

FEATHER RIVER AIR QUALITY MANAGEMENT DISTRICT

STAFF REPORT

PROPOSED RULE AMENDMENT:

REGULATION X RULE 4.3 EXEMPTIONS FROM PERMIT

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1.0 EXECUTIVE SUMMARY

The Feather River Air Quality Management District (FRAQMD, District) Regulation IV sets the guidelines for the District permit and registration program. Rule 4.3 contains groups of sources that are not subject to District permitting requirements.

In September 2003, the California Legislature adopted Senate Bill 700. This bill removed a long-standing statute that exempts agricultural operations from obtaining operating permits for sources of air pollution. The bill requires agricultural sources with emissions greater than or equal to one-half the threshold for a federal major source to obtain a District permit, and sources that meet or exceed the threshold for a federal major source to obtain a federal operating permit from the United States Environmental Protection Agency (USEPA) or a local district with a federally approved federal operating permits program.

The proposed amendments will update District rules and regulations to be consistent with state and federal law. The exemption will be such that District rules will be equally, but not more stringent than state law requires.

2.0 BACKGROUND

On September 22, 2003, Governor Davis signed into law Senate Bill 700, authored by Senator Florez. The bill amended air pollution control requirements in the California Health and Safety Code (CH&S) to include requirements for agricultural sources of air pollution.

Agricultural sources of air pollution were the focus of the bill for two main reasons. First, California law had previously exempted these sources from requirements to obtain air permits. This resulted in a conflict between state and federal law, and California faced sanctions if it failed correct the problem. Had the bill not been signed, new and expanding businesses in the state would have faced significant and costly hurdles to obtain air permits required under federal law, and the state would have lost billions of dollars in federal transportation funding.

There was another reason for the bill to focus on air pollution resulting from agricultural activities, however. In some parts of the state, air quality is very bad and agricultural activities are significant contributors to the problem. Poor air quality harms public health; it causes and/or exacerbates asthma, respiratory illnesses, heart and lung disease, and early mortality. Children and the elderly are especially vulnerable. Parts of California, such as the San Joaquin Valley and the South Coast, have some of the highest asthma rates in the nation. Senate Bill 700 was intended to address the agricultural contribution to these problems while recognizing that the problems are not the same, nor is the contribution of agricultural sources, in all the regions of the state.

The bill did six main things: (1) It defined "agricultural source" in state law; (2) It removed the restriction from state law that prevented air districts from requiring permits for agricultural sources; (3) It established specific permitting and exemption requirements for agricultural sources; (4) It required emission control regulations in areas that do not attain National Ambient Air Quality Standards for PM10; (5) It required permits and emissions mitigation for Confined Animal Facilities (CAFs) that are defined by ARB as "large" (based on a review of current scientific data about emissions from CAFs and the impact of those emissions on attainment of ambient air standards); and (6) It required CAPCOA to compile a clearinghouse of information about available emissions control and mitigation for agricultural activities. It is important to note

that the bill did not remove the exemption for agricultural operations from the general odor-nuisance provisions of the Health and Safety Code.

3.0 LEGAL MANDATES

FEDERAL MANDATE

Title V of the Federal Clean Air Act establishes the requirements for major sources of air pollution to obtain operating permits. These permits can either be issued by the USEPA or by a local or state agency with an approved operating permits program pursuant to 40 CFR part 70. Interim approval was granted to FRAQMD on June 2, 1995 and granted full approval on November 30, 2001. Environmental groups submitted comments to the USEPA requesting to repeal the approvals for operating permits programs in California, since state law conflicted with federal law. At the time, Federal laws required major agricultural sources of air pollution to obtain permits while California laws prevented districts from permitting agricultural sources. In response, the USEPA withdrew approval of the operating permits program for 34 California districts, including FRAQMD effective November 14, 2002. USEPA re-approved the California programs on November 7, 2003 (effective January 1, 2004), after SB 700 was passed.

STATE MANDATES

Senate Bill 700 require that major agricultural sources of air pollution and certain non-major agricultural sources of air pollution obtain stationary source permits from local districts. Currently, FRAQMD Rule 4.3 exempts all agricultural sources from obtaining district permits. The proposed amendments to Rule 4.3 will remove those exemptions for these sources pursuant to CH&S Section 40724.

Chapter 4.5, Protect California Air Act of 2003 Requirements: In an effort to minimize the potential impact of federal New Source Review (NSR) reform, the state legislature passed the Protect California Air Act of 2003 (SB 288). The Act (CH&S Code § 42500 through 42507) is intended to minimize the impact of the relaxation of the federal new source review program on air quality in California. The Act prohibits districts from making revisions to their State Implementation Plan (SIP) approved NSR rules in existence on December 30, 2002 that would result in weakening their rules. These revisions include but are not limited to, revisions to rule applicability, changing the definition of modification so that NSR is not triggered or triggered at a higher level of emission increases, or relaxing Best Available Control Technology (BACT), air quality analysis, and public participation requirements. The Act does permit districts to deviate from these requirements under specified conditions.

