

Yolo-Solano Air Quality Management District
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PROPOSED ADOPTION OF RULE 3.20, OZONE TRANSPORT MITIGATION

FINAL STAFF REPORT

December 1, 2004

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I. EXECUTIVE SUMMARY

On December 8, 2004, the Yolo-Solano Air Quality Management District (District) Board of Director's will consider the proposed adoption of Rule 3.20, OZONE TRANSPORT MITIGATION.

This rule will establish the District's program designed to achieve no net increase in emissions of ozone precursors from new or modified stationary sources that emit or have the potential to emit 10 tons or greater per year of an ozone precursor.

Because the proposed adoption is an "action taken to protect the environment" by imposing new requirements, the proposal falls under a categorical exemption pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15308. Therefore, staff have prepared a Notice of Exemption to satisfy the requirements of the CEQA.

A BACKGROUND

Overview of source category

As this rule affects all ATC applications for new and modified emission units, there is no one source category that is affected by this rule, however all permitted stationary sources could be affected by this rule.

II. DISCUSSION OF RULE 3.20 REQUIREMENTS

State Mandates

Ozone transport

The following is a citation of the California Air Resources Board's (ARB's) webpage (<http://www.arb.ca.gov/aqd/transport/mitigation/mitigation.htm>) relating to ozone transport:

"The CCAA requires the Air Resources Board (ARB or Board) to assess the contribution of ozone and ozone precursors from upwind regions on ozone concentrations that violate the State ozone standard in downwind areas. The Act also directs ARB to establish mitigation requirements for upwind districts designed to mitigate their impact on downwind districts.

ARB originally established mitigation requirements in 1990, which are contained in title 17, California Code of Regulations, sections 70600 and 70601. These regulations were amended in 1993, and more recently, in 2003. The Board adopted amendments on May 22, 2003, which were approved by the Office of Administrative Law on December 4, 2003, and became effective on January 3, 2004.

These amendments added two new requirements for upwind Districts. These amendments require upwind Districts to (1) consult with their downwind neighbors and adopt "all feasible measures" for ozone precursors and (2) amend their "no net increase" thresholds for permitting so that they are equivalent to those of their

downwind neighbors no later than December 31, 2004. The amendments clarify that upwind districts are required to comply with the mitigation requirements, even if they attain the State ozone standard in their own district, unless the mitigation measures are not needed in the downwind district.”

For clarification, the California Health and Safety Code section 39610 actually requires that not later than December 31, 1989, the ARB shall identify each air basin in which transported air pollutants from upwind areas outside the air basin cause or contribute to a violation of the state ambient air quality standard for ozone, and shall identify the **district** of origin of the transport air pollutants. Under Title 17, Division 3, Chapter 1, Subchapter 1.5, Article 6, Section 70500, the State did not identify the origin of transport by Districts, but by region. This section has identified the “Broader Sacramento Area” as transporting to the Upper Sacramento Valley, the San Joaquin Valley, the San Francisco Bay Area, and the Mountain Counties. Included in the definition of “Broader Sacramento Area” is the **Yolo-Solano Air Pollution Control District**.

The first new requirement of all feasible measures is addressed through the planning process, including through the triennial plan update.

The second requirement is being directly implemented through Rule 3.20. The Yolo-Solano District is specifically required to “require the implementation, by December 31, 2004, of a stationary source permitting program designed to achieve no net increase in the emissions of ozone precursors from new or modified stationary sources that emit or have the potential to emit 10 tons or greater per year of an ozone precursor. (Article 6, 70600(b)(1)(C))”

Because this rule is being adopted solely to implement the state ozone transport mitigation requirements and the reductions were not relied on in the District’s attainment plan, this rule will not be submitted for inclusion in the State Implementation Plan (SIP).

Senate Bill 288 (SB288)

SB288, the "Protect California Air Act of 2003," was signed into State law on September 22, 2003, with an effective date of January 1, 2004. That law, developed in response to concerns regarding federal changes to New Source Review (NSR), places restrictions on changes that California air pollution control districts can make to their local NSR rules.

