such as: the California Air Resources Board, any other local air pollution control agencies, the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency, and any State or Federal Land Manager, or Indian governing body whose lands may be affected by emissions from the source or modification.
- D. Provide opportunity for a public hearing for persons to appear and submit written or oral comments on the air quality impact of the source, alternatives to it, the control technology required, and other appropriate considerations, if in the APCO's judgment such a hearing is warranted. The APCO shall give notice of any public hearing at least 30 days in advance of the hearing.

#### X. PLANT-WIDE APPLICABILITY LIMITS (PAL)

The APCO shall issue a Plant-wide Applicability Limit (PAL) permit according to the provisions contained in 40 CFR 51.165(f)(1) through (f)(15). The provisions of 40 CFR 51.165(f)(1) through (f)(15), are hereby incorporated by reference.

#### XI. INVALIDATION

If any provision of this rule or the application of such provision to any person or circumstance is held invalid, the remainder of this Rule or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

#### XII. EFFECTIVE DATE FOR REFERENCED FEDERAL REGULATIONS

All references and citations in this Rule to Title 40 of the Code of Federal Regulations (CFR) refer to the referenced federal regulation as in effect on July 6, 2021.

## **REGULATION V - PERMIT TO OPERATE**

Rule 500      Additional Procedures for Issuing Permits to Operate for Sources Subject to Title V of the 1990 Federal Clean Air Act Amendments (adopted 11/12/93, amended 6/19/01)

### **I. PURPOSE AND GENERAL REQUIREMENTS OF RULE 500**

Rule 500 implements the requirements of Title V of the federal Clean Air Act as amended in 1990 (CAA) for permits to operate. Title V provides for the establishment of operating permit programs for sources which emit regulated air pollutants, including attainment and nonattainment pollutants. Additionally, Rule 500 is used to implement the Phase II acid deposition control provisions of Title IV of the CAA, including provisions for Acid Rain Permits. The effective date of Rule 500 is the date the United States Environmental Protection Agency (U.S. EPA) promulgates interim, partial, or final approval of this rule in the Code of Federal Regulations (CFR).

By the effective date of Rule 500, the Tuolumne County Air Pollution Control District (District) shall implement an operating permit program pursuant to the requirements of this rule. The District shall also continue to implement its existing permit program, as defined by Regulations IV and V, including authorities to construct, Rule 401. Nothing in Rule 500 limits the authority of the District to revoke or terminate a permit pursuant to sections 40808 and 42307-42309 of the California Health and Safety Code (H&SC).

Sources subject to Rule 500 include major sources, acid rain units subject to Title IV of the CAA, solid waste incinerators subject to section 111 or 129 of the CAA, and any other sources specifically designated by rule of the U.S. EPA. Sources subject to Rule 500 shall obtain permits to operate pursuant to this rule. Each permit to operate issued pursuant to Rule 500 shall contain conditions and requirements adequate to ensure compliance with and the enforceability of:

- A. All applicable provisions of Division 26 of the H&SC, commencing with section 39000;
- B. All applicable orders, rules, and regulations of the District and the California Air Resources Board (ARB);

- C. All applicable provisions of the applicable implementation plan required by the CAA;
- D. Each applicable emission standard or limitation, rule, regulation, or requirement adopted or promulgated to implement the CAA; and
- E. The requirements of all preconstruction permits issued pursuant to Parts C and D of the CAA.

The operation of an emissions unit to which Rule 500 is applicable without a permit or in violation of any applicable permit condition or requirement shall be a violation of Rule 500.

## II. DEFINITIONS

The definitions in this section apply throughout Rule 500 and are derived from related provisions of the U.S. EPA's Title V regulations in Part 70 Code of Federal Regulations (CFR), "State Operating Permit Programs." The terms defined in this section are italicized throughout Rule 500.

- A. *Acid Rain Unit:* An "acid rain unit" is any fossil fuel-fired combustion device that is an affected unit under 40 CFR Part 72.6 and therefore subject to the requirements of Title IV (Acid Deposition Control) of the CAA.
- B. *Administrative Permit Amendment:* An "administrative permit amendment" is an amendment to a permit to operate which:
  - 1. Corrects a typographical error;
  - 2. Identifies a minor administrative change at the stationary source; for example, a change in the name, address, or phone number of any person identified in the permit;
  - 3. Requires more frequent monitoring or reporting by a responsible official of the stationary source; or
  - 4. Transfers ownership or operational control of a stationary source, provided that, prior to the transfer, the APCO receives a written agreement which specifies a date for the transfer of permit responsibility, coverage, and liability from the current to the prospective permittee.
- C. *Affected State:* An "affected state" is any state that: 1) is contiguous with California and whose air quality may be affected by a permit action, or 2) is within 50 miles of the source for which a permit action is being proposed.

- D. *Air Pollution Control Officer (APCO)*: "Air Pollution Control Officer" refers to the air pollution control officer of the Tuolumne County Air Pollution Control District, or his or her designee.
- E. *Applicable Federal Requirement*: An "applicable federal requirement" is any requirement which is enforceable by the U.S. EPA and citizens pursuant to section 304 of the CAA and is set forth in, or authorized by, the CAA or a U.S. EPA regulation. An "applicable federal requirement" includes any requirement of a regulation in effect at permit issuance and any requirement of a regulation that becomes effective during the term of the permit. Applicable federal requirements include:
1. Title I requirements of the CAA, including:
    - a. New Source Review requirements in the State Implementation Plan approved by the U.S. EPA and the terms and conditions of the preconstruction permit issued pursuant to an approved New Source Review rule;
    - b. Prevention of Significant Deterioration (PSD) requirements and the terms and conditions of the PSD permit (40 CFR Part 52);
    - c. New Source Performance Standards (40 CFR Part 60);
    - d. National Ambient Air Quality Standards, increments, and visibility requirements as they apply to portable sources required to obtain a permit pursuant to section 504(e) of the CAA;
    - e. National Emissions Standards for Hazardous Air Pollutants (40 CFR Part 61);
    - f. Maximum Achievable Control Technology or Generally Available Control Technology Standards (40 CFR Part 63);
    - g. Risk Management Plans (section 112(r) of the CAA);
    - h. Solid Waste Incineration requirements (sections 111 or 129 of the CAA);
    - i. Consumer and Commercial Product requirements (section 183 of the CAA);
    - j. Tank Vessel requirements (section 183 of the CAA);
    - k. District prohibitory rules that are approved into the state implementation plan;

1. Standards or regulations promulgated pursuant to a Federal Implementation Plan; and
  - m. Enhanced Monitoring and Compliance Certification requirements (section 114(a)(3) of the CAA).
  2. Title III, section 328 (Outer Continental Shelf) requirements of the CAA (40 CFR Part 55);
  3. Title IV (Acid Deposition Control) requirements of the CAA (40 CFR Parts 72, 73, 75, 76, 77, 78 and regulations implementing sections 407 and 410 of the CAA);
  4. Title VI (Stratospheric Ozone Protection) requirements of the CAA (40 CFR Part 82); and
  5. Monitoring and Analysis requirements (section 504(b) of the CAA).
- F. *California Air Resources Board (ARB)*: "California Air Resources Board" refers to the Air Resources Board of the State of California.
- G. *Clean Air Act (CAA)*: "Clean Air Act" refers to the federal Clean Air Act as amended in 1990 (42 U.S.C. section 7401 et seq.).
- H. *Code of Federal Regulations (CFR)*: "Code of Federal Regulations" refers to the United States Code of Federal Regulations.
- I. *Commence Operation*: "Commence operation" is the date of initial operation of an emissions unit, including any start-up or shakedown period authorized by a temporary permit to operate issued pursuant to section 42301.1 of the H&SC.
- J. *Direct Emissions*: "Direct emissions" are emissions that may reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.
- K. *District*: "District" refers to the Tuolumne County Air Pollution Control District.
- L. *Effective Date of Rule 500*: The "effective date of Rule 500" is the date the U.S. EPA promulgates interim, partial, or final approval of the rule in the Code of Federal Regulations.
- M. *Emergency*: An "emergency" is any situation arising from a sudden and reasonably unforeseeable event beyond the control of a permittee (e.g., an act of God) which causes the exceedence of a technology-based emission limitation under a permit and requires immediate corrective action to restore



compliance. An "emergency" shall not include noncompliance as a result of improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

- N. *Emissions Unit:* An "emissions unit" is any identifiable article, machine, contrivance, or operation which emits, may emit, or results in the emissions of, any regulated air pollutant or hazardous air pollutant.
- O. *Federally-enforceable Condition:* A "federally-enforceable condition" is any condition set forth in the permit to operate which addresses an applicable federal requirement or a voluntary emissions cap.
- P. *Fugitive Emissions:* "Fugitive emissions" are emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.
- Q. *Generally Available Control Technology (GACT) Standard:* A "generally available control technology standard" refers to any generally available control technology standard or management practice promulgated pursuant to section 112(d) of the CAA (40 CFR Part 63).
- R. *Hazardous Air Pollutant (HAP):* A "hazardous air pollutant" is any air pollutant listed pursuant to section 112(b) of the CAA.
- S. *Health and Safety Code (H&SC):* "Health and Safety Code" refers to the California Health and Safety Code.
- T. *Initial Permit:* An "initial permit" is the first operating permit for which a source submits an application that addresses the requirements of the federal operating permits program as implemented by Rule 500.
- U. *Major Source:* A "major source" is a stationary source which has the potential to emit a regulated air pollutant or a HAP in quantities equal to or exceeding the lesser of any of the following thresholds:
1. 100 tons per year (tpy) of any regulated air pollutant;
  2. 50 tpy of volatile organic compounds or oxides of nitrogen for a federal nonattainment area classified as serious, 25 tpy for an area classified as severe, or, 10 tpy for an area classified as extreme;
  3. 70 tpy of PM10 (particulate matter of 10 microns or less) for a federal PM10 nonattainment area classified as serious;
  4. 10 tpy of one HAP or 25 tpy of two or more HAPs; or
  5. Any lesser quantity threshold promulgated by the U.S. EPA.

- V. *Maximum Achievable Control Technology (MACT) Standard:* A "maximum achievable control technology standard" refers to any maximum achievable control technology emission limit or other requirement promulgated pursuant to section 112(d) of the CAA as set forth in 40 CFR Part 63.
- W. *Minor Permit Modification:* A "minor permit modification" is any modification to a federally-enforceable condition on a permit to operate which: 1) is not a significant permit modification and 2) is not an administrative permit amendment.
- X. *Permit Modification:* A "permit modification" is any addition, deletion, or revision to a permit to operate condition.
- Y. *Potential to Emit:* For the purposes of Rule 500, "potential to emit" as it applies to an emissions unit and a stationary source is defined below.
1. **Emissions Unit:** The "potential to emit" for an emissions unit is the maximum capacity of the unit to emit a regulated air pollutant or HAP considering the unit's physical and operational design. Physical and operational limitations on the emissions unit shall be treated as part of its design, if the limitations are set forth in permit conditions or in rules or regulations that are legally and practicably enforceable by U.S. EPA and citizens or by the District. The Physical and operational limitations to be considered in determining maximum capacity to emit shall include: limits placed on emissions; and restrictions on operations such as hours of operation and type or amount of material combusted, stored, or processed.
  2. **Stationary Source:** The "potential to emit" for a stationary source is the sum of the potential to emit from all emissions units at the stationary source. If two or more HAPs are emitted at a stationary source, the potential to emit for each of those HAPs shall be combined to determine applicability. Fugitive emissions shall be considered in determining the potential to emit for: 1) sources as specified in 40 CFR Part 70.2 Major Source (2), and 2) sources of HAP emissions. Notwithstanding the above, any HAP emissions from any oil or gas exploration or production well (with its associated equipment) and any pipeline compressor or pump station shall not be aggregated with emissions of similar units for the purpose of determining a major source of HAPs, whether or not such units are located in contiguous areas or are under common control.
- Z. *Preconstruction Permit:* A "preconstruction permit" is a permit authorizing construction prior to construction and includes:
1. A preconstruction permit issued pursuant to a program for the prevention of significant deterioration of air quality required by section 165 of the CAA; or

2. A preconstruction permit issued pursuant to a new source review program required by sections 172 and 173 of the CAA.

AA. *Regulated Air Pollutant:* A "regulated air pollutant" is any pollutant: 1) which is emitted into or otherwise enters the ambient air, and 2) for which the U.S. EPA has adopted an emission limit, standard, or other requirement. Regulated air pollutants include:

1. Oxides of nitrogen and volatile organic compounds;
2. Any pollutant for which a national ambient air quality standard has been promulgated pursuant to section 109 of the CAA;
3. Any pollutant subject to a new source performance standard promulgated pursuant to section 111 of the CAA;
4. Any ozone-depleting substance specified as a Class I (chlorofluorocarbons) or Class II (hydrofluorocarbons) substance pursuant to Title VI of the CAA; and
5. Any pollutant subject to a standard or requirement promulgated pursuant to section 112 of the CAA, including:
  - a. Any pollutant listed pursuant to section 112(r) of the CAA (Prevention of Accidental Releases) shall be considered a "regulated air pollutant" upon promulgation of the list.
  - b. Any HAP subject to a standard or other requirement promulgated by the U.S. EPA pursuant to section 112(d) or adopted by the District pursuant to 112(g) and (j) of the CAA shall be considered a "regulated air pollutant" for all sources or categories of sources: 1) upon promulgation of the standard or requirement, or 2) 18 months after the standard or requirement was scheduled to be promulgated pursuant to section 112(e)(3) of the CAA.
  - c. Any HAP subject to a District case-by-case emissions limitation determination for a new or modified source, prior to the U.S. EPA promulgation or scheduled promulgation of an emissions limitation shall be considered a "regulated air pollutant" when the determination is made pursuant to section 112(g)(2) of the CAA. In case-by-case emissions limitation determinations, the HAP shall be considered a "regulated air pollutant" only for the individual source for which the emissions limitation determination was made.

BB. *Responsible Official:* A "responsible official" is an individual with the authority to certify that a source complies with all applicable federal requirements and federally-enforceable conditions of permits issued to sources in accordance with Rule 500. "Responsible official" means one of the following:

1. For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
  - a. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
  - b. The delegation of authority to such representative is approved in advance by the APCO;
2. For a partnership or sole proprietorship, a general partner or the proprietor, respectively;
3. For a municipality, state, federal, or other public agency, either a principal executive officer or a ranking elected official; or
4. For an acid rain unit subject to Title IV (Acid Deposition Control) of the CAA, the "responsible official" is the designated representative of that unit for any purposes under Title IV and Rule 500.

CC. *Significant Permit Modification:* A "significant permit modification" is any modification to a federally-enforceable condition on a permit to operate which:

1. Involves any permit modification under section 112(g) of Title I of the CAA or under U.S. EPA regulations promulgated pursuant to Title I of the CAA, including 40 CFR Parts 51, 52, 60, 61, and 63;
2. Significantly changes monitoring conditions;
3. Provides for the relaxation of any reporting or recordkeeping conditions;
4. Involves a permit term or condition which allows a source to avoid an applicable federal requirement, including: 1) a federally-enforceable voluntary emissions cap assumed in order to avoid triggering a

modification requirement of Title I of the CAA, or 2) an alternative HAP emission limit pursuant to section 112(i)(5) of the CAA;

5. Involves a case-by-case determination of any emission standard or other requirement; or
6. Involves a source-specific determination for ambient impacts, visibility analysis, or increment analysis on portable sources.

DD. *Solid Waste Incinerator:* A "solid waste incinerator" is any incinerator which burns solid waste material from commercial, industrial, medical, general public sources (e.g., residences, hotels, or motels), or other categories of solid waste incinerators subject to a performance standard promulgated pursuant to sections 111 or 129 of the CAA. The following incinerators are excluded from the definition of "solid waste incinerator" for the purpose of Rule 500:

1. Any hazardous waste incinerator required to obtain a permit under the authority of section 3005 of the Solid Waste Disposal Act (42 U.S.C. section 6925);
2. Any materials recovery facility which primarily recovers metals;
3. Any qualifying small power production facility as defined in 16 U.S.C.A. section 796(17)(C);
4. Any qualifying cogeneration facility which burns homogenous waste for the production of energy as defined in 16 U.S.C.A. section 796(18)(B); or
5. Any air curtain incinerator which burns only wood, yard, or clean lumber waste and complies with the opacity limitations to be established by the Administrator of the U.S. EPA.

EE. *Stationary Source:* For the purposes of Rule 500, a "stationary source" is any building, structure, facility, or installation (or any such grouping) that:

1. Emits, may emit, or results in the emissions of any regulated air pollutant or HAP;
2. Is located on one or more contiguous or adjacent properties;
3. Is under the ownership, operation, or control of the same person (or persons under common control) or entity; and
4. Belongs to a single major industrial grouping; for example, each building, structure, facility, or installation in the grouping has the

same two-digit code under the system described in the 1987 Standard Industrial Classification Manual.

FF. *United States Environmental Protection Agency (U.S. EPA):* "United States Environmental Protection Agency" refers to the Administrator or appropriate delegatee of the "United States Environmental Protection Agency."

GG. *Voluntary Emissions Cap:* A "voluntary emissions cap" is an optional, federally-enforceable emissions limit on one or more emissions unit(s) which a source assumes in order to avoid an applicable federal requirement. The source remains subject to all other applicable federal requirements.

### III. APPLICABILITY

#### A. Sources Subject to Rule 500

The sources listed below are subject to the requirements of Rule 500:

1. A major source;
2. A source with an acid rain unit for which application for an Acid Rain Permit is required pursuant to Title IV of the CAA;
3. A solid waste incinerator subject to a performance standard promulgated pursuant to section 111 or 129 of the CAA;
4. Any other source in a source category designated by rule of the U.S. EPA; and;
5. Any source that is subject to a standard or other requirement promulgated pursuant to section 111 or 112 of the CAA published after July 21, 1992, that the U.S. EPA does not exempt from the requirements of Title V of the CAA.
6. Upon amendment of the California Health and Safety Code to allow the issuance of Title V permits to agricultural production sources, such sources shall be subject to evaluation for applicability to the requirements of Title V.

#### B. Sources Exempt from Rule 500

The sources listed below are not subject to the requirements of Rule 500:

1. Any stationary source that would be required to obtain a permit solely because it is subject to 40 CFR Part 60, Subpart AAA (Standards of Performance for New Residential Wood Heaters);

2. Any stationary source that would be required to obtain a permit solely because it is subject to 40 CFR Part 61, Subpart M, section 145 (National Emission Standards for Asbestos, Standard for Demolition and Renovation); and
3. Any other source in a source category deferred by U.S. EPA rulemaking unless such source is otherwise subject to Title V (i.e., it is a major source).

#### IV. ADMINISTRATIVE PROCEDURES FOR SOURCES

##### A. Permit Requirement and Application Shield

A source shall operate in compliance with permits to operate issued pursuant to Rule 500. Rule 500 does not alter any applicable requirement that a source obtain preconstruction permits.

If a responsible official submits, pursuant to Rule 500, a timely and complete application for a permit, a source shall not be in violation of the requirement to have a permit to operate until the APCO takes final action on the application. The application shield here will cease to insulate a source from enforcement action if a responsible official of the source fails to submit any additional information requested by the APCO pursuant to subsection IV.C.2.c, below.

If a responsible official submits a timely and complete application for an initial permit, the source shall operate in accordance with the requirements of any valid permit to operate issued pursuant to section 42301 of the H&SC until the APCO takes final action on the application. If a responsible official submits a timely and complete application for renewal of a permit to operate, the source shall operate in accordance with the permit to operate issued pursuant to Rule 500, notwithstanding expiration of this permit, until the APCO takes final action on the application.

The application shield does not apply to sources applying for permit modifications. For permit modifications, a source shall operate in accordance with the applicable federal requirements, the permit to operate issued pursuant to Rule 500 and any temporary permit to operate issued pursuant to section 42301.1 of the H&SC.

##### B. Application Requirements

###### 1. Initial Permit

- a. For a source that is subject to Rule 500 on the effective date of the interim Title V program of June 2, 1995, a responsible official shall submit a standard District application within 12 months after the date the rule becomes effective.

- b. For a source that becomes subject to Rule 500 after the effective date of the interim Title V program of June 2, 1995, a responsible official shall submit a standard District application within 12 months of the source commencing operation or of otherwise becoming subject to Rule 500.
- c. For a source with an acid rain unit subject to Phase II of the Acid Deposition Control Program of Title IV of the CAA, initial Phase II acid rain permits shall be submitted to the District by January 1, 1996 for sulfur dioxide and for coal-fired units by January 1, 1998 for oxides of nitrogen.

## 2. Permit Renewal

For renewal of a permit, a responsible official shall submit a standard District application no earlier than 18 months and no later than 6 months before the expiration date of the current permit to operate. Permits to operate for all emissions units at a stationary source shall undergo simultaneous renewal.

## 3. Significant Permit Modification

After obtaining any required preconstruction permits, a responsible official shall submit a standard District application for each emissions unit affected by a proposed permit revision that qualifies as a significant permit modification. Upon request by the APCO, the responsible official shall submit copies of the latest preconstruction permit for each affected emissions unit. The emissions unit(s) shall not commence operation until the APCO takes final action to approve the permit revision.