The amendments to Rule 4.3 meet this mandate. The amendments will require previously exempted sources to obtain district permits including major source permits, and apply BACT to new and modified sources. The amendments will not relax the requirements to obtain a permit and undergo NSR analysis; will not relax the requirement to apply BACT to a new or modified emission unit; will not relax the requirements or thresholds for performing an air quality impact analysis as required by Rule 10.1 G; will not relax the requirements for monitoring, recordkeeping, and reporting; will not relax the requirement for regulating any air pollutant; and will not relax any requirement for public participation.

4.0 PROPOSED RULE SUMMARY

The proposed amended Rule 4.3 will strike the exemption for agricultural sources (Rule 4.3 (i)) and incorporate new exemption language pursuant to CH&S Sections 39011.5, 40724, 42301.16 and 42310.

The proposed amended exemption will exempt agricultural sources, unless they meet the definition of “agricultural source of air pollution” in CH&S Section 39011.5 and one or more of the following apply:

- The source is a major stationary source or undergoes a major modification pursuant to District Rule 10.1, New Source Review.
- The source is a major source of Hazardous Air Pollutants (HAPs) pursuant to District Rule 10.7, Toxics New Source Review.
- The source is a Large Confined Animal Facility as defined in CH&S Section 40724.6.
- The source’s actual emissions equal or exceed one-half the major source thresholds listed in District Rules 10.1 or 10.7.

Because the Clean Air Act does not account for fugitive emissions in the calculations for a major source, unless otherwise specified, CH&S Section 39011.5 specified criteria for emissions to be included for calculation. Emission sources include internal combustion engines used in agricultural operations, excluding those engines used to propel implements of husbandry (tractors, vehicles, etc.) and emissions generated from confined animal facilities. In general, dust generated from the working of fields is not included in the calculations for a major source.

Table 1 and Figure 1 describe which sources will be required to obtain permits, depending on the following scenarios. Percentages are based on Major Source Thresholds.

Table 1: Emission Scenarios vs. Title V Threshold

	Potential Emissions (% of Major Source Threshold)	Actual Emissions (% of Major Source Threshold)
Scenario 1	125%	100%
Scenario 2	125%	75%
Scenario 3	125%	25%
Scenario 4	75%	75%
Scenario 5	75%	25%
Scenario 6	50%	25%