SB 288 prohibits California districts from changing their NSR rules in ways that would make them less stringent than the rules that existed on December 30, 2002, as submitted to the EPA for inclusion into the SIP. December 30, 2002 is the day before the first federal NSR changes were published in the Federal Register.

This new rule is independent of the District’s Rule 3.4, NEW SOURCE REVIEW and therefore is not affected by SB288.

III. DISCUSSION OF PROPOSED RULE 3.20

The proposed sections for this rule are as follows:

Section 100 General

Section 101 - This section states that this rule is being adopted for the purpose of implementing the California Ozone Transport Mitigation requirements codified under California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 1.5, Article 6, section 70600(b)(1)(C)

Section 102 - This section clarifies that this rule only applies to emissions units which require an Authority to Construct (ATC) by Rule 3.1 which are deemed complete after December 8, 2004, and are subject to Rule 3.4, NEW SOURCE REVIEW.

Section 110 - This section establishes exemptions from this rule. The purpose of this section is to exclude applications that can't possibly trigger the requirements of this rule. This will simplify calculations for District staff as well as help sources understand the potentially duplicative requirements.

Section 200 Definitions

Section 201 - This section defines a new term for "Stationary Source Potential to Emit (SSPE)" which is used to determine which sources trigger mitigation by this rule.

Section 300 Standards

Section 301.1 - This section requires that if a source's SSPE is equal to or above 20,000 for VOC or NO_x, that calculations must be performed to determine if mitigation is required.

Section 301.2 - This section requires that if mitigation calculations are required, then mitigation shall be provided based on the quantities determined by the procedures in section 401.

Section 400 Administrative Requirements

Section 401 - This section specifies the calculation methodology for determining the quantity of mitigation required, if any. For sources that were over the 20,000 lb/year threshold prior to the current application, the quantity of mitigation required is equal to the increase in annual emissions, minus the quantity of any offsets provided under Rule 3.4. For sources that were under the 20,000 lb/year threshold prior to the current application, the quantity is equal to the increase over the threshold, minus the quantity of any offsets provided under Rule 3.4.

Section 402 - This section specifies that mitigation must come from within the Sacramento Valley Air Basin, and if from a different District, must meet the requirements of California Health and Safety Code.

Section 403 - This section specifies the procedure for calculating the SSPE for stationary sources.

IV. IMPACTS OF THE PROPOSED RULE

Emissions Impacts

With new mitigation requirements for sources equal to or greater than 10 tons per year for VOC and NO_x, this new rule will reduce emissions overall, however staff can not quantify the potential reductions as this rule applies to future applications.

Cost Impact

Section 40703 of the CH&SC requires that the District consider and make public its findings relating to the cost effectiveness of implementing an emission control measure.

Impacts on businesses: Proposed adoption of Rule 3.20 will require mitigation for sources that didn't previously require mitigation. Of the approximately 750 permitted facilities in the District, there are only approximately 15 that have a potential to emit between 10 tons per year and 15 tons per year for VOC or NO_x.

Using the upper end of costs seen in the past few years for VOC and NO_x Emission Reduction Credits (ERCs) of \$36,000/ton, the additional 5 tons per year could cost up to \$180,000, but only if the source proposes future modifications that result in increase in emissions. However, it is expected that many of the sources would elect to take a lower potential to emit rather than provide ERCs.

Cost to District - Staff does not anticipate an additional need for staff resources due to these revisions.

Socioeconomic Impacts

California Health and Safety Code Section 40728.5 (a) requires the District, in the process of the adoption of any rule or regulation, to consider the socioeconomic impact if air quality or emission limits may be significantly affected. However, districts with a population of less than 500,000 persons are exempt from the provisions of Section 40728.5 (a). The District's population is estimated to be approximately 300,000 and well below the 500,000 person threshold. Therefore, a socioeconomic analysis for this rulemaking is not required.