## 4. Minor Permit Modification

After obtaining any required preconstruction permits, a responsible official shall submit a standard District application for each emissions unit affected by the proposed permit revision that qualifies as a minor permit modification. The emissions unit(s) affected by the proposed permit modification shall not commence operation until the APCO takes final action to approve the permit revision. In the application, the responsible official shall include the following:

- a. A description of the proposed permit revision, any change in emissions, and additional applicable federal requirements that will apply;
- b. Proposed permit terms and conditions; and



- c. A certification by a responsible official that the permit revision meets criteria for use of minor permit modification procedures and a request that such procedures be used.

5. Acid Rain Unit Permit Modification

A permit modification of the acid rain portion of the operating permit shall be governed by regulations promulgated pursuant to Title IV of the CAA.

- C. Application Content and Correctness

1. Standard District Application

The standard District application submitted shall include the following information:

- a. Information identifying the source;
- b. Description of processes and products (by Standard Industrial Classification Code) including any associated with proposed alternative operating scenarios;
- c. Identification of fees specified in Rule 601;
- d. A listing of all existing emissions units at the stationary source and identification and description of all points of emissions from the emissions units in sufficient detail to establish the applicable federal requirements and the basis for fees pursuant to section VII, below;
- e. Citation and description of all applicable federal requirements, information and calculations used to determine the applicability of such requirements and other information that may be necessary to implement and enforce such requirements;
- f. Calculation of all emissions, including fugitive emissions, in tons per year and in such terms as are necessary to establish compliance with the all applicable District, state, or federal requirements for the following:
  - 1) All regulated air pollutants emitted from the source,
  - 2) Any HAP that the source has the potential to emit in quantities equal to or in excess of 10 tons per year, and;

- 3) If the source has the potential to emit two or more HAPs in quantities equal to or in excess of 25 tons per year, all HAPs emitted by the source;
- g. As these affect emissions from the source, the identification of fuels, fuel use, raw materials, production rates, operating schedules, limitations on source operation or workplace practices;
  - h. An identification and description of air pollution control equipment and compliance monitoring devices or activities;
  - i. Other information required by an applicable federal requirement;
  - j. The information needed to define permit terms or conditions implementing a source's options for operational flexibility, including alternative operating scenarios, pursuant to subsection V.G., below;
  - k. A compliance plan and compliance schedule with the following:
    - 1) A description of the compliance status of each emissions unit within the stationary source with respect to applicable federal requirements,
    - 2) A statement that the source will continue to comply with such applicable federal requirements that the source is in compliance,
    - 3) A statement that the source will comply, on a timely basis, with future-effective requirements which have been adopted, and
    - 4) A description of how the source will achieve compliance with requirements for which the source is not in compliance;
  - l. For a source not in compliance with an applicable federal requirement at the time of permit issuance, renewal, and modification (if the non-compliance is with units being modified), a schedule of compliance which resembles and is at least as stringent as that contained in any judicial consent decree, administrative order, or schedule approved by the District hearing board if required by state law and which identifies remedial measures with specific increments of progress, a final compliance date, testing and monitoring

methods, recordkeeping requirements, and a schedule for submission of certified progress reports to the U.S. EPA and the APCO at least every 6 months;

- m. A certification by a responsible official of all reports and other documents submitted for permit application, compliance progress reports at least every 6 months, statements on compliance status with any applicable enhanced monitoring, and compliance plans at least annually which shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete;
- n. For a source with an acid rain unit, an application shall include the elements required by 40 CFR Part 72;
- o. For a source of HAPs, the application shall include verification that a risk management plan has been prepared in accordance with section 112(r) of the CAA and registered with the authorized local fire or health department; and
- p. For proposed portable sources, an application shall identify all locations of potential operation and how the source will comply with all applicable District, state, and federal requirements at each location.
- q. Insignificant Activities:
  - 1) For the purposes of this rule, an insignificant activity shall be any activity, process, or emissions unit which is not subject to a source-specific applicable federal requirement and which emits no more than 0.5 tons per year of a HAP and no more than two tons per year of a regulated air pollutant that is not a HAP. Source specific applicable federal requirements include requirements for which emission unit-specific information is required to determine applicability.
  - 2) An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required in Section VII of this rule. [Reference: 40 CFR Part 70.5(c)]

## 2. Correctness of Applications

A responsible official of a source shall submit an accurate and complete application in accordance with the requirements of the District.

- a. Upon written request of the APCO, a responsible official shall supplement any complete application with additional information within the timeframe specified by the APCO.
- b. A responsible official shall promptly provide additional information in writing to the APCO upon discovery of submittal of any inaccurate information as part of the application or as a supplement thereto, or of any additional relevant facts previously omitted which are needed for accurate analysis of the application.
- c. Intentional or negligent submittal of inaccurate information shall be reason for denial of an application.

#### D. Written Requests for District Action

A responsible official shall submit a written request to the APCO for the following permit actions:

##### 1. Administrative Permit Amendment

For an administrative permit amendment, a responsible official may implement the change addressed in the written request immediately upon submittal of the request.

- ##### 2. Permit Modification for a Condition that is not Federally Enforceable
- For a permit modification for a condition that is not federally enforceable, a responsible official shall submit a written request in accordance with the requirements of Rule 401.

##### 3. Permits to Operate for New Emissions Units

For permits to operate for a new emissions unit at a stationary source, a responsible official shall submit a written request in accordance with the requirements of Rule 401, except under the following circumstances:

- a. The construction or operation of the emissions unit is a modification under U.S. EPA regulations promulgated pursuant to Title I of the CAA, including 40 CFR Parts 51, 52, 60, 61, 63;

- b. The construction or operation of the emissions unit is addressed or prohibited by permits for other emissions units at the stationary source; or
- c. The emissions unit is an acid rain unit subject to Title IV of the CAA,

In the circumstances specified in subsections a., b., or c., above, a responsible official shall apply for a permit to operate for the new emissions unit pursuant to the requirements of Rule 500.

E. Response to Permit Reopening for Cause

Upon notification by the APCO of a reopening of a permit for cause for an applicable federal requirement pursuant to section V.H., below, a responsible official shall respond to any written request for information by the APCO within the timeframe specified by the APCO.

V. DISTRICT ADMINISTRATIVE PROCEDURES

A. Completeness Review of Applications

The APCO shall determine if an application is complete and shall notify the responsible official of the determination within the following timeframes:

1. For an initial permit, permit renewal, or a significant permit modification, within 60 days of receiving the application;
2. For a minor permit modification, within 30 days of receiving the application;

The application shall be deemed complete unless the APCO requests additional information or otherwise notifies the responsible official that the application is incomplete within the timeframes specified above.

B. Notification of Completeness Determination

The APCO shall provide written notification of the completeness determination to the U.S. EPA, the ARB and any affected state and shall submit a copy of the complete application to the U.S. EPA within five working days of the determination. The APCO need not provide notification for applications from sources that are not major sources when the U.S. EPA waives such requirement for a source category by regulation or at the time of approval of the District operating permits program.

C. Application Processing Timeframes

The APCO shall act on a complete application in accordance with the procedures in subsections D., E. and F., below (except as application procedures for acid rain units are provided for under regulations promulgated pursuant to Title IV of the CAA), and take final action within the following timeframes:

1. For an initial permit for a source subject to Rule 500 on the date the rule becomes effective, no later than three years after the date the rule becomes effective;
2. For an initial permit for a source that becomes subject to Rule 500 after the date the rule becomes effective, no later than 18 months after the complete application is received;
3. For a permit renewal, no later than 18 months after the complete application is received deemed complete;
4. For a significant permit modification, no later than 18 months after the complete application is received deemed complete;
5. For a minor permit modification, within 90 days after the application is received or 60 days after written notice to the U.S. EPA on the proposed decision, whichever is later; or
6. For any permit application with early reductions pursuant to section 112(i)(5) of the CAA, within 9 months from the date a complete after the application is received.

D. Notification and Opportunity for Review of Proposed Decision

Within the applicable timeframe specified in subsection C., above, the APCO shall provide notice of and opportunity to review the proposed decision to issue a permit to operate in accordance with requirements in this subsection.

1. For initial permits, renewal of permits, significant permit modifications, and reopenings for cause, the APCO shall provide the following:
  - a. Written notice, the proposed permit and, upon request, copies of the District analysis to interested persons or agencies. The District analysis shall include a statement that sets forth the legal and factual basis for the proposed permit conditions, including references to the applicable statutory and regulatory provisions. Interested persons or agencies shall include persons who have requested in writing to be notified of proposed Rule 500 decisions, any affected state and the ARB.

- b. On or after providing written notice pursuant to subsection a., above, public notice that shall be published in at least one newspaper of general circulation in the District and, if necessary, by other means to assure adequate notice to the affected public. The notice shall provide the following information:
- 1) The identification of the source, the name and address of permit holder, the activity(ies) and emissions change involved in the permit action;
  - 2) The name and address of the District, the name and telephone number of District staff to contact for additional information;
  - 3) The availability, upon request, of a statement that sets forth the legal and factual basis for the proposed permit conditions;
  - 4) The location where the public may inspect the complete application, the District analysis, and the proposed permit;
  - 5) A statement that the public may submit written comments regarding the proposed decision within at least 30 days from the date of publication and a brief description of commenting procedures; and
  - 6) A statement that members of the public may request a public hearing if a hearing has not been scheduled. The APCO shall provide notice of any public hearing scheduled to address the proposed decision at least 30 days prior to such hearing in accordance with Rule 424.
- c. A copy of the complete application, the District analysis and the proposed permit at District offices for public review and comment during normal business hours;
- d. A written response to persons or agencies that submitted written comments which are postmarked by the close of the public notice and comment period. All written comments and responses to such comments shall be kept on file at the District office and made available upon request.
- e. After completion of the public notice and comment period pursuant to subsection a., above, written notice to the U.S. EPA of the proposed decision along with copies of the

proposed permit, the District analysis, the public notice submitted for publication, the District's response to written comments, and all necessary supporting information.

2. For minor permit modifications, the APCO shall provide written notice of the proposed decision to the U.S. EPA, the ARB, and any affected state. Additionally, the District shall provide to the U.S. EPA (and, upon request, to the ARB or any affected state) copies of the proposed permit, the District analysis, and all necessary supporting information. The District analysis shall include a statement that sets forth the legal and factual basis for the proposed permit conditions, including references to the applicable statutory and regulatory provisions.

#### E. Changes to the Proposed Decision

Changes to the proposed decision shall be governed by the following procedure:

1. The APCO may modify or change the proposed decision, the proposed permit, or the District analysis on the basis of information set forth in the comments received during the public comment period provided pursuant to subsection D.1.a., above, or due to further analysis by the APCO. Pursuant to subsection D.1.e., above, the APCO shall forward any such modified proposed decision, the proposed permit, the District analysis, and all necessary supporting information to the U.S. EPA.
2. If the U.S. EPA objects in writing to the proposed decision within 45 days of being notified of the decision and receiving a copy of the proposed permit and all necessary supporting information pursuant to subsection D.1.e., above, the APCO shall not issue the permit. Also, if the public petitions the U.S. EPA within 60 days after the end of the U.S. EPA's 45-day review period and the permit has not yet been issued, the APCO shall not issue the permit until U.S. EPA objections in response to the petition are resolved. The APCO shall either deny the application or revise and resubmit a permit which addresses the deficiencies identified in the U.S. EPA objection within the following timeframes:
  - a. For initial permits, permit renewals, and significant permit modifications, within 90 days of receiving the U.S. EPA objection; or
  - b. For minor permit modifications, within 90 days of receipt of the application or 60 days of the notice to U.S. EPA, whichever is later.



F. Final Decision

If the U.S. EPA does not object in writing within 45 days of the notice provided pursuant to subsection D.1.e., above, or the APCO submits a revised permit pursuant to subsection E.2., above, the APCO shall, expeditiously, deny the application or issue the final permit to operate. In any case, the APCO shall take final action on an application within the applicable timeframe specified in subsection C., above. Failure of the APCO to act on a permit application or permit renewal application in accordance to the timeframes provided in subsection C., above, shall be considered final action for purposes of obtaining judicial review to require that action on the application be taken expeditiously.

Written notification of the final decision shall be sent to the responsible official of the source, the U.S. EPA, the ARB and any person or affected state that submitted comments during the public comment period. Written notification of any refusal by the District to accept all recommendations for the proposed permit, that an affected state submitted during the public comment period shall be sent to U.S. EPA and affected states. The APCO shall submit a copy of a permit to operate as issued to the U.S. EPA and provide a copy to any person or agency requesting a copy. If the application is denied, the APCO shall provide reasons for the denial in writing to the responsible official along with the District analysis and cite the specific statute, rule, or regulation upon which the denial is based.

G. District Action on Written Requests

The APCO shall act on a written request of a responsible official for permit action using the applicable procedure specified in this subsection.

1. Administrative Permit Amendment

The APCO shall take final action no later than 60 days after receiving the written request for an administrative permit amendment.

a. After designating the permit revisions as an administrative permit amendment, the APCO may revise the permit without providing notice to the public or any affected state.

b. The APCO shall provide a copy of the revised permit to the responsible official and the U.S. EPA.

c. While the APCO need not make a completeness determination on a written request, the APCO shall notify the responsible official if the APCO determines that the permit cannot be revised as an administrative permit amendment.

2. Permit Modification for a Condition that is not Federally Enforceable

The APCO shall take action on a written request for a permit modification for a condition that is not federally enforceable in accordance with the requirements of Rule 401 under the following circumstances:

- a. Any change at the stationary source allowed by the permit modification shall meet all applicable federal requirements and shall not violate any existing permit term or condition; and
- b. The APCO provides to the U.S. EPA a contemporaneous written notice describing the change, including the date, any change in emissions or air pollutants emitted, and any applicable federal requirement that would apply as a result of the change.

3. Permits to Operate for New Emissions Unit

The APCO shall take action on a written request for a permit to operate for a new emissions unit in accordance with the requirements for of Rule 401 under the circumstances specified in subsection 2.a. and 2.b., above. However, if subsections IV.D.3.a., IV.D.3.b., or IV.D.3.c., above, apply, the APCO shall require the submittal of a standard District application and take action on that application pursuant to the requirements of Rule 500.

H. Permit Reopening for Cause

The APCO shall reopen and revise a permit to operate during the annual review period required by section 42301(c) of the H&SC, or petition the District hearing board to do so pursuant to section 42307 of the H&SC, whichever is applicable, prior to its expiration date upon discovery of cause for reopening or upon notification of cause for reopening by the U.S. EPA, or within 18 months of promulgation of a new applicable federal requirement. The APCO shall act only on those parts of the permit for which cause to reopen exists.

1. Circumstances that are cause for reopening and revision of a permit include, but are not limited to, the following:
  - a. The need to correct a material mistake or inaccurate statement;
  - b. The need to revise or revoke a permit to operate to assure compliance with applicable federal requirements;

- c. The need to incorporate any new, revised, or additional applicable federal requirements, if the remaining authorized life of the permit is 3 years or greater, no later than 18 months after the promulgation of such requirement (where less than 3 years remain in the authorized life of the permit, the APCO shall incorporate these requirements into the permit to operate upon renewal); or
  - d. The need to reopen a permit issued to acid rain unit subject to Phase II of Title IV of the CAA to include:
    - 1) Oxides of nitrogen requirements prior to January 1, 1999, and
    - 2) Additional requirements promulgated pursuant to Title IV as they become applicable to any acid rain unit governed by the permit.
2. In processing a permit reopening, the APCO shall use the same procedures as for an initial permit and additionally:
- a. Provide written notice to a responsible official and the U.S. EPA at least 30 days, or a shorter period in the case of an emergency, prior to reopening a permit; and
  - b. Complete action to revise the permit as specified in the notice of reopening within 60 days after the written notice to the U.S. EPA pursuant to subsection D.1.e., if the U.S. EPA does not object, or after the APCO has responded to U.S. EPA objection pursuant to subsection E.2., above.

I. Options for Operational Flexibility

The APCO shall allow specified changes in operations at a source without requiring a permit revision for conditions that address an applicable federal requirement. The APCO shall not allow changes which constitute a modification under Title I of the CAA or Rule 401, or that result in an exceedence of the emissions allowable under the permit, whether expressed therein as a rate of emissions or in terms of total emissions without revision to the permit. The source may gain operational flexibility through use of the following options:

1. Alternative Operating Scenarios

The APCO shall allow the use of alternative operating scenarios provided that:

- a. Terms and conditions applicable to each operating scenario are identified by the responsible official in the permit application;
  - b. The terms and conditions are approved by the APCO;
  - c. The terms and conditions are incorporated into the permit; and
  - d. The terms and conditions are in compliance with all applicable District, state, and federal requirements. A permit condition shall require a contemporaneous log to record each change made from one operating scenario to another.
2. Voluntary Emissions Caps

The APCO shall issue a permit that contains terms and conditions that allow for trading of emissions increases and decreases within the stationary source solely for the purpose of complying with a voluntary emissions cap established in the permit independent of otherwise applicable federal requirements provided that:

- a. The requirements of subsections 1.a., 1.c., and 1.d., above, are met;
- b. The terms and conditions are approved by the APCO as quantifiable and enforceable; and
- c. The terms and conditions are consistent with the applicable preconstruction permit.

A permit condition shall require that a responsible official provide written notice to the U.S. EPA and APCO 30 days in advance of a change by clearly requesting operational flexibility under this subsection of Rule 500. The written notice shall describe the change, identify the emissions unit which will be affected, the date on which the change will occur and the duration of the change, any change in emissions of any air pollutant, whether regulated or not, and any new emissions of any air pollutant not emitted before the change, whether regulated or not.

3. Contravening an Express Permit Condition

The APCO shall allow for changes in operation that contravene an express condition addressing an applicable federal requirement in a permit to operate provided that:

- a. The change will not violate any applicable federal requirement;

- b. The change will not contravene federally-enforceable conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements;
- c. The change is not a modification under Title I of the CAA or any provision of Rule 401;
- d. The change does not result in exceeding the emissions allowable under the permit, whether expressed therein as a rate of emissions or in terms of total emissions;
- e. Written notice is given to the U.S. EPA and APCO 30 days in advance of a change, and the notice clearly indicates which term or condition will be contravened, requests operational flexibility under this subsection, describes the change, identifies the emissions units which will be affected, the date on which the change will occur, the duration of the change, any change in emissions of any air pollutant, whether regulated or not, and any new emissions of any air pollutant not emitted before the change, whether regulated or not; and
- f. The APCO has not provided a written denial to the responsible official within 30 days of receipt of the request for an operational change.

## VI. PERMIT CONTENT REQUIREMENTS

A permit-to-operate shall contain permit conditions that will assure compliance with all applicable federal requirements.

### A. Incorporation of Applicable Federal Requirements

A permit to operate shall incorporate all applicable federal requirements as permit conditions. The following procedure shall be used to incorporate an applicable federal requirement as a permit condition:

1. A permit condition that addresses an applicable federal requirement shall be specifically identified in the permit, or otherwise distinguished from any requirement that is not federally enforceable;
2. Where an applicable federal requirement and a similar requirement that is not federally enforceable apply to the same emissions unit, both shall be incorporated as permit conditions, provided that they are not mutually exclusive; and
3. Where an applicable federal requirement and a similar requirement that is not federally enforceable apply to the same emissions unit and

are mutually exclusive (e.g., require different air pollution control technology), the requirement specified in the preconstruction permit (or, in the case of sources without preconstruction permits, the more stringent requirement) shall be incorporated as a permit condition and the other requirement shall be referenced.

## B. General Requirements

All permits to operate shall contain the conditions or terms consistent with 40 CFR Part 70.6 Permit Content, including:

### 1. Emission and Operational Limitations

The permit shall contain conditions that require compliance with all applicable federal requirements, including any operational limitations or requirements.

### 2. Preconstruction Permit Requirements

The permit shall include all of the preconstruction permit conditions for each emissions unit.

### 3. Origin and Authority for Permit Conditions

The origin and authority for each permit term or condition shall be referenced in the permit.

### 4. Equipment Identification

The permit shall identify the equipment to which a permit condition applies.

### 5. Monitoring, Testing, and Analysis

The permit shall contain conditions that require monitoring, analytical, compliance certification, test method, equipment management, and statistical procedures consistent with any applicable federal requirement, including those pursuant to sections 114(a)(3) and 504(b) of the CAA, and 40 CFR Part 64. Periodic monitoring shall be required as a condition to ensure that the monitoring is sufficient to yield reliable data which are representative of the source's compliance with permit conditions over the relevant time period.

### 6. Recordkeeping

The permit shall include recordkeeping conditions that require:

- a. Record maintenance of all monitoring and support information associated with any applicable federal requirement, including:
    - 1) Date, place, and time of sampling;
    - 2) Operating conditions at the time of sampling;
    - 3) Date, place, and method of analysis; and
    - 4) Results of the analysis;
  - b. Retention of records of all required monitoring data and support information for a period of at least five years from the date of sample collection, measurement, report, or application; and
  - c. Any other recordkeeping deemed necessary by the APCO to ensure compliance with all applicable federal requirements.
7. Reporting

The permit shall include reporting conditions that require the following:

- a. Any deviation from permit requirements, including that attributable to upset conditions (as defined in the permit), shall be promptly reported to the APCO who will determine what constitutes "prompt" reporting in terms of the requirement, the degree, and type of deviation likely to occur;
- b. A monitoring report shall be submitted at least every six months and shall identify any deviation from permit requirements, including that previously reported to the APCO (see subsection 7.a. above);
- c. All reports of a deviation from permit requirements shall include the probable cause of the deviation and any preventative or corrective action taken;
- d. A progress report shall be made on a compliance schedule at least semi-annually and shall include: 1) the date when compliance will be achieved, 2) an explanation of why compliance was not, or will not be, achieved by the scheduled date, and 3) a log of any preventative or corrective action taken; and

- e. Each monitoring report shall be accompanied by a written statement from the responsible official which certifies the truth, accuracy, and completeness of the report.