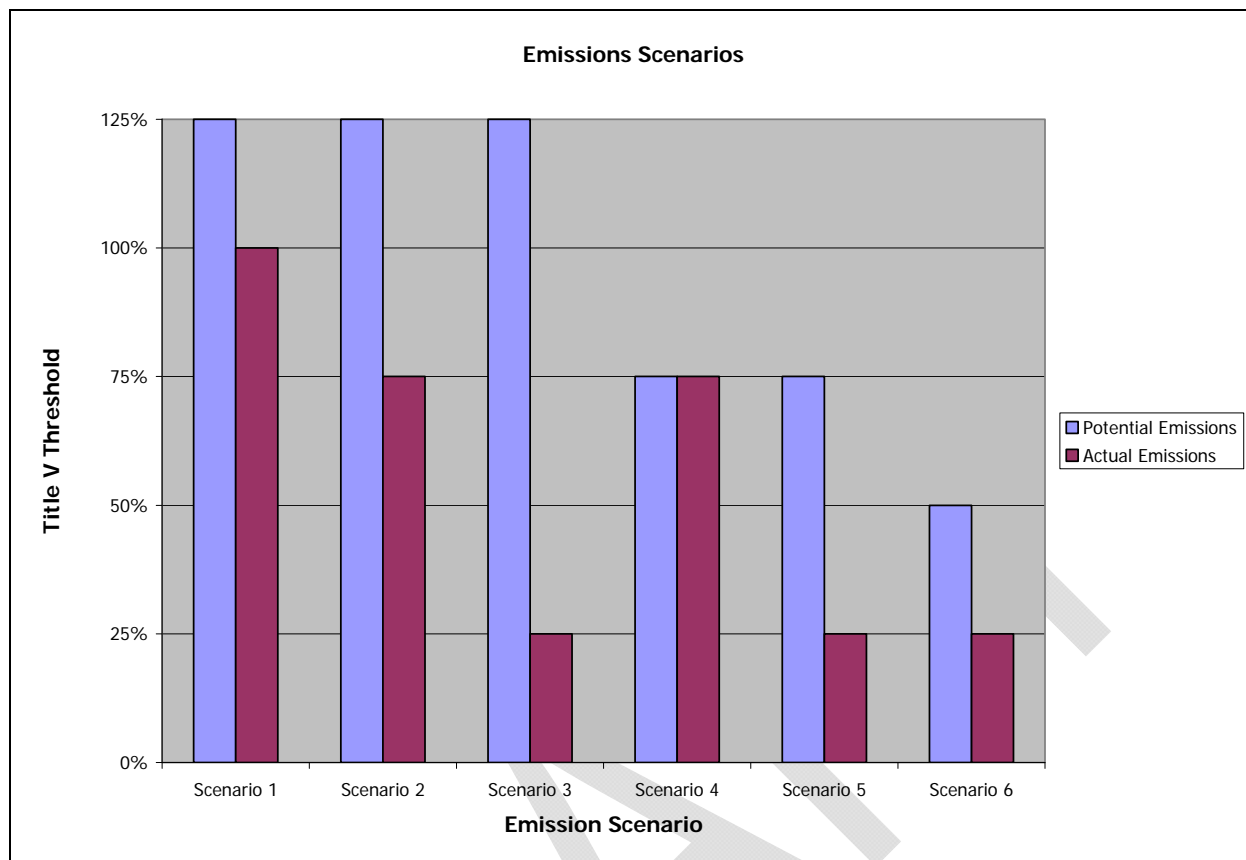


Figure 1: Emission Scenario vs. Title V Threshold

Table 2 shows each scenario's applicability to permitting requirements.

Table 2: Permit Applicability

	No Permit Required	District Permit Required	Title V Permit Required
Scenario 1			X
Scenario 2			X
Scenario 3			X
Scenario 4		X	
Scenario 5	X		
Scenario 6	X		

Table 3 lists the FRAQMD Title V thresholds & Agricultural Source Permit thresholds for all pollutants. The table breaks out the different requirements for the SFNA portion of the District and the non-SFNA portion of the District.

Table 3: Title V and Agricultural Source Thresholds by Attainment Area

Pollutant	Area of District	Title V Threshold	Agricultural Source Threshold
NOx	SFNA	25 tons/year	12.5 tons/year
VOC	SFNA	25 tons/year	12.5 tons/year
NOx	North FRAQMD	100 tons/year	50 tons/year
VOC	North FRAQMD	100 tons/year	50 tons/year

PM10	All FRAQMD	100 tons/year	50 tons/year
SOx	All FRAQMD	100 tons/year	50 tons/year
CO	All FRAQMD	100 tons/year	50 tons/year
HAPs	All FRAQMD	25 tons/year	12.5 tons/year

5.0 IMPACTS OF THE NEW RULE

EMISSION IMPACTS

The amendments do not implement an emission control measure. However, the proposed amendments will subject a new source category to obtain stationary permits and as a result, new and modified sources will be required to comply with BACT when applicable. The District does not anticipate significant emission increases or decreases as a result of the new requirements.

SOCIOECONOMIC IMPACT

California Health and Safety Code § 40728.5 requires, in part, that:

“Whenever a district intends to propose the adoption, amendment or repeal of a rule or regulation that will significantly affect air quality or emissions limitations, that agency shall, to the extent that data are available, perform an assessment of the socioeconomic impacts of the adoption, amendment, or repeal of the rule or regulation.”

However, districts with a population of less than 500,000 persons are exempt from the provisions of CH&S § 40728.5 (a). The District’s population is estimated to be approximately 155,679, below the 500,000 person threshold. Therefore, a socioeconomic analysis for this rulemaking is not required.

COST IMPACTS

California Health and Safety Code Section 40703 requires that all air quality districts consider and make public findings relating to the cost effectiveness of implementing an emission control measure.

Agricultural sources required to obtain permits will be subject to the existing permit fees pursuant to District Rules 7.4, Application Fees, and Rule 7.6, Annual Renewal Fees. An agricultural source required to obtain a Title V permit will be subjected to the Title V Supplemental Fee (Rule 10.3 G)

Application fees will include the application filing fee (currently \$113.00), and evaluation and inspection fees billed at District’s hourly rate (currently \$70.00/hour). Application fees are variable and may increase or decrease depending on the complexity of the project, completeness of application and the information provided, travel time, inspection time, and whether or not meetings are required to discuss compliance options. Table 4 shows a breakdown of Annual Renewal Fees.

