

Board Agenda Item

TO: Air Pollution Control District Board

FROM: Terry Dressler, Air Pollution Control Officer

CONTACT: Rebecca Armstrong, 961-8888

SUBJECT: Proposed Rule 345, Control of Fugitive Dust from Construction and Demolition

RECOMMENDATION:

That the Board:

- A. Hold a public hearing to receive testimony on proposed Rule 345.
- B. Approve the Resolution attached to this Board Letter. Approval of the resolution will result in the following actions:
 1. CEQA Findings: Adopt the CEQA findings (Attachment 1) pursuant to the California Environmental Quality Act (CEQA) and the CEQA guidelines.
 2. Rule Findings: Adopt the associated rule findings (Attachment 2) in support of the proposed Rule 345 pursuant to Health and Safety Code Section 40727 regarding necessity, authority, clarity, consistency, nonduplication, and reference. The rule findings also acknowledge public comments received on the proposed rules (Attachment 3) and adopt the Response to Comments (Attachment 4) as findings of the Board.
 3. Rule Adoption: Adopt proposed Rule 345 (Attachment 5).

EXECUTIVE SUMMARY:

Senate Bill 656 (SB 656, Sher – Health & Safety Code Section 39614) was enacted by the legislature in 2003 to reduce public exposure to inhalable particulate matter (PM). This state law requires air pollution control districts to adopt additional, locally-appropriate, requirements to control particulate matter pollution after reviewing a statewide list of the most readily available, feasible and cost-effective control measure

being implemented by any California air district. As a result of this analysis and study, Santa Barbara County Air Pollution Control District (District) staff found that Santa Barbara County's particle pollution problem appears to be PM₁₀-based.

At the May 26, 2005 District Board Hearing, staff presented to the Board Members a list of the most readily available, feasible and cost-effective control measures that could reduce PM₁₀ and PM_{2.5} (collectively referred to as PM).

The Board directed staff to develop a new rule to control particulate matter from *construction and demolition activities* and established a cost-effectiveness limit of \$ 1,000 per ton of PM₁₀ reduced.

Staff conducted a combined Community Advisory Council (CAC) meeting and public workshop (October 28, 2009) and discussed this proposed new rule. Only one member of the public attended this workshop. This person was a member of a construction business and he stated that the construction businesses are already implementing the standards and complying with the requirements that are listed in this rule.

The CAC recommended one minor text revision to one of the definitions and voted (13:1) to recommend that the Board adopt this new rule.

DISCUSSION:

Objectives

Proposed new Rule 345 fulfills the District's SB656 commitment to adopt fugitive dust control measures addressing construction and demolition projects. This new rule was designed to complement and be consistent with existing fugitive dust regulations in California Environmental Quality Act (CEQA), the California Vehicle Code and storm water pollution prevention standards established by water agencies.

This rule is essentially a standard-based rule with no record keeping requirements, permitting requirements, or dust control plan requirements.

Upon adoption of this new Rule 345, the District will have the ability to enforce dust mitigation measures that apply to construction and demolition sources. This rule will enable District Inspectors when on regular source inspections and when responding to complaint calls, to write Notices of Violation (NOVs) for subject sources that are causing a nuisance or are not adhering to the rule requirements. This reinforces other regulatory measures pertaining to dust control (e.g., CEQA Fugitive Dust Mitigation Measures, California Storm Water Control Regulations, etc.) that are currently in place. The improved enforcement capability provided by Rule 345 will reduce particulate emissions.

Background

Pursuant to SB 656, staff has conducted an assessment of ambient particulate matter air quality, made an evaluation of the California Air Resources Board (ARB) list of measures, identified feasible and cost-effective measures, and outlined an implementation schedule for the locally-appropriate control measures. As a result of this analysis and study, District staff found that Santa Barbara County's particle pollution problem appears to be PM₁₀-based.

At the May 26, 2005 District Board Hearing, staff presented to the Board Members a list of the most readily available, feasible and cost-effective control measures that could reduce PM₁₀ and PM_{2.5} (collectively referred to as PM).

The Board directed District staff to develop a new rule to control particulate matter from construction and demolition activities with a cost-effectiveness limit of \$1,000 per ton of PM₁₀ reduced. As a result, we created this draft Rule 345, "Control of Fugitive Dust from Construction and Demolition" which also meets the \$1,000 per ton cost-effectiveness limit established by the Board.

Only a few air districts have created new fugitive dust-related rules or made revisions to existing fugitive dust-related rules as a result of their SB 656 analyses. These include Ventura, Monterey Bay, and San Diego districts. The proposed Rule 345 is modeled after fugitives dust rules of the Ventura, San Diego, and South Coast air districts.

Rule 345 Requirements

Rule 345 applies to any activity associated with construction or demolition of a structure or structures. Activities subject to this regulation are also subject to Rule 302 (Visible Emissions) and Rule 303 (Nuisance).

