

SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT

FINAL DRAFT STAFF REPORT

Proposed Amendments to Rule 3160 (Prescribed Burning Fee)

March 17, 2020

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I. SUMMARY

Rule 3160 (*Prescribed Burning Fee*) was initially adopted by the District on February 15, 2001. The purpose for the rule is to recover the costs associated with implementation of the District's prescribed burn program, which is conducted pursuant to the requirements of Title 17 of the California Code of Regulations (Title 17) and District Rule 4106 (*Prescribed Burning and Hazard Reduction Burning*). Historically, Rule 3160 was the only source of dedicated funding for this program. However, in June 2019 the District entered into a Memorandum of Understanding (MOU) to participate in the new Statewide Prescribed Burn Reporting and Monitoring Support Program. Under the terms of the MOU, the District will be reimbursed for prescribed burn program implementation costs up to \$122,500 over the next two years.

In light of this new funding source and in the interest of facilitating increased prescribed burning in the Valley, the District's Governing Board directed staff to amend Rule 3160 (*Prescribed Burn Fee*) to allow the provisional suspension of the collection of prescribed burn fees on the condition that adequate funding is received from the state to cover the costs of administering and implementing the District's prescribed burn program. While the District believes that the fees charged under Rule 3160 to recover the costs of administering the smoke management duties mandated by state law represent only a small percentage of the total costs of one of these projects, we believe that removing any potential hurdles to fuel reduction efforts is imperative. Funding under this MOU may significantly offset the fees traditionally collected through Rule 3160. Amendments to Rule 3160 would take into consideration money received through the MOU and would establish a mechanism to prorate any program costs not covered, thereby reducing the fees required to be paid by land managers.

II. REASONS FOR RULE AMENDMENT

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. Since its adoption in 2001, the rule has been the sole source of direct funding to implement the state-mandated program. Other sources of funding from the state or federal government have not existed in the past for these programs and for that reason, the fee structure in Rule 3160 was designed with the intention of recovering the District's program costs, while allowing for fluctuations in prescribed burning activity from year to year.

Exceptionally dry drought conditions, the buildup of combustible materials through decades of forest mismanagement, and the mortality of millions of trees from the recent exceptional drought and bark beetle infestation, has sparked a wave of new discussion and legislation aimed at reducing the risk of catastrophic wildfires. In September 2018, Senate Bill (SB) 1260 was signed into law¹, which among other things, required the California Air Resources Board (CARB) and local air districts to enhance air quality and smoke monitoring associated with prescribed burns. Funding for fire prevention and related activities has also been significantly increased at the State level in recent budget years. Also signed into law in September of 2018 was SB 901, which guaranteed \$200 million in Cap-and-Trade funding to Cal-Fire annually through budget year 2023-24 to fund forest health, wildfire prevention, and fuel reduction projects around the state.² The fiscal year 2018-19 budget also included, for the first time, over \$5 million in Cap-and-Trade funding to CARB for prescribed fire smoke monitoring, \$2 million of which was budgeted by CARB to implement a new Prescribed