Table 4: Annual Renewal Fees Based on District Rule 7.6 (effective 7/1/05)

	Units	Non-Major Source	Major Source (Title V)
Annual Renewal Filing Fee	per permit	\$81.00	\$81.00
Emissions Fees:			
NOx	per ton/year	\$8.00	\$41.02
VOC	per ton/year	\$8.00	\$41.02
PM	per ton/year	\$8.00	\$41.02
SOx	per ton/year	\$8.00	\$41.02
CO	per ton/year	\$2.00	\$41.02
Evaluation Fees:	per hour	\$70.00	\$70.00

Annual renewal fees for similar sized non-major sources for ranged from \$830.00 to \$3,198.00 for 2006-07. Title V fees ranged from \$3,101.38 to \$16,671.87 for 2006-07.

6.0 ENVIRONMENTAL REVIEW AND COMPLIANCE

The amendments to Rule 4.3: Exemptions from Permit is an action of adopting approved federal and state requirements. As the District has not exercised discretion by modifying federal requirements, it is ministerial in nature and the amendments to Rule 4.3: Exemptions from Permit is statutorily exempt from CEQA pursuant to Section 15268 of the state CEQA Guidelines.

7.0 REQUIRED FINDINGS

California Health and Safety Code Section 40727 (a) requires that prior to adopting or amending a rule or regulation, an air district's board must make findings of necessity, authority, clarity, consistency, non-duplication and reference. The findings must be based on the following:

1. Information presented in the District's written analysis, prepared pursuant to CH&S § 40727.2;
2. Information contained in the rulemaking records pursuant to CH&S § 40728; and
3. Relevant information presented at the Board's hearing for the rule.

Table 5 below describes the finding and the basis for making the finding.

Table 5: Necessary Findings

FINDING	FINDING DETERMINATION
Necessity: The District must find that the rulemaking demonstrates a need exists for the rule or for its amendment or repeal. (CH&S § 40727 (b)(1))	Rule 4.3 It is necessary for the District to adopt the proposed rule to comply with state law pursuant to Senate Bill 700 (2003-04 legislative session)
Authority: The District must find that a provision of law or of a state or federal regulation permits or requires the District to adopt, amend, or repeal the rule. (CH&S § 47027(b)(2))	Rule 4.3 The District is authorized to adopt rules and regulations by CH&S § 40001, 40702, 40919, 41010, and 42300.

FINDING	FINDING DETERMINATION
Clarity: The District must find that the rule is written or displayed so that its meaning can be easily understood by the persons directly affected by it. (CH&S § 40727(b)(3))	Rule 4.3 The District has reviewed the proposed rule and determined that they can be easily understood by the affected industry. In addition, the record contains no evidence that the persons directly affected by the rule cannot understand the rule.
Consistency: The rule is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations. (CH&S § 40727(b)(4))	Rule 4.3 The proposed amendments resolve conflicts with and are not contradictory to existing statutes, court decisions, or state or federal regulations.
Non-Duplication: The District must find that either: 1) The rule does not impose the same requirements as an existing site or federal regulation; or 2) that the duplicative requirements are necessary or proper to execute the powers and duties granted to, and imposed upon the District. (CH&S § 40727(b)(5))	Rule 4.3 The proposed rule duplicates state and federal rules or regulations for permitting programs. The duplicative requirements are necessary in order to execute the powers and duties imposed upon the District.
Reference: The District must refer to any statute, court decision, or other provision of law that the District implements, interprets, or makes specific by adopting, amending or repealing the rule. (CH&S § 40727(b)(6))	Rule 4.3 The proposed rule implements agricultural permitting requirements pursuant to CH&S 39011.5, 42310, 40724 et seq. and required by the Clean Air Act (U.S.C. Title 42 sec. 7661)

8.0 COMPARISON WITH OTHER APPLICABLE REGULATIONS AND REQUIREMENTS

California Health and Safety Code Section 40727.2 requires districts to prepare a written analysis (may be in the form of a matrix) that identifies all existing federal air pollution control requirements, including, but not limited to, emission control standards constituting BACT, that apply to the same equipment or source type as the rule or regulation proposed for adoption or modification by the District. In addition, the analysis shall identify any other District rule or regulation that applies to the same equipment or source type.

Under CH&S § 40727.2(g), the District finds that the proposed rule does not strengthen or impose new emission limits on existing sources. However newly constructed or modified sources will be required to apply BACT where applicable.

9.0 PUBLIC NOTICE

The notice for this rule adoption was mailed to all permitted sources and to neighboring air districts. In addition, the notice was published in the Appeal Democrat on August 17, 2007 and posted on the Feather River AQMD website in accordance with Health and Safety Code 42311.

United States EPA (Pending)

Air Resources Board (Pending)

Public Workshop (Pending)