To reduce compliance costs, the rule is proposed as a standards-based rule rather than requiring prescribed control methods. In addition, this new rule will enable District Compliance Staff to enforce those particulate mitigation measures that are already in place.

The requirements on loading of trucks for hauling soil or bulk material are based on existing vehicle code requirements; businesses are already required to comply with these.

Rule 345 Permitting Requirements

No new or modified permits are required as a result of this new rule.

Rule 345 Source Testing, Record Keeping, and Reporting Requirements

No source testing, record keeping, or reporting requirements are associated with this new rule.

Implications for Sources

Affected Sources

There are approximately 640 construction and demolition-related businesses in Santa Barbara County.

Staff made a significant effort to inform affected sources of this proposed new rule. An informational mailing was sent to approximately 720 potentially affected sources and interested parties in September of 2009. Additionally, a public workshop was held in Buellton on October 28, 2009. This public workshop was held in the evening in conjunction with the Community Advisory Council meeting. The one member of the public that attended this workshop stated that the construction businesses are already complying with dust mitigation requirements and standards that are included in this rule as part of efforts to comply with requirements that are already in place such as CEQA requirements and storm water control regulations.

No additional costs are expected for the regulated community as a result of the rule *requirements*. However, if District Inspectors respond to a nuisance call, the cost of a Notice of Violation may be incurred if the source is not in compliance with the rule requirements.

Exempt Sources

The exemptions in Rule 345 are consistent with those of other surrounding Air Districts Fugitive Dust Rules. Construction or demolition of any structure having four or fewer dwelling units under one roof is exempt from this rule. This exemption applies to single family housing. Rule 345 exempts activities that include construction or demolition of a mobile home or of any structure having four or fewer dwelling units under one roof, and exempts activities performed in conjunction with emergency operations. In addition, demolition activities using blasting explosives and any active operation, open storage pile, or disturbed surface area demonstrated to be in conflict with the California or Federal Endangered Species Acts, or a local, state, or federal water quality requirement, are exempt from the rule provisions.

Implications for District Budget

There are no routine or ongoing costs associated with the adoption and implementation of proposed Rule 345. The only District cost involved will be the cost of District compliance staff activities associated with response to complaint and/or nuisance calls for these subject activities; past complaint log data indicate these calls are rare and occur only occasionally.

Comparison to Existing Federal, State and Local Requirements

Pursuant to the H&SC §40727.2, the District is required to identify all existing federal, state, and local air pollution control requirements that apply to the same equipment or source category as the rule proposed for adoption or modification by the District. These

other air pollution control requirements include federal New Source Performance Standards (NSPS), federal National Emissions Standards for Hazardous Air Pollutants (NESHAPs), Best Available Control Technology (BACT) and any other District rule applying to the same equipment.

Emission Reductions

The adoption of this new rule will create some reduction in PM₁₀ emissions. However, the amount is not quantifiable as this is primarily a complaint-driven rule.

Rulemaking Process and Schedule

Staff conducted a public workshop (October 28, 2009) and discussed this proposed new rule. Only one member of the public attended this workshop. This person stated that the construction businesses are already complying with dust mitigation requirements and standards that are included in this rule, as part of efforts to comply with requirements that are already in place such as CEQA requirements and storm water control regulations.

Staff took the draft rule to the Community Advisory Committee (CAC) on October 28, 2009. At the meeting, after discussing this proposed new rule, the CAC recommended that the Board adopt Rule 345 as presented by the District staff with one minor revision to the definition of "Earth Moving Activities". The CAC motion was passed 13 to 1.

Public Review: Public Comments Submitted to Date

Attachments 3 and 4 contain public comments received at the public workshops held in October 2009, written comments received to date and staff responses for this proposed rule. District staff have not received any public comments on this new rule to date.

Public comments are being accepted up until this Board Hearing.

Cost-Effectiveness

According to the 2005 CARB staff report for SB 656, the cost involved in creating and implementing this Construction and Demolition Dust Rule is approximately \$ 368 per ton (adjusted from 2001 for 2008 costs) for construction and \$238 per ton (adjusted from 2001 for 2008 costs) for demolition activities. This cost effectiveness information includes the cost of water, dust suppressant, equipment, and labor necessary to comply with the rule requirements. There is no established District threshold for cost effectiveness for PM emission reductions, however the Board set a cost effectiveness limit of \$1000/ton for this rule and this proposed rule is well within that limit.

Rule 345 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.

California Environmental Quality Act

The California Environmental Quality Act (CEQA) requires environmental review for certain actions. This rulemaking project for new Rule 345, Control of Fugitive Dust from Construction and Demolition consists of dust mitigation requirements, some of which already exist. District staff found that the implementation of new Rule 345 would not result in any significant environmental impacts. The District determined that a Notice of Exemption (Attachment 6) will be filed for this rulemaking effort. CEQA Findings to be adopted by the District Board, as well as a discussion of the finding of a CEQA Guidelines Class 8 Categorical Exemption for new Rule 345, are provided in Attachment 1.

