

Antelope Valley
Air Quality Management District



Draft
Staff Report

Proposed Amendment of
Rule 300 – Delinquency Penalty

For adoption on November 15, 2019

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STAFF REPORT
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STAFF REPORT

Rule 300 – *Delinquency Penalty*

I. PURPOSE OF STAFF REPORT

A staff report serves several discrete purposes. Its primary purpose is to provide a summary and background material to the members of the Governing Board. This allows the members of the Governing Board to be fully informed before making any required decision. It also provides the documentation necessary for the Governing Board to make any findings, which are required by law to be made prior to the approval or adoption of a document. In addition, a staff report ensures that the correct procedures and proper documentation for approval or adoption of a document have been performed. Finally, the staff report provides evidence for defense against legal challenges regarding the propriety of the approval or adoption of the document.

II. EXECUTIVE SUMMARY

On July 1, 1997 the Antelope Valley Air Pollution Control District (AVAPCD) was created pursuant to statute (former Health & Safety (H&S) Code §40106, A.B. 266-Knight Ch. 542, statutes of 1996) and assumed all air pollution control responsibilities from the South Coast Air Quality Management District (SCAQMD) for the area of Los Angeles County outside the South Coast Air Basin. The SCAQMD rules in effect within the jurisdiction of the AVAPCD remained in effect until the AVAPCD Governing Board superseded or amended them. On January 1, 2002 the AVAQMD was created pursuant to statute (H&S Code §41300 et seq.) to replace the AVAPCD. Once again the rules in effect at the time of the change remained in effect until the AVAQMD Governing Board superseded or amended them.

Rule 300 – *Major Facility Late Fee* was last amended 06/18/2013. The 06/18/2013 version is the current version in the AVAQMD rulebook. Over time the number of delinquent fees has increased along with resultant costs to the District for recovery of such delinquent fees. The amendments propose to retitle the rule *Delinquency Penalty* and apply it to all facilities. This action will encourage the timely payment of fees and allow the AVAQMD to recover costs related to delinquent fees.

III. STAFF RECOMMENDATION

Staff recommends that the Governing Board of the AVAQMD adopt the proposed amendments to Rule 300 -*Delinquency Penalty* and approve the appropriate California Environmental Quality Act (CEQA) documentation.

IV. LEGAL REQUIREMENTS CHECKLIST

The findings and analysis as indicated below are required for the procedurally correct amendments to Rule 300 – *Delinquency Penalty*. Each item is discussed, if applicable, in Section V below. Copies of documents are included in the appropriate Appendix.

FINDINGS REQUIRED FOR RULES & REGULATIONS

- X Necessity
- X Authority
- X Clarity
- X Consistency

- X Non-duplication
- X Reference
- X Public Notice & Comment
- X Public Hearing

REQUIREMENTS FOR STATE IMPLEMENTATION PLAN SUBMISSION (SIP):

- N/A Public Notice & Comment
- N/A Availability of Document
- N/A Notice to Specified Entities (State, Air Districts, USEPA, Other States)
- N/A Public Hearing
- N/A Legal Authority to adopt and implement the document.

- N/A Applicable State laws and regulations were followed.

CALIFORNIA ENVIRONMENTAL QUALITY ACT REQUIREMENTS (CEQA):

- N/A Ministerial Action
- X Exemption
- N/A Negative Declaration
- N/A Environmental Impact Report
- X Appropriate findings, if necessary.
- X Public Notice & Comment

SUPPLEMENTAL ENVIRONMENTAL ANALYSIS (RULES & REGULATIONS ONLY):

- X Environmental impacts of compliance.
- N/A Mitigation of impacts.
- N/A Alternative methods of compliance.

OTHER:

- X Written analysis of existing air pollution control requirements
- X Economic Analysis
- X Public Review

ELEMENTS OF A FEDERAL SUBMISSION

- N/A Elements as set forth in applicable Federal law or regulations.

V. DISCUSSION OF LEGAL REQUIREMENTS

A. REQUIRED ELEMENTS/FINDINGS

This section discusses the State of California statutory requirements that apply to the proposed amendment of Rule 300. These are actions, that need to be performed, and/or information, that must be provided in order to adopt the rule in a procedurally correct manner.