Incremental Cost Effectiveness

Health and Safety Code Section 40920.6 requires an assessment of the incremental cost-effectiveness for proposed retrofit regulations relative to ozone, CO, SO_x, NO_x, and their precursors. Incremental cost-effectiveness is defined as the difference in control costs divided by the difference in emission reductions between two potential control options that can achieve the same emission reduction goal of a regulation.

This rule is not a retrofit regulation and therefore an incremental cost effectiveness analysis for this rulemaking is not required.

V. ENVIRONMENTAL IMPACTS OF METHODS OF COMPLIANCE

California Public Resource Code Section 21159 requires the District to perform an environmental analysis of the reasonably foreseeable methods of compliance. The analysis must include the following information for the proposed adoption of Rule 3.20:

- a. An analysis of the reasonably foreseeable environmental impacts of the methods of compliance.
- b. An analysis of the reasonably foreseeable mitigation measures.
- c. An analysis of the reasonably foreseeable alternative means of compliance with the rule or regulation.

Table 1 lists all reasonably foreseeable compliance methods, the environmental impacts of those methods, and measures that could be used to mitigate the environmental impacts.

TABLE 1. Environmental Impacts, Mitigation Measures, and Alternatives

Compliance Methods	Reasonably Foreseeable Environmental Impacts	Reasonably Foreseeable Mitigation Measures
Take a lower limit on potential to emit for VOC and NOx (so as to avoid mitigation)	Air Quality Impacts: The lower limits will result in less emissions of VOC and NOx.	No mitigation necessary
Surrender Emission Reduction Credits (ERCs) for VOC or NOx for projects with potential to emit equal to or greater than 10 tons per year	Water Impacts: No impact	No mitigation necessary
	Human Health Impacts: With less emissions of VOC and NOx, there is expected to be less emissions of Hazardous Air Pollutants (HAPs).	No mitigation necessary
	Solid Waste Disposal Impacts: No impact.	No mitigation necessary
	Noise Impacts: No impact.	No mitigation necessary

This analysis demonstrates the adoption of proposed Rule 3.20 will not have a significant effect on the environment or humans due to unusual circumstances. In addition, the adoption of proposed Rule 3.20 establishes new mitigation levels for VOC and NOx which is action taken to protect the environment. Therefore, staff have determined that the project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15308, Actions by Regulatory Agencies for Protection of the Environment. Staff prepared a Notice of Exemption (NOE) to meet the CEQA Guidelines (Attachment B).

VI. REGULATORY FINDINGS

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

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

The required findings are:

Necessity: The rule adoption is required in order to meet the state's ozone transport regulation requirements (title 17, California Code of Regulations, sections 70600 and 70601) by December 31, 2004.

Authority: The District is authorized to adopt rules and regulations by California Health and Safety Code, Sections 40001, 40702, 40716, 41010 and 41013. (H&SC Section 40727 (b)(2)).

Clarity: District staff believes this rule 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. (H&SC Section 40727(b)(3)).

Consistency: The proposed rule does not conflict with and is not contradictory to, existing statutes, court decisions, or state or federal regulations. (H&SC Section 40727(b)(4)).

Non-Duplication: The proposed rule does not duplicate any state laws or regulations, regarding the attainment and maintenance of state and federal air quality limits. (H&SC Section 40727(b)(5)).

Reference: This rule incorporates provisions of the California Ozone Transport Regulation.

VII. COMPARISON WITH OTHER APPLICABLE REGULATIONS AND REQUIREMENTS

Health and Safety Code Section 40727.2 requires districts to prepare a written analysis (usually 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 applies 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. The analysis shall compare the following specific elements:

Element for comparison	District Rule 3.20	Federal Regulation
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Averaging provisions and units associated with emission limits	Emission limits from Rule 3.20 apply on an annual basis	Specifications from 51.165 are on an annual basis
Operating parameters and work practice requirements	Not applicable for Rule 3.20	42 US Code 7503 (Clean Air Act Section 173) does not specify operating parameters or work practice requirements.
Monitoring, reporting, and recordkeeping requirements	No record keeping requirements for sources	42 US Code 7661c (Clean Air Act Section 504) has specific requirements for major sources.
Any other element that warrants review	N/A	N/A

This Rule 3.20 does not impose any specific control standards that would constitute best available control technology (BACT) standards. The District Rule 3.4 does apply to the same equipment or source types, however the requirements for this rule are in addition to any Rule 3.4 requirements.