FISCAL IMPACT:

The cost of implementing proposed Rule 345 from complaint and/or nuisance calls.

SPECIAL INSTRUCTIONS:

Please send a certified minute order and signed resolution to Rebecca Armstrong, of the District, for transmittal to the Air Resources Board.

CONCURRENCES:

County Counsel.

ATTACHMENTS:

Resolution	
Attachment 1:	CEQA Findings
Attachment 2:	Rule Findings
Attachment 3:	Public Comments
Attachment 4:	Response to Public Comments
Attachment 5:	Proposed New Rule 345
Attachment 6:	Notice of Exemption (NOE) for CEQA

BOARD RESOLUTION

PROPOSED RULE 345

**CONTROL OF FUGITIVE DUST FROM
CONSTRUCTION AND DEMOLITION**

January 21, 2010

Santa Barbara County Air Pollution Control District

**260 North San Antonio Road, Suite A
Santa Barbara, California 93110**

(805) 961-8800

**RESOLUTION OF THE AIR POLLUTION
CONTROL DISTRICT BOARD OF THE COUNTY OF
SANTA BARBARA, STATE OF CALIFORNIA**

In the Matter of) **APCD Resolution No.**
)
Adopting Rule 345)
_____)

RECITALS

1. The Air Pollution Control District Board of the County of Santa Barbara (“Board”) is authorized to adopt, amend, or repeal rules and regulations pursuant to Health and Safety Code section 40725 *et seq.*

2. Pursuant to Health and Safety Code section 40001, the Board is required to adopt and enforce rules and regulations to achieve and maintain the state and federal ambient air quality standards.

3. The Board has determined that a need exists to create new Rule 345 (Control of Fugitive Dust from Construction and Demolition) for the purpose of compliance with Senate Bill 656 (Sher).

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1) This Board has held a hearing and accepted public comments in accordance with the requirements of Health and Safety Code section 40725 *et seq.*

2) The California Environmental Quality Act (“CEQA”) findings set forth in Attachment 1 of the Board Package dated January 21, 2010 (herein after “Board Package”) are hereby adopted as findings of this Board pursuant to CEQA and the CEQA guidelines.

3) The general rule findings set forth in Attachment 2 of the Board Package are hereby adopted as findings of this Board pursuant to Health and Safety Code section 40727.

4) The Responses to Public Comments set forth in Attachment 4 of the Board Package are hereby adopted as findings of this Board.

5) Rule 345 as set forth in Attachment 5 of the Board Package is hereby adopted as a rule of the Santa Barbara County Air Pollution Control District pursuant to Health and Safety Code section 40725 *et seq.*

6) The Board authorizes the Control Officer to transmit Rule 345 to the State Air Resources Board in compliance with applicable state and federal law. Additionally, the Board authorizes the Control Officer to do any other acts necessary and proper to obtain necessary approvals of the new rule by the California Air Resources Board and the United States Environmental Protection Agency.

PASSED AND ADOPTED by the Air Pollution Control District Board of the County of Santa Barbara, State of California, this 21st day of January, 2010, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:
TERRY DRESSLER
CLERK OF THE BOARD

By _____
Deputy

Chair, Air Pollution Control
District Board of the County of
Santa Barbara

APPROVED AS TO FORM:
DENNIS MARSHALL
SANTA BARBARA COUNTY COUNSEL

By _____
Deputy
Attorneys for the Santa Barbara
Air Pollution Control District

ATTACHMENT 1

CEQA FINDINGS

PROPOSED RULE 345,
CONTROL OF FUGITIVE DUST FROM
CONSTRUCTION AND DEMOLITION

January 21, 2010

Santa Barbara County Air Pollution Control District

260 North San Antonio Road, Suite A
Santa Barbara, California 93110

(805) 961-8800

ATTACHMENT 1

CEQA FINDINGS

The Santa Barbara County Air Pollution Control District (District) found that there is no potential for significant environmental impacts from the implementation of the new Rule 345, Control of Fugitive Dust from Construction and Demolition.

The Board finds that:

- The adoption and implementation of Rule 345 will not have significant adverse impacts on the environment.
- No relaxation in meeting ambient air quality standards for ozone will result. No cross-media impacts were identified.
- Pursuant to § 15300 and § 15308 of the CEQA Guidelines, the project does not have a significant effect on the environment, and is categorically exempt from the requirement for the preparation of environmental documents.

The District prepared a Notice of Exemption (Attachment 6 of the Board Package dated January 21, 2010) for the project. The District will file the Notice of Exemption with the County Clerk of the Board in compliance with State Public Resources Code § 21152(b).