1. State Findings Required for Adoption of Rules & Regulations:

Before adopting, amending, or repealing a rule or regulation, the AVAQMD Governing Board is required to make findings of necessity, authority, clarity, consistency, non-duplication, and reference based upon relevant information presented at the hearing. The information below is provided to assist the Board in making these findings.

a. Necessity:

The proposed amendment of Rule 300 is necessary to circumvent the disruption of anticipated revenue that is created when a facility is late paying their permit fees. A penalty can be imposed if fees are not paid by the applicable due date as established by the provisions of District Regulation III, or by any invoice produced pursuant to the procedures specified in the applicable District rules. The penalty of Fifty percent (50%) may deter facilities from making late payments.

b. Authority:

AVAQMD has the authority pursuant to H&S Code §40702 to adopt, amend or repeal rules and regulations. The AVAQMD also has the authority to adopt and amend annual fees for the evaluation, issuance and renewal of permits (H&S Code §42311). In addition, Health & Safety Code §§42400 et seq. allow the imposition of penalties for various violations of law including but not limited to District Rules and Regulations regarding payment of fees.

c. Clarity:

Any facility holding an AVAQMD Authority to Construct (ATC) or Permit to Operate (PTO) may be affected by the proposed amendment of Rule 300. The proposed amendment is clear in that it is written so that the persons subject to the rule can easily understand the meaning.

d. Consistency:

The proposed amendment of Rule 300 is in harmony with, and not in conflict with or contradictory to, any state law or regulation, federal law or regulation, or court decisions because H&S Code §§41512.7 and 42311(a) provide that an air district may adopt a schedule of annual fees for the evaluation, issuance, and

renewal of permits to cover the cost of district programs related to stationary sources. Furthermore, H&S Code §§42400 et seq. allow the imposition of penalties for various violations of law including but not limited to District Rules and Regulations regarding payment of fees.

e. Non-duplication:

The proposed amendment of Rule 300 does not impose the same requirements as an existing state or federal law or regulation because H&S Code 42311 and various other sections merely authorize the imposition of such fees but do not specify the types and amounts of fees to be imposed. In addition, H&S Code §§42400 et seq. allow the imposition of penalties for various violations of law including but not limited to District Rules and Regulations regarding payment of fees.

f. Reference:

AVAQMD has the authority pursuant to H&S Code §40702 to adopt, amend or repeal rules and regulations, the authority pursuant to H&S Code §42311 to adopt a schedule of annual fees and H&S Code §§42400 et seq. allowing the imposition of penalties

g. Public Notice & Comment, Public Hearing:

Notice for the public hearing for the proposed amendment of Rule 300 will be published on October 18, 2019. See Appendix “B” for a copy of the public notice. See Appendix “C” for copies of comments, if any, and AVAQMD responses.

2. Federal Elements (SIP Submittals, Other Federal Submittals).

Submittals to USEPA are required to include various elements depending upon the type of document submitted and the underlying federal law that requires the submittal. Rule 300 does not require submission to USEPA as it is a procedural rule for imposing a delinquency penalty for nonpayment of fees.

(B) WRITTEN ANALYSIS OF EXISTING REQUIREMENTS

H&S Code §40727.2 requires air districts to prepare a written analysis of all existing federal air pollution control requirements that apply to the same equipment or source type as the rule proposed for modification by the district. The proposed amendment of Rule 300 establishes a penalty for a late payment of fees by all sources and does not in itself impose air pollution control requirements. Therefore, the preparation of a written analysis of existing pollution control requirements that apply to the same equipment or source type is not required.

C. ECONOMIC ANALYSIS

1. General.

Fees are a primary revenue source that supports the District's efforts to implement and enforce the provisions of the FCAA, the California Clean Air Act and District Rules and Regulations. Staff is recommending amendment of Rule 300 to encourage the timely payment of fees when due and to recover recurring costs associated with delinquent fees and delinquency cases. The amendment of Rule 300 would set a penalty on District Fees imposed pursuant to District Rule 301, District Rule 302, and District Rule 303 of fifty percent (50%) if the fees are not paid on time to the responsible persons or organizations.

Delinquent payments of permit fees have been slowly increasing over time. Currently the monthly number of delinquent invoices is averaging 22 invoices per month. It takes a minimum of three (3) hours of staff time to process a delinquency. Such processing includes production and mailing of a delinquent letter and duplicate invoice, inspector follow-up with the facility in question, as well as basic enforcement activities. If additional enforcement methods are necessary, the costs to the District increase exponentially, especially if legal enforcement methods are necessary. Since the penalty will only be imposed when fees are not paid in full by their invoiced due date and there is a provision allowing those with financial hardship or other issues to apply for a waiver of the penalty, it is expected that the economic impact will be minimal for most fee payers.