#### 8. Compliance Plan

The permit shall include a compliance plan that:

- a. Describes the compliance status of an emissions unit with respect to each applicable federal requirement;
- b. Describes how compliance will be achieved if an emissions unit is not in compliance with an applicable federal requirement at the time of permit issuance;
- c. Assures that an emissions unit will continue to comply with those permit conditions with which it is in compliance; and
- d. Assures that an emissions unit will comply with any future applicable federal requirement on a timely basis.

#### 9. Compliance Schedule

The permit shall include a compliance schedule for any emissions unit which is not in compliance with current applicable federal requirements at the time of permit issuance, renewal, and modification (if the non-compliance is with units being modified). The compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree, administrative order, or schedule approved by the District hearing board if required by state law and shall require:

- a. A statement that the emissions unit will continue to comply with those permit conditions with which it is in compliance;
- b. A statement that the emissions unit will comply with any future applicable federal requirement on a timely basis;
- c. For each condition with which the emissions unit is not in compliance with an applicable federal requirement, a schedule of compliance which lists all preventative or corrective activities, and the dates when these activities will be accomplished; and
- d. For each emissions unit that is not in compliance with an applicable federal requirement, a schedule of progress on at least a semi-annual basis which includes: 1) the date when compliance will be achieved, 2) an explanation of why



compliance was not, or will not be, achieved by the scheduled date, and 3) a log of any preventative or corrective actions taken.

10. Right of Entry

The permit shall require that the source allow the entry of the District, ARB, or U.S. EPA officials for the purpose of inspection and sampling, including:

- a. Inspection of the stationary source, including equipment, work practices, operations, and emission-related activity;
- b. Inspection and duplication of records required by the permit to operate; and
- c. Source sampling or other monitoring activities.

11. Compliance with Permit Conditions

The permit shall include the following provisions regarding compliance:

- a. The permittee shall comply with all permit conditions;
- b. The permit does not convey property rights or exclusive privilege of any sort;
- c. The non-compliance with any permit condition is grounds for permit termination, revocation and reissuance, modification, enforcement action, or denial of permit renewal;
- d. The permittee shall not use the "need to halt or reduce a permitted activity in order to maintain compliance" as a defense for non-compliance with any permit condition;
- e. A pending permit action or notification of anticipated non-compliance does not stay any permit condition; and
- f. Within a reasonable time period, the permittee shall furnish any information requested by the APCO, in writing, for the purpose of determining: 1) compliance with the permit, or 2) whether or not cause exists for a permit or enforcement action.

12. Emergency Provisions

The permit shall include the following emergency provisions:

- a. The responsible official shall submit to the District a properly signed contemporaneous log or other relevant evidence which demonstrates that:
  - 1) An emergency occurred;
  - 2) The permittee can identify the cause(s) of the emergency;
  - 3) The facility was being properly operated at the time of the emergency;
  - 4) All steps were taken to minimize the emissions resulting from the emergency; and
  - 5) Within two working days of the emergency event, the permittee provided the district with a description of the emergency and any mitigating or corrective actions taken;
- b. In any enforcement proceeding, the permittee has the burden of proof for establishing that an emergency occurred; and
- c. In addition to the emergency provisions above, the permittee shall comply with the emergency or upset provisions contained in all applicable federal requirements and District Rule 516.

13. Severability

The permit shall include a severability clause to ensure the continued validity of otherwise unaffected permit requirements in the event of a challenge to any portion of the permit.

14. Compliance Certification

The permit shall contain conditions for compliance certification which include the following requirements:

- a. The responsible official shall submit a compliance certification to the U.S. EPA and the APCO every 12 months or more frequently as specified in an applicable requirement or by the District. All compliance reports and other documents required to be submitted to the District by the responsible official shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete;

- b. The compliance certification shall identify the basis for each permit term or condition (e.g., specify the emissions limitation, standard, or work practice) and a means of monitoring compliance with the term or condition;
- c. The compliance certification shall include the compliance status and method(s) used to determine compliance for the current time period and over the entire reporting period; and
- d. The compliance certification shall include any additional inspection, monitoring, or entry requirement that may be promulgated pursuant to sections 114(a) and 504(b) of the CAA.

15. Permit Life

With the exception of acid rain units subject to Title IV of the CAA and solid waste incinerators subject to section 129(e) of the CAA, each permit to operate for any source shall include a condition for a fixed term not to exceed five years from the time of issuance. A permit to operate for an acid rain unit shall have a fixed permit term of five years. A permit to operate for a solid waste incinerator shall have a permit term of 12 years; however, the permit shall be reviewed at least every five years.

16. Payment of Fees

The permit shall include a condition to ensure that appropriate permit fees are paid on schedule. If fees are not paid on schedule, the permit is forfeited. Operation without a permit subjects the source to potential enforcement action by the District and the U.S. EPA pursuant to section 502(a) of the CAA.

17. Alternative Operating Scenarios

Where a responsible official requests that an alternative operating scenario be included in the permit for an emissions unit, the permit shall contain specific conditions for each operating scenario, including each alternative operating scenario. Each operating scenario, including each alternative operating scenario, identified in the permit must meet all applicable federal requirements and all of the requirements of this section. Furthermore, the source is required to maintain a contemporaneous log to record each change from one operating scenario to another.

18. Voluntary Emissions Caps

To the extent applicable federal requirements provide for averaging emissions increases and decreases within a stationary source without case-by-case approval, a responsible official may request, subject to approval by the APCO, to permit one or more emissions unit(s) under a voluntary emissions cap. The permit for each emissions unit shall include federally-enforceable conditions requiring that:

- a. All applicable federal requirements, including those authorizing emissions averaging, are complied with;
- b. No individual emissions unit shall exceed any emissions limitation, standard, or other requirement;
- c. Any emissions limitation, standard, or other requirement shall be enforced through continuous emission monitoring, where applicable; and
- d. All affected emissions units under a voluntary emissions cap shall be considered to be operating in violation of the permit if the voluntary emissions cap is exceeded.

19. Acid Rain Units Subject to Title IV

The permit for an acid rain unit shall include conditions that require compliance with any federal standard or requirement promulgated pursuant to Title IV (Acid Deposition Control) of the CAA and any federal standard or requirement promulgated pursuant to Title V of the CAA, except as modified by Title IV. Acid rain unit permit conditions shall include the requirements of 40 CFR Part 72.9 and the following provisions:

- a. The sulfur dioxide emissions from an acid rain unit shall not exceed the annual emissions allowances (up to one ton per year of sulfur dioxide may be emitted for each emission allowance allotted) that the source lawfully holds for that unit under Title IV of the CAA or the regulations promulgated pursuant to Title IV;
- b. Any increase in an acid rain unit's sulfur dioxide emissions authorized by allowances acquired pursuant to Title IV of the CAA shall not require a revision of the acid rain portion of the operating permit provided such increases do not require permit revision under any other applicable federal requirement;
- c. Although there is no limit on the number of sulfur dioxide emissions allowances held by a source, a source with an acid rain unit shall not use these emissions allowances as a defense

for noncompliance with any applicable federal requirement or District requirement; and

- d. An acid rain unit's sulfur dioxide allowances shall be accounted for according to the procedures established in regulations promulgated pursuant to Title IV of the CAA.

## VII. SUPPLEMENTAL ANNUAL FEE

The fees collected pursuant to this section shall supplement the fee requirements in Rule 601.

### A. Payment of Supplemental Fee

A responsible official, or his or her delegee, shall pay an annual supplemental fee for a permit to operate pursuant to this rule as determined by the calculation method in subsection C. below to meet an overall fee rate of \$25 per ton of fee-based emissions (CPI adjusted), unless subsection B. below applies.

1. "Fee-based emissions" means the actual rate of emissions in tons per year of any fee pollutant, including fugitive emissions, emitted from the stationary source over the preceding year or any other period determined by the APCO to be representative of normal operation. Fee-based emissions shall be calculated using each emission unit's actual operating hours, production rates, and in-place control equipment; types of material processed, stored, or combusted during the preceding calendar year, or other time period established by the APCO.
2. "Fee pollutant" means oxides of nitrogen, volatile organic compounds, any pollutant for which a national ambient air quality standard has been promulgated by the U.S. EPA (excluding carbon monoxide), and any other pollutant that is subject to a standard or regulation promulgated by the U.S. EPA under the CAA or adopted by the District pursuant to section 112(g) and (j) of the CAA. Any air pollutant that is regulated solely because of a standard or regulation under section 112(r) of the CAA for accidental release or under Title VI of the CAA for stratospheric ozone protection shall not be included.
3. "(CPI adjusted)" means adjusted by the percentage, if any, by which the Consumer Price Index of the year exceeds the Consumer Price Index for calendar year 1989. The value for (CPI adjusted) shall be obtained from the U.S. EPA.

B. No Supplemental Fee

There shall not be a supplemental annual fee if the total annual fee rate paid by the source under Rule 601 (Permit Fees Rule) and H&SC section 44380 (AB 2588 Toxic Hot Spots) equals or exceeds \$25 per ton of fee-based emissions (CPI adjusted). Only those AB 2588 Toxic Hot Spots fees that fund direct and indirect costs associated with activities related to the operating permits program as specified in section 502(b)(3)(A) of the CAA are to be used to meet the overall fee rate of \$25 per ton of fee-based emissions (CPI adjusted).

C. Determination of Supplemental Fee

The supplemental annual fee shall be determined by completing the following steps:

Step 1: Calculation of Supplemental Annual Fee

$$s = [ \$25 \text{ per ton (CPI adjusted)} \times e ] - f$$

where:

s = supplemental annual fee in dollars

e = fee-based emissions in tons per year

f = sum (in dollars) of annual fee under Rule 601 (Permit Fee Rule) and that portion of AB 2588 Toxic Hot Spots fees that funds direct and indirect costs associated with activities related to the operating permits program as specified in section 502(b)(3)(A) of the CAA

Step 2: When the Supplemental Annual Fee is Zero

If "f" is equal to or greater than "[ \$25 per ton (CPI adjusted) x e ]", then "s" shall be zero and subsection B., above, applies. If "f" is less than "[ \$25 per ton (CPI adjusted) x e ]", then "s" shall be as calculated in Step 1.

D. Submittal of Information

The responsible official, or his or her delegee, shall provide the APCO sufficient information to determine the supplemental fee.

Rule 500.5 Violations and Determinations of Compliance.

A. General

1. Purpose

The purpose of this rule is to provide standards by which compliance with requirements derived from the federal Clean Air Act may be determined.

2. Applicability

The provisions of this rule shall provide standards for compliance determinations required by, or derived from, federal law for the operation of any article, machine, equipment, or other contrivance within the District which may cause the issuance of air contaminants, or the use of which may eliminate, reduce, or control the issuance of air contaminants.

3. Exemptions

Reserved

4. Effective Dates

This Rule becomes effective on February 28, 1995.

5. References

The requirements of this Rule arise from the provisions of Sections 110(a)(2)(A),(C), and (F)(42 U.S.C. Sections 7401(a)(2)(A),(C), and (F):and Sections 113, 114(a)(3)(42 U.S.C. Sections 7413 and 7414(a)(3)) of the federal Clean Air Act.

B. Definitions

1. Administrator

The Administrator of the United States Environmental Protection Agency or delegate.

2. District

Tuolumne County Air Pollution Control District.

C. Violations of Other Legal Mandates

Nothing in the District Regulations is intended to permit any practice which is a violation of any statute, ordinance, rule or regulation.

D. Standards for Determination of Compliance

1. Compliance Certification

Notwithstanding any other provision in any plan approved by the United States Environmental Protection Agency Administrator, for the purpose of submission of compliance certification required by federal law, the owner or operator is not prohibited from using the following, in addition to any specified compliance methods:

- a. An enhanced monitoring protocol approved for the source pursuant to 40 CFR Part 64.
- b. Any other monitoring method approved for the source pursuant to 40 CFR 70.6(a)(3) and incorporated into a federally enforceable operating permit.

## 2. Credible Evidence

Notwithstanding any other provision in the District's State Implementation Plan approved by the Administrator, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of any such plan.

- a. Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at a source:
  - 1) An enhanced monitoring protocol approved for the source pursuant to 40 CFR Part 64.
  - 2) A monitoring method approved for the source pursuant to 40 CFR 70.6(a)(3) and incorporated into a federally enforceable operating permit.
  - 3) Compliance test methods specified in the District's State Implementation Plan.
- b. The following testing, monitoring, or information-gathering methods are presumptively credible testing, monitoring, or information-gathering methods:
  - 1) Any federally-enforceable monitoring or testing methods, including those in 40 CFR Parts 51, 60, 61 and 75.
    - ii. Other testing, monitoring, or information gathering methods that produce information comparable to that produced by any method in (D)(2)(a) or (D)(2)(b) herein.



Before any source may be operated, a Permit to Operate shall be obtained from the Air Pollution Control Officer. No Permit to Operate shall be granted either by an Air Pollution Control Officer or the Hearing Board for any source constructed without authorization as required in Regulation IV until the information required is provided to the Air Pollution Control Officer and such source is altered, if necessary, and made to conform to the standards set forth in Regulation IV and elsewhere in these Rules and Regulations.

Rule 502      Exemptions to Rule 501.

The Air Pollution Control Officer may exempt from the requirements of Rule 501 any item of equipment specified in Rule 402, *Exemptions to Rule 401*.

Rule 503      Applications.

Every application for a Permit to Operate shall be filed in the manner and form prescribed by the Air Pollution Control Officer and shall give all the information necessary to enable the Air Pollution Control Officer to make the determination on the approvability of the application.

Rule 504      Action on Applications.

The Air Pollution Control Officer shall act within 180 days after the filing date on a Permit to Operate application and shall notify the applicant in writing of his approval, conditional approval or denial.

Rule 505      Conditional Approval.

The Air Pollution Control Officer may issue a Permit to Operate subject to conditions which will insure the compliance of any equipment within the standards of these Rules and Regulations, in which case the conditions shall be specified in writing. Commencing work under an Authority to Construct, or operation under a Permit to Operate, shall be deemed acceptance of all the conditions so specified.

Rule 506      Denial of Application.

In the event of denial of a Permit to Operate, the Air Pollution Control Officer shall notify the applicant in writing of the reasons therefore. Service of this notification may be made in person or by mail, and such service may be proved by a written acknowledgment of the persons served or affidavit of the person making the service. The Air Pollution Control Officer shall not accept a further application unless the application has complied with the objections specified by the Air Pollution Control Officer as his reasons for denial of the Permit to Operate.

Rule 507      Responsibility.

The fact that a Permit to Operate for an article, machine, equipment or other contrivance described therein shall not be an endorsement of such article, machine, equipment or other contrivance; neither shall it be deemed or construed to be a warranty, guarantee or representation on the part of the Air Pollution Control Officer that emission standards would not be exceeded by such article, machine, equipment or other contrivance. In every instance the person, firm or corporation to whom such Permit to Operate is issued shall be and remain responsible under these Rules and Regulations for each and every instance wherein emission standards are exceeded by the article, machine, equipment or other contrivance described in the Permit to Operate, and the fact of issuance shall not be a defense to or mitigation of any charge of violation. Issuance of a Permit to Operate pursuant to these Rules and Regulations does not release the permittee of the responsibility of any and all other applicable permits and authorizations issued by other local governmental agencies.

Rule 508      Posting of Permit to Operate.

A person who has been granted a Permit to Operate under this Regulation shall firmly affix such Permit to Operate, and approved facsimile or other identification approved by the Air Pollution Control Officer upon the article, machine, equipment or other contrivance in such a manner as to be clearly visible in an accessible place on the premises or maintained readily available at all times on the operating premises. A person shall not willfully deface, alter, forge, counterfeit, or falsify a Permit to Operate.

Rule 509      Authority to Inspect.

For the purpose of enforcing or administering any State or local law, order, regulation, or rule relating to air pollution, the Air Pollution Control Officer and his duly authorized agents shall have the right of entry to any premises on which an air pollution emission source is located for the purpose of inspecting such source, including securing samples of emissions therefrom, or any records required to be maintained therewith by the District. The Air Pollution Control Officer or his duly authorized agent shall have the right to inspect sampling and monitoring apparatus as he deems necessary.

Rule 510      Separation of Emissions.

If air contaminants from a single source operation are emitted through two or more emission points, the total emitted quantity of air contaminants cannot exceed the quantity which would be allowable through a single emission point. The total emitted quantity of any such air contaminant shall be taken as the product of the highest concentration measured in any of the emission points, unless the person responsible for the source operation establishes the correct total emitted quantity to the Air Pollution Control Officer's satisfaction.

Rule 511      Combination of Emissions.

- A. If air contaminants from two or more source operations are combined prior to emission and there are adequate and reliable means reasonably susceptible for confirmation and use by the Air Pollution Control Officer in establishing a separation of the components of the combined emission to indicate the nature, extent, quantity, and degree of emission arising from each such source operation, the Rules and Regulations shall apply to each source operation separately.
- B. If air contaminants from two or more source operations are combined and the emissions cannot be separated according to the requirements of Section A above, the Rules and Regulations shall be applied to combined emissions as if it originated in a single source operation subject to the most stringent limitations and requirements placed by the Rules and Regulations on any of the source operations whose air contaminants are so combined.

Rule 512      Circumvention.

A person shall not build, erect, install, or use any article, machine, equipment or other contrivance, the use of which, without resulting in an actual reduction in the total release of air contaminants to the atmosphere, superficially reduces or conceals an emission which would otherwise constitute a violation of Division 26 of the Health and Safety Code of the State of California or of these Rules and Regulations. This Rule shall not apply to cases in which the only violations involved are Section 41700 of the Health and Safety Code, or of Rule 205 of these Rules and Regulations.

Rule 513      Source Recordkeeping.

The owner or operator of any stationary source shall, upon notification from the Air Pollution Control Officer, maintain records of the nature and amounts of emissions from such source and/or any other information as may be deemed necessary by the Air Pollution Control Officer to determine whether such source is in compliance with applicable emission limitations or other control measures. The Air Pollution Control Officer may require that such records be certified by a professional engineer registered in the State of California. Such studies shall be made at the expense of the person causing the emissions.

The information recorded shall be summarized and reported to the Air Pollution Control Officer, on forms or formats as required by the Air Pollution Control Officer and shall be submitted within 45 days after the end of the reporting period. Reporting periods are January 1 - June 30 and July 1 - December 31, or other periods as may be specified by the Air Pollution Control Officer.

Information reported by the owner or operator and copies of the summarizing reports submitted to the Air Pollution Control Officer shall be retained by the owner or operator for two years after the date on which the pertinent report is submitted.

Rule 514      Public Records and Trade Secrets.

- A. All information, analysis, plans, or specifications that disclose the nature, extent, quantity, or degree of air contaminants or other pollution which will be produced by any source which the District requires any applicant to provide before such applicant builds, alters, replaces, operates, sells, rents, or uses such source, are public records.
- B. All air quality or other pollution monitoring data, including data compiled from stationary sources, are public records.
- C. Except as otherwise provided in Section D below, trade secrets are not public records under this Rule. Trade secrets, as used in this Rule, may include, but are not limited to, any formula, plan, process, tool mechanism, compound, procedure, production rate, or compilation of information which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade, or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it. The owner or operator shall state in writing his justification for claiming material as trade secrets and such justification shall be public record. The Air Pollution Control Officer shall rule on the validity of trade secret claims. Requests from the public for records shall be specific and in sufficient detail to enable the Air Pollution Control Officer to readily identify the information requested.
- D. Notwithstanding any other provisions of the law, all air pollution emission data, including those emission data which constitute trade secrets as defined in Section C above, are public records. Production data used to calculate emission data are not emission data for purposes of this subdivision and data which constitute trade secrets and which are used to calculate emission data are not public records.

Rule 515      Provision of Sampling and Testing Facilities.

The Air Pollution Control Officer may, upon reasonable written notice, require the owner or operator of any source, the use of which may cause the issuance of air contaminants or the use of which may eliminate, reduce, or control the issuance of air contaminants, to:

- A. Provide to the Air Pollution Control Officer data on process and production rate, and techniques, flow diagrams, descriptions of basic equipment and control equipment, rates of emissions and other information which the Air Pollution Control Officer may require.
- B. Provide and maintain such facilities as are necessary for sampling and testing purposes in order to secure information that will disclose the nature, extent, quantity, or degree of air contaminants discharged into the atmosphere from the equipment in question. In the event of such a requirement, the Air Pollution Control Officer shall notify the applicant, in writing, of the required

size, number and location of sampling holes, the size, and location of the sampling platform. All utilities shall be constructed in accordance with the general industry safety orders of the State of California.