California Environmental Quality Act

District staff has evaluated the environmental impacts related to Draft Rule 345, and has concluded that a Class 8 Categorical Exemption is applicable for this project. California Environmental Quality Act (CEQA) Guidelines Sections 15300 to 15332¹ include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of CEQA. Class 8 Categorical Exemptions (CEQA Guidelines Section 15308) apply to actions by regulatory agencies for protection of the environment. The Class 8 Categorical Exemption is further described as “*actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environmental degradation are not included in this exemption.*”

The project consists of a new Rule 345, Control of Fugitive Dust from Construction and Demolition. Pursuant to SB 656, and at the direction of the Board, District staff has developed new Rule 345, Control of Fugitive Emissions from Construction and Demolition.

Upon adoption of this new Rule 345, the District will have the ability to enforce dust mitigation measures that apply to construction and demolition sources. This rule will enable District Inspectors when on regular source inspections and when responding to complaint calls, to write Notices of Violation (NOVs) for subject sources that are causing a nuisance and are not adhering to the rule requirements. This reinforces other regulatory measures pertaining to dust control (e.g., CEQA-Fugitive Dust Mitigation Measures, California Storm Water Control Regulations, etc.) that are currently in place. The improved enforcement capability provided by Rule 345 will reduce particulate matter emissions.

The stated purpose of Draft Rule 345 is consistent with the Class 8 Categorical Exemption language of “*maintenance, restoration, enhancement, or protection of the environment.*” The Class 8 Categorical Exemption is used regularly by a wide array of regulatory agencies statewide and within Santa Barbara County for similar types of projects that involve no additional environmental impacts or relaxation of standards, and that do not call for the construction of any facilities.

District staff considered the provisions of Draft Rule 345 in the context of the above-stated CEQA exemption, and made the following conclusions:

- The draft rule includes a 20% opacity standard for construction and demolition projects in Section D.1. District Rule 302, Visible Emissions, already includes the 20% opacity limit that is included in Rule 345 Section D.1.; therefore, the opacity standard in the draft rule is consistent with current standards used by the District.

¹ Title 14 California Code of Regulations, Chapter 3, Guidelines for the Implementation of the California Environmental Quality Act, Article 19, Categorical Exemptions.

- The draft rule requirements that have specific dust control measures (Sections D.2. and D.3) pertain to preventative measures to control dust onsite as well as to control dust from truck hauling and track-out/carry-out. These measures include options for compliance and are consistent with the types of measures that are already recommended by District and utilized by various jurisdictions in Santa Barbara County for construction and demolition projects.
- Section D.4.a. of the rule is the only section that specifically calls for the use of water, and pertains only to demolition activities. The use of water for the purpose of dust minimization during demolition is consistent with the District's current recommendations. The District's standard dust conditions recommend applying water to sources of dust such as roads and material stockpiles. Also, the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) for Asbestos² requires the use of water for asbestos-containing materials, and District advisories pertaining to demolition and rebuild after fire damage have recommended the application of water to minimize particulate emissions. Therefore, the implementation of Section D.4.a. of Draft Rule 345 does not constitute a new water usage requirement.

In light of the above statements, District staff concludes that the implementation of Draft Rule 345 would not result in any new environmental impacts or a relaxation of air quality standards. Draft Rule 345 pertains to "protection of the environment" during construction and demolition activities and implementation of the rule does not involve any new construction or demolition activities. Therefore, the use of a Class 8 Categorical Exemption is appropriate for Draft Rule 345.

² SBCAPCD Rule 1001, National Emission Standards for Hazardous Air Pollutants, incorporates federal standards from Part 61, Chapter I, Title 40 of the Code of Federal Regulations. The requirements of Subpart M, National Emission Standard for Asbestos, are enforced by SBCAPCD.

ATTACHMENT 2

RULE FINDINGS

PROPOSED RULE 345,
CONTROL OF FUGITIVE DUST FROM
CONSTRUCTION AND DEMOLITION

January 21, 2010

Santa Barbara County Air Pollution Control District

260 San Antonio Road, Suite A
Santa Barbara, California 93110

(805) 961-8800

ATTACHMENT 2

RULE FINDINGS FOR PROPOSED RULE 345

Pursuant to California Health and Safety Code Section 40727, the Board makes the following findings for the adoption of Proposed New Rule 345, Control of Fugitive Dust from Construction and Demolition.

Necessity

The Board determines that it is necessary to adopt Rule 345, Control of Fugitive Dust from Construction and Demolition, to fulfill the commitment in Senate Bill (SB) 656, Sher Bill.

Authority

The Board is authorized under state law to adopt, amend, or repeal rules and regulations pursuant to Health and Safety Code Section 40000, and 40725 through 40728 which assigns to local and regional authorities the primary responsibility for the control of air pollution from all sources other than exhaust emissions from motor vehicles. Additionally, pursuant to Health and Safety Code Section 40702, the District Board is required to adopt rules and regulations and to do such acts as are necessary and proper to execute the powers and duties granted to it and imposed upon it by State law.

Clarity

The Board finds that proposed Rule 345 is sufficiently clear. The rule was publicly noticed, and reviewed by the Community Advisory Council. The rule is written or displayed so that persons directly affected by it can easily understand its meaning.