Fees collected from Rule 300 cannot be anticipated. Assessed penalties would be dependent on late payment of regular permit fees.

2. Incremental Cost Effectiveness.

Pursuant to H&S Code §40920.6, incremental cost effectiveness calculations are required for rules and regulations which are adopted or amended to meet the California Clean Air Act requirements for Best Available Retrofit Control Technology (BARCT) or "all feasible measures" to control volatile compounds, oxides of nitrogen or oxides of sulfur. The proposed amendment of Rule 300 is not subject to incremental cost effectiveness calculations because this rule does not impose BARCT or "all feasible measures".

D. ENVIRONMENTAL ANALYSIS (CEQA)

1. Through the process described below, it was determined that a Notice of Exemption would be the appropriate CEQA process for the proposed amendments to Rule 300.

a. The proposed amendment of Rule 300 meets the CEQA definition of "project." They are not "ministerial" actions.

b. The proposed amendment of Rule 300 is exempt from CEQA review because the rule merely establishes a penalty for late payment of fees for all facilities and there is not potential that the adoption might cause the release of

additional air contaminants or create any adverse environmental impacts.
Therefore a Class 8 categorical exemption (14 Cal. Code Reg. §15308) applies.

E. SUPPLEMENTAL ENVIRONMENTAL ANALYSIS

1. Potential Environmental Impacts

The proposed amendment does not have any potential environmental impacts because it merely establishes a penalty for late payment of fees for all facilities and does not have any impact upon emissions of air contaminants.

2. Mitigation of Impacts

N/A

3. Alternative Methods of Compliance

N/A

F. PUBLIC REVIEW

See Staff Report Section (V)(A)(1)(g) and (2)(b), as well as Appendix B.

VI. TECHNICAL DISCUSSION

A. SOURCE DESCRIPTION

The proposed amendments will affect all sources holding and applying for AVAQMD Permits.

B. EMISSIONS

The proposed amendment does not regulate emissions or impose control requirements. Therefore, there will be no direct impact upon emissions.

C. CONTROL REQUIREMENTS

The proposed amendment does not impose any control requirements.

D. PROPOSED RULE SUMMARY

This section gives a brief overview of the proposed actions regarding Regulation III. Only a brief summary of each section is included. Readers are encouraged to examine the *[bracketed and italicized]* notations contained in the iterated version of the rule contained in Appendix “A” for notations regarding movement and modification of specific sections and subsections.

Rule 300 – *Delinquency Penalty* defines District authority regarding the penalty applied to persons or organizations whose respective fees are not paid by the due date as established by the applicable provisions of District Regulation III.

E. RULE HISTORY

1. Rule History.

Rule 300 – *Major Facility Late Fee* was originally adopted on 06/18/2013. The amendments propose to retitle the rule *Delinquency Penalty* and the penalty will apply to all facilities within the boundaries of the District. This action will encourage the timely payment of fees and allow the AVAQMD to recover costs related to delinquent fees. This is was not included in the SIP. Rule 300 is a fee rule and does not require submission to USEPA.

F. PROPOSITION 26 ANALYSIS

On November 2, 2010 the California voters added Article XIII C §1(e) to the California Constitution (commonly referred to as Proposition 26). This provision added a new definition of “tax” which resulted in a variety of fees and charges imposed by local governmental entities to be subject to voter approval. The provisions also provided several exceptions to this voter approval requirement including but not limited to:

A charge imposed for a specific benefit conferred or privilege granted directly to the payer that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.

A charge imposed for a specific government service or product provided directly to the payer that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.

A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

In general, air district permit fees would fall under this exemption so long as they are reasonably related to the costs of issuance and enforcement of the permits. A similar requirement that air district fees be reasonably related to costs of district programs is found in Health & Safety Code §42311(a). Please see Appendix F for an analysis of District delinquency rates. Rule 300 is primarily a deterrent measure and is designed to offset the costs incurred by the District due to the non-payment of fees. The District does not expect this fee to be imposed on a regular basis.