VIII. PUBLIC COMMENTS AND STAFF RESPONSES

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 Vacaville Reporter, Woodland Democrat, and Davis Enterprise. A copy of the notice was also provided to all libraries in the District's jurisdiction.

A copy of the notice, the preliminary staff report, and preliminary draft rule language was placed on the District's webpage.

The only comments received for this rule were from the ARB.

- C1. ARB commented that the provisions of Rule 3.20 should be incorporated into Rule 3.4 because "they ultimately are New Source Review requirements and have been evaluated as such by the Air Resources Board".
- R1. The ozone transport mitigation requirements are not ultimately (or otherwise) New Source Review requirements and it would be incorrect for the ARB to consider them as such. New Source Review is a federal program with its' basis in the Clean Air Act. Ozone Transport Mitigation is a state program from the California Clean Air Act.

The staff report and rule language (section 101, purpose) make it clear that this rule 3.20 is being adopted to implement the California Ozone Transport Mitigation Requirements. While many California Districts have adopted the California Health and Safety code requirements related to their plan requirements in their NSR rules,

the actual CH&SC section 40919 requirements for districts with serious air pollution does not discuss nor reference New Source Review.

- C2. ARB commented that the funding of the Small Facility Bank must come from emission reductions that are real, quantifiable, surplus, permanent, and enforceable and recommended related changes.
- R2. The preliminary draft rule language included provisions for the District to establish a Small Facility Banking Account to provide credits to minor sources that triggered mitigation by this rule (similar to the Bay Area Air Quality Management District). Based on comments from ARB, the District has decided to delete the language related to a Small Facility Banking Account.
- C3. ARB commented that the definition of a non-major source should not be tied directly to the Federal Clean Air Act because of provisions in Senate Bill 288.
- R3. The District do not agree with that SB288 applies to this rule, however as the reference to non-major source related to the Small Facility Banking Account, the term has now been deleted.
- C4. ARB commented that the calculation of the amount of offsets required for this rule should take into account the offset ratios of Rule 3.4 and credit the amount of ERCs surrendered for Rule 3.4 prior to applying the offset ratios.
- R4. The District is unsure of the basis for this comment. Section 70600 of state law does not include any language regarding offset ratios. The requirement for offset ratios is not mentioned in State law, and only comes from the Federal Clean Act section 182(d)(2). For a State ozone transport mitigation “no net increase” program, the District would consider that whatever quantities of credits surrendered would count towards the “net” program.

IX. REFERENCES

Senate Bill 288, Chapter 4.5 (commencing with section 42500) of Part 4 of Division 26 of the California Health & Safety Code.

Ozone Transport Mitigation Regulations, Title 17, California Code of Regulations, sections 70600 and 70601.

ATTACHMENT A

**PROPOSED RULE 3.20, OZONE TRANSPORT MITIGATION
STRIKE-OUT UNDERLINE VERSION**

Rule 3.20 OZONE TRANSPORT MITIGATION

ADOPTED (December 8, 2004)

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100 **GENERAL**

101 **PURPOSE:** The purpose of this Rule is to implement the California Ozone Transport Mitigation requirements codified under California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 1.5, Article 6, section 70600(b)(1)(C).

102 **APPLICABILITY:** This Rule shall apply to all applications for Authority to Construct (ATC) submitted pursuant to Rule 3.1, GENERAL PERMIT REQUIREMENTS, which are deemed complete after December 8, 2004, and which are subject to Rule 3.4, NEW SOURCE REVIEW.

