

Agenda Date: October 18, 2007  
Agenda Placement: Regular  
Estimated Time: 60 Minutes  
Continued Item: Yes

## Board Agenda Item

TO: Air Pollution Control District Board  
FROM: Terry Dressler, Air Pollution Control Officer  
CONTACT: Tom Murphy, 961-8857  
SUBJECT: Proposed New APCD Rule 213, Fees for Registration Programs

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### RECOMMENDATION

Hold the second public hearing to receive testimony on proposed new APCD Rule 213, Fees for Registration Programs and consider options A or B below.

- A. Adopt the attached Resolution (Attachment 1) which will result in the following actions:
  1. Adoption of new Rule 213 (Attachment 2).
  2. Adoption of the California Environmental Quality Act (CEQA) findings given in Attachment 3.
  3. Adoption of the associated findings (Attachment 4) in support of adopting new Rule 213 pursuant to Health and Safety Code Section 40727 regarding authority, necessity, clarity and consistency. The findings acknowledge public comments on the new rule (Attachment 6) and staff's responses to these comments (Attachment 7).
- B. Consider an alternative option for new Rule 213(Attachment 8), provide any additional direction to staff, and set a public hearing date to consider adoption of new Rule 213 on December 20, 2007.

### DISCUSSION

The California Air Resources Board recently adopted a State Airborne Toxic Control Measure (ATCM) for stationary diesel engines (California Code of Regulations Title 17, section 93115 as revised in April 2007). Your Board adopted new APCD Rule 1201, Registration of Agricultural Diesel Engines, on August 16, 2007 to implement the registration requirements of the ATCM as it applies to diesel engines used in agricultural operations. At the August hearing, staff also presented proposed new APCD Rule 213, Fees for Registration Programs, which would require owners or operators of equipment subject to Rule 1201

registration provisions to pay an initial \$200 registration fee and an annual \$200 registration renewal fee in order for the APCD to partially recover the costs associated with implementing and enforcing the ATCM. As with all APCD fees, this fee may be adjusted annually based on the California Consumer Price Index. During discussion of this proposed new rule, the Board directed staff to double-check our original revenue/expenditure analysis and to evaluate alternatives to assessing fees for the new agricultural engine registration program. The original proposal as presented at the August hearing is called Option A, and the alternative fee proposal, which is discussed below, is called Option B.

Pursuant to Section 39666(d) of the California Health and Safety Code, the APCD is responsible under state law to enforce the stationary diesel engine ATCM. The ATCM, which applies to engines rated over 50 horsepower, has significant requirements for both existing and new diesel engines used in agricultural activities, including a requirement that all engines that are subject to the regulation be registered with the local air district. Existing engines greater than 50 horsepower are required to be registered or permitted by the APCD by March 1, 2008. New engines greater than 50 horsepower that are installed after January 1, 2005 must be registered with the APCD by November 14, 2007. New engines installed between August 18, 2007 and November 14, 2007 have 90 days after installation to apply for APCD registration.

### **Basis for Proposed New Rule 213 (Option A)**

The ATCM requires engine owners or operators to pay “any fees assessed by the District for the purpose of recovering the District’s cost of implementing and enforcing” the ATCM (California Code of Regulations, Title 17, section 93115.8(d)).

The proposed fee in new Rule 213 was developed jointly with San Luis Obispo APCD and Ventura APCD staff to facilitate **reciprocity** of the registration programs in all three counties. This means that an engine registered in one of the three counties can operate in any of the three counties without additional fees or paperwork. The basis for the fee was estimated by calculating the tasks and level of effort required to implement the ATCM for an assumed population of 300 engines in Santa Barbara County. The tasks required to implement the ATCM include:

- Program development
- Program oversight
- Outreach
- Source identification
- Data entry
- Inspections
- Air Toxic Hot Spots implementation, advertising and outreach

The level of effort for each of these tasks was estimated over a five-year span to account for the varying level of effort required for program start-up and longer-term implementation. Our cost/revenue analysis assuming 300 engines in Santa Barbara County found that the five-year annualized costs to implement the program as follows:

- Annual revenue: \$60,000 per year
- Annual costs: \$65,500 per year
- Cost recovery: approximately 90 percent

- Annual level of effort: approximately one-third of a full time employee
- Level of effort per engine registered in the program: less than two hours per year

Since the ATCM is an unfunded mandate, the APCD does not receive any additional funding for this program; all un-recovered costs from implementing this ATCM and its requirements will be spread among other discretionary revenue sources.

With Option A, staff recommends a fee of \$200/year for each engine registered in the program. This proposed fee is roughly equivalent to the Air Resources Board's annual portable engine registration fee of \$207. The proposed fee is lower than the permit costs for comparable engines subject to District permits which can average between \$300 - \$500 per year or more for larger engines.

An important aspect of implementing and enforcing the ATCM is the need to conduct ongoing engineering, customer service support and compliance work and to account for those costs. We used a five year time horizon to estimate costs for ongoing work as the program transitions from program development to program implementation and enforcement. Estimating the costs to implement and enforce the ATCM beyond five years introduces too much uncertainty into the estimates and is not recommended. A detailed discussion of ongoing costs to implement and enforce the ATCM is provided in the next section.