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APPENDIX "A"
Rule 300 – *Delinquency Penalty*
Iterated Version

The iterated version is provided so that the changes to an existing rule may be easily found. The manner of differentiating text is as follows:

1. Underlined text identifies new or revised language.
2. ~~—Lined out text~~ identifies language which is being deleted.
3. Normal text identifies the current language of the current rule which will remain unchanged by the adoption of the proposed amendments.
4. *Italicized text* identifies explanatory material that is not part of the proposed language

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Rule 300

Major Facility Late Fee Delinquency Penalty

(A) General

(1) Purpose

- (a) The purpose of this rule is to encourage the timely payment of fees when due ~~by Major Facilities.~~

(2) Applicability

- (a) This rule shall apply to the fees imposed pursuant to District Rule 301, District Rule 302 and District Rule 303 ~~Major Facilities as defined pursuant to District Rule 3001(S).~~

(B) Requirements

- (1) If the fee is not paid ~~by the~~ within ninety (90) days of the applicable due date as established by the provisions of District Regulation III or by any invoice produced pursuant to the procedures specified in the applicable District Rule, then the person subject to such fee shall be assessed a ~~late fee~~ Delinquency Penalty in the amount of ~~1550%~~ 50% of the original fee ~~as imposed.~~

- ~~(2) The applicant/permittee or owner/operator will be notified by mail if the fee is not paid by the due Date established by the applicable provisions of District Regulation III or by any invoice produced pursuant to the procedures specified in the applicable District Rule.~~

- ~~(23)~~ Assessment or payment of a ~~late fee~~ Delinquency Penalty shall not limit the District's rights to pursue any other remedy provided by law.

(C) Waiver, Suspension or Reduction of Penalty

- ~~(1) The APCO may waive, suspend, or reduce the Delinquency Penalty upon good cause shown after written application from the person against whom the penalty was assessed.~~

- ~~(2) Such waiver, suspension or reduction in penalty will be memorialized in writing and the application and any action upon it shall be placed in the applicable District file.~~

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APPENDIX "B"
PUBLIC NOTICE DOCUMENTS

1. Draft Proof of Publication for Notice of Public Hearing – Antelope Valley Press 10/18/2019

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NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the Governing Board of the Antelope Valley Air Quality Management District (AVAQMD) will conduct a public hearing on November 19, 2019 at 10:00 A.M. to consider the proposed amendment of Rule 300 – *Delinquency Penalty*.

SAID HEARING will be conducted in the Governing Board Chambers located at the AVAQMD offices, 43301 Division Street, Suite 206, Lancaster, CA 93535-4649 where all interested persons may be present and be heard. Copies of the proposed amendment on Rule 300 – *Delinquency Penalty* and the Staff Report are posted on the AVAQMD website at www.avaqmd.ca.gov and are also available at the AVAQMD Office at 43301 Division Street Avenue, Suite 206, Lancaster, CA 93535. Written comments may be submitted to Bret Banks, APCO at the above office address, and should be received no later than November 18, 2019 to be considered.

Rule 300 - *Major Facility Late Fee* as last amended June 18, 2013 is proposed for amendment to retitle the rule to *Delinquency Penalty* and implement a penalty that will cover all facilities and encourage timely payment of fees to recover recurring costs associated with delinquent fees and delinquency cases.

Pursuant to the California Environmental Quality Act (CEQA) the AVAQMD has determined that a Categorical Exemption (Class 8 – 14 Cal. Code Reg §15308) applies and has prepared a *Notice of Exemption* for this action.

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APPENDIX "C"
PUBLIC COMMENTS AND RESPONSES

None received to date.

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APPENDIX "D"
CALIFORNIA ENVIRONMENTAL QUALITY ACT
DOCUMENTATION

1. Notice of Exemption (Draft) – Los Angeles County

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NOTICE OF EXEMPTION

TO: Los Angeles County Clerk
12400 E. Imperial Hwy, #1001
Norwalk, CA 90650

FROM: Antelope Valley
Air Quality Management District
43301 Division Street, Suite 206
Lancaster, CA 93535-4649

X AVAQMD Clerk of the Governing Board

PROJECT TITLE: Amendment of Rule 300 – *Delinquency Penalty*

PROJECT LOCATION – SPECIFIC: Los Angeles County portion of the Mojave Desert Air Basin.

PROJECT LOCATION – COUNTY: Los Angeles County

DESCRIPTION OF PROJECT: Rule 300 – *Major Facility Late Fee* was last amended 06/18/2013. The 06/18/2013 version is the current version in the AVAQMD rulebook. Over time the number of delinquent fees has increased along with resultant costs to the District for recovery of such delinquent fees. The amendments propose to retitle the rule *Delinquency Penalty* and apply it to all facilities. This action will encourage the timely payment of fees and allow the AVAQMD to recover costs related to delinquent fees.

