



COUNTY OF SAN DIEGO
AIR POLLUTION CONTROL DISTRICT

BOARD OF SUPERVISORS

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DATE: June 24, 2009

TO: San Diego County Air Pollution Control Board

SUBJECT: NOTICED PUBLIC HEARING - ADOPTION OF NEW RULE 55 – FUGITIVE DUST CONTROL (Districts: All)

SUMMARY:

Overview

Dust released from the soil during construction and demolition activity is one of the largest sources of particulate matter emissions in the region and the most frequent source of complaints about air pollution. These fugitive dust particulates can cause respiratory illness and can damage property and reduce visibility.

San Diego County does not yet meet the State clean air standards for particulate matter, although federal standards are currently being met. Per State law, this lack of attainment requires the District to implement all feasible measures to attain the standard.

For this reason, adoption by the Air Pollution Control Board is requested for proposed new Rule 55. Rule 55, if adopted, would regulate fugitive dust emissions from construction sites by restricting the level of construction-related fugitive dust emissions allowed to cross onto adjacent properties, but leaves the selection of dust control measures to the discretion of the project owner/operator. In contrast to rules of other California air districts with worse fugitive dust problems, Rule 55 does not require submittal of dust control plans or record keeping of dust control efforts. Further, homeowner operations are exempt but remain subject to existing Rule 51, which prohibits public nuisance. Industry and government agencies were consulted throughout the rule development process. Compliance will not be onerous or costly because the requirements are consistent with existing dust control requirements and practices.

Recommendation(s)

AIR POLLUTION CONTROL OFFICER

1. Find that the adoption of Rule 55 is categorically exempt from the provisions of the California Environmental Quality Act pursuant to California Code of Regulations, Title 14, Section 15308, as an action taken to assure protection of the environment where the regulatory process involves procedures for protection of the

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environment, and pursuant to California Code of Regulations Title 14, Section 15061(b)(3), since it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

2. Adopt the resolution entitled Resolution Adopting Rule 55 into Regulation IV of the Rules and Regulations of the San Diego County Air Pollution Control District.

Fiscal Impact

Rule 55 will not have a significant fiscal impact on the Air Pollution Control District and will be implemented and enforced with existing staff.

Business Impact Statement

Rule 55 will not adversely impact the business community. Affected industries include small and large building contractors and development companies, and government agencies undertaking or contracting construction/demolition activities. The proposed dust prevention standards and measures are consistent with existing State, regional, and local regulatory requirements for fugitive dust control.

Advisory Board Statement

At its meeting on April 8, 2009, with a quorum present, the Air Pollution Control District Advisory Committee expressed support of the Air Pollution Control District's recommendations.

BACKGROUND:

State law (Senate Bill 656, 2003 Statutes) requires that air districts that do not meet State Particulate Matter Standards adopt additional control requirements after reviewing a Statewide list of the most readily available and cost-effective control measures being implemented by any California air district. The San Diego County Air Pollution Control District (District) evaluated the list and determined that most measures are already being implemented in San Diego County (December 14, 2005, APCB #2). However, the District currently does not have a rule to control construction-related fugitive dust.

Rule 55 will provide an efficient method to address complaints of fugitive dust emanating from construction sites. The District currently relies on Rule 50 (Visible Emissions) and Rule 51 (Nuisance) to address such complaints. However, those rules do not specifically address construction-related fugitive dust and often require multiple site visits to validate compliance or non-compliance. Rule 55 specifically addresses fugitive dust from construction activity and will provide more immediate authority to resolve related complaints creating efficiency for the District and industry.

Rule 55 will minimize compliance costs through consistency with existing dust control requirements and practices. Examples of such requirements include the California Vehicle Code, which prohibits dirt track-out onto public roads, storm water pollution prevention standards established by water agencies, and municipal grading ordinances, which require dust suppression.

