

APPENDIX A

**Summary of Significant Comments and Responses
For Proposed Amendments to Rule 3160**

March 17, 2020

SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT

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**Summary of Significant Comments
Draft Amendments to Rule 3160 (Prescribed Burning Fee)
January 22, 2020**

The San Joaquin Valley Air Pollution Control District (District) held a public workshop to present, discuss, and receive comments on proposed amendments to Rule 3160 on January 22, 2020. Summaries of significant comments received during the public comment period are summarized below.

Comments were received from the following:

National Parks Conservation Association (NPCA), Sierra Forest Legacy (SFL)

1. **COMMENT (NPCA, SFL):** We support the District’s proposal to prorate or suspend fees associated with “public benefit prescribed burns.” The District should more narrowly define “public benefit prescribed burn” to include only projects with a primary objective of wildfire prevention or air quality maintenance, as opposed to objectives such as range improvement.

RESPONSE: The District agrees that only projects determined by the APCO to directly or indirectly benefit the public interest and be beneficial to the state should be eligible for fee proration/suspension. Notwithstanding this critical eligibility criterion, the District believes that many of the project types identified in the California Public Resources Code Section 4475(a) – including but not limited to watershed management, vegetative management, and forest improvement burns as well as burns conducted for the purpose of air quality maintenance and wildfire prevention – have the potential to directly or indirectly benefit the public interest and be beneficial to the state, and could indeed qualify as “public benefit prescribed burns” under the proposed rule. Furthermore, the District believes it would be inappropriate and inconsistent with the goals of Senate Bill (SB) 1260 to categorically exclude specific project types identified as serving the public interest and beneficial to the state under California Public Resources Code Section 4475(a).

In considering projects under Rule 3160, the District intends to first ensure that the project type conforms to California Public Resources Code Section 4475(a), and then ensure that the project supports the goal of improving air quality by lessening the frequency and severity of future wildfires. The definition of “public benefit prescribed burn” in Rule 3160 has been revised to further clarify the District’s intended criteria in evaluating such projects.

SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT

2. **COMMENT (NPCA, SFL):** The District should reduce fees associated with managed wildfires and only charge for acreage that is actively managed.

RESPONSE: The purpose of Rule 3160 is to provide the revenue necessary to implement the District's Smoke Management Program as it pertains to providing the required services to land management agencies and individuals conducting prescribed burn projects within the Valley. This includes the review and approval of Smoke Management Plans which provide land management agencies and individuals the necessary authorization to conduct prescribed burn projects consistent with state law (see 17 CCR 80100, *et seq.*). The obligatory smoke management services performed by the District apply to naturally or accidentally ignited wildfires that are managed for resource benefit in the same way that they apply to pre-planned ignitions. The District incurs a significant expense in performing these services regardless of whether a particular burn is planned or unplanned. Furthermore, the revenue collected under Rule 3160 only partially funds the actual costs incurred by the District in the implementation and administration of its prescribed burn program, and reducing the fee obligation associated with managed wildfires would result in an even greater revenue shortfall. The District is hopeful that it will continue to receive funding via the state Prescribed Burn Reporting and Monitoring Support Program – or any similar state or federal programs that provides the District with targeted funding to implement its Smoke Management Program – such that the fees assessed pursuant to Rule 3160 are significantly if not fully offset for planned and unplanned burns alike.

The District is committed to continuing to work with prescribed burn stakeholders to accurately determine the acreage and assess the resultant fees associated with managed wildfires.

3. **COMMENT (NPCA, SFL):** The District should better align its prescribed burn fee invoicing schedule with the federal fiscal year, such that burns are conducted and invoiced in the same fiscal year.

RESPONSE: Rule 3160 applies to local, state, and federal agencies as well as private parties, all which may be operating under different fiscal years. Furthermore, we did not receive any formal comments from federal land management agencies asking for this change.

SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT

Summary of Significant Comments Draft Amendments to Rule 3160 (Prescribed Burning Fee) December 4, 2019

The District held a public scoping meeting for Rule 3160 on December 4, 2019. Summaries of significant comments received during the public scoping meeting and associated comment period are summarized below.

Comments were received from the following:

National Parks Conservation Association (NPCA), Central Valley Air Quality Coalition (CVAQ), Sierra Forest Legacy (SFL), Fire Restoration Group (FRG), Sequoia National Forest (SQF)

4. **COMMENT (NPCA, CVAQ, SFL, FRG):** We support the utilization of grant funding under the CAPCOA prescribed burn MOU to prorate or suspend prescribed burn fees charged to land managers. The District should identify additional avenues to fund its prescribed burn program; specifically, the District should make use of agricultural and open burn fees and penalties in funding this program.

RESPONSE: The District appreciates the general support for the proposed amendments to Rule 3160 by NPCA et al. Pursuant to the California Constitution, local government fees must have a nexus to the services rendered to the payor so as not to be considered taxes. The purpose of Rule 3160 is to provide the revenue necessary to implement the District's Smoke Management Program as it pertains to providing the required services to land management agencies and individuals conducting prescribed burn projects within the Valley. This includes the review and approval of Smoke Management Plans which provide land management agencies and individuals the necessary authorization to conduct prescribed burn projects consistent with state law.

It is important to note that the revenue collected under Rule 3160 – as is generally the case with any District fee rule – only partially funds the actual costs incurred by the District in the implementation and administration of its prescribed burn program. Therefore, the District utilizes supplemental sources of revenues, such as penalties, to make up the difference. This rulemaking will not change that practice.

5. **COMMENT (NPCA, CVAQ, SFL, FRG):** We agree that the proration or suspension of prescribed burn fees, as proposed in this rulemaking, should be limited to projects that benefit the public interested by providing an enhanced level of public safety or a long-term air quality benefit.

SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT

RESPONSE: The District appreciates support for this proposed provision by NPCA et al. The District proposes to incorporate this provision into Rule 3160 by limiting the proration or suspension of prescribed burn fees to projects that qualify as a “Public Benefit Prescribed Burn.” As defined in the proposed amendments to the rule, these projects would be limited to “projects determined by the APCO to directly or indirectly benefit the public interest and be beneficial to the state for those purposes set forth in California Public Resources Code Section 4475(a).”

6. **COMMENT (NPCA, CVAQ, SFL, FRG):** The proration or suspension of prescribed burn fees should not be extended to pile burning.

RESPONSE: Pile burning falls within the definition of “prescribed burning” in state law (see Title 17, California Code of Regulations, Section 80100, *et seq.*) and Rule 4106 (Prescribed Burning and Hazard Reduction Burning). Furthermore, pile burning is one means of thinning the accumulation of vegetative material in the forests and other wildland environments and meeting the state’s aggressive fuel reduction and forest management goals. Therefore, the District does not think it is appropriate to exclude pile burning from the proration or suspension of prescribed burn fees, provided that such projects are determined by the APCO to meet the proposed definition of a “Public Benefit Prescribed Burn” project.

7. **COMMENT (NPCA, CVAQ, SFL, FRG):** The District should not regulate managed wildfires – specifically, the natural or accidental ignition of fire to vegetation on lands selected in advance of such application to meet specific planned resource management objectives – under Rules 4106 and 3160.

RESPONSE: State law (see 17 CCR 80100, *et seq.*) requires that the District regulate managed wildfires and Rule 4106 implements the requirements of state law. Such a change would require an amendment to the applicable provisions of state law. Furthermore, this suggestion falls outside the scope of this rulemaking effort as the District does not intend to open or amend Rule 4106 as this time.

8. **COMMENT (SQF):** We support the proposed amendments to Rule 3160 and the District’s general support for our prescribed burn program.

RESPONSE: Duly noted. The District appreciates Sequoia National Forest’s support for the proposed amendments to Rule 3160 and cooperation in implementing the prescribed burn smoke management guidelines required by state law.