Proposed Amendments to Rule 9510
(Indirect Source Review)

Webcast participants: submit comments to
webcast@valleyair.org

May 18, 2017
ISR Amendment Public Process

• Public process
  – Public workshop on April 26, 2016
  – Public notice issued August 15, 2016
  – Public workshop on January 17, 2017
  – Public workshop, today, May 18, 2017

• Comments addressed in latest version
Meeting Federal Air Quality Standards

- Heavy Duty Trucks
- Passenger Cars
- Farm Equipment
- Off-Road Equipment
- Other Off-Road, including Trains
- Stationary and Area Sources

Tons per Day

2013

Attainment of New PM2.5 and 8-hr ozone standards
Current ISR Requirements

- Mitigation for indirect and area source required per SB 709 (CH&SC 40604)
- Rule 9510 is a commitment in the EPA approved ozone and PM10 Attainment Demonstration Plans
- Reduce construction exhaust emissions
  - NOx by 20% cleaner than State Fleet Average
  - PM10 by 45% cleaner than State Fleet Average
- Reduce operational emissions (area and mobile sources)
  - NOx by 33% of project baseline
  - PM10 by 50% of project baseline
New development projects requiring discretionary approval

Threshold examples:
- 50 residential units
- 2,000 sq ft of commercial space
- 25,000 sq ft of light industrial space
- 100,000 sq ft of heavy industrial space
- 39,000 sq ft of general office space
- 9,000 sq ft of educational space

Transportation/Transit projects with minimum construction emissions of 2.0 tons of NOx or PM10
Project Design Elements

• District encourages on-site project design mitigation measures
• District provides an extensive list of project design features to assist developers
  – Clean construction equipment, trucking fleets
  – Minimize vehicle miles traveled
  – Energy efficiency
• Benefits
  – Achieve immediate and permanent emission reductions
  – Emissions reductions directly benefit local community
  – Overall better project
  – Minimize or eliminate mitigation fees
Mitigation Fees

• In lieu of onsite measures developers may choose to pay mitigation fees
• Fees based on the difference between emission reductions required by the rule and those achieved through on-site measures
• All mitigation fees collected by the District are invested in Valley communities to reduce emissions
• Benefits
  – Fees used to fund emission reduction projects (agricultural tractors, irrigation pumps, vanpool subsidies, wood burning inserts and stoves, etc.)
ISR Program Success

• On-site emissions reductions
  – Clean construction fleet
  – Project designs: 9,300 tons of emission reductions

• Off-site emission reductions
  – 3,000 emission reduction projects
    Ag irrigation pumps, tractors, fireplace inserts, lawn mowers, vanpool subsidies
  – 6,000 tons of emission reductions
Rule Amendment: Applicability

• Currently the rule applies to a development project proponent seeking “final discretionary approval”: no change proposed
• Discretionary approval can vary among public agencies in the Valley
• Some large projects have sidestepped discretionary decisions even though potentially significant impacts on air quality
• Removing this inconsistency is critical to providing fair and equitable application of the rule throughout the Valley
Rule Amendment: Applicability

• Large development projects seeking approval subject to ISR
• Large development projects: set at 5 times above standard ISR applicability thresholds
• Large development projects threshold examples:
  – 250 residential units
  – 125,000 sq ft of light industrial space
  – 500,000 sq ft of heavy industrial space
  – 195,000 sq ft of general office space
Recent comment received:

Large development project thresholds applicability should be clarified to indicate that the rule does not apply to projects vested by the rule amended date.
Vested Right to Develop

• Examples of “Vested Right to Develop”:
  - Tentative map approval
  - Contract between developer and the agency
  - Site Plan Review approval
  - Some amendments to a developed site
  - Building permit issuance
  - Other approval from a gov’t agency
Applicability Clarification

- **Section 2.1**: On and after 3/1/06, development projects with final discretionary approval above certain thresholds remain subject to the ISR rule.

- **Section 2.2**: On and after (rule amendment date), large development projects above certain thresholds are subject to the ISR rule.

- **Section 2.3**: Section 2.2 does not apply if any of following:
  - The rule applies pursuant to Section 2.1,
  - Project received final discretionary approval prior to 3/1/06, or
  - Project received non-discretionary approval, including but not limited to a building permit or other Vested Right to Develop prior to (rule amendment date).
Vested Right to Develop

• Added “Vested Right to Develop” definition

Section 3.36:

For the purposes of this rule, a contract, tentative map approval, or other form of approval received from a governmental agency, which authorizes a guaranteed legal right to proceed with the Development Project, provided any such approval was not a discretionary decision.
Applicability Clarification

• Existing applicability threshold:
  – Final discretionary approval received before March 2006: project not subject to rule
  – Final discretionary approval received after March 2006: project subject to rule

• Amendment for large projects:
  – Current applicability threshold remains: final discretionary approval
  – Project not subject to Discretionary approval AND received Ministerial project approval OR have Vested Right to Develop before Rule amendment adoption date: project not subject to rule
  • otherwise: project subject to rule
“Large Project”
ISR Application Timing

• Rule effective upon District Governing Board adoption

• Application process for large development projects:
  – Submit Air Impact Assessment (AIA) application to District no later than applying for approval from a public agency (30 days to apply if already requested, but haven’t received building permit)
Other Rule Enhancements

• Clarify “Development” Project definition
  – Independent from Land Use Agency approval type
  – No changes to project currently subject to the rule

• Clarify “Transit” and “Transportation” Project definitions
  – These are development projects
  – No changes to requirements

• Remove obsolete reference to “URBEMIS”
  – URBEMIS no longer utilized
• Add “seismic safety” to the list of exemptions
  – Currently retrofits for seismic safety are not exempt
• Allow all projects to defer payment of off-site mitigation fees according to approved fee deferral schedule:
  – Currently off-site fees up to $50,000 are required up front
  – Alleviates additional financial burden by allowing fee deferral for small businesses, too
Other Rule Enhancements (Cont’d)

• Clarify that off-site fee rate is based on fee rate applicable at the time of invoice issuance
  – Correction to address current rule issue

• Clarify that payment of applicable fees required prior to generating emissions
  – Consistent with original rule intent

• Requirement to report a change in ownership of a project
  – Eliminates responsible party’s confusion and avoid non-compliance situations
Socioeconomics Analysis

• District reviewed original socioeconomic impact analysis from 2005
  – Original concluded no significant impact

• 2016-17 Analysis:
  – The actual costs over 10-year implementation are considerably less than projected
  – Many projects significantly reduced or even eliminated fee obligation by using clean trucking and construction fleets, and incorporating other air friendly design elements
  – 2005 conclusion remains relevant and accurate
Next Steps…

2 Weeks: May 18 – June 1, 2017
Public comment period

August 17, 2017
Governing Board Public Hearing

July 14, 2017
Publication of proposed rule package to District web page for 30-day comment period
Comment Period Deadline

June 1, 2017 at 5:00 PM

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Questions/Comments

Please come to podium, state name and affiliation

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