103 **SEVERABILITY:** If a court of competent jurisdiction issues an order that any provision of this Rule is invalid, it is the intent of the Board of Directors of the District that other provisions of this Rule remain in full force and effect, to the extent allowed by law.

110 **EXEMPTIONS:** The following emissions units shall be exempt from this rule:

110.1 Emissions units located at a stationary source which has a post-project stationary source potential to emit (SSPE) of less than 20,000 pounds per calendar year for Volatile Organic Compounds (VOC) and less than 20,000 pounds per calendar year for Oxides of Nitrogen (NOx).

110.3 Emissions units which do not emit VOC or NOx.

110.4 Emission units which are exempt from sections 302 or 303 of Rule 3.4, NEW SOURCE REVIEW.

200 **DEFINITIONS:** Unless otherwise defined below, the terms in this Rule are as defined in Rule 1.1, GENERAL PROVISIONS AND DEFINITIONS.

201 STATIONARY SOURCE POTENTIAL TO EMIT (SSPE): The potential to emit for a stationary source calculated in accordance with section 403.

300 STANDARDS

301 NO NET INCREASE REQUIREMENTS: Requirements shall be triggered on a pollutant by pollutant basis.

301.1 Calculations to determine the quantity of mitigation to be provided, if any, shall be performed if the post-project Stationary Source Potential to Emit (SSPE) equals or exceeds the following:

<u>Pollutant</u>	<u>lbs/year</u>
<u>Volatile organic compounds</u>	<u>20,000</u>
<u>Nitrogen oxides</u>	<u>20,000</u>

301.2 If mitigation calculations are required pursuant to section 301.1, sufficient mitigation shall be provided as calculated according to the procedures specified in Section 401.

400 ADMINISTRATIVE REQUIREMENTS:

401 CALCULATION OF MITIGATION REQUIRED: Calculations shall be performed separately for each pollutant, expressed in terms of pounds per year. The quantity of "no net increase" mitigation that shall be required shall be one of the following, whichever is applicable.

a. For pollutants with a pre-project SSPE greater than 20,000 pounds per year, subtract the pre-project SSPE and the quantity of emission offsets required by Rule 3.4, NEW SOURCE REVIEW, if any, from the post-project SSPE.

b. For pollutants with a pre-project SSPE less than or equal to 20,000 pounds per year, subtract 20,000 pounds and the quantity of emission offsets required by Rule 3.4, NEW

SOURCE REVIEW, if any, from the post project SSPE.

If the calculation yields a negative number, then no mitigation is required by this rule.

402 LOCATION OF MITIGATION: Mitigation provided shall meet the following criteria:

402.1. All mitigation credits shall come from within the Sacramento Valley Air Basin.

402.2. Mitigation credits which are obtained pursuant to banking actions in a district other than the Yolo-Solano Air Quality Management District may be used only if the APCO has reviewed the credit conditions issued by the other district in which the proposed emission credits were obtained and made a determination that the impact of using such emission credits meets the requirements of District Rules and Regulations and Health and Safety Code Section 40709.6.

403 CALCULATION OF STATIONARY SOURCE POTENTIAL TO EMIT (SSPE): The SSPE shall be equal to the sum of emissions from the following:

403.1 The potential to emit for all emissions units at the stationary source, except as provided in 403.1.a, 403.1.b,& 403.1.c, based on current Permits to Operate and valid ATC permits, including the current application(s) being reviewed.

a. For an emissions unit with both a valid ATC and a valid PTO, or a unit with multiple valid ATCs, use the ATC or PTO with the highest potential to emit in this calculation.

b. Any potential to emit represented by a PTO which has been cancelled or has expired and emission reduction credits have not been applied for pursuant to Rule 3.5, EMISSION REDUCTION CREDITS

shall not be included in this calculation.

- c. Any potential to emit represented by an ATC or PTO for an emissions unit which is exempt from sections 302 or 303 of Rule 3.4, NEW SOURCE REVIEW shall not be included in this calculation.

403.2 Emission reduction credits obtained pursuant to Rule 3.5, EMISSION REDUCTION CREDITS, from emissions units installed at the stationary source after January 1, 1977.