Consistency

The Board determines that proposed Rule 345 is consistent with, and not in conflict with or contradictory to, existing federal or state statutes, court decisions, or regulations with regard to the control of particulate matter from construction and demolition activities.

The air pollution control districts throughout the state of California that have construction and demolition fugitive dust control rules have adopted similar rules. Based on this evidence, the Board finds that the rules are consistent with neighboring air pollution control districts.

Nonduplication

The Board finds that proposed Rule 345 (Control of Dust from Construction and Demolition) does not impose the same restrictions as any existing state or federal regulation, and the proposed rule is necessary and proper to execute the powers and duties granted to, and imposed upon, the District.

Reference

The Board finds that we have authority under state law to adopt Rule 345 pursuant to Health and Safety Code Section 39002 which assigns to local and regional authorities the primary responsibility for the control of air pollution from all sources other than exhaust emissions from motor vehicles. Additionally, pursuant to Health and Safety Code Section 40702, the Board is required to adopt rules and regulations and to do such acts as are necessary and proper to execute the powers and duties granted to it and imposed upon it by state law.

Public Comment

Response to Comments

The Board has reviewed the response to comments included in Attachment 4 and hereby approves those responses to comments as findings.

ATTACHMENT 3

PUBLIC COMMENTS ON
PROPOSED RULE 345,
CONTROL OF FUGITIVE DUST FROM
CONSTRUCTION AND DEMOLITION

January 21, 2010

Santa Barbara County Air Pollution Control District

260 San Antonio Road, Suite A
Santa Barbara, California 93110
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ATTACHMENT 3

PUBLIC COMMENTS PROPOSED RULE 345, CONTROL OF FUGITIVE DUST FROM CONSTRUCTION AND DEMOLITION

As of January 15, 2010, the District has received public comments, from Vandenberg Air Force Base (see attached letter), on this proposed new rule.

ATTACHMENT 4

**DISTRICT RESPONSE TO
PUBLIC COMMENTS ON
PROPOSED RULE 345,
CONTROL OF FUGITIVE DUST FROM
CONSTRUCTION AND DEMOLITION**

January 21, 2010

Santa Barbara County Air Pollution Control District

**260 San Antonio Road, Suite A
Santa Barbara, California 93110**

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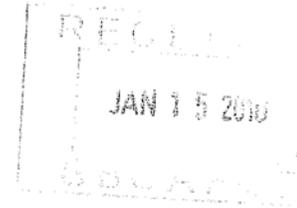
ATTACHMENT 4

DISTRICT RESPONSE TO PUBLIC COMMENTS PROPOSED RULE 345, CONTROL OF FUGITIVE DUST FROM CONSTRUCTION AND DEMOLITION

As of January 15, 2010, the District has received and responded to the public comments received from Vandenberg Air Force Base (VAFB). Please see attached response to comments.



DEPARTMENT OF THE AIR FORCE
30TH SPACE WING (AFSPC)



14 January 2010

MEMORANDUM FOR SANTA BARBARA COUNTY
AIR POLLUTION CONTROL DISTRICT

FROM: 30 CES/CEANQ
1515 Iceland Avenue
Vandenberg AFB CA 93437-6010

SUBJECT: Vandenberg Air Force Base Comments to Draft Rule 345, Control of
Fugitive Dust from Construction and Demolition Activities

1. Enclosed please find Vandenberg Air Force Base (VAFB) comments to the subject draft rule. VAFB appreciates the opportunity to review the draft rule and provide our comments and concerns.
2. Questions regarding these comments can be addressed to Dave Savinsky at (805)606-2068 or me at (805) 606-6863.

A handwritten signature in black ink, appearing to read "K. Harding".

KIMBERLEE HARDING
Environmental Protection Specialist
Asset Management Flight

1 Attachment:

1. Comments to draft rule 345

Vandenberg Air Force Base

Comments to Draft Rule 345, Control of Fugitive Dust from Construction and Demolition Activities

Exemptions:

B.5: Who determines when this rule conflicts with the Endangered Species Acts and water quality requirements and how is the regulated community to know which regulation takes precedence? Potential conflicts between regulations and the applicable agencies could lead to confusion and violations for the regulated community.

Definitions:

a. Active Operations: Suggest this definition be modified as follows for clarity. "...or vehicular movement on unpaved surfaces *associated with construction/demolition activities.*" Potential enforcement action could occur from non-construction associated vehicles driving on unpaved roads in an area defined as a facility where a construction project is occurring.

b. Open Storage Pile: The term "silt" is used in this definition but is not defined in the Rule. Request the term "Silt" be defined in this rule for clarity.

c. Source: The definition of source in this rule appears to conflict with Stationary Source definitions in Rule 102.