- C.
1. Provide and maintain sampling and monitoring apparatus to measure emissions of air contaminants when the Air Pollution Control Officer has determined that such apparatus is available and should be installed.
  2. A person installing, operating, or using any of the following equipment shall provide, properly install, maintain in good working order, and operate continuous stack monitoring systems as described below:
    - a. Oxides of nitrogen (NO<sub>x</sub>) and carbon dioxide (CO<sub>2</sub>) or oxygen (O<sub>2</sub>) from steam generators with a heat input of 250 million British Thermal Units or more per hour and with a use factor of at least 30 percent.
    - b. Oxides of nitrogen (NO<sub>x</sub>) from all new nitric acid plants.
    - c. Sulfur dioxide (SO<sub>2</sub>) from sulfuric acid plants, sulfur recovery plants, carbon monoxide (CO) from boilers or regenerators of fluid catalytic cracking units, new fluid cokers and existing fluid cokers with a feed rate greater than 10,000 barrels per day.
  3. A person operating or using a stack monitoring system shall, upon written notice of the Air Pollution Control Officer, provide a summary of the data obtained from such systems. This summary of the data shall be in the form and manner prescribed by the Air Pollution Control Officer. The summary of the data shall be available for public inspection at the office of the Air Pollution Control District.

Records from the monitoring equipment shall be kept by the owner or operator for a period of two years, during which time they shall be available to the Air Pollution Control Officer in such form as he directs.

4. A violation of emission standards of these Rules and Regulations, as shown by the stack monitoring system, shall be reported to the Air Pollution Control Officer within 96 hours.
5. The owner or operator shall notify the Air Pollution Control Officer of the intent to shut down any monitoring equipment at least 24 hours prior to the event.

6. The Air Pollution Control Officer shall inspect, as he determines to be necessary, the monitoring devices required by this Rule to ensure that such devices are functioning properly.
- D. The Air Pollution Control Officer may require that disclosures required under this Rule be certified by a professional engineer registered in the State of California. Studies necessary to provide such information shall be made at the expense of the person causing the emissions.

Rule 516      Upset and Breakdown Conditions.

A. Breakdown Procedure.

1. The owner or operator shall notify the Air Pollution Control Officer of any occurrence which constitutes a breakdown condition. Such notification shall identify the time, specific location, equipment involved, and (to the extent known) the cause(s) of the occurrence, and shall be given as soon as reasonably possible, but not later than two (2) hours after its detection during normal District business hours.
2. The Air Pollution Control Officer shall establish written procedures and guidelines, including appropriate forms for logging of initial reports, investigation, and enforcement follow up, to ensure that all reported breakdown occurrences are handled uniformly to final disposition.
3. Upon receipt of notification pursuant to subsection A.1. above, the Air Pollution Control Officer shall promptly investigate and determine whether the occurrence constitutes a breakdown condition. If the Air Pollution Control Officer determines that the occurrence does not constitute a breakdown condition, the Air Pollution Control Officer may take appropriate enforcement action, including, but not limited to seeking fines, an abatement order, or an injunction against further operation.

B. Disposition of Short-Term Breakdown Conditions.

1. An occurrence which constitutes a breakdown condition, and which persists longer than 48 hours, except for continuous monitoring equipment for which the period shall be 96 hours, shall constitute a violation of any applicable emission limitation or restriction prescribed by these Rules and Regulations; however, the Air Pollution Control Officer may elect to take no enforcement action if the owner or operator demonstrates to his satisfaction that a breakdown exists and the following requirements are met:

- a. The owner or operator submits the notification required by subsection A.1. above; and
    - b. The owner or operator immediately undertakes appropriate corrective measures and comes into compliance or elects to shut down for corrective measures within 48 hours, except for continuous monitoring equipment for which the period shall be 96 hours. If the owner or operator elects to shut down rather than come into compliance, he must nonetheless take whatever steps are possible to minimize the impact of the breakdown within the 48 hour period; and
    - c. The breakdown does not interfere with the attainment and maintenance of any national ambient air quality standard.
  2. An occurrence which constitutes a breakdown condition shall not persist longer than 48 hours, except for continuous monitoring equipment for which the period shall be 96 hours, unless the owner or operator has obtained an emergency variance.
- C. Emergency Variance Procedures.
1. If the breakdown condition will require more than 48 hours to correct, except for continuous monitoring equipment for which the period shall be 96 hours, the owner or operator may, in lieu of shutdown, request the Air Pollution Control Officer to commence the emergency variance procedure set forth in subsection D.2. below.
  2. Upon receipt of a request for an emergency variance, the Air Pollution Control Officer shall contact the chairperson of the Hearing Board, or their designated member(s) of the Hearing Board, who shall conduct deliberations for consideration of the request. The Air Pollution Control Officer shall inform the owner or operator of the source of such deliberation. During consideration of the emergency variance, the Air Pollution Control Officer shall recommend whether any emergency should be granted, and the owner or operator of the source shall be entitled to present relevant information or data applicable to the breakdown. The burden shall be on the owner or operator to establish that a breakdown condition exists. Thereafter, the chairperson or other designated member(s) may, without notice or hearing, grant or deny an emergency variance. The chairperson or other designated member(s) shall, within five (5) working days, issue a written order, confirming the decision, with appropriate findings.
  3. No emergency variance shall be granted unless the chairperson or other designated member(s) determines that:

- a. The occurrence constitutes a breakdown condition; and
  - b. Continued operation is not likely to create a nuisance, an immediate threat, or hazard to public health or safety; and
  - c. The requirements for a variance set forth in Health and Safety Code Sections 42352 and 42353 have been met; and
  - d. The continued operation in a breakdown condition will not interfere with the attainment of the national ambient air quality standards.
4. At any time after an emergency variance has been granted the Air Pollution Control Officer may request that the chairperson or designated member(s) reconsider and revoke, modify, or further condition the variance if the Air Pollution Control Officer has good cause to believe that:
- a. Continued operation is likely to create a nuisance, an immediate threat, or hazard to public health or safety; or
  - b. The owner or operator is not complying with all applicable conditions of the variance; or
  - c. A breakdown condition no longer exists; or
  - d. Final compliance is not being accomplished as expeditiously as practicable.

The procedures set forth in subsection C.2. above shall govern any proceedings conducted under this subsection.

5. An emergency variance shall remain in effect only for as long as necessary to repair or remedy the breakdown condition, but in no event after a regularly noticed hearing to consider an interim or 90 day variance has been held, or fifteen (15) days from the date of the subject notice, whichever is sooner.

D. Reporting Requirements. Within one week after a breakdown occurrence has been corrected, the owner or operator shall submit a written report to the Air Pollution Control Officer which includes:

- 1. A statement that the occurrence has been corrected together with the date of correction and proof of compliance; and
- 2. A specific statement of the reason(s) or cause(s) for the occurrence sufficient to enable the Air Pollution Control Officer to determine whether the occurrence was a breakdown condition; and



3. A description of the corrective measures undertaken and/or to be taken to avoid such an occurrence in the future. The Air Pollution Control Officer may, at the request of the owner or operator, for good cause, extend up to 30 days the deadline for submitting the description required by this subsection; and
4. An estimate of the quantity of, or detailed description of emissions caused by the occurrence; and
5. Pictures of the equipment or control which failed if available.

E. Burden of Proof.

The burden shall be on the owner or operator of the source to provide sufficient information to demonstrate that a breakdown did occur. If the owner or operator fails to provide sufficient information, the Air Pollution Control Officer shall undertake appropriate enforcement action.

F. Failure to Comply with Reporting Requirements.

Any failure to comply, or comply in a timely manner, with the reporting requirement established in subsection B.1. and D.1. through D.5. of this Rule shall constitute a separate violation of this Rule.

G. False Claiming of Breakdown Occurrence.

It shall constitute a separate violation of this Rule for any person to file with the Air Pollution Control Officer a report which falsely, or without probable cause, claims that an occurrence is a breakdown.

H. Hearing Board Standards and Guidelines.

The Hearing Board shall adopt standards and guidelines consistent with this Rule to assist the chairperson or other designated member(s) of the Hearing Board in determining whether to grant or deny an emergency variance, and to assist the Air Pollution Control Officer in the enforcement of this Rule.

Rule 517      Transfer.

A Permit to Operate shall not be transferable, whether by operation of law or otherwise, either from one location to another, from one piece of equipment to another, or from one person to another.

Rule 518      Revocation of a Permit to Operate.

If the holder of any Permit to Operate within a reasonable time willfully fails and refuses to furnish to the Air Pollution Control Officer information, analysis, plans, or

specifications requested by the Air Pollution Control Officer, the Air Pollution Control Officer may suspend the Permit to Operate. He shall serve notice in writing of such suspension and the reasons therefore on the permittee.

Rule 519      Appeals.

Within ten (10) days after notice by the Air Pollution Control Officer of any of the following: denial of an Authority to Construct, Permit to Operate, or denial of Trade Secret status, or any conditional approval, requirements for sampling and monitoring apparatus, or any Permit to Operate suspension, the applicant may petition the Hearing Board, in writing, for public hearing. The Hearing Board, after notice and public hearing held within thirty (30) days after filing the petition may sustain or reverse the action of the Air Pollution Control Officer, provided that in reversing an action of the Hearing Board shall make the finding that the action of the Air Pollution Control Officer was not proper. Such orders of the Hearing Board may be made subject to specified conditions.

Rule 520      Reinstatement.

The Air Pollution Control Officer shall reinstate a revoked Permit to Operate when all information, analysis, plans, and specifications are furnished, and the source is in compliance with these Rules and Regulations.

Rule 521      Annual Renewal.

Permits to Operate issued pursuant to this Rule shall expire one (1) year after the date of issuance. The Air Pollution Control Officer may renew an expired Permit to Operate upon payment of the applicable permit fees by the source operator.

## REGULATION VI - FEES

Rule 600      The District shall impose a fee system subject to the following Regulations:

California Health & Safety Code      (Enforcement) Section 42300  
 California Health & Safety Code      (Fees)                      Section 42311

Rule 601      Permit fees

A.      Authority to Construct Filing Fee. Every applicant for an Authority to Construct for which a permit is required by State Law or the Rules and Regulations of the Air Pollution Control District shall pay a filing fee which is equivalent to ten (10) hours of the Air Pollution Control District's hourly schedule as adopted by the Board of Supervisors.

1.      Cancellation or Denial. If an application for an Authority to Construct is canceled or denied and such denial becomes final, the filing fee required herein shall not be refunded nor applied to subsequent applications.
2.      Approval. If an application for an Authority to Construct is approved, the filing fee will be applied to the Permit to Operate fee.

B.      Permit to Operate. Every applicant for a Permit to Operate for which a permit is required by State Law or the Rules and Regulations of the Air Pollution Control District shall pay a Permit to Operate fee annually based upon the District's anticipated costs of regulatory actions during the term of such Permit to Operate. Each subsequent year, the District shall adjust the Permit to Operate fees to reflect actual hours of regulatory activity. The District's anticipated costs will be based upon the hourly fee schedule as adopted by the Board of Supervisors.

The owner or operator who is required by State Law or Regulation V of the District's Rules and Regulations to pay a fee as prescribed by this regulation and fails to pay the required fee within 30 days of receipt of the notice, shall be subject to a penalty fee not to exceed 50% of the initial fee. Penalty fees are not applicable to fee adjustments as outlined in Rule 601.B.

C.      Toxic Hot Spots. The owner or operator of a stationary source who is required by the Health & Safety Code 44300 et. seq. to pay a fee adopted by the Air Resource Board and fails to pay the required fee within 60 days of

receipt of the notice, shall be subject to a penalty fee pursuant to Section 44380 (c) of the Health and Safety Code.

## **REGULATION VII - PROCEDURE BEFORE THE HEARING BOARD**

Rule 700      Applicable Articles of the Health and Safety Code.

The provisions of Article 2, Chapter 4, Part 4, and Chapter 8, Part 3 of Division 26 of the Health and Safety Code, respectively entitled Variances and Hearing Board, are applicable within the boundaries of the Tuolumne County Air Pollution Control District.

Rule 701      General.

This regulation shall apply to all hearings before the Hearing Board of the Air Pollution Control District.

Rule 702      Filing Petitions.

Requests for hearing shall be initiated by the filing of a petition, in triplicate, with the clerk of the Hearing Board, and the payment of the fee as provided in Rule 605 of these Rules and Regulations, after service of a copy of the petition has been made on the Air Pollution Control Officer and one copy on the holder of the permit or variance, if any, involved. Service may be in person or by mail; the service may be proved by written acknowledgment of the person served or by the affidavit of the person making the service.

Rule 703      Contents of Petitions. Every petition shall state:

- A. The name, address, and telephone number of the petitioner, or other person authorized to receive service of notices.
- B. Whether the petitioner is an individual, co-partner, corporation, or other entity, and names and addresses of the partners if a co-partnership, names and addresses of the officers, if a corporation, and the names and addresses of the persons in control, if other entity.
- C. The type of business or activity involved in the application and the street address at which it is conducted.
- D. A brief description of the article, machine, equipment or other contrivance, if any involved, in the application.

- E. The Section or Rule under which the petition is filed:
  - 1. To determine whether a permit shall be revoked or a suspended permit reinstated, under Section 42307, Health and Safety Code;
  - 2. For a variance under Section 42350, Health and Safety Code;
  - 3. To revoke or modify a variance under Section 42356, Health and Safety Code;
  - 4. To review the denial or conditional granting of an Authority to Construct or Permit to Operate under Rule 519 of these Rules and Regulations;
  - 5. To review the denial of certification or withdrawal of certified emission reductions under Rule 412, or to review the withdrawal of approval of innovative technology under Rule 418.
- F. Each petition shall be signed by the petitioner, or by some person on his behalf, and where the person signing is not the petitioner, it shall set forth his authority to sign.
- G. Petitions for revocation of permits shall allege, in addition, the Rule under which permit was granted, the Rule, or Section which is alleged to have been violated, together with a brief statement of the facts constituting such alleged violations.
- H. Petitions for reinstatement of suspended permits shall allege, in addition, the Rule under which the permit was granted, the request and alleged refusal which formed the basis for such suspension, together with a brief statement as to why information requested, if any, was not furnished, whether such information is believed by petitioner to be pertinent, and, if so, when it will be furnished.
- I. All petitions shall be typewritten, double spaced, on legal or letter size paper, on one side of the paper only, leaving a margin of at least one inch at the top and left side of each sheet.

Rule 704      Petitions for Variances.

The Petition for Hearing form, as provided, shall be filled out completely.

Rule 705      Appeal from Denial.

A petition to review the denial or conditional approval of a permit shall, in addition to the information required by Rule 703, set forth a summary of the permit application or a copy thereof, and the alleged reasons for the denial or conditional approval and the reasons for appeal.

Rule 706      Failure to Comply with Rules.

The clerk of the Hearing Board shall not accept for filing any petition which does not comply with these Rules relating to form, filing, and service of petitions unless the chairman of the Hearing Board directs otherwise and confirms such direction in writing. Such direction need not be made at a meeting of the Hearing Board.

Rule 707      Answers.

Any person may file an answer within ten (10) days after service. All answers shall be served in the same manner as are petitions under the provisions of Rule 702.

Rule 708      Dismissal of Petition.

The petitioner may dismiss his petition at any time before submission of the case to the Hearing Board, without a hearing or meeting of the Hearing Board. The clerk of the Hearing Board shall notify all interested persons of such dismissal.

Rule 709      Place of Hearing.

All hearings shall be held at a place designated by the Hearing Board.

Rule 710      Notice of Public Hearing.

A. For hearings requested under Rule 519, the clerk of the Hearing Board shall serve notice to the time and place of a hearing upon the Air Pollution Control Officer and upon the applicant or permittee affected, not less than ten (10) days prior to such hearing. In addition, such notice shall be published in at least one newspaper of general circulation within the District. The notice shall state the time and place of the hearing and such other information as may be necessary to reasonably apprise the people within the District of the nature and purpose of the hearing.

B. Except as stated in (A), (C), (D), and (E), in the case of a hearing to consider the application for a variance, the clerk of the Hearing Board shall serve a notice of the time and place of a hearing upon the Air Pollution Control Officer, all other districts within the air basin, the Air Resources Board, the Environmental Protection Agency, the applicant or permittee, and every person who requests such a notice not less than thirty (30) days prior to such hearing.

In addition, such notice shall be published in at least one daily newspaper of general circulation in the District at least thirty (30) days prior to the hearing. The notice shall state the time and place of the hearing, and the place where the application, including any proposed conditions or schedule of increments of progress, is available for public inspection, and such other information as may be necessary to reasonably apprise the people within the District of the nature and purpose of the hearing.

- C. For an application for a variance, or a series of variances, to be in effect for a period of not more than ninety (90) days, the clerk of the Hearing Board shall serve a notice of the time and place of a hearing to grant such a variance upon the Air Pollution Control Officer, all other districts within the basin, the Air Resources Board, the Environmental Protection Agency, and upon the applicant or permittee, not less than ten (10) days prior to such hearing.
- D. For an application for an interim variance, the clerk of the Hearing Board shall serve reasonable notice of the time and place of a hearing upon the Air Pollution Control Officer and upon the applicant.
- E. For an application for an emergency variance, the clerk of the Hearing Board shall serve notice of the time and place of the hearing upon the Air Pollution Control Officer and upon the applicant.
- F. The clerk of the Hearing Board shall serve notice of time and place of a hearing either by personal services, or by first-class mail, postage prepaid. If either the identity or address of any person entitled to notice is unknown, the clerk shall serve such person by publication of the notice in the District pursuant to Section 6061 of the Government Code.
- G. Sections 42450 through 42454 of the Health and Safety Code, Orders of Abatement, shall apply.
- H. For an application for an appeal of denial of emission reduction certification or withdrawal, or for an application for an appeal of approval of innovative technology, the clerk of the Hearing Board shall serve reasonable notice of the time and place of a hearing upon the Air Pollution Control Officer and upon the applicant.

Rule 711      Evidence.

- A. Oral evidence shall be taken only on oath or affirmation.
- B. Each party shall have these rights:
  - 1. To call and examine witnesses;
  - 2. To introduce exhibits;
  - 3. To cross-examine opposing witnesses on any matter relevant to the issues, even though that matter was not covered in the direct examination;
  - 4. To impeach any witness regardless of which party first called him to testify;
  - 5. To rebut the evidence against him.

- C. If a respondent does not testify in his own behalf, he may be called and examined as if under cross-examination.
- D. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same that they are now or hereafter may be recognized in civil actions, and irrelevant and unduly repetitious evidence shall be excluded.
- E. All evidence, oral or written, and all exhibits, shall be recorded at the time of the hearing and all records shall be maintained for a period of time as specified by law or as determined by the Air Pollution Control Board.

Rule 712      Preliminary Matters.

Preliminary matters such as setting a date for hearing, granting continuances, approving petitions for filing, allowing amendments and other preliminary rulings not determinative of the merits of the case may be made by the chairman of the Hearing Board without a hearing or meeting of the Hearing Board and without notice.

Rule 713      Official Notice.

The Hearing Board may take official notice of any matter which may be judicially noticed by the courts of this State.

Rule 714      Continuances.

The chairman of the Hearing Board shall grant any continuance of fifteen (15) days, or less, concurred in by petitioner, the Air Pollution Control Officer and by every person who has filed an answer in the action and may grant any reasonable continuance; in either case such action may be *ex parte*, without a meeting of the Hearing Board and without prior notice.

Rule 715      Decision.

The decision shall be in writing, served and filed within fifteen (15) days after submission of the cause by the parties thereto and shall contain a brief statement of facts found to be true, the determination of the issue presented and the order of the Hearing Board. A copy shall be mailed or delivered to the Air Pollution Control



Officer, the Air Resources Board, the petitioner, and to every person who has filed an answer or who has appeared as a party in person or by counsel at the hearing.

Rule 716      Effective Date of Decision.

The decision shall become effective fifteen (15) days after delivering or mailing a copy of the decision, as provided in Rule 715, or the Hearing Board may order that the decision shall become effective sooner.

Rule 717      Lack of Permit.

The Hearing Board shall not receive or accept a petition for a variance for the operation or use of any equipment until a permit has been granted or denied by the Air Pollution Control Officer, except that an appeal from a denial of a permit and a petition for a variance may be filed with the Hearing Board in a single petition. A variance granted by the Hearing Board after a denial of a permit by the Air Pollution Control Officer may include a permit for the duration of the variance.

## REGULATION VIII - AIR QUALITY ZONING

### Rule 801      Establishment of Air Quality Zones.

The Air Pollution Control Board may establish air quality zones within the District for the implementation of air pollution control strategies. The Air Pollution Control Board may consider factors including, but not limited to, topography, meteorology, land use, and existing air quality in considering boundaries of a zone. Air pollution control strategies may include different emission limitation and source category applicabilities. The establishment of District zones shall be enacted only after consultation with the Control Council of the Mountain Counties Air Basin.

### Rule 802      Attainment Pollutant Zones.

#### A.      Class I Zones.

1.      All of the following areas within the District which were in existence on August 7, 1977, shall be Class I zones with respect to attainment pollutant increment consumption and shall not be redesignated:
  - a.      National wilderness areas which exceed 5,000 acres in size;
  - b.      National memorial parks which exceed 5,000 acres in size;
  - c.      National parks which exceed 6,000 acres in size.
2.      Pursuant to the provisions of Rule 803, the District Air Pollution Control Board may redesignate any other area within the District as a Class I zone. Such eligible lands include, but are not limited to, any local, state, or federal monument, primitive area, preserve, recreational area, wild and scenic river, wildlife refuge, lakeshore, park, wilderness area or other area of cultural or recreational value.

#### B.      Class II Zones.

1.      All area within the District not contained within Class I or Class III zones shall be Class II zones with respect to attainment pollutant consumption.

2. Pursuant to the provisions of Rule 803, the District Air Pollution Control Board may redesignate any area not contained within a mandatory federal Class I zone as a Class II zone.