ATTACHMENT B

NOTICE OF EXEMPTION FROM CEQA GUIDELINES

ATTACHMENT C
RESOLUTION NO. 04-13

RESOLUTION NO. 04-13**RESOLUTION ADOPTING YOLO-SOLANO AIR QUALITY MANAGEMENT DISTRICT
RULE 3.20, OZONE TRANSPORT MITIGATION**

WHEREAS, California Health and Safety Code section 40702 provides that an air quality management district shall adopt rules and regulations as may be necessary or proper to execute the powers and duties granted to, and imposed upon, the district by Division 26 of the Health and Safety Code; and

WHEREAS, Health and Safety Code section 40727 provides that before adopting, amending, or repealing a rule or regulation, a district board shall make findings of necessity, authority, clarity, consistency, nonduplication, and reference, based upon information developed pursuant to section 40727.2, information in the rulemaking record maintained pursuant to section 40728, and relevant information presented at the public hearing required by section 40725; and

WHEREAS, section 15308 of the CEQA Guidelines provides that actions taken by regulatory agencies as authorized by state law to assure the maintenance, restoration, or enhancement of the environment where the regulatory process involves procedures for protection of the environment, are categorically exempt from CEQA review (Class 8 Categorical Exemption); and

WHEREAS, the purpose of adopting District Rule 3.20 is to meet the requirements of California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 1.5, Article 6, Section 70600(b)(1)(C).

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Yolo-Solano Air Quality Management District hereby finds, authorizes, directs and declares as follows:

1. The Board of Directors has considered and hereby adopts by reference the staff report prepared in this matter.
2. The Board of Directors makes the following findings pursuant to Health and Safety Code section 40727:
 - a. Necessity: Information in the District's rulemaking record maintained pursuant to Health and Safety Code section 40728 demonstrates a need for adopting District Rule 3.20;
 - b. Authority: Health and Safety Code section 40702 permits the District to adopt District Rule 3.20;
 - c. Clarity: District Rule 3.20 as proposed is written so that its meaning can be easily understood by the persons directly affected by it;
 - d. Consistency: District Rule 3.20 as proposed is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations;
 - e. Nonduplication: District Rule 3.20 as proposed does not impose the same requirements as an existing state or federal regulation;
 - f. Reference: By adopting District Rule 3.20, the District meets the requirements of California

Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 1.5, Article 6, Section 70600(b)(1)(C).

3. The Board of Directors finds that the District has complied with the procedural requirements set forth in Chapters 6 and 6.5 of Part 3 of Division 26 of the Health and Safety Code.
4. The Board of Directors finds that adopting District Rule 3.20 is an action taken by a regulatory agency as authorized by state law to assure the maintenance, restoration, or enhancement of the environment where the regulatory process involves procedures for protection of the environment, and is therefore categorically exempt from CEQA review as a Class 8 Categorical Exemption.
5. The Board of Directors hereby adopts District Rule 3.20, OZONE TRANSPORT MITIGATION, as set forth in Exhibit 1 (Attachment A of the Staff Report), which is attached and incorporated by reference. The adoption is effective December 8, 2004.

PASSED AND ADOPTED by the Board of Directors of the Yolo-Solano Air Quality Management District this 8th day of December, 2004, by the following vote:

Ayes:

Noes:

Absent:

Abstain:

Marci Coglianese, Chair
Board of Directors
Yolo-Solano Air Quality Management District

Attest:

Approved as to Form:

Kay Mahorney, Clerk
Board of Directors

Hope Welton, District Counsel

ATTACHMENT D
WRITTEN COMMENTS RECEIVED



**STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
AIR RESOURCES BOARD**

P. O. Box 2815
Sacramento, California 95812

November 22, 2004

**Transmittal
of
ARB Staff Rule Review Comments**

To: Mr. Paul Hensleigh
Air Quality Engineer
Yolo Solano Air Quality Management District
Tele phone Number: (530) 757-3665
e-mail: Phensleigh@ysaqmd.org

From: Alex Krichevsky, (916) 324-6222
e-mail: akrichev@arb.ca.gov

The following draft rule, which was considered at a public workshop held by your District staff on November 17, 2004, was received by us on November 3, 2004, for our review:

Rule 3.20 Ozone Transport Mitigation

We have reviewed the rule and have the comments on the following pages. We believe that our comments are important to the effectiveness and enforceability of Rule 3.20.

On several occasions in October and November, 2004, Ms. Liz Ota of our Regulatory Assistance Section, Project Assessment Branch, Stationary Source Division, and Ms. Beverly Werner, Manager, Regulatory Assistance Section, discussed these comments with you and Matt Ehrhard of the District.

We received the rule after the ARB/CAPCOA protocol date. When we receive draft rules at least 30 days before a workshop, our staff is afforded sufficient time to conduct a thorough, comprehensive review, and you will likely receive our comments well before the workshop.

If you have any questions about our comments, please contact Ms. Beverly Werner, Manager of the Regulatory Assistance Section, at (916) 322-3984.

Rule review comments are on the following pages

Date: November 22, 2004

Air Resources Board Staff Comments on
Yolo Solano Air Quality Management District
Draft Rule 3.20

Rule 3-20 Ozone Transport Mitigation

1. General: The provisions of proposed Rule 3.20 should be incorporated into Rule 3-4. The provisions of proposed Rule 3.20, because they ultimately are New Source Review requirements and have been evaluated as such by the Air Resources Board, should be incorporated into the District's New Source Review Rule (Rule 3.4). The rule language needs to make clear how the new offset requirements mesh with existing offset requirements.

The District has taken the position that the requirements under proposed Rule 3.20 are not New Source Review requirements but are instead narrow, unrelated transport mitigation requirements. However, we disagree with the District's argument; proposed Rule 3.20 applies only to new and modified sources subject to New Source Review and strengthens an existing New Source Review offset requirement. It is required by State transport mitigation regulations that mandate a lowering of the District's New Source Review offset thresholds for ozone precursors to 10 tons per year. Funding of the proposed Small Facility Bank must come from emission reductions that are real, quantifiable, surplus, permanent, and enforceable.

- ? Using a facility growth allowance from the District's air quality plan to fund the bank is not consistent with those criteria. We recommend that this aspect of the proposed rule be dropped.
- ? If the Small Facility Bank is to be established using emission reductions from unclaimed equipment and facility shutdowns, more details should be included in the rule regarding the procedures for banking such shutdowns to assure that they meet the criteria listed above.

Reporting requirements need to be built into the proposed Small Facility Bank. Proposed Section 500 would require the District to maintain a registry of all the emission reductions added and removed from the Small Facility Bank, but does not currently include any reporting requirements. We recommend that the District add the requirement that it regularly submit a report on the deposits and withdrawals from the Small Facility Bank to the District Board and to the Air Resources Board for approval. For an example, see the Bay Area Air Quality Management District's NSR rule (Rule 2-2) provision for a no-net-increase status report to be submitted for ARB approval in conjunction with the triennial update of the clean air plan. Further, we recommend that the registry include details regarding the sources of the emission reductions, the sources that receive them for use as offsets, and any other details needed to assure that the credits deposited into the bank are valid and are used properly. We recommend that the District work with us ahead of time to develop the format of the registry/report before this proposed rule provision becomes effective.

4. Section 301.3: The definition of a "non-major source" should not be tied directly to the Federal Clean Air Act. When the federal one-hour ozone standard is replaced by the 8-hour ozone standard in mid-2005, federal law will allow major source threshold relaxation. Such changes in thresholds would be barred by State law (Senate Bill 288).
5. Section 401: The calculation of the amount of emission offsets required under proposed Rule 3.20 should take into account the offset ratios required under Rule 3.4. We recommend that the calculation procedures specify that the amount of offsets required by Rule 3.4 prior to the application of offset ratios is subtracted.