### **Stakeholder and Board Member Feedback**

Starting in February 2007, APCD staff held several meetings with affected stakeholders and provided three APCD Board briefings. We met with the Santa Barbara County Agricultural Advisory Committee (March 8 and August 1), the Santa Barbara APCD Agricultural Air Quality Coalition (February 22 and June 14), the Santa Barbara County Farm Bureau (May 31), and the Growers-Shippers Vegetable Association of Santa Barbara and San Luis Obispo Counties (August 14th). A synopsis of the comments and concerns that we heard regarding Rule 213 include the following points:

1. Emergency standby engines should pay reduced fees due to lower use.
2. Tier III engines should pay reduced fees because they are the cleanest engines currently available.
3. There should be a fee reduction for owners/operators of multiple engines.
4. Why are there ongoing tasks and costs associated with implementing and enforcing the ATCM?
5. Why are costs calculated over a five year period?
6. Take a look at our expenditure analysis and double-check the costs to implement and enforce the ATCM.
7. What are the implications of not recovering 100 percent of the costs associated with implementing and enforcing the ATCM?

Items 1 and 2 above will be addressed in the next section that presents an alternative fee proposal (Option B) that will provide for reduced fees for emergency standby engines and less polluting Tier III engines. Staff considered item 3 and concluded that providing reduced fees for multiple engines was a difficult option to propose since we do not see significant cost reductions for compliance activities required to implement and enforce the ATCM on multiple engines, as each individual engine will need to be inspected periodically.

Item 4 requires a summary of the ongoing engineering and compliance work that we need to perform to implement and enforce the ATCM. Ongoing engineering work includes:

- Registration issuance
- Engineering evaluation assistance
- Customer service providing education and guidance on ATCM requirements
- Database development, data input, maintenance, and reporting to ARB
- GIS application for remote engines
- Engine replacement guidance
- Air Toxics evaluation assistance

Ongoing compliance work includes:

- Periodic inspections and reports
- Pre-inspection registration review and scheduling
- Verification of engine types and locations
- Tracking remotely located engines
- Verification of engine replacements
- Locating un-registered engines
- Compliance follow-up
- Enforcement and violation program administration

While ongoing engineering and compliance activities will vary depending on individual engines registered, we have reviewed our ongoing costs estimates with San Luis Obispo APCD and Ventura APCD staff and believe that we have estimated these costs to the best of our ability. It is very important to recognize that the ATCM has several compliance trigger dates for engine replacement, including 2010, 2011, 2014, and 2015. This range of compliance dates will necessitate continued effort by APCD staff to ensure compliance with the ATCM.

Item 5 was addressed in the previous section which presents the basis for the staff recommended Option A fee structure for Rule 213. We have revisited our workload estimates in response to item 6, as discussed above. Item 7 is discussed in the next section.

### **Summary and Implications of Alternative Rule 213 (Option B)**

To address comments relating to reduced fees for both emergency standby engines and Tier III engines, staff has developed an alternative fee option that the Board may consider. There are several important assumptions that have been made to provide this alternative, including:

- We assume a population of 300 agricultural engines and estimate numbers by age, location and use
- Fees are based on age, location and use
- Emergency standby and Tier III (Tier IV in the future) engines pay less, all other engines pay more for registration
- Fees recover 90% of district's estimated annual costs (\$60,000 revenue vs \$66,000 annual cost)

Importantly, this option also **precludes** having a **reciprocal** registration program with San Luis Obispo and Ventura. Thus, operators using engines in more than one county will need to register those engines in the counties in which they are used, resulting in a higher cost than Option A.

On average over the next five years, we estimate that there will be approximately 15 standby engines, 25 Tier III engines, and 240 Tier 0, Tier 1, or Tier II engines registered with the APCD. To maintain a 90 percent revenue recovery rate and provide a reduced fee for emergency standby engines and Tier III engines (or Tier IV in the future) of \$100 per engine per year, the fees for all remaining higher-polluting engines must be set at \$243 per engine per year. As we are still attempting to recover only 90 percent of the costs to implement and enforce the ATCM, all unrecovered costs will be spread among other discretionary revenue sources. The implications of not recovering 100 percent of our costs are that other permitted sources will be subsidizing any costs not recovered through Rule 213.

## **SUMMARY OF STAFF RECOMMENDATION**

Staff recommends that the Board adopt Option A, proposed new Rule 213 as presented today and at the August 16, 2007 hearing. We believe that it is important to have a program that is reciprocal with San Luis Obispo and Ventura County and that the proposed fee is our best estimate of the costs to implement and enforce the ATCM. If the Board wishes instead to consider the alternative Option B fee approach, an additional hearing will be necessary, which would be set for December 20, 2007.

## **COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

To comply with the California Environmental Quality Act (CEQA), the APCD prepared a Notice of Exemption pursuant to CEQA Guidelines section 15307. The APCD analyzed the proposed Rule and found no potential for reasonably foreseeable environmental impacts from the method of compliance, i.e., submitting an application for annual registration of the subject diesel engines. The Rule is an action taken by a regulatory agency as authorized by state law to assure clean air and protect public health.

### **Attachments:**

1. Board Resolution
2. Rule 213
3. CEQA Findings
4. Rule Findings
5. CEQA Notice of Exemption
6. Public Comments
7. Response to Comments
8. Alternative Option for New Rule 213