General Comments:

1. Is the chip seal method of paving roads and parking lots which may be associated with the construction project regulated by this rule? Chip sealing is dusty but customary way of paving roads and parking lots. How is compliance with this rule to be achieved if chip sealing is used?
2. At what point does watering down a construction/demolition site conflict with storm water/waste water regulations and who makes such a determination? Suggest the governmental body with jurisdiction over storm water/waste water regulations make the determination.
3. Please clarify how the property line definition relates to federal properties.
4. What are the requirements and the process to certify a PM10 efficient street sweeper and are retrofit kits available for non-PM10 efficient sweepers?
5. Does this rule apply to areas around construction areas that must be mowed due to security requirements or to keep rattlesnakes down?

**DISTRICT RESPONSE TO PUBLIC COMMENTS
PROPOSED RULE 345,
CONTROL OF FUGITIVE DUST FROM CONSTRUCTION AND DEMOLITION**

Comment from	Comment	Staff Response
1. VAFB	<p>Exemptions: Section B.5: Who determines when this rule conflicts with the Endangered Species Acts and water quality requirements and how is the regulated community to know which regulation takes precedence? Potential conflicts between regulations and the applicable agencies could lead to confusion and violations for the regulated community.</p>	<p>The local, state or federal governmental agency responsible for the Endangered Species Act and/or water quality requirements will make this determination.</p>
2. VAFB	<p>Definitions: a: Active Operations: Suggest this definition be modified as follow for clarity, "...or vehicular movement on unpaved surfaces <i>associated with construction/demolition activities.</i>" Potential enforcement action could occur from non-construction associated vehicles driving on unpaved roads in an area defined as a facility where a construction project is occurring.</p>	<p>District staff have added this additional <i>italicized</i> text to this definition as requested.</p>
3. VAFB	Definitions:	District staff have added the term "Silt" to the

	<p>b. Open Storage Pile: The term “silt” is used in this definition but is not defined in the Rule. Request the term “Silt” be defined in this rule for clarity.</p>	list of definitions as requested.
4. VAFB	<p>Definitions: c. Source: The definition of source in this rule appears to conflict with Stationary Source definitions in Rule 102.</p>	There is no “ <i>Source</i> ” definition in Rule 102. The definition for “ <i>Source</i> ” in this rule is rule specific. As a result, the “ <i>Source</i> ” definition in this rule <i>is intended</i> to be different from “ <i>Stationary Source</i> ” definition in Rule 102.
5. VAFB	<p>General Comments: 1. Is the chip seal method of paving roads and parking lots which may be associated with the construction project regulated by this rule? Chip sealing is dusty but customary way of paving roads and parking lots. How is compliance with this rule to be achieved if chip sealing is used?</p>	This rule is complaint driven. If a public complaint is made to the District regarding this “chip seal” method of paving that is associated with a construction project, then a District inspector will respond to the site and will ensure that all rule requirements are being complied with.
6. VAFB	<p>General Comments (continued): 2. At what point does watering down a construction/demolition site conflict with storm water/waste water regulations and who makes such a determination? Suggest the governmental body with jurisdiction over storm water/waste</p>	The local, state or federal governmental agency responsible for the Endangered Species Act and/or water quality requirements will make this determination.

	water regulations make the determination.	
7. VAFB	General Comments (continued): 3. Please clarify how the property line definition relates to federal properties.	The property line definition in this rule equates to the stationary source line (outside boundary line) for all facilities including federal properties.
8. VAFB	General Comments (continued): 4. What are the requirements and the process to certify a PM10 efficient street sweeper and are retrofit kits available for non-PM10 efficient sweepers?	Please see definition Section C.13. for “PM ₁₀ -Efficient Street Sweeper”. A copy of the SCAQMD Rule 1186 Appendix A has been provided as an attachment to District staff’s response letter to VAFB. There are no retrofit kits available, however, the majority of businesses and cities currently have PM10 efficient sweepers.
9. VAFB	General Comments (continued): 5. Does this rule apply to areas around construction areas that must be mowed due to security requirements or to keep rattlesnakes down?	Yes, if this active operation of “mowing” is being done specifically in association with (or specifically for) a construction and/or demolition project.

ATTACHMENT 5

PROPOSED RULE 345,
CONTROL OF FUGITIVE DUST FROM
CONSTRUCTION AND DEMOLITION

January 21, 2010

Santa Barbara County Air Pollution Control District

260 San Antonio Road, Suite A
Santa Barbara, California 93110

(805) 961-8800

RULE 345. CONTROL OF FUGITIVE DUST FROM CONSTRUCTION AND DEMOLITION ACTIVITIES. (Adopted 1/21/2010)

A. Applicability

This rule applies to any activity associated with construction or demolition of a structure or structures. Activities subject to this regulation are also subject to Rule 302 (Visible Emissions) and Rule 303 (Nuisance).

