

**AIR POLLUTION CONTROL DISTRICT
COUNTY OF SAN DIEGO**

PROPOSED NEW RULE 55 – FUGITIVE DUST CONTROL

WORKSHOP REPORT

A workshop notice was mailed or e-mailed to all identified individuals, building industry associations, and government agencies in San Diego County that may be subject to proposed new Rule 55 – Fugitive Dust Control. Notices were also provided to the California Air Resources Board (ARB) and the San Diego Regional Water Quality Control Board.

The workshop was held on March 3, 2009, and was attended by 20 people. Written comments were received after the workshop. The comments and Air Pollution Control District (District) responses are as follows:

1. WORKSHOP COMMENT

How will the rule be enforced?

DISTRICT RESPONSE

With the exception of track-out/carry-out onto public roads, the rule specifies a standard of no visible emissions crossing a property boundary for more than 3 minutes in a 60 minute period. Inspectors responding to a complaint, for example, will determine by direct observation whether this standard is being violated, and if so, take appropriate enforcement action. For track-out/carry-out, the rule requires specific measures to “minimize” track-out/carry-out, and clean-up of the roadway if it occurs. An inspector will determine if these measures are being implemented, and if not, determine appropriate compliance action.

2. WORKSHOP COMMENT

What are the penalties for failing to comply with the rule?

DISTRICT RESPONSE

The amount of a fine will depend on individual circumstances of the violation. Maximum penalties and circumstances to be considered in determining the fine amount are governed by State law (Health and Safety Code Section 42400 et seq.).

3. WORKSHOP COMMENT

Unlike fugitive dust control rules of other California air districts, the proposed rule does not specify a distance of track-out that triggers the clean-up requirement.

DISTRICT RESPONSE

That is correct. The proposed rule specifies that track-out/carry-out must be “minimized” using the applicable specified measures, and removed at the conclusion of each work day when active operations cease, or every 24 hours for continuous operations. By comparison, some other districts further require immediate clean-up of track-out/carry-out when it extends beyond a specified distance.

4. WORKSHOP COMMENT

If a non-compliant street sweeper is used, will the operator, owner, or someone else receive the Notice of Violation?

DISTRICT RESPONSE

The operator, owner, or both could receive a Notice of Violation.

5. WORKSHOP COMMENT

There may be contractors or agencies for which the purchase of compliant street sweepers would be a financial hardship. The District should consider allowing a two-year period for obtaining a compliant street sweeper.

DISTRICT RESPONSE

The District disagrees. The District has surveyed many businesses and cities, and has yet to find one that does not already use compliant street sweepers. Therefore, the District will not be delaying compliance with this provision. It should be noted that the rule does not take effect until 6-months after the date of adoption by the Air Pollution Control Board. In addition, operators/owners may petition for a temporary variance from the District's Hearing Board, if necessary.

6. WORKSHOP COMMENT

Our company constructs many linear projects, spread out over long distances. It would be difficult for us to comply with the provision requiring street sweeping every 24 hours for

continuous operations, without purchasing more street sweeping equipment. Can the rule be written to be flexible on this requirement?

DISTRICT RESPONSE

The requirement, as currently proposed, is considered feasible based on similar and more stringent requirements of other California air districts, and therefore will not be amended. Further, the proposed provision is more lenient than the existing State law requirement to remove materials immediately (California Vehicle Code Section 23113).

7. WORKSHOP COMMENT

The term “visible roadway dust” is ambiguous, since dirt may still be visible after the roadway has been swept.

DISTRICT RESPONSE

The rule's definition of “visible roadway dust” includes the phrase “which can be removed by a vacuum sweeper, or a wet sweeper under normal operating conditions.” Therefore, dirt that is still visible after a sweeper has been used under normal operating conditions is not included in the definition and would not trigger a violation. The operator should consider this if he/she chooses another clean-up method, such as sweeping by hand-held appliance.

8. WORKSHOP COMMENT

The track-out/carry-out measures specified in provision (d)(2) may not constitute all possible cleanup methods. This provision should be amended to add “not limited to the following methods”.

DISTRICT RESPONSE

The District agrees. The rule will be amended to add language allowing measures that are of equivalent effectiveness to those listed.

9. WORKSHOP COMMENT

Are the requirements for removal of roadway track-out typically specified by public agencies in their contracts with construction contractors?