C. Class III Zones.

1. Pursuant to the provisions of Rule 803, the District Air Pollution Control Board may redesignate any area not contained within a mandatory federal Class I zone or restricted area as listed below as a Class III zone:
  - a. An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; or
  - b. A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.
2. In redesignating an area as a Class III zone, the District Air Pollution Control Board shall make the finding that the highest and best use of the land redesignated as a Class III zone is for industrial development.

Rule 803      Attainment Pollutant Zone Redesignations.

- A. The District Air Pollution Control Board may redesignate areas as Class I or Class II zones with respect to attainment pollutant increment consumption, provided that:
  1. Prior to the issuance of notice respecting the redesignation of an area that includes any Federal lands, the Air Pollution Control Officer shall provide written notice to the appropriate Federal Land Manager and afford adequate opportunity (not in excess of 60 days) to confer with the Air Pollution Control Officer respecting the redesignation and to submit written comments and recommendations. In redesignating any area with respect to which any Federal Land Manager has submitted written comments and recommendations, the Air Pollution Control Officer shall publish a list of any inconsistency between such redesignation and such comments and recommendations together with the reasons for making redesignation against the recommendation of the Federal Land Manager; and
  2. At least one public hearing is to be held to receive comments relative to such redesignation. The notice of public hearing shall be published at least 30 days prior to the hearing date in a newspaper of general circulation in the District; and

3. The Air Pollution Control Officer shall consult with the Control Council of the Mountain Counties Air Basin regarding such redesignation; and
  4. Federal Land Managers and other Air Pollution Control Districts outside the Mountain Counties Air Basin whose lands may be affected shall be notified at least 30 days prior to the public hearing; and
  5. A description of the reasons for the proposed redesignation, including a description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation shall be prepared and made available for public inspection at least 30 days prior to the hearing and the notice announcing the hearing shall contain appropriate notification of the availability of such discussion.
- B. The District Air Pollution Control Board may redesignate areas, except those listed in Rule 802.A.1. and C.1., as Class III zones with respect to attainment pollutant increment consumption, provided that:
1. All the requirements for a Class I or Class II area redesignation contained in Section A. above shall be met with respect to the proposed Class III area redesignation; and
  2. The redesignation shall have been specifically approved by the Air Resources Board after consultation with the Legislature, if it is in session, or with the leadership of the Legislature if it is not in session; and
  3. The District Air Pollution Control Board shall enact a resolution concurring with the redesignation; and
  4. The redesignation shall not cause, or contribute to, a concentration of any air pollution which would exceed any maximum allowable increase permitted under the classification of any other area or any national ambient air quality standard; and
  5. Any Authority to Construct application for any major stationary source or major modification subject to the provisions of Regulation IV which could receive an Authority to Construct only if the area in question were redesignated as Class III, and any material submitted as part of that application, shall be made available, insofar as is practicable, for public inspection prior to any public hearing on redesignation of any area as Class III.

## **REGULATION IX - NONVEHICULAR AIRBORNE TOXIC CONTROL MEASURES**

### ATCM 900    BENZENE AIRBORNE TOXIC CONTROL MEASURE - RETAIL SERVICE STATIONS (Title 17 and 26 Sections 93100 and 93101)

- A.    DEFINITIONS: For the purpose of this Rule, the following definitions shall apply:
1.    “ARB-Certified vapor recovery system” means a vapor recovery system which has been certified by the Air Resources Board pursuant to Section 41954 of the Health and Safety Code.
  2.    “Excavation” means exposure to view by digging.
  3.    “Gasoline” means any organic liquid (including petroleum distillates and methanol ) having a Reid vapor pressure of four pounds or greater and used as a motor vehicle fuel or any fuel which is commonly or commercially known or sold as gasoline.
  4.    “Motor vehicle” has the same meaning as defined in Section 415 of the Vehicle Code.
  5.    “Owner or operator” means an owner or operator of a retail service station.
  6.    “Phase I vapor recovery system” means a gasoline vapor recovery system which recovers vapors during the transfer of gasoline from delivery tanks into stationary storage tanks.
  7.    “Phase II vapor recovery system” means a gasoline vapor recovery system which recovers vapors during the fueling of motor vehicles from stationary storage tanks.
  8.    “Retail service station” means any new or existing motor vehicle fueling service station subject to payment of California sales tax on gasoline sales.

9. “Existing retail service station” means any retail service station operating, constructed, or under construction as of the date of District adoption of regulations implementing this control measure.
10. “New retail service station” means any retail service station which is not constructed or under construction as of the date of District adoption of regulations implementing this control measure.
11. “Tank replacement” means replacement of one or more stationary storage tanks at an existing retail service station or excavation of 50 percent or more of an existing retail service station's total underground liquid piping from the stationary storage tanks to the gasoline dispensers.
12. “Throughput” means the volume of gasoline dispensed at a retail service station.

**B. PHASE I VAPOR RECOVERY SYSTEM REQUIREMENTS:**

1. No owner or operator shall transfer, permit the transfer, or provide equipment for the transfer of gasoline, and no other person shall transfer gasoline from a gasoline delivery tank equipped with a vapor recovery system into a stationary storage tank at a retail service station unless an ARB-certified Phase I vapor recovery system is installed on the stationary storage tank and used during the transfer.
2. The provisions of subdivision (B)(1) shall not apply to:
  - a. A transfer to a stationary storage tank with a capacity of less than 1.0 cubic meter (260 gallons).
  - b. A transfer to a stationary storage tank used the majority of the time for the fueling of implements of husbandry as defined in Division 16, Chapter 1, of the Vehicle Code.
  - c. A transfer to a stationary storage tank used exclusively to fuel motor vehicles with a fuel capacity of five gallons or less.
  - d. An existing retail service station with an annual throughput from tanks other than those described in subdivisions (B)(2)(a), (B)(2)(b) and (B)(2)(c) of 480,000 or fewer gallons during the calendar year prior to District adoption of this measure. If during any calendar year thereafter the gasoline throughput from such tanks at the existing retail service station exceeds 480,000 gallons, this exemption shall cease to apply commencing with the first day of the following calendar year.

- e. A transfer to a stationary storage tank at an existing retail service station which receives gasoline exclusively from delivery tanks that are not required to be equipped with vapor recovery systems.
3. Notwithstanding (B)(2)(d), at the time of tank replacement at an existing retail service station, ARB-certified Phase I vapor recovery systems shall be installed and used thereafter on all of the station facilities, except those which are exempt from the Phase I requirement by (B)(2)(a), (B)(2)(b), (B)(2)(c) or (B)(2)(e).
- C. PHASE II VAPOR RECOVERY SYSTEM REQUIREMENTS.
1. No owner or operator shall transfer, permit the transfer or provide equipment for the transfer of gasoline from a stationary storage tank at a retail service station into a motor vehicle fuel tank unless an ARB-certified Phase II vapor recovery system is installed and used during the transfer.
  2. The provisions of subdivision (C)(1) shall not apply to:
    - a. A transfer of gasoline from a stationary storage tank which is exempt from Phase I requirements under subdivision (B)(2)(a), (B)(2)(b) or (B)(2)(c).
    - b. An existing retail service station which is exempt from Phase I requirements under subdivision (B)(2)(d).
  3. Notwithstanding (C)(2)(b), at the time of tank replacement at an existing retail service station, ARB-certified Phase II vapor recovery systems shall be installed and used thereafter on all of the station facilities, except those which are exempt from the Phase II requirement by (C)(2)(a).
- D. CORRECTION OF DEFECTS.
1. No owner or operator shall use or permit the use of any Phase II system or any component thereof containing a defect identified in Title 17, California Administrative Code, Section 94006 until it has been repaired, replaced, or adjusted, as necessary to remove the defect, and, if required under the Health and Safety Code Section 41960.2, District personnel have re-inspected the system or have authorized its use pending reinspection. Nothing in this subdivision shall excuse compliance with subdivision (C)(1).

E. COMPLIANCE SCHEDULE.

For the purpose of this section, the following compliance schedule shall apply:

1. The owner or operator of any new retail service station subject to this section shall comply with the provisions of this section at the time gasoline is first sold from the station.
2. The owner or operator of any existing retail service station without ARB-certified Phase I and II vapor recovery systems shall notify the APCO in writing in advance of an intended tank replacement and shall secure all necessary permits and other approvals for the installation of Phase I and II vapor recovery systems. The owner or operator of an existing retail service station shall comply with the provisions of this section upon completion of the tank replacement.
3. The owner or operator of an existing retail service station subject to this section, who has not earlier complied in accordance with (E)(2), shall within 15 months after District adoption of these regulations implementing this control measure secure all permits and other approvals necessary for installation of the equipment required by this section. The owner or operator shall comply with the provision of this section within 24 months after District adoption of regulations implementing this control measure.
4. Excluding those existing retail service stations subject to this section as a result of tank replacement, the owner or operator of a previously exempted stationary storage tank or retail service station where the operation or annual throughput has changed such that the exemption from either Phase I or II requirements or both is no longer applicable, shall comply with the section's provisions in accordance with (E)(3) above, provided that the first day the retail station or stationary storage tank is no longer exempt shall be considered as the date of District adoption of regulations implementing this control measure.
5. The owner or operator of any existing retail service station, regardless of annual throughput, shall apply for an Air Pollution Permit to Operate within 60 days after District adoption of these Regulations. (Section 42300 and 42301)
6. The owner or operator of a new retail service station shall file an application for an Authority to Construct Permit prior to construction. (Section 42300 and 42303)

F. OPERATING INSTRUCTIONS.

1. The owner or operator of each service station utilizing a system for the control of gasoline vapors resulting from motor vehicle fueling operations shall conspicuously post operating instructions for the



system in the gasoline dispensing area. The instructions shall clearly describe how to fuel vehicles correctly with vapor recovery nozzles utilized at the station and shall include a warning that repeated attempts to continue dispensing, after the system having indicated that the vehicle fuel tank is full, may result in spillage or recirculation of gasoline. (H&S 41960.4)

2. The owner or operator shall also include a prominent display of a toll free telephone number for problems experienced with the systems. (H&S 41960.3)

G. COMPLIANCE.

1. Enforcement. These Rules and Regulations shall be enforced by the APCO under the authority of Section 40001, 40702, and all officers empowered by Section 40120.
2. Penalty. A violation of these provisions of this Regulation is a misdemeanor punishable according to the provisions in Sections 42400, 42400.1, 42400.2, 42400.5, 42401, 42402, 42402.1, 42402.2 and 42403.

ATCM 901    HEXAVALENT CHROMIUM AIRBORNE TOXIC CONTROL MEASURE - DECORATIVE AND HARD CHROME PLATING AND CHROMIC ACID ANODIZING FACILITIES. (Title 17 - Section 93102)

The Hexavalent Chromium Airborne Toxic Control Measure -Decorative and Hard Chrome Plating and Chromic Acid Anodizing Facilities adopted by the California Air Resources Board pursuant to Health and Safety Code Section 39666, as set forth in Section 93102 of Title 17 of the California Code of Regulations, effective January 6, 1989, is hereby adopted and incorporated by reference herein.

ATCM 902    HEXAVALENT CHROMIUM AIRBORNE TOXIC CONTROL MEASURE - CHROMATE TREATED COOLING TOWERS. (Title 17 - Section 93103, CARB adoption date - March 9, 1989)

The Hexavalent Chromium Airborne Toxic Control Measure - Chromate Treated Cooling Towers, adopted by the California Air Resources Board pursuant to Health and Safety Code Section 39666, as set forth in Section 93103 of Title 17 of the California Code of Regulations, effective March 12, 1990, is hereby adopted and incorporated by reference herein.

ATCM 903    ETHYLENE OXIDE AIRBORNE TOXIC CONTROL MEASURE FOR STERILIZERS AND AERATORS. (Title 17 - Section 93108)

The Ethylene Oxide Airborne Toxic Control Measure for Sterilizers and Aerators adopted by the California Air Resources Board pursuant to Health and Safety Code Section 39666, as set forth in Section 93108 of Title 17 of the California Code of

Regulations, effective January 28, 1999, is hereby adopted and incorporated by reference herein

ATCM 904 ASBESTOS AIRBORNE TOXIC CONTROL MEASURE FOR SURFACING APPLICATIONS. (Title 17 - Section 93106. Supersedes Asbestos Containing Serpentine ATCM, CARB adoption date - July 16, 2001)

A. Effective Date.

No later than November 13, 2001, each air pollution control and air quality management district must:

1. Implement and enforce the requirements of this section, or
2. Propose their own asbestos airborne toxic control measure as provided in Health and Safety Code section 39666(d).

B. Applicability.

This section shall apply to any person who produces, sells, supplies, offers for sale or supply, uses, applies, or transports any of the following materials:

1. Aggregate material extracted from property where any portion of the property is located in a geographic ultramafic rock unit (as defined in subsection (I)(9)); or
2. Aggregate material extracted from property that is **NOT** located in a geographic ultramafic rock unit (as defined in subsection (I)(9)) if the material has been:
  - a. Evaluated at the request of the Air Pollution Control Officer (APCO) and determined to be ultramafic rock or serpentine;
  - b. Tested at the request of the APCO and determined to have an asbestos content of 0.25 percent or greater, as determined using an approved asbestos bulk test method; or
  - c. Determined by the owner/operator of a facility to be ultramafic rock, or serpentine, or material that has an asbestos content of 0.25 percent or greater.
  - d. Any mixture of aggregate material that contains ten percent (10%) or more of any of the materials listed above in subsection (B)(1) or (B)(2).

C. Prohibition On the Use, Sale, and Supply of Restricted Aggregate Material.

Unless one of the exemptions in subsection (F) applies, no person shall use, apply, sell, supply, or offer for sale or supply any restricted material (as defined in subdivision (I)(20)) for surfacing, unless it has been tested using an approved asbestos bulk test method and determined to have an asbestos content that is less than 0.25 percent.

D. Requirements to Provide Notice with Restricted Material.

1. *Requirements for Producers of Restricted Material for Surfacing Applications:* Any producer who sells, supplies, or offers for sale or supply restricted material for surfacing that has been tested using an approved asbestos bulk test method and determined to have an asbestos content that is less than 0.25 percent must provide to the recipient of the restricted material a written receipt that contains the following information:
  - a. The amount of restricted material that was sold or supplied;
  - b. The date the restricted material was sold or supplied;
  - c. The dates that the restricted material was sampled and tested, or verification that the material is exempt under subsection (F)(7); and
  - d. A statement that the asbestos content of the restricted material is less than 0.25 percent.
2. *Requirements for Persons - Other than Producers - Who Sell or Supply Restricted Material for Surfacing Applications:* Any person, other than a producer, who sells, supplies, or offers for sale or supply restricted material for surfacing must provide to the recipient of the material a written receipt which specifies the following information:
  - a. The amount of restricted material that was sold or supplied;
  - b. The date that the restricted material was sold or supplied; and
  - c. A statement that the asbestos content of the restricted material is less than 0.25 percent.
3. *Requirements for the Sale or Supply of Restricted Materials for Non-Surfacing Applications:* Any person who sells, supplies, or offers for sale or supply restricted material for non-surfacing applications must provide with each sale or supply a written receipt containing the following statement:

**“WARNING!**

**This material may contain asbestos.**

**It is unlawful to use this material for surfacing or any application in which it would remain exposed and subject to possible disturbances.**

**Extreme care should be taken when handling this material to minimize the generation of dust.”**

E. Recordkeeping and Reporting Requirements.

1. *Recordkeeping Requirements for Persons Who Use Restricted Material for Surfacing:* Any person who uses or applies restricted material for surfacing must retain any written receipt or other record verifying that the material has an asbestos content of less than 0.25 percent for a minimum period of seven years from the date of use or application.
2. *Recordkeeping Requirements for Persons Who Transport Restricted Material:* Any person who transports restricted material must maintain a copy of all receipts or records required by subsection (D) with the material at all times during transit and application.
3. *Recordkeeping Requirements for Persons Who Sell or Supply Restricted Material:* Any person who sells, supplies, or offers restricted material for sale or supply must retain copies of all receipts or records required by subsection (D) for a minimum period of seven years from the date of sale or supply.
4. *Reporting Requirements for Persons Who Use, Sell, or Supply Restricted Material:* Any person who uses restricted material for surfacing, sells, supplies, or offers restricted material for sale or supply must provide receipts and test results to the APCO for review upon request.

F. Exemptions.

1. *Sand and Gravel Operations:* The requirements of subsections (C), (D), and (e) shall not apply to aggregate material extracted from a sand and gravel operation. A "sand and gravel operation" means any aggregate-producing facility operating in alluvial deposits.
2. *Roads Located at Quarries or Mines:* The requirements of subsection (C) shall not apply to roads at quarries or mines that are located in a geographic ultramafic rock unit, an ultramafic rock deposit, or a

serpentine deposit, provided that the aggregate material was obtained on site from the quarry or mine property.

3. *Maintenance Operations on Existing Roads:* The requirements of subsections (C), (D), and (E) shall not apply to maintenance operations on any existing road surface if no additional restricted material is applied to the road surface.
4. *Emergency Road Repairs:* The APCO may issue a temporary exemption from the requirements of subsections (C), (D), and (E) to an applicant who demonstrates that a road repair is necessary due to a landslide, flood, or other emergency, and that the use of aggregate material other than restricted material is not feasible for this repair. The APCO shall specify the time during which such exemption shall be effective; however, no exemption shall remain in effect longer than 90 days.
5. *Asphalt and Concrete Materials:* The requirements of subsections (C), (D), and (E) shall not apply to restricted material that is an integral part of the production of asphalt concrete, portland cement concrete or other similarly cemented materials; or construction of an asphalt or a portland cement concrete surface as long as all of the restricted material is incorporated into or completely covered by the asphalt or portland cement concrete.
6. *Landfill Operations:* The use and application requirements of subsection (C) shall not apply to landfill operations, except for the surfacing of public-access roads used by vehicular traffic.
7. *Geologic Evaluation:* The APCO may provide an exemption from subsections (C), (D), and (E) for aggregate material extracted from within a geographic ultramafic rock unit if a registered geologist has conducted a geologic evaluation of the property from which the aggregate material is obtained and determined that serpentine or ultramafic rock is not likely to be found on the property. Before an exemption can be granted, the owner/operator must provide a copy of a report detailing the geologic evaluation to the APCO for his or her consideration.
  - a. At a minimum, the geologic evaluation must include:
    - 1) A general description of the property and the proposed use;
    - 2) A detailed site characterization, which may include:
      - i. A physical site inspection;

- ii. Offsite geologic evaluation of adjacent property;
  - iii. Evaluation of existing geological maps and studies of the site and surrounding area;
  - iv. Development of geologic maps of the site and vicinity;
  - v. Identification and description of geologic units, rock and soil types, and features that could be related to the presence of ultramafic rocks, serpentine, or asbestos mineralization;
  - vi. A subsurface investigation to evaluate the nature and extent of geologic materials in the subsurface where extensive vertical excavation is planned; methods of subsurface investigation may include, but are not limited to borings, test pits, trenching, and geophysical surveys;
- 3) A classification of rock types found must conform to the nomenclature based on the International Union of Geological Science system;
  - 4) A description of the sampling procedures used;
  - 5) A description of the analytical procedures used, which may include mineralogical analyses, petrographic analyses, chemical analyses, or analyses for asbestos content;
  - 6) An archive of collected rock samples for third party examination; and
  - 7) A geologic evaluation report documenting observations, methods, data, and findings; the format and content of the report should follow the Guidelines for Engineering Geologic Reports issued by the State Board of Registration for Geologists and Geophysicists.
- b. The APCO shall respond to a request for an exemption within 90 days of the receipt of the application.
  - c. If the request for an exemption is denied, the APCO shall provide written reasons for the denial.
  - d. Expiration of the Geologic Exemption: If the owner/operator discovers any ultramafic rock or serpentine on the property after the exemption is granted, then:

- 1) The owner/operator must comply with the requirements of subsections (C), (D), and (E) immediately following the discovery; and
  - 2) The owner/operator must report the discovery of ultramafic rock or serpentine to the APCO within 24 hours; and
  - 3) The exemption under subsection (F)(7) shall expire and cease to be effective.
8. *Limited Access Surfaces:* The APCO may provide an exemption from the requirements of subsection (C) for the use of restricted material on limited access surfaces, if the owner/operator can demonstrate that:
- a. No alternative aggregate materials are reasonably available; and
  - b. The surface is not located in an area zoned or identified in a land use plan for residential, recreational, or commercial use.
  - c. The APCO shall respond to a request for an exemption within 90 days of the receipt of the application.
  - d. If the request for an exemption is denied, the APCO shall provide written reasons for the denial.

“Limited access surface” means any surface not subject to vehicular travel or pedestrian access that has an incline of twenty (20) percent or greater.

9. *Surfacing Applications in Remote Locations:*
- a. The APCO may provide an exemption from the requirements of subsection (c) if the owner/operator can demonstrate that:
    - 1) The surface is located in a remote location (as defined in subsection (I)(19)); and
    - 2) No alternative aggregate materials are reasonably available; and
    - 3) All aggregate material used for surfacing has been tested according to an approved asbestos bulk test method and determined to have an asbestos content of one (1.0) percent or less; except that the APCO may allow the use of restricted material with an asbestos content up to five (5.0) percent if the owner/operator

can demonstrate that restricted material with an asbestos content of one (1.0) percent or less is not reasonably available.

- b. Before providing this exemption, the APCO shall:
- 1) Consider the following information: county land use plans, the current use of the surrounding land, and the current and anticipated zoning designations;
  - 2) Provide public notice and solicit comments for a 30-day period;
  - 3) Require that any surface exempted pursuant to this subsection be posted with a permanent sign alerting the public to potential asbestos exposures; and
  - 4) Require that any exemption shall be valid for no longer than three years; but if the owner/operator cannot demonstrate that all the criteria listed in subdivision (F)(9)(a) are met at the time of reapplication, the exemption shall not be renewed.
- c. The APCO may grant an exemption when the distance from the road or other surface to the nearest receptor is less than one mile if **ALL** of the following criteria are met:
- 1) The criteria listed above in subsections (F)(9)(a)(2). and 3., and subsection (F)(9)(b) must be met:
  - 2) Any receptor located within one mile from the road or other surface must **NOT** be any of the following:
    - i. A permanent resident (i.e., a person that resides at the receptor point for six months or more in a year), or
    - ii. A permanent business (i.e., business that operates at the receptor point for six months or more in a year), or
    - iii. A school or daycare center;
  - 3) The road or other surface must be located on private property;
  - 4) The entrance points to the road or other surface from any public thoroughfare must be gated and posted with a sign as required in subsection (F)(9)(b)3.;



- 5) The applicant for the exemption must provide to the APCO an estimate of the average traffic volume on the road or other surface and the methodology used to make the estimate; and
  - 6) Whenever the traffic volume exceeds or is anticipated to exceed 20 vehicle passes per day, the owner/operator must;
    - i. Treat the road or other surface with a dust control method that is at least 70 percent effective; and
    - ii. Maintain records of the application and type of the dust control method for a minimum period of seven years; and
    - iii. Provide the records of the applications of the dust control method to the APCO upon request.
  - d. The APCO shall respond to any application for an exemption within 90 days of the receipt of the application.
  - e. If the request for an exemption is denied, the APCO shall provide written reasons for the denial.
10. *Roads Located at Construction Sites:* The requirements of subsections (C), (D), and (E) shall not apply to restricted material used for the construction of temporary road surfaces located at on-going construction sites where vehicle traffic is limited to construction personnel and equipment. This exemption does not apply to the use of restricted material for temporary roads for public use.
11. *Riprap:* The requirements of subsection (C) (D), and (E) shall not apply to restricted material used for riprap. “Riprap” means the material used to construct a loose assemblage of stones along a water course or shoreline to prevent erosion or provide stability.

G. Requirements to Perform a Geologic Evaluation or Asbestos Testing.

Pursuant to the requirements of Health and Safety Code section 41511, the APCO or the Executive Officer of the ARB may require an owner/operator to perform:

- 1. A geologic evaluation for the presence of ultramafic rock or serpentine on any property from which aggregate material is extracted; or

2. Testing for the asbestos content of any aggregate material sold, supplied, offered for sale or supply, or used for surfacing.

H. Applicable Test Methods.

1. *Ultramafic Rock:* The ultramafic rock composition of any material shall be determined using a standard analysis technique including, but not limited to, color index assessment, microscopic examination, petrographic analysis or rock thin sections, or chemical analysis techniques, such as X-ray fluorescence spectrometry or inductively coupled plasma analysis.
2. *Asbestos Testing:* ARB Test Method 435 or an alternative asbestos bulk test method approved in writing by the Executive Officer of the Air Resources Board shall be used to determine compliance with this section. For the purposes of determining compliance with this section, references in ARB Test Method 435 to “serpentine aggregate” shall mean “aggregate material.”
3. *Averaging of Test Results:* If ARB Test Method 435 or an alternative approved asbestos bulk test method has been used to perform two or more tests on any one volume of aggregate material, whether by the same or a different person, the arithmetic average of these test results shall be used to determine the asbestos content of the aggregate material.
4. *Sampling Frequency:* For the purposes of this section, the sampling frequency required for determining the asbestos content of any aggregate material shall be no less than one composite sample per 1000 tons of aggregate material processed, as specified in ARB Test Method 435, unless the APCO approves an alternative sampling frequency as follows:
  - a. The APCO may approve an alternative sampling frequency after reviewing and verifying the authenticity of the following information, which shall be provided by the owner/operator of the quarry:
    - 1) An established history of analytical test results demonstrating that no aggregate material sampled and tested in accordance with an approved asbestos bulk test method had an asbestos content that was 0.25 percent or greater;
    - 2) The established history of analytical test results must include:

- i. Test results from ten percent of the expected total yield over the life of the quarry, as stated in any permit issued pursuant to the California Surface Mining and Reclamation Act, Public Resources Code, Division 2, Chapter 9, Section 2710 et seq.; or
      - ii. Test results that cover at least two years of production of surfacing material; this production amount must be verified with sales receipts and testing results as required in subsection (E)(3);
    - 3) A geologic evaluation of the quarry that has been conducted in accordance with the provisions in subsection (F)(7);
    - 4) Any permits issued pursuant to the California Surface Mining and Reclamation Act, Public Resources Code, Division 2, Chapter 9, Section 2710 et seq.;
    - 5) Sales receipts retained by the quarry pursuant to subsections (D) and (E)(3).
  - b. The APCO shall not approve any alternate sampling frequency that requires less than one test per 100,000 tons of aggregate material processed for surfacing.
  - c. If any of the aggregate material tested is determined to have an asbestos content of 0.25 percent or greater using an alternative sampling frequency approved by the APCO, the owner/operator must:
    - 1) Resume the sampling frequency specified in ARB Test Method 435 immediately after receiving the test results; and
    - 2) Report the detection of asbestos and provide a copy of the analytical test results to the APCO within 48 hours after receiving the test results.
- I. Definitions. For the purposes of this section, the following definitions shall apply:
- 1. “Aggregate” means a mixture of mineral fragments, sand, gravel, cobbles, rocks, stones, or similar minerals that may or may not be crushed or screened. “Aggregate” does not include elemental metals, gemstones, petroleum products, organic materials, or mineral ore to be processed offsite of the property from which it was extracted.

2. "Alluvial deposit" means any deposit of sediments laid down by running water including, but not limited to, streams and rivers.
3. "APCO" means the executive officer, air pollution control officer; or the designee of the executive officer or air pollution control officer of any air pollution control or air quality management district created or continued in existence pursuant to Part 3 (commencing with section 40000), Division 26, Health and Safety Code;
4. "Approved asbestos bulk test method" means ARB Test Method 435 or an alternative asbestos bulk test method approved in writing by the Executive Officer of the Air Resources Board.
5. "ARB" means the California Air Resources Board.
6. "ARB Test Method 435" means the test method specified in title 17, California Code of Regulations, section 94147.
7. "Asbestos" means asbestiforms of the following minerals: chrysotile (fibrous serpentine), crocidolite (fibrous riebeckite), amosite (fibrous cummingtonite-grunerite), fibrous tremolite, fibrous actinolite, and fibrous anthophyllite.
8. "Decoration/landscaping" means the application or use of aggregate materials for aesthetic purposes.
9. "Geographic ultramafic rock unit" means a geographic area that is designated as an ultramafic rock unit or ultrabasic rock unit, including the unit boundary line, on any of the maps referenced in Appendix A.
10. "Geologic evaluation" means an evaluation of a property, as specified in subsection (f)(7), to determine the presence of various rock types, including ultramafic rock, serpentinite, or other metamorphic derivatives of ultramafic rock.
11. "Limited access surface" means any surface not subject to vehicular travel or pedestrian access that has an incline greater than twenty (20) percent.
12. "Non-surfacing applications" means any application of aggregate material that will not remain a part of the uppermost layer, such as fill, base rock, or drain rock.
13. "Owner/operator" or "person" includes, but is not limited to:

- a. An individual, trust, firm, joint stock company, business concern, partnership, limited liability company, association, or corporation including, but not limited to, a government corporation;
  - b. Any city, county, district, commission, the state or any department, agency, or political subdivision thereof, any interstate body, and the federal government or any department or agency thereof to the extent permitted by law; or
  - c. A project proponent and any of its contractors or subcontractors.
14. “Producer” means any person that extracts and processes aggregate material from the ground.
  15. “Property” means any real property including, but not limited to, any contiguous parcel or parcels of land and anything attached to or erected on it.
  16. “Quarry” means a facility or operation that obtains stone from the earth by means of cutting, digging, excavating, or blasting.
  17. "Receipt" means any written acknowledgment that a specified amount of restricted material was received, delivered, or purchased. Receipts include, but are not limited to, bills of sale, bills of lading, and notices of transfer.
  18. “Registered geologist” means an individual that is currently licensed as a geologist with the State of California, Department of Consumer Affairs, Board of Geology and Geophysicists.
  19. “Remote location” means any location that is at least one (1.0) mile from the location of a receptor. “Receptor” includes, but is not limited to, any hospital, school, day care center, work site, business, residence, and permanent campground. The distance to the nearest receptor is to be measured from the outermost limit of the area to be disturbed or road surface, whichever is closer.
  20. “Restricted material” means any of the following:
    - a. Aggregate material extracted from property where any portion of the property is located in a geographic ultramafic rock unit (as defined in subsection (i)(9)); and
    - b. Aggregate material extracted from property that is **NOT** located in a geographic ultramafic rock unit (as defined in subsection (i)(9)) if the material has been:

- 1) Evaluated at the request of the Air Pollution Control Officer (APCO) and determined to be ultramafic rock or serpentine;
  - 2) Tested at the request of the APCO and determined to have an asbestos content of 0.25 percent or greater; or
  - 3) Determined by the owner/operator of a facility to be ultramafic rock, serpentine, or aggregate material that has an asbestos content of 0.25 percent or greater.
- c. Any mixture of aggregate material that contains ten percent (10%) or more of any of the materials listed above in subsections (i)(20)(A) or (i)(20)(B), or any combination thereof, shall also be considered “restricted material.”
21. “Riprap” means material used to construct a loose assemblage of stones along a water course or shoreline to prevent erosion or provide stability.
  22. "Road surface" means the traveled way of a road and any shoulder which extends up to ten (10) feet from the edge of the traveled way.
  23. "Sand and gravel operation" means any aggregate-producing facility operating in alluvial deposits.
  24. "Serpentine" means any form of the following hydrous magnesium silicate minerals: antigorite, lizardite, and chrysotile.
  25. “Serpentinite” means a rock consisting almost entirely of serpentine, although small amounts of other minerals such as magnetite, chromite, talc, brucite, and tremolite-actinolite may also be present. “Serpentinite” is a metamorphic derivative of the ultramafic rocks, peridotite, pyroxenite, or dunite.
  26. "Surfacing" means the act of providing or creating a temporary or permanent covering for a surface used for pedestrians, motor vehicles, non-motor vehicles, decoration, landscaping, soil stabilization, or erosion control. Examples of surfaces include, but are not limited to, roads, road shoulders, streets, access roads, alleys, lanes, driveways, parking lots, playgrounds, trails, squares, plazas, and fairgrounds. For the purposes of this section, “surfacing” does not include creating a covering composed of asphalt concrete or portland cement concrete.
  27. “Ultrabasic rock” means ultramafic rock.

- 28. “Ultramafic rock” means an igneous rock composed of 90 percent or greater of one or a combination of the following iron/magnesium-rich, dark-colored silicate minerals: olivine, pyroxene, or more rarely amphibole. For the purposes of this section, “ultramafic rock” includes the following rock types: dunite, pyroxenite, and peridotite; and their metamorphic derivatives.

ATCM 905     DIOXINS AIRBORNE TOXIC CONTROL MEASURE - MEDICAL WASTE INCINERATORS. (Title 17 - Section 93104, CARB adoption date – July 13, 1990)

The Dioxins Airborne Toxic Control Measure for Medical Waste Incinerators adopted by the California Air Resources Board pursuant to Health and Safety Code Section 39666, as set forth in Section 93104 of Title 17 of the California Code of Regulations, effective July 13, 1991, is hereby adopted and incorporated by reference herein.

ATCM 906     AIRBORNE TOXIC CONTROL MEASURE - EMISSIONS OF TOXIC METALS FROM NON-FERROUS METAL MELTING. (Title 17 - Section 93107, CARB adoption date - January 14, 1993)

The Airborne Toxic Control Measure for Emissions of Toxic Metals from Non-Ferrous Metal Melting, adopted by the California Air Resources Board pursuant to Health and Safety Code Section 39666, as set forth in Section 93107 of Title 17 of the California Code of Regulations, effective January 6, 1994, is hereby adopted and incorporated by reference herein.

ATCM 907     AIRBORNE TOXIC CONTROL MEASURE - EMISSIONS OF PERCHLOROETHYLENE FROM DRY CLEANING OPERATIONS. (Title 17 - Section 93109, CARB adoption date - October 14, 1993)

The Airborne Toxic Control Measure for Emissions of Perchloroethylene from Dry Cleaning Operations, adopted by the California Air Resources Board pursuant to Health and Safety Code Section 39666, as set forth in Section 93109 of Title 17 of the California Code of Regulations, effective June 3, 1994 is hereby adopted and incorporated by reference herein.

ATCM 908     ASBESTOS AIRBORNE TOXIC CONTROL MEASURE FOR CONSTRUCTION, GRADING, QUARRYING, AND SURFACE MINING OPERATIONS. (Title 17 - Section 93105, CARB adoption date - July 22, 2002)

- A.     Effective Date.
  - 1.     Effective November 19, 2002, each air pollution control and air quality management district must:
    - a.     Implement and enforce the requirements of this section; or

- b. Propose their own asbestos airborne toxic control measure as provided in Health & Safety Code section 39666(d).
2. *Pre-existing Operations:* The owner/operator of any project in which the construction, grading, quarrying, or surface mining operation started before the effective date of this section shall comply with this section by:
    - a. The date the district begins implementing and enforcing this section as required in subsection (A)(1)(a); or
    - b. The compliance date specified in the airborne toxic control measure adopted by the district as required in subsection (A)(1)(b).

B. Applicability.

Unless one of the specific exemptions specified in subsection (C) applies, this section shall apply to any construction, grading, quarrying, or surface mining operation on any property that meets any of the following criteria:

1. Any portion of the area to be disturbed is located in a geographic ultramafic rock unit; or
2. Any portion of the area to be disturbed has naturally-occurring asbestos, serpentine, or ultramafic rock as determined by the owner/operator, or the Air Pollution Control Officer (APCO); or
3. Naturally-occurring asbestos, serpentine, or ultramafic rock is discovered by the owner/operator, a registered geologist, or the APCO in the area to be disturbed after the start of any construction, grading, quarrying, or surface mining operation.

C. General Exemptions.

1. *Geologic Evaluation:* The APCO may provide an exemption from this section for any property that meets the criterion in subsection (B)(1) if a registered geologist has conducted a geologic evaluation of the property and determined that no serpentine or ultramafic rock is likely to be found in the area to be disturbed. Before an exemption can be granted, the owner/operator must provide a copy of a report detailing the geologic evaluation to the APCO for his or her consideration.
  - a. At a minimum, the geologic evaluation must include:
    - 1) A general description of the property and the proposed use;



- 2) A detailed site characterization which may include:
  - i. A physical site inspection;
  - ii. Offsite geologic evaluation of adjacent property;
  - iii. Evaluation of existing geological maps and studies of the site and surrounding area;
  - iv. Development of geologic maps of the site and vicinity;
  - v. Identification and description of geologic units, rock and soil types, and features that could be related to the presence of ultramafic rocks, serpentine, or asbestos mineralization; and
  - vi. A subsurface investigation to evaluate the nature and extent of geologic materials in the subsurface where vertical excavation is planned; methods of subsurface investigation may include, but are not limited to borings, test pits, trenching, and geophysical surveys;
- 3) A classification of rock types found must conform to the nomenclature based on the International Union of Geological Science system;
- 4) A description of the sampling procedures used;
- 5) A description of the analytical procedures used, which may include mineralogical analyses, petrographic analyses, chemical analyses, or analyses for asbestos content;
- 6) An archive of collected rock samples for third party examination; and
- 7) A geologic evaluation report documenting observations, methods, data, and findings; the format and content of the report should follow the Guidelines for Engineering Geologic Reports issued by the State Board of Registration for Geologists and Geophysicists.
  - a. The district may request any additional tests or other information needed to evaluate an application for exemption.
  - b. The district shall grant or deny a request for an exemption within 90 days of the receipt of a complete application.

- c. If the request for an exemption is denied, the APCO shall provide written reasons for the denial.
  - d. *Expiration of the Geologic Exemption:* If the owner/operator discovers any naturally-occurring asbestos, serpentine, or ultramafic rock in the area to be disturbed after the exemption is granted, then:
    - 1) The owner/operator must comply with the requirements of this section;
    - 2) The owner/operator must report the discovery of the naturally-occurring asbestos, serpentine, or ultramafic rock to the APCO no later than the next business day; and
    - 3) The exemption under subsection (C)(1) shall expire and cease to be effective.
2. If a method is developed to accurately demonstrate that property located in a geographic ultramafic rock unit has no detectable asbestos in the area to be disturbed, then the ARB Executive Officer shall propose to the Board for adoption a regulatory amendment allowing the method to be utilized, as appropriate, to obtain an exemption from the requirements specified in this section.
  3. *Agriculture and Timber Harvesting:* This section shall not apply to agricultural operations or timber harvesting except for construction of roads and buildings. Construction of roads is subject to the requirements of subsection (E) if the road is part of a construction or grading operation, quarry, or surface mine, and is subject to the requirements of subsection (d) if the road is not part of a construction or grading operation, quarry, or surface mine.
  4. *Homeowners and Tenants:* Individuals engaged in covered activities on residential property they own or occupy are exempt from subsections (e)(1) and (E)(3)(a).
  5. *Sand and Gravel Operations:* The APCO may provide an exemption for crushing, screening and conveying equipment, stockpiles, and off-site material transport at a sand and gravel operation if the operation processes only materials from an alluvial deposit.
    - a. The district shall grant or deny a request for an exemption within ninety (90) days of the receipt of a complete application.
    - b. If the request for an exemption is denied, the APCO shall provide written reasons for the denial.

D. Requirements for Road Construction and Maintenance.

These requirements shall apply to roads that are not part of a construction or grading project, quarry, or surface mine.

1. No person shall conduct any road construction or maintenance activities that disturb any area that meets any criterion listed in subsections (B)(1) or (B)(2) unless all of the following conditions are met.
  - a. The APCO is notified in writing at least fourteen (14) days before the beginning of the activity or in accordance with a procedure approved by the district.
  - b. All the following dust control measures are implemented during any road construction or maintenance activity:
    - 1) Unpaved areas subject to vehicle traffic must be stabilized by being kept adequately wetted, treated with a chemical dust suppressant, or covered with material that contains less than 0.25 percent asbestos;
    - 2) The speed of any vehicles and equipment traveling across unpaved areas must be no more than fifteen (15) miles per hour unless the road surface and surrounding area is sufficiently stabilized to prevent vehicles and equipment traveling more than 15 miles per hour from emitting dust that is visible crossing the project boundaries;
    - 3) Storage piles and disturbed areas not subject to vehicular traffic must be stabilized by being kept adequately wetted, treated with a chemical dust suppressant, or covered with material that contains less than 0.25 percent asbestos; and
    - 4) Activities must be conducted so that no track-out from any road construction project is visible on any paved roadway open to the public.
  - c. Equipment and operations must not cause the emission of any dust that is visible crossing the project boundaries.
2. No person shall conduct any road construction or maintenance activity that disturbs the ground surface in an area that meets the criteria in subsection (B)(3) unless:

- a. The APCO is notified no later than the next business day of the discovery that the area meets the criteria in subsection (B)(3); and
  - b. The requirements of subsections (D)(1)(b) through (D)(1)(c), are implemented within twenty-four (24) hours of the discovery.
3. *Exemptions from the Requirements for Road Construction and Maintenance.* The following exemptions may apply in addition to the applicable general exemptions specified in subsection (C).
- a. *Emergency Road Repairs:* Subsection (D)(1)(a) shall not apply when construction of a road or firebreak, or a road repair is necessary due to a landslide, flood, or other emergency or to mitigate a condition that constitutes an imminent hazard to the public. The owner/operator shall notify the APCO no later than the next business day of the action taken and the condition establishing the applicability of this subsection.
  - b. *Remote locations:* The APCO may provide an exemption from the requirements of subsection (D) for any activity which will occur at a remote location.
    - 1) The district shall grant or deny a request for an exemption within ninety (90) days of the receipt of a complete application.
    - 2) If the request for an exemption is denied, the APCO shall provide written reasons for the denial.
- E. Requirements for Construction and Grading Operations.
1. *Areas of one acre or less meeting the criteria in subsections (B)(1) or (B)(2):* No person shall engage in any construction or grading operation on property where the area to be disturbed is one (1.0) acre or less unless all of the following dust mitigation measures are initiated at the start and maintained throughout the duration of the construction or grading activity:
    - a. Construction vehicle speed at the work site must be limited to fifteen (15) miles per hour or less;
    - b. Prior to any ground disturbance, sufficient water must be applied to the area to be disturbed to prevent visible emissions from crossing the property line;

- c. Areas to be graded or excavated must be kept adequately wetted to prevent visible emissions from crossing the property line;
  - d. Storage piles must be kept adequately wetted, treated with a chemical dust suppressant, or covered when material is not being added to or removed from the pile;
  - e. Equipment must be washed down before moving from the property onto a paved public road; and
  - f. Visible track-out on the paved public road must be cleaned using wet sweeping or a HEPA filter equipped vacuum device within twenty-four (24) hours.
2. *Areas greater than one acre meeting the criteria in subsections (B)(1) or (B)(2):* No person shall engage in any construction or grading operation on property where the area to be disturbed is greater than one (1.0) acre unless:
- a. An Asbestos Dust Mitigation Plan for the operation has been:
    - 1) Submitted to and approved by the district before the start of any construction or grading activity; and
    - 2) The provisions of that dust mitigation plan are implemented at the beginning and maintained throughout the duration of the construction or grading activity; and
  - b. For a project started before the effective date of this section for which an asbestos dust mitigation plan was submitted at least sixty (60) days before the effective date, and for which the district has not yet approved the asbestos dust mitigation plan:
    - 1) The measures in subsection (E)(1) must be implemented and maintained until the district-approved asbestos dust mitigation plan is implemented; and
    - 2) The provisions of the district-approved asbestos dust mitigation plan must be implemented within fourteen (14) days of district approval of the plan and maintained throughout the remainder of the construction or grading activity.

3. *Property that meets the criteria in subsection (B)(3):* No person shall engage in any construction or grading operation unless the following requirements are met:
  - a. The owner/operator notifies the district of the discovery of naturally-occurring asbestos, serpentine, or ultramafic rock no later than the next business day;
  - b. The dust mitigation measures in subsection (E)(1) are implemented within twenty-four (24) hours after determining that the property meets the criteria in subsection (B)(3); and
  - c. For operations in which the area to be disturbed is one (1.0) acre or less, the dust mitigation measures in subsection (E)(1) are maintained throughout the duration of the construction or grading activity; or
  - d. For operations in which the area to be disturbed is greater than one (1.0) acre, the owner/operator must:
    - 1) Submit an asbestos dust mitigation plan to the district within fourteen (14) days of the discovery of naturally-occurring asbestos, serpentine, or ultramafic rock;
    - 2) Maintain the dust mitigation measures in subsection (E)(1) until the provisions of the district-approved asbestos dust mitigation plan are implemented;
    - 3) Implement the provisions of the district-approved asbestos dust mitigation plan within fourteen (14) days of district approval of the plan; and
    - 4) Maintain the provisions of the district-approved asbestos dust mitigation plan throughout the remainder of the construction or grading activity.
4. *Asbestos Dust Mitigation Plans:* An Asbestos Dust Mitigation Plan must specify dust mitigation practices which are sufficient to ensure that no equipment or operation emits dust that is visible crossing the property line and must include one or more provisions addressing each of the following topics.
  - a. Track-out prevention and control measures which shall include:
    - 1) Removal of any visible track-out from a paved public road at any location where vehicles exit the work site; this shall be accomplished using wet sweeping or a

- HEPA filter equipped vacuum device at the end of the work day or at least one time per day; and
- 2) Installation of one or more of the following track-out prevention measures:
    - i. A gravel pad designed using good engineering practices to clean the tires of exiting vehicles;
    - ii. A tire shaker;
    - iii. A wheel wash system;
    - iv. Pavement extending for not less than fifty (50) consecutive feet from the intersection with the paved public road; or
    - v. Any other measure as effective as the measures listed above.
  - b. Keeping active storage piles adequately wetted or covered with tarps.
  - c. Control for disturbed surface areas and storage piles that will remain inactive for more than seven (7) days, which shall include one or more of the following:
    - 1) Keep the surface adequately wetted;
    - 2) Establishment and maintenance of surface crusting sufficient to satisfy the test in subsection (H)(6);
    - 3) Application of chemical dust suppressants or chemical stabilizers according to the manufacturers' recommendations;
    - 4) Covering with tarp(s) or vegetative cover;
    - 5) Installation of wind barriers of fifty (50) percent porosity around three (3) sides of a storage pile;
    - 6) Installation of wind barriers across open areas; or
    - 7) Any other measure as effective as the measures listed above.
  - d. Control for traffic on on-site unpaved roads, parking lots, and staging areas which shall include:
    - 1) A maximum vehicle speed limit of fifteen (15) miles per hour or less; and
    - 2) One or more of the following:

- i. Watering every two hours of active operations or sufficiently often to keep the area adequately wetted;
  - ii. Applying chemical dust suppressants consistent with manufacturer's directions;
  - iii. Maintaining a gravel cover with a silt content that is less than five (5) percent and asbestos content that is less than 0.25 percent, as determined using an approved asbestos bulk test method, to a depth of three (3) inches on the surface being used for travel; or
  - iv. Any other measure as effective as the measures listed above.
- e. Control for earthmoving activities which shall include one or more of the following:
  - 1) Pre-wetting the ground to the depth of anticipated cuts;
  - 2) Suspending grading operations when wind speeds are high enough to result in dust emissions crossing the property line, despite the application of dust mitigation measures;
  - 3) Application of water prior to any land clearing; or
  - 4) Any other measure as effective as the measures listed above.
- f. *Control for off-site transport.* The owner/operator shall ensure that no trucks are allowed to transport excavated material off-site unless:
  - 1) Trucks are maintained such that no spillage can occur from holes or other openings in cargo compartments; and
  - 2) Loads are adequately wetted and either:
    - i. Covered with tarps; or
    - ii. Loaded such that the material does not touch the front, back, or sides of the cargo compartment at any point less than six inches from the top and that no point of the load extends above the top of the cargo compartment.



- g. *Post construction stabilization of disturbed areas.* Upon completion of the project, disturbed surfaces shall be stabilized using one or more of the following methods:
  - 1) Establishment of a vegetative cover;
  - 2) Placement of at least three (3.0) inches of non-asbestos-containing material;
  - 3) Paving;
  - 4) Any other measure deemed sufficient to prevent wind speeds of ten (10) miles per hour or greater from causing visible dust emissions.
  
- h. *Air monitoring for asbestos (if required by the APCO).*
  - 1) If required by the district APCO, the plan must include an air-monitoring component.
  - 2) The air monitoring component shall specify the following:
    - i. Type of air sampling device(s);
    - ii. Siting of air sampling device(s);
    - iii. Sampling duration and frequency; and
    - iv. Analytical method.
  
- i. *Frequency of reporting:* The plan shall state how often the items specified in subsection (E)(5)(b), and any other items identified in the plan, will be reported to the district.

5. *Recordkeeping and Reporting Requirements.*

- a. *Recordkeeping Requirements:* The owner/operator shall maintain all of the following records for at least seven (7) years following the completion of the construction project:
  - 1) The results of any air monitoring conducted at the request of the APCO;
  - 2) The documentation for any geologic evaluation conducted on the property for the purposes of obtaining an exemption, except the archive of collected samples which may be discarded at the expiration of the exemption or one (1) year after the exemption is granted whichever is less; and
  - 3) The results of any asbestos bulk sampling that meets any of the following conditions:

- i. The asbestos bulk sampling was conducted by the owner/operator to document the applicability of or compliance with this section, or
      - ii. The asbestos bulk sampling was done at the request of the district APCO.
    - b. *Reporting Requirements:* The owner/operator of any grading or construction operation subject to this section shall submit the following to the District:
      - 1) The results of any air monitoring conducted at the request of the APCO; and
      - 2) The results of any asbestos bulk sampling that meets any of the following conditions:
        - i. Asbestos bulk sampling conducted by the owner/operator to document applicability of or compliance with this section; or
        - ii. Asbestos bulk sampling done at the request of the APCO.
- F. Requirements for Quarrying and Surface Mining Operations.
- 1. No person shall engage in any quarrying or surface mining operation that meets the criteria of subsections (B)(1) or (B)(2) unless an Asbestos Dust Mitigation Plan for the operation has been submitted to and approved by the District and the fugitive dust mitigation measures specified in the Plan are implemented and maintained throughout the duration of any quarrying or surface mining operation except,
    - a. *Pre-existing Operations:* The owner or operator of any quarrying or surface mining operation that was in operation before the date this section is implemented as determined pursuant to subsection (A) that has not obtained district approval of the asbestos dust mitigation plan may continue operating if all the following conditions are met:
      - 1) The owner/operator has submitted an asbestos dust mitigation plan to the district at least sixty (60) days prior to the date specified in subsection (A);
      - 2) The owner/operator implements all of the dust mitigation measures specified in subsections (F)(2)(b) and (F)(2)(c) by the effective date specified in

- subsection (A) and maintains them until the provisions of an approved asbestos dust mitigation plan are implemented; and
- 3) The owner/operator implements the provisions of the asbestos dust mitigation plan within fourteen (14) days following district approval of the plan.
- b. *Mineral exploration activities:* Mineral exploration activities as defined in the California Public Resources Code section 2714(d) in an area meeting any of the conditions of subsection (B) are not required to submit an asbestos dust mitigation plan but shall instead implement and maintain the following measures throughout the duration of the activity:
- 1) Limit vehicle speeds on the site to fifteen (15) miles per hour or less;
  - 2) Apply sufficient water during any ground disturbance to prevent visible dust from crossing the property line;
  - 3) Keep disturbed areas and storage piles adequately wetted until they are permanently stabilized;
  - 4) Install a track-out prevention device designed to prevent track-out onto any paved public road;
  - 5) Clean up any visible track-out at the end of the workday or at a minimum within twenty-four (24) hours; and
  - 6) Cover or treat with a chemical dust suppressant, or otherwise stabilize any disturbed areas when operations cease for more than seven (7) days.
2. The owner/operator of any quarry or surface mine that meets any of the criteria in subsection (B)(3) shall:
- a. Notify the APCO no later than the next business day of the discovery.
  - b. Implement all the following measures within twenty-four (24) hours following the discovery:
    - 1) Keep stock and working piles adequately wetted during the addition and removal of material;

- 2) Keep on-site unpaved roads, parking lots, and staging areas stabilized using one of the following measures:
    - i. Adequately wetted; or
    - ii. Controlled using dust palliatives or suppressants; or
    - iii. paving; or
    - iv. Covered to a depth of three (3) inches with gravel that contains less than 0.25 percent asbestos as determined using an approved asbestos bulk test method;
  - 3) Keep exposed areas and inactive stockpiles that are prone to mechanical or wind disturbances:
    - i. Adequately wetted; or
    - ii. Controlled using dust palliatives or suppressants, paving, wind berms or breaks; or
    - iii. Covered with tarps or material that contains less than 0.25 percent asbestos as determined using an approved asbestos bulk test method;
  - 4) Ensure that materials to be quarried, excavated, or graded are adequately wetted;
  - 5) Ensure that all loads are adequately wetted before and during truck loading operations;
  - 6) Ensure that all trucks transporting materials off-site meet the conditions of either paragraph (i) or paragraph ii at the time the truck leaves the site:
    - i. Loads are adequately wetted and covered with tarps; or
    - ii. Loads are adequately wetted and the material does not touch the front back or sides of the cargo compartment at any point less than six (6) inches from the top and no point of the load extends above the top of the cargo compartment; and
  - 7) Limit vehicle speeds within the quarry or surface mining operation to fifteen (15) miles per hour or less.
- c. Implement all of the following measures within fourteen (14) days of the determination that the operation meets any of the criteria in subsection (B)(3).

- 1) Measures to ensure that material being excavated, crushed, screened, loaded, transferred or conveyed does not result in any dust that is visible crossing the property line.
- 2) Measures to ensure that no grinding mill, screening operation, or transfer point on a belt conveyor discharges into the air any visible emissions other than uncombined water vapor, for a period aggregating more than three minutes in any one hour which are:
  - i. Fifty percent as dark or darker in shade as that designated as number one on the Ringlemann Chart, as published by the United States Bureau of Mines; or
  - ii. Of such opacity as to obscure an observers view to a degree equal to or greater than smoke as described in subsection (F)(2)(c)2.i. or ten (10) percent opacity.
- 3) Measures to ensure that no crusher discharges into the air any visible emissions other than uncombined water vapor, for a period aggregating more than three minutes in any one hour which are:
  - i. Seventy-five percent as dark or darker in shade as that designated as number one on the Ringlemann Chart, as published by the United States Bureau of Mines; or
  - ii. Of such opacity as to obscure an observers view to a degree equal to or greater than smoke as described in subsection (F)(3)(c)3.i. or fifteen (15) percent opacity.
- 4) Measures for material handling sufficient to meet the requirements of subsections (F)(2)(c)1. through (F)(2)(c)3. Such measures may include the following:
  - i. Installation and operation of spraybars on all conveyors; and
  - ii. Installation of shrouds at all drop points.
- 5) Track-out control and prevention measures which shall include:
  - i. Installation of a gravel pad, grizzly, tire washing system, or paving at least fifty (50) feet of the access road, and

- ii. Cleaning any visible track-out off the paved public road using wet sweeping or a HEPA filter equipped vacuum device at the end of each workday.
  - 6) Stabilization of all on-site roads, parking lots, and staging areas open to the public by one of the following methods:
    - i. Pave with asphalt or concrete, or
    - ii. Treat with a chemical dust suppressant applied according to manufacturer's directions, or
    - iii. Maintain a gravel cover that has a depth of at least three (3) inches and contains less than 0.25 percent asbestos as determined using an approved asbestos bulk test method.
  - d. Submit an Asbestos Dust Mitigation Plan to the District within fourteen (14) days and maintain the measures specified in subsections (F)(2)(b) and (F)(2)(c) until the asbestos dust mitigation measures in the district-approved Asbestos Dust Mitigation Plan are implemented.
- 3. An Asbestos Dust Mitigation Plan required by subsections (F)(1) and (F)(2)(d) must include sections which address each of the following topics.
  - a. A Fugitive Dust Mitigation Component which shall, at a minimum, include the measures specified in subsections (F)(2)(b) and (F)(2)(c), unless the APCO determines that it is appropriate to add, omit, or modify these measures depending on site-specific parameters. The plan shall also require that:
    - 1) Equipment and operations do not emit dust that is visible crossing the property line;
    - 2) Crushers do not discharge into the air any visible emissions other than uncombined water vapor, for a period aggregating more than three minutes in any one hour, which is:
      - i. Seventy-five percent as dark or darker in shade as that designated as number one on the Ringlemann Chart, as published by the United States Bureau of Mines; or
      - ii. Of such opacity as to obscure an observers view to a degree equal to or greater than smoke

as described in subsection (F)(3)(a)2.i. or fifteen (15) percent opacity; and

- 3) Grinding mills, screening operations, and transfer points on belt conveyors do not discharge into the air any visible emissions other than uncombined water vapor, for a period aggregating more than three minutes in any one hour, which is:
  - i. Fifty percent as dark or darker in shade as that designated as number one on the Ringlemann Chart, as published by the United States Bureau of Mines; or
  - ii. Of such opacity as to obscure an observers view to a degree equal to or greater than smoke as described in subsection (F)(3)(a)3.i. or ten (10) percent opacity.
- b. *Air monitoring for asbestos (if required by the APCO).*
  - 1) If required by the district APCO, the plan must include an air monitoring component.
  - 2) The air monitoring component shall specify the following:
    - i. Type of air sampling device(s);
    - ii. Sitting of air sampling device(s);
    - iii. Sampling duration and frequency; and
    - iv. Analytical method.
- c. *Frequency of reporting.* The plan shall state how often the items specified in subsection (F)(5)(b), and any other items identified in the plan, will be reported to the district.
4. Upon petition by the owner/operator the APCO may approve the use of requirements or restrictions established under other regulatory programs to meet the requirements of subsection (F) under the following conditions:
  - a. The requirements or restrictions are equivalent to or more stringent than the requirements of subsection (F); and
  - b. The requirements or restrictions are enforceable by the APCO.
5. *Recordkeeping and Reporting Requirements:* The owner/operator of a surface mining or quarrying operation subject to this section must comply with the following recordkeeping and reporting requirements.

- a. *Recordkeeping Requirements:* The owner/operator shall maintain all of the following records for at least seven (7) years:
- 1) The results of any air monitoring conducted at the request of the APCO;
  - 2) The documentation for any geologic evaluation conducted on the property for the purpose of obtaining an exemption except, the archive of collected rock samples which may be discarded at the expiration of the exemption or one (1) year after the district granted or denied the exemption, whichever comes first; and
  - 3) The results of any asbestos bulk sampling that meets any of the following conditions:
    - i. The asbestos bulk sampling was conducted by the owner/operator to document the applicability of, or compliance with this section; or
    - ii. The asbestos bulk sampling was done at the request of the district APCO.
- b. *Reporting Requirements:* The owner/operator shall submit the following to the District:
- 1) The results of any air monitoring conducted at the request of the APCO;
  - 2) The documentation of any geologic evaluation conducted on the property in question; and
  - 3) The results of any asbestos bulk sampling that meets any of the following conditions:
    - i. Asbestos bulk sampling conducted by the owner/operator to document applicability of or compliance with this section; or
    - ii. Asbestos bulk sampling done at the request of the district APCO.

G. Air Monitoring for Asbestos.

Pursuant to the requirements of Health and Safety Code section 41511:

1. Air monitoring may be required by the district APCO.



2. The APCO may revise the asbestos dust mitigation plan on the basis of the results of the air monitoring.

#### H. Test Methods.

1. *Ultramafic Rock*: The ultramafic rock composition of any material shall be determined using standard analysis techniques including, but not limited to, color index assessment, microscopic examination, petrographic analysis or rock thin sections, or chemical analysis techniques, such as X-ray fluorescence spectrometry or inductively coupled plasma analysis.
2. *Bulk Sampling Methods*: ARB Test Method 435, or an alternative asbestos bulk test method approved in writing by the Executive Officer of the California Air Resources Board, shall be used to determine the asbestos content of a bulk sample. For the purposes of determining compliance with this section, references in ARB Test Method 435 to "serpentine aggregate" shall mean "gravel" or other "bulk materials" to be tested for asbestos content.
3. *Analysis of Air Samples*: Analysis of all air samples shall follow the analytical method specified by the United States Environmental Protection Agency, Asbestos Hazard Emergency Response Act (AHERA) criteria for asbestos (40 CFR, Part 763 Subpart E, Appendix A, adopted October 30, 1987), with the following exceptions:
  - a. The analytical sensitivity shall be 0.001 structures per cubic centimeter (0.001 s/cc); and
  - b. All asbestos structures with an aspect ratio greater than three to one (3 to 1) shall be counted irrespective of length.
4. The results of the analysis of air samples shall be reported as transmission electron microscopy (TEM) asbestos structures per cubic centimeter (s/cc).
5. *Adequately Wetted*: Field determination of "adequately wetted" shall be as follows:
  - a. If the district-approved asbestos dust mitigation plan has specified a percent moisture content for specific materials the determination shall be as specified in the district-approved asbestos dust mitigation plan; or

- b. If no moisture threshold is specified in a district-approved asbestos dust mitigation plan, a sample of at least one (1) quart in volume shall be taken from the top three (3) inches of a road, or bare area or from the surface of a stockpile. The sample shall be poured out from a height of four (4) feet onto a clean hard surface. The material shall be considered to be adequately wetted if there is no observable dust emitted when the material is dropped.
6. *Surface Crusting*: “Measurement of the stability of surface crusting on horizontal surfaces” shall be as follows:
- a. Where a visible crust exists, drop a steel ball with a diameter of 15.9 millimeters (0.625 inches) and a mass ranging from 16 to 17 grams from a distance of 30 centimeters (one foot) directly above (at a 90 degree angle perpendicular to) the ground surface. If blowsand (thin deposits of loose grains covering less than 50 percent of the surface that have not originated from the surface being tested) is present, clear the blowsand from the surfaces to be tested before dropping the steel ball.
  - b. A sufficient crust is determined to exist if, when the ball is dropped according to subsection (H)(6)(a), the ball does not sink into the surface so that it is partially or fully surrounded by loose grains and, upon removing the ball, the surface on which it was dropped has not been pulverized so that loose grains are visible.
  - c. Drop the ball three times each in three representative test areas within a survey area measuring 1 foot by 1 foot that represents a random portion of the surface being evaluated. The test area shall be deemed to have passed if at least two of the three times the ball was dropped, the results met the criteria in subsection (H)(6)(b). If all three test areas pass, the area shall be deemed to be “sufficiently crusted”.

I. Definitions.

For the purposes of this section, the following definitions shall apply:

1. "Access road" means any road extending from a public thoroughfare onto the property of a construction project, quarry, or surface mining operation.
2. "Adequately wetted" means sufficiently moistened with water to minimize the release of particulate matter into the ambient air as determined by the test method(s) in subsection (H)(5).

3. "Agricultural operation" means activities necessary for the growing and harvesting of crops or raising of fowl or animals.
4. "APCO" means the executive officer, air pollution control officer, or the designee of the executive officer or air pollution control officer of any air pollution control or air quality management district created or continued in existence pursuant to Part 3 (commencing with section 40000), Division 26, Health and Safety Code.
5. "Approved asbestos bulk test method" means ARB Test Method 435 or an alternative asbestos bulk test method approved in writing by the Executive Officer of the California Air Resources Board.
6. "ARB" means the California Air Resources Board.
7. "ARB Test Method 435" means the test method specified in title 17, California Code of Regulations, section 94147.
8. "Asbestos" means asbestiforms of the following minerals: chrysotile (fibrous serpentine), crocidolite (fibrous riebeckite), amosite (fibrous cummingtonite--grunerite), fibrous tremolite, fibrous actinolite, and fibrous anthophyllite.
9. "Asbestos-containing material" means any material that has an asbestos content of 0.25 percent or greater.
10. "Asbestos Dust Mitigation Plan" means a detailed written document specifying measures that would be implemented to minimize the emissions of asbestos-laden dust.
11. "Carry-out" or "track-out" means any bulk material that adheres to and agglomerates on the exterior surfaces of motor vehicles, haul trucks, and/or equipment, including tires, and that has fallen or been deposited onto a paved public roadway.
12. "Construction," "grading," "construction or grading operation" and "construction or grading activity" mean any surface disturbance conducted with powered equipment or any related activity, including, but not limited to, all surface and subsurface cuts and fills, excavation, trenching, stockpiling, bulldozing, and landfills.
13. "District" means any air pollution control or air quality management district created or continued in existence pursuant to Part 3 (commencing with section 40000), Division 26, Health and Safety Code.

14. "Geographic ultramafic rock unit" means a geographic area that is designated as an ultramafic rock unit or ultrabasic rock unit, including the unit boundary line, on any of the maps referenced in Appendix A.
15. "Geologic evaluation" means an evaluation of a property to determine the presence of various types of rocks, including ultramafic rock, serpentinite, or other metamorphic derivatives of ultramafic rock.
16. "Gravel pad" means a layer of gravel, rock, or crushed rock which is at least one inch or larger in diameter and less than five (5) percent silt content, maintained at the point of intersection of a paved public roadway and a work site entrance to dislodge mud, dirt, and debris from tires of motor vehicles and haul trucks prior to leaving a worksite.
17. "Grizzly" means a device used to dislodge mud, dirt, and debris from the tires and undercarriage of motor vehicles and haul trucks prior to leaving the work site.
18. "HEPA filter" means a High Efficiency Particulate Air filter used to remove particles less than one (1) micron in aerodynamic diameter and operates at removal efficiencies of 99.9 percent or greater.
19. "Naturally-occurring asbestos" means asbestos that has not been processed in an asbestos mill.
20. "Owner/operator" or "person" includes, but is not limited to:
  - a. An individual, trust, firm, joint stock company, business concern, partnership, limited liability company, association, or corporation including, but not limited to, a government corporation;
  - b. Any city, county, district, commission, the state or any department, agency, or political subdivision thereof, any interstate body, and the federal government or any department or agency thereof to the extent permitted by law; or
  - c. A project proponent and any of its contractors or subcontractors.
21. "Paving" means creating a cover consisting of portland cement, asphalt concrete, or chip seal.
22. "Project Boundaries" means the right-of-way and any construction easements adjacent to and necessary for the purposes of a specific road construction project or maintenance activity.

23. "Property" means any real property including, but not limited to, any contiguous parcel or parcels of land and anything attached to or erected on it.
24. "Quarrying" means the act of obtaining stone from the earth by means of cutting, digging, excavating, or blasting and includes processes used to convert the excavated material into commercial products.
25. "Registered geologist" means an individual that is currently licensed as a geologist with the State of California, Department of Consumer Affairs, Board of Geology and Geophysicists.
26. "Remote location" means any location that is at least one (1.0) mile from the location of a receptor. "Receptor" includes, but is not limited to, any hospital, school, day care center, work site, business, residence, and permanent campground. The distance to the nearest receptor is to be measured from the outermost limit of the area to be disturbed or road surface, whichever is closer.
27. "Road Construction and Maintenance" means the activities undertaken to build roads, highways, railroads, bridges, culverts, drains and other works incidental to road or highway construction, and maintenance activities that involve grading or excavation. Road Construction and Maintenance does not include the construction of rest stops, maintenance buildings, or parking lots. These excluded activities are subject to the requirements of subsection (E)
28. "Road surface" means the traveled way of a road and any shoulder which may extend up ten (10) feet from the edge of the traveled way.
29. "Sand and Gravel Operation" means any facility operating in alluvial deposits.
30. "Serpentine" means any form of the following hydrous magnesium silicate minerals: antigorite, lizardite, and chrysotile.
31. "Serpentinite" means a rock consisting almost entirely of serpentine, although small amounts of other minerals such as magnetite, chromite, talc, brucite, and tremolite-actinolite may also be present. "Serpentinite" is a metamorphic derivative of the ultramafic rocks, peridotite, pyroxenite, or dunite.
32. "Surface mining" means all, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposit, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine. "Surface mining" includes, but is not limited to, in place distillation or retorting or leaching, the production and disposal of mining waste,

prospecting and exploratory activities or any activity subject to regulation under the Surface Mining and Reclamation Act of 1975, Public Resources Code section 2700 et seq.

- 33. "Ultrabasic rock" means ultramafic rock.
- 34. "Ultramafic rock" means an igneous rock composed of 90 percent or greater of one or a combination of the following iron/magnesium-rich, dark-colored silicate minerals: olivine, pyroxene, or more rarely amphibole. For the purposes of this section, "ultramafic rock" includes the following rock types: dunite, pyroxenite, and peridotite; and their metamorphic derivatives.
- 35. "Visible emissions" means any particulate matter that is visually detectable without the aid of instruments other than corrective lenses.

ATCM 909    EMISSIONS OF CHLORINATED TOXIC AIR CONTAMINANTS FROM AUTOMOTIVE MAINTENANCE AND REPAIR ACTIVITIES.    (Title 17 - Section 93111, CARB adoption date - April 27, 2000)

The Airborne Toxic Control Measure for Emissions of Chlorinated Toxic Air Contaminants from Automotive Maintenance and Repair Activities adopted by the California Air Resources Board pursuant to Health and Safety Code Section 39666, as set forth in Section 93111 of Title 17 of the California Code of Regulations, effective April 4, 2001, is hereby adopted and incorporated by reference herein.

ATCM 910    EMISSIONS OF HEXAVALENT CHROMIUM AND CADMIUM FROM MOTOR VEHICLE AND MOBILE EQUIPMENT COATINGS. (Title 17 - Section 93112, CARB adoption date - September 20, 2001)

The Airborne Toxic Control Measure for Emissions of Hexavalent Chromium and Cadmium from Motor Vehicle and Mobile Equipment Coatings adopted by the California Air Resources Board pursuant to Health and Safety Code Section 39666, as set forth in Section 93112 of Title 17 of the California Code of Regulations, effective September 19, 2002, is hereby adopted and incorporated by reference herein.

ATCM 911    REDUCE EMISSIONS OF TOXIC AIR CONTAMINANTS FROM OUTDOOR RESIDENTIAL WASTE BURNING (Title 17 - Section 93113, CARB adoption date - February 3, 2003)

- A.    Applicability.
  - 1.    Notwithstanding section 41806(a) of the Health and Safety Code, this regulation shall apply to persons conducting outdoor burning of combustible or flammable waste generated from inside residences and from outdoor activities associated with a residence, for the purpose of disposing of the waste.

2. This regulation shall apply to persons lighting fires that burn combustible or flammable waste, as defined, outdoors in enclosed or partially enclosed such as in pits or in piles on the ground. This regulation shall not apply to persons lighting fires at the direction of a public officer in an emergency situation for public health or fire safety reasons, in accordance with section 41801 of the Health and Safety Code or other provisions of law.
3. Except as provided in (a)(1) and (a)(2) above, nothing in this regulation shall affect the applicability of the provisions of article 2 and article 3, respectively, of chapter 3 of part 4 of division 26 of the Health and Safety Code.

B. Definitions.

Terms used shall have the same definitions as in Health and Safety Code section 39010 et. seq., unless otherwise indicated. For purposes of this regulation, the following additional definitions shall apply:

1. "Air Pollution Control District" (APCD), "Air Quality Management District" (AQMD), "air district," or "district" means an air pollution control district or an air quality management district created or continued in existence pursuant to Health and Safety Code section 40000 et seq.
2. "APCO" means the Air Pollution Control Officer or the chief executive officer of the respective local air pollution control district or local air quality management district where the property is located, or a designated representative.
3. "ARB" means the State of California Air Resources Board.
4. "Air Toxic" means toxic air contaminants as defined in section 39655 (a) of the Health and Safety Code.
5. "Allowable Combustibles" means dry natural vegetation waste originating on the premises and reasonably free of dirt, soil and visible surface moisture.
6. "Approved ignition device" means an instrument or material that will ignite open fires without the production of black smoke by the ignition device, as approved by the APCO.
7. "Burn Barrel" means a metal container used to hold combustible or flammable waste materials so that they can be ignited outdoors for the purpose of disposal.

8. "Census zip code" means a Zip Code tabulation area, a statistical geographic entity that approximates the delivery area for a U.S. Postal Service five-digit Zip Code. Census zip codes are aggregations of census blocks that have the same predominate Zip Code associated with the mailing addresses in the U.S. Census Bureau's Master Address File. Census zip codes do not precisely depict Zip Code delivery areas, and do not include all Zip Codes used for mail delivery. For the purposes of this regulation, census zip codes are referenced to the most recent national decennial census completed by the U.S. Census Bureau.
9. "Chief fire official" means the ranking officer in the authority having jurisdiction with responsibility for fire protection within a defined geographic region of an air district, or his or her designee. The chief fire official may be a federal, state, county or municipal employee, depending on the extent of the fire jurisdiction within the exemption area. In State or Federal Responsibility Areas for wildland protection, the state or federal official's determination overrides county authority with regard to burn permits and the use of burn barrels or incinerators in exemption areas.
10. "Combustible" means any substance capable of burning or any substance that will readily burn.
11. "Disallowed combustibles" means any waste or manufactured material, including but not limited to petroleum products and petroleum wastes; construction and demolition debris; coated wire; putrescible wastes; tires; tar; tarpaper; non-natural wood waste; processed or treated wood and wood products; metals; motor vehicle bodies and parts; rubber; synthetics; plastics, including plastic film, twine and pipe; fiberglass; styrofoam; garbage; trash; refuse; rubbish; disposable diapers; ashes; glass; industrial wastes; manufactured products; equipment; instruments; utensils; appliances; furniture; cloth; rags; paper or paper products; cardboard; boxes; crates; excelsior; offal; swill; carcass of a dead animal; manure; human or animal parts or wastes, including blood; and fecal and food-contaminated material. For purposes of this regulation, dry, natural vegetation waste from yard maintenance is not a disallowed combustible, if reasonably free of dirt, soil and surface moisture.
12. "Flammable" means capable of catching fire easily, or combustible.
13. "Incinerator" means any device constructed of nonflammable materials, including containers commonly known as burn barrels, for the purpose of burning therein trash, debris, and other flammable materials for volume reduction or destruction.



14. "Incorporated place" means the city, town, municipality or village reported to the U.S. Census Bureau as being legally in existence under California law at the time of the most recent national decennial census completed by the U.S. Census Bureau. For the purposes of calculating population density for this regulation, incorporated places include the FIPS Place Class Codes C, C7 and C8, as defined by the U.S. Census Bureau in Technical Documentation, Summary File 1, October 2002.
15. "Natural vegetation" means all plants, including but not limited to grasses, forbs, trees, shrubs, flowers, or vines that grow in the wild or under cultivation. Natural vegetation excludes vegetative materials that have been processed, treated or preserved with chemicals for subsequent human or animal use, including but not limited to chemically-treated lumber, wood products or paper products.
16. "Open outdoor fire" means the combustion of combustible material of any type outdoors in the open, not in any enclosure, where the products of combustion are not directed through a flue.
17. "Permissive burn day" or "burn day" means any day on which agricultural burning, including prescribed burning, is not prohibited by the ARB and agricultural and prescribed burning is authorized by the air district consistent with the Smoke Management Guidelines for Agricultural and Prescribed Burning, set forth in sections 80100-80330 of title 17 of the California Code of Regulations.
18. "Population density" means the number of people per square mile within a census zip code. It is calculated as the number of people within a census zip code divided by the area of the census zip code after subtracting the population and area of all incorporated places within the census zip code.
19. "Processed or treated wood and wood products" means wood that has been chemically treated to retard rot or decay or wood that has been modified with glues, laminates, stains, finishes, paints or glosses for use in furniture or for construction purposes, including but not limited to plywood, particle board, fencing or railroad ties. For the purposes of this regulation, dimensional lumber that has been air-dried or kiln-dried, with no preservatives or finishes added, is not considered processed or treated wood.
20. "Residence" means a single- or two-family dwelling unit and the land and ancillary structures surrounding it.
21. "Residential waste burning" means the disposal of the combustible or flammable waste from a single- or two-family dwelling unit or

residence by burning outdoors. Residential waste burning is not agricultural, including prescribed, burning.

22. "Waste" means all discarded putrescible and non-putrescible solid, semisolid, and liquid materials, including but not limited to petroleum products and petroleum wastes; construction and demolition debris; coated wire; tires; tar; tarpaper; wood waste; processed or treated wood and wood products; metals; motor vehicle bodies and parts; rubber; synthetics; plastics, including plastic film, twine and pipe; fiberglass; styrofoam; garbage; trash; refuse; rubbish; disposable diapers; ashes; glass; industrial wastes; manufactured products; equipment; instruments; utensils; appliances; furniture; cloth; rags; paper or paper products; cardboard; boxes; crates; excelsior; offal; swill; carcass of a dead animal; manure; human or animal parts or wastes, including blood; fecal- and food-contaminated material; felled trees; tree stumps; brush; plant cuttings and prunings; branches; garden waste; weeds; grass clippings, pine needles, leaves and other natural vegetation waste.

C. Prohibitions.

1. No person shall burn disallowed combustibles from any property for the purpose of disposing of waste material outdoors at a residence, except as provided under subsection (e), "Exemptions", below.
2. No person shall dispose of allowable combustibles from any property by burning them in a burn barrel or incinerator outdoors, except as provided under subsection (e), "Exemptions", below.
3. No person shall ignite, or allow to become ignited, allowable combustibles unless using an approved ignition device.
4. No person shall ignite, or allow to become ignited, allowable combustibles unless it is a permissive burn day in the air district where the residential waste burning is to take place.

D. Compliance Schedule.

1. For the purposes of Section 39666(d) of the Health and Safety Code, the date of adoption of this regulation shall be February 3, 2003.
2. Unless an air district adopts an earlier effective date in accordance with section 39666(d) of the Health and Safety Code, the prohibitions set forth in subsection (c), above, shall become effective on January 1, 2004.

3. The ARB shall conduct a public education and outreach program with respect to the regulation, the public health impacts of residential waste burning, and available alternatives to burning.

E. Exemptions.

1. No exemption from the prohibitions set forth in subsections (c)(1) and (c)(2) is available for an incorporated place in any census zip code or census zip code sub-area.
2. Where the population density of the unincorporated area is less than or equal to 3.0 within the boundaries of any census zip code within an air district, the following exemptions apply:
  - a. dry non-glossy paper and cardboard may be burned.
  - b. burn barrels or incinerators may be used.
3. Where the population density of the unincorporated area is greater than 3.0 but less than or equal to 10.0 within the boundaries of any census zip code within an air district, an air district may file a Request for Exemption to allow the burning of dry non-glossy paper and cardboard, or the use of burn barrels or incinerators, or both, subject to the provisions of (e)(10).
4. As part of any Request for Exemption submitted under subsection (e)(3), an air district may create sub-areas within a census zip code where the prohibitions set forth in subsections (c)(1) and (c)(2) shall still apply, subject to the provisions of (e)(10).
5. Where the population density is greater than 10.0 within the boundaries of any census zip code within an air district, an air district may file a Request for Exemption to create sub-areas within a census zip code to allow the burning of dry non-glossy paper and cardboard, or the use of burn barrels or incinerators, or both, subject to the provisions of subsection (e)(10), provided the unincorporated sub-area has a population density of less than or equal to 3.0.
6. The prohibition contained in subsection (c)(2) of this regulation shall not apply in any jurisdiction where a local ordinance or other enforceable mechanism is in effect on January 4, 2002 requiring the use of a burn barrel or incinerator to burn allowable combustibles, unless the local ordinance or other enforceable mechanism is subsequently rescinded or revoked.
7. No air district shall file a Request for Exemption from subsection (c)(1) to allow the burning of dry non-glossy paper and cardboard if it is prohibited by air district rules in effect on January 4, 2002, or thereafter, or within a geographic area where it is prohibited by a

local ordinance or other enforceable mechanism in effect January 4, 2002, or thereafter.

8. No air district shall file a Request for Exemption from subsection (c)(2) to allow the use of a burn barrel or incinerator outdoors at a residence if it is prohibited by air district rules in effect on January 4, 2002, or thereafter, or within a geographic area where the use of a burn barrel or incinerator is prohibited by a local ordinance or other enforceable mechanism in effect January 4, 2002, or thereafter.
9. On or before May 1, 2003, and every ten years thereafter, the ARB shall provide the air districts with a listing of all incorporated places and the population density within the boundaries of each census zip code contained within each air district.
10. Any Request for Exemption by an air district shall be submitted in writing to the ARB on or before August 1, 2003, and every ten years thereafter, and shall include all of the following:
  - a. a resolution, board order, or other enforceable mechanism adopted by the air district's Governing Board at a formal public meeting approving the Request for Exemption; and
  - b. a written commitment from the air district to provide information on the hazards associated with residential waste burning, and ways to minimize these hazards, to all persons conducting residential waste burning by using either an air district or appropriate fire protection agency permit program for residential waste burning, or other equivalent mechanism; and
  - c. to allow the burning of dry non-glossy paper and cardboard where the population density is greater than 3.0 but less than or equal to 10.0 within the boundaries of census zip codes within an air district, a finding by the air district that the exemption is necessary; and
  - d. to allow the use of burn barrels or incinerators where the population density is greater than 3.0 but less than or equal to 10.0 within the boundaries of census zip codes within an air district, written documentation from the chief fire official with primary jurisdiction over fire safety within the area contained within the census zip code, including references to fire codes (where applicable), that an unacceptable fire risk would occur if the prohibition set forth in subsection (c)(2) for that area remained in effect; and

- e. for census zip code sub-areas, documentation showing the population, land area, and population density of each census zip code sub-area and providing specific, enforceable, geographic boundaries; and
  - f. a list of the specific exemptions requested, for each applicable census zip code and census zip code sub-area, that are included in the Request for Exemption; and
  - g. a finding that all incorporated places within the boundaries of the census zip code or census zip code sub-area within an air district are excluded from the Request for Exemption; and
  - h. a finding that the air district considered the health risks to all populated communities that are within exempted areas; and
  - i. a statement in the resolution, board order, or other enforceable mechanism specifying that there is no air district rule, local ordinance, or other enforceable mechanism that was in effect on January 4, 2002, or thereafter, that would otherwise prohibit the burning of dry-non-glossy paper and cardboard; and
  - j. a statement in the resolution, board order, or other enforceable mechanism specifying that there is no air district rule, local ordinance, or other enforceable mechanism that was in effect on January 4, 2002, or thereafter, that would otherwise prohibit the use of a burn barrel or incinerator.
11. The ARB shall review the air district's Request for Exemption for completeness and approve or reject the Request for Exemption, in writing, within 60 days after submittal.
12. If the air district's Request for Exemption is not complete, the ARB shall return the Request for Exemption to the air district for amendment. The air district shall have an additional 30 days to submit a revised Request for Exemption.
13. By January 1, 2004, and every ten years thereafter, the ARB shall make available a listing of all census zip codes and census zip code sub-areas within each air district that are exempt in accordance with the criteria specified in subsections (e)(2), (e)(3) and (e)(5) and as approved by the ARB, if required.
14. a. Except as provided in subsection (e)(14)(B), all exemptions shall terminate on December 31, 2013, and as appropriate every ten years thereafter, unless renewed by the air district

pursuant to the procedures set forth in subsections (e)(10) through (e)(12).

- b. An exemption provided in accordance with subsection (e)(5) shall terminate on December 31, 2008, and as appropriate every five years thereafter, unless renewed by the air district pursuant to the procedures set forth in subsections (e)(10) through (e)(12).

ATCM 912     REDUCE PARTICULATE EMISSIONS FROM DIESEL-FUELED ENGINES -- STANDARDS FOR NONVEHICULAR DIESEL.     (Title 17 - Section 93114, CARB adoption date - July 24, 2003)

The Airborne Toxic Control Measure to Reduce Particulate Emissions from Diesel-Fueled Engines – Standards for Nonvehicular Diesel, adopted by the California Air Resources Board pursuant to Health and Safety Code Section 39666, as set forth in Section 93114 of Title 17 of the California Code of Regulations, effective August 14, 2004, is hereby adopted and incorporated by reference herein.

ATCM 913     STATIONARY COMPRESSION IGNITION ENGINES.     (Title 17 - Section 93115, CARB adoption date - February 26, 2004)

The Airborne Toxic Control Measure to Reduce Particulate Matter Emissions from Stationary Compression Engines, adopted by the California Air Resources Board pursuant to Health and Safety Code 39666, as set forth in Section 93115 of Title 17 of the California Code of Regulations, effective January 1, 2005, is hereby adopted and incorporated by reference herein.

ATCM 914     DIESEL PARTICULATE MATTER FROM PORTABLE ENGINES RATED AT 50 HORSEPOWER AND GREATER.     (Title 17 - Section 93116, CARB adoption date - February 26, 2004)

The Airborne Toxic Control Measure to Reduce Particulate Matter Emissions from Portable Engines Rated at 50 Horsepower and Greater, adopted by the California Air Resources Board pursuant to Health and Safety Code 39666, as set forth in Section 93116 of Title 17 of the California Code of Regulations, effective March 11, 2005, is hereby adopted and incorporated by reference herein.