B. Exemptions

The provisions of this rule shall not apply to the following:

1. Construction or demolition activities in support of any structure having four or fewer dwelling units under one roof.
2. Construction or demolition activities in support of a mobile home.
3. Emergency operations conducted during and in response to life-threatening situations, or in conjunction with any officially declared disaster or state of emergency.
4. Demolition activities using blasting explosives, which have been permitted by the California Division of Industrial Safety. However, any other activities capable of generating fugitive dust emissions and performed in conjunction with explosive blasting, including but not limited to vehicle transport of materials produced by blasting operations, are not exempt from complying with provisions of this rule or other applicable rules.
5. Any active operation, open storage pile, or disturbed surface area demonstrated to be in conflict with the California or Federal Endangered Species Acts, or a local, state, or federal water quality requirement.

C. Definitions

1. **“Active Operations”** means activities capable of generating fugitive dust, including, but not limited to, bulk material handling, earth-moving activities, construction or demolition activities, or vehicular movement on unpaved surfaces associated with construction/demolition activities.
2. **“Blower”** means any device used, designed or operated to produce a current of air by fuel, electricity or other means to push, propel or blow dirt, cuttings, refuse or debris.
3. **“Bulk Material”** means sand, gravel, aggregate material less than two inches in length or diameter, and other organic or inorganic particulate matter.
4. **“Construction/Demolition Activities”** means any on-site mechanical operations conducted in preparation of, or related to, the building, alteration, rehabilitation, demolition, or improvement of property, including, but not limited to, grading, excavating, loading, crushing, cutting, planning, or ground breaking.
5. **“Disturbed Surface Area”** means that portion of the ground that has been physically moved, uncovered, destabilized, or otherwise modified from its undisturbed natural soil condition, thereby increasing the potential for emissions of fugitive dust. This definition excludes those areas that have:
 - a. been restored to a natural state, such that the vegetative ground cover and soil characteristics are similar to adjacent or nearby natural conditions;
 - b. been paved or otherwise covered by a permanent structure.

6. **“Earth-Moving Activities”** means any operations using equipment to move or uncover soil, and includes, but is not limited to the following:
 - a. grading, earth cutting and filling operations;
 - b. loading or unloading of dirt or bulk materials;
 - c. adding to or removing from open storage piles, soil mulching.
7. **“Emergency”** means any sudden, unexpected occurrence involving a clear and imminent danger, demanding immediate action to prevent or mitigate the loss of, or damage to, life, health, property, or essential public services.
8. **“Erosion”** means the movement and deposition of land surface materials by water or wind primarily as a result of human activities.
9. **“Fugitive Dust”** means any solid particulate matter that becomes airborne, directly or indirectly as a result of the activities of any person(s), except for emissions from an exhaust stack.
10. **“Open Storage Pile”** means any accumulation of bulk material or soil with five percent or greater silt content which is not fully enclosed, covered or chemically stabilized, and which attains a height of three feet or more and a total surface area of 150 or more square feet. Silt content level is assumed to be five percent or greater unless a person can show, by sampling and analysis in accordance with ASTM Method C-136 or other equivalent method approved in writing by the California Resources Board, that the silt content is less than five percent.
11. **“Outbound”** means trucks that are going in the direction away from (i.e., leaving or exiting) a construction or demolition site or property.
12. **“Paved Road”** means a public or private improved street, highway, alley, public way, or easement that is covered by typical roadway materials including, but not limited to, asphalt paving or concrete.
13. **“PM₁₀ - Efficient Street Sweeper”** means any street sweeper certified by the Control Officer or by the South Coast Air Quality Management District as meeting the Particulate Matter (10 microns and less) capture efficiency criteria outlined in South Coast Air Quality Management District Rule 1186 Appendix A.
14. **“Property Line”** means the boundary of an area owned or legally controlled by a person causing fugitive dust emissions or allowing such emissions. This may include all or portions of a legal parcel or parcels.
15. **“Silt”** means loose sedimentary material with rock particles usually 1/20 millimeter or less in diameter.
16. **“Source”** means all activities and operations causing emissions that are located on contiguous property under common ownership or control, including associated facility-access and haul roads.
17. **“Structure”** means anything constructed, erected or demolished, the use of which requires location on the ground or attachment to something located on the ground, excluding trailers and sidewalks. Structure shall not include any public highway or roadway.
18. **“Track-Out/Carry-Out”** means any bulk materials that adhere to and agglomerate on the exterior surfaces of motor vehicles and/or equipment (including tires), or are inadvertently carried out, and that fall onto a paved road, creating visible roadway dust.
19. **“Visible Dust Emissions”** means any solid particulate matter that can be seen in the air without the aid of instruments other than corrective lenses.

20. **“Visible Roadway Dust”** means any sand, soil, dirt, or other solid particulate matter which can be seen upon paved public road surfaces and which can be removed by a vacuum sweeper, or a wet sweeper under normal operating conditions.