DISTRICT RESPONSE

Yes, our research suggests this is usually indicated clearly in such contracts.

10. WORKSHOP COMMENT

The rule does not address windy conditions. Can you include a provision to suspend the rule when the wind speed is above 15 mph?

DISTRICT RESPONSE

The District cannot include the requested language. Activities which cause excessive visible dust emissions during windy periods should be mitigated or temporarily suspended to avoid a violation.

11. WORKSHOP COMMENT

The rule applies to “active” operations. However, are disturbed, inactive sites subject to violation during high winds, even if they are not active?

DISTRICT RESPONSE

Yes. The rule was intended to prevent wind-generated dust from both active and inactive disturbed sites. The rule will be amended to clarify that it applies to previously active, but currently inactive sites as well as active sites.

12. WORKSHOP COMMENT

Can the rule be changed to be sensitive to possible future water rationing?

DISTRICT RESPONSE

The rule allows operators/owners to choose the most cost-effective dust prevention measures. If there is an alternative more economical than water, assuming it were rationed, then the operator is free to use it without the need for a specific rule provision.

13. WORKSHOP COMMENT

Will the District be maintaining a list of recommended chemical dust suppressant products?

DISTRICT RESPONSE

The District will not be endorsing or recommending particular chemical dust suppressants. However, there is considerable information on the internet regarding the environmental impacts

and effectiveness of different products. Sources include the U.S. Environmental Protection Agency (<http://www.epa.gov/esd/cmb/pdf/dust.pdf>), and individual states (e.g., Washington: www.ecy.wa.gov/pubs/96433.pdf) and cities (e.g., Albuquerque: www.cabq.gov/airquality/fugitivedustcontrol.html).

14. WRITTEN COMMENT

The rule does not address public dirt roads, off-road recreation, and agricultural operations as sources of fugitive dust. These should be covered by the rule also.

DISTRICT RESPONSE

The District has initially focused on construction/demolition sites to address the largest source of fugitive dust in the region, as well as the largest source of air quality complaints received by the District. The District may consider addressing other sources of fugitive dust in future rule development. Further, all sources of air pollution, including fugitive dust sources identified in the comment, are prohibited from creating a public nuisance, pursuant to existing Rule 51 (Nuisance).

15. WRITTEN COMMENT

In provision (d)(1), Airborne Dust Beyond the Property Line, the 10% opacity threshold is difficult for a layperson to understand and measure.

DISTRICT RESPONSE

The District agrees. The intent of the 10% opacity standard was to regulate visible dust emissions. The rule will be amended to change the standard to “visible dust emissions” since this term is more widely understood.

16. WRITTEN COMMENT

Is it correct that the rule does not apply to mineral industries with APCD permits? If so, this should be clarified by adding the following to the Exemptions section:

- (7) Activities such as grading, excavation, loading, transporting, crushing, cutting, planing, shaping or ground breaking that occur at stationary sources which have valid San Diego APCD permits and are subject to applicable fugitive dust rules (Rule 50, Rule 51, site specific dust opacity conditions, etc.).

DISTRICT RESPONSE

Mineral facilities holding a District permit are not subject to this rule, except when a mineral industry facility undertakes a construction project. The rule is clarified by adding an exemption in subsection (b)(7).

17. WRITTEN COMMENT

The rule as written could be construed to apply to military munitions training activity. A few minor changes to provision (c)(4) would remove the ambiguity:

- (1) After the words "preparatory to or", delete the words "related to the" and insert the words "for the purpose of";
- (2) Change the word "alteration" to "altering";
- (3) Change the word "rehabilitation" to "rehabilitating";
- (4) Delete the word "demolition", and insert the words "razing, tearing down, breaking to pieces"; and
- (5) Change the words "improvement of" to "improving".

DISTRICT RESPONSE

The rule will be amended to incorporate the suggested clarifications.

18. ARB COMMENT

A requirement should be added to prevent dust from spilling or being blown out from outbound trucks carrying bulk materials.

DISTRICT RESPONSE

Although the California Vehicle Code (Section 23114) already prohibits spilling aggregate materials onto a roadway, the suggested provision will be added to the rule requirements for track-out/carry-out.

RA:RR:AH:jlm
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