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In the process of developing Rule 55, District staff conducted substantial outreach to the construction industry and government agencies, including the San Diego County Building Industry Association, Engineering & General Contractors Association, Associated General Contractors, Caltrans, the County Department of Public Works, the City of San Diego, and several other cities. A Public Workshop was also held. No substantive issues were raised and there was general concurrence that Rule 55 compliance will not be onerous or costly because the requirements are consistent with existing dust control requirements and practices.

Compliance with Board Policy on Adopting New Rules

On February 2, 1993 (APCB #2), the Board directed that, with the exception of a regulation requested by business or a regulation for which a socioeconomic impact assessment is not required, no new or revised regulation shall be implemented unless specifically required by federal or State law. Proposed new Rule 55 is required pursuant to State law, which calls for adoption of every feasible control measure to accelerate progress toward achieving ambient air quality standards for airborne particulate matter. Therefore, implementation of the proposed rule is consistent with the Board directive.

Environmental Statement

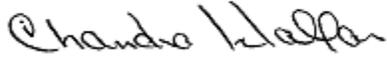
The California Environmental Quality Act (CEQA) requires environmental review for certain actions. The District conducted a preliminary review to determine CEQA applicability to the proposed adoption of Rule 55. Rule 55 was developed pursuant to State law (Health and Safety Code 39614), which calls for adoption of every feasible control measure to accelerate progress toward achieving air quality standards for particulate matter. Rule 55 will protect public health and the environment by promoting reductions in fugitive dust emissions from construction sites. The adoption of Rule 55 is exempt from the provisions of CEQA pursuant to California Code of Regulations, Title 14, Section 15308, as an action taken to assure protection of the environment where the regulatory process involves procedures for protection of the environment. Additionally, Rule 55 is reflective of dust control standards, which are already required by other agencies. Thus, it will not result in significantly different dust control practices on the part of the regulated community. Therefore, the project is also exempt pursuant to California Code of Regulations Title 14, Section 15061(b)(3), since it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Linkage to the County of San Diego's Strategic Plan

The County's five-year strategic plan includes an Environment Initiative to protect air quality and quality of life. Proposed new Rule 55 will reduce impacts on public health, property, and the environment, and reduce regional particulate matter emissions without negatively impacting the local business community. The rule balances air quality preservation, public health protection, and economic development needs.

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All)

Respectfully submitted,



CHANDRA L. WALLAR
Deputy Chief Administrative Officer



ROBERT KARD
Air Pollution Control Officer

ATTACHMENT(S)

Attachment A – Resolution Adopting New Rule 55 in Regulation IV of the Rules and
Regulations of the San Diego County Air Pollution Control District.

Attachment B – Workshop Report

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AGENDA ITEM INFORMATION SHEET

CONCURRENCE(S)

COUNTY COUNSEL REVIEW	<input checked="" type="checkbox"/> Yes	
Written disclosure per County Charter §1000.1 required?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
GROUP/AGENCY FINANCE DIRECTOR	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> N/A
CHIEF FINANCIAL OFFICER	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> N/A
Requires Four Votes	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
GROUP/AGENCY INFORMATION TECHNOLOGY DIRECTOR	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> N/A
COUNTY TECHNOLOGY OFFICE	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> N/A
DEPARTMENT OF HUMAN RESOURCES	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> N/A

Other Concurrence(s): N/A

ORIGINATING DEPARTMENT: Air Pollution Control District, County of San Diego

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AUTHORIZED REPRESENTATIVE: _____

ROBERT J. KARD
Air Pollution Control Officer

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AGENDA ITEM INFORMATION SHEET
(continued)

PREVIOUS RELEVANT BOARD ACTIONS:

December 14, 2005 (APCB #2), Approval of Proposed Measures to Reduce Particulate Matter in San Diego County.

BOARD POLICIES APPLICABLE:

N/A

BOARD POLICY STATEMENTS:

N/A

CONTRACT AND/OR REQUISITION NUMBER(S):