D. Requirements and Standards

1. **Visible Fugitive Dust Beyond the Property Line.** No person shall engage in any construction or demolition activity or earth moving activities subject to this rule in a manner that causes discharge into the atmosphere beyond the property line visible dust emissions of 20% opacity or greater for a period or periods aggregating more than 3 minutes in any 60 minute period.
2. **Truck Hauling.** No person, including facility or site owner or operator of source, shall load or allow the loading of bulk materials or soil onto outbound trucks unless at least one of the following dust prevention techniques is utilized:
 - a. Use properly secured tarps or cargo covering that covers the entire surface area of the load or use a container-type enclosure.
 - b. Maintain a minimum of 6 inches of freeboard below the rim of the truck bed where the load touches the sides of the cargo area and ensure that the peak of the load does not extend above any part of the upper edge of the cargo area.
 - c. Water or otherwise treat the bulk material to minimize loss of material to wind or spillage.
 - d. Other effective dust prevention control measures approved in writing by the Control Officer.
3. **Track-Out/Carry-Out.** Visible roadway dust as a result of active operations, spillage from transport trucks, erosion, or track-out/carry-out shall be controlled as outlined below:
 - a. Visible roadway dust shall be minimized by the use of any of the following track-out/carry-out and erosion control measures that apply to the project or operations: track-out grates of gravel beds at each egress point, wheel-washing at each egress point during muddy conditions, soil binders, chemical soil stabilizers, geotextiles, mulching, or seeding; and
 - b. Visible roadway dust shall be removed at the conclusion of each work day when bulk material removal ceases, or every 24 hours for continuous operations. If a street sweeper is used to remove any track-out/carry-out, only a PM₁₀-Efficient Street Sweeper shall be used. The use of blowers for removal of track-out/carry-out is prohibited.
4. **Demolition.** The following work practice standards shall be followed during structure demolition:
 - a. As necessary to prevent visible emissions, the structure shall be wet (with sufficient quantities of water to prevent the generation of visible dust plumes) prior to removal. Wetting shall continue as necessary during active removal and the debris reduction process.
 - b. Unless the owner or operator certifies in writing to the Control Officer prior to the demolition that safety concerns require otherwise, the structure shall be demolished inward toward the building pad and roof and walls shall be laid down so that they fall inward and not away from the building.

E. Rule Effective Date

Unless otherwise specified, the provisions of this rule as adopted on January 21, 2010 become effective July 21, 2010

APPROVED AS TO FORM:

DENNIS MARSHALL
SANTA BARBARA COUNTY COUNSEL

By _____
Deputy
Attorneys for the Santa Barbara
Air Pollution Control District

ATTACHMENT 6
NOTICE OF EXEMPTION

PROPOSED RULE 345,
CONTROL OF FUGITIVE DUST FROM
CONSTRUCTION AND DEMOLITION

January 21, 2010

Santa Barbara County Air Pollution Control District

260 San Antonio Road, Suite A
Santa Barbara, California 93110

(805) 961-8800

NOTICE OF EXEMPTION

TO: Clerk of the Board
County of Santa Barbara
105 East Anapamu Street
Santa Barbara, CA 93101

FROM: Santa Barbara County
Air Pollution Control District
260 N. San Antonio Rd, Suite A
Santa Barbara, CA 93110

Project I.D.: District Rule 345, Control of Fugitive Dust from Construction and Demolition

Project Title: District Proposed New Rule 345, Control of Fugitive Dust from Construction and Demolition

Location: Santa Barbara County, California

Project Description: The project consists of a new Rule 345, Control of Fugitive Dust from Construction and Demolition. Pursuant to SB 656, and at the direction of the Board, District staff has developed new Rule 345, Control of Fugitive Emissions from Construction and Demolition.

Upon adoption of this new Rule 345, the District will have the ability to enforce dust mitigation measures that apply to construction and demolition sources. This rule will enable District Inspectors when on regular source inspections and when responding to complaint calls, to write Notices of Violation (NOVs) for subject sources that are causing a nuisance and are not adhering to the rule requirements. This reinforces other regulatory measures pertaining to dust control (e.g., CEQA-Fugitive Dust Mitigation Measures, California Storm Water Control Regulations, etc.) that are currently in place. The improved enforcement capability provided by Rule 345 will reduce particulate matter emissions.

Exempt Status: (Check One)

- Ministerial (Section 21080 (b)(1); 15268)
- Declared Emergency (Section 21080(b)(3); 15269(a))
- Emergency Project (Section 21080(b)(4); 15269(b)(c))
- Categorical Exemption
CEQA Section(s): 15308
- Statutory Exemption
Code Number(s):
- General Exemption under CEQA Section 15061(b)(3)

Reasons Why Project is Exempt: The project is an action taken by the District as a result of Senate Bill 656 is being implemented for the purpose of providing protection of the environment. There will be no relaxation of standards, and no cross-media impacts will result. Rule 345 pertains to control of fugitive dust during construction and demolition activities, and implementation of the rule does not involve any new construction or demolition activities.

Contact Person: Molly Pearson

Telephone: (805) 961-8838

Bobbie Bratz
Technology and Environmental Assessment Division

Date: January 21, 2010

Clerk of the Board Date and Time Stamp

Terry Dressler
Air Pollution Control Officer