NAME OF PUBLIC AGENCY APPROVING PROJECT: Antelope Valley AQMD

NAME OF PERSON OR AGENCY CARRYING OUT PROJECT: Antelope Valley AQMD

EXEMPT STATUS (CHECK ONE)

Ministerial (Pub. Res. Code §21080(b)(1); 14 Cal Code Reg. §15268)

Emergency Project (Pub. Res. Code §21080(b)(4); 14 Cal Code Reg. §15269(b))

X Categorical Exemption – Class 8 (14 Cal Code Reg. §15308)

REASONS WHY PROJECT IS EXEMPT: The proposed amendments to Rule 300 are exempt from CEQA review because they merely adjust fees and there is not potential that the amendments might cause the release of additional air contaminants or create any adverse environmental impacts, a Class 8 categorical exemption (14 Cal. Code Reg. §15308) applies.

LEAD AGENCY CONTACT PERSON: Bret Banks **PHONE:** (661) 723-8070

SIGNATURE: _____

TITLE: Executive Director **DATE:** November 19, 2019

DATE RECEIVED FOR FILING:

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APPENDIX "E" BIBLIOGRAPHY

The following documents were consulted in the preparation of this staff report and the proposed amendment of Rule 300:

1. CARB District Rules Log Data Base

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Appendix “F”
Cost Analysis

1. Past Due Invoice Analysis Jan 2017-August 2019

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Past Due Analysis												
2017				2018				2019				
	# of del invoices	30 days	60 days	90 days	# of del invoices	30 days	60 days	90 days	# of del invoices	30 days	60 days	90 days
Jan	11	\$ 6,325.00	\$ -	\$ -	24	\$ 10,539.83	\$ 1,188.61	\$ 575.00	27	\$ 11,968.83	\$ 400.02	\$ 144,205.30
Feb	1	\$ -	\$ 575.00	\$ -	40	\$ 18,042.03	\$ 10,167.72	\$ 1,763.61	12	\$ 4,981.69	\$ 1,038.48	\$ 144,205.30
Mar	4	\$ 1,196.52	\$ -	\$ 575.00	20	\$ 400.02	\$ 8,593.00	\$ 2,175.97	11	\$ 8,733.84	\$ 1,859.67	\$ 143,144.28
April	9	\$ 5,628.83	\$ 754.41	\$ 575.00	26	\$ 10,078.64	\$ 400.02	\$ 9,826.22	19	\$ 9,525.40	\$ 7,783.82	\$ 143,545.66
May	5	\$ 187.58	\$ 2,279.84	\$ 947.11	33	\$ 11,121.76	\$ 7,580.48	\$ 9,854.13	7	\$ -	\$ 3,536.12	\$ 143,545.66
June	7	\$ -	\$ 3,672.64	\$ 947.11	9	\$ 661.00	\$ 2,405.80	\$ 3,469.17	20	\$ 15,092.59	\$ -	\$ 146,001.62
July	13	\$ 14,247.19	\$ -	\$ 3,024.06	22	\$ 19,532.07	\$ 661.00	\$ 2,436.06	27	\$ 259,085.68	\$ 12,008.25	\$ 144,425.70
August	8	\$ 1,116.33	\$ 1,116.33	\$ 947.11	10	\$ 1,078.31	\$ 4,596.30	\$ 1,897.00	26	\$ 4,667.38	\$ 241,683.29	\$ 150,819.65
Sept	6	\$ -	\$ 744.22	\$ 1,691.33	13	\$ 39,664.81	\$ 1,078.31	\$ 4,493.20				
Oct	8	\$ 2,218.38	\$ -	\$ 2,063.44	22	\$ 7,288.23	\$ 32,864.47	\$ 5,571.51				
Nov	11	\$ 10,679.54	\$ 4,505.57	\$ 1,691.33	21	\$ 144,094.88	\$ 2,827.78	\$ 37,357.67				
Dec	14	\$ 7,314.38	\$ -	\$ 947.11	24	\$ 4,357.86	\$ 143,208.30	\$ 36,957.65				
avg	8	\$ 4,076.15	\$ 1,137.33	\$ 1,117.38	22	\$ 22,238.29	\$ 17,964.32	\$ 9,698.10	19	\$ 39,256.93	\$ 33,538.71	\$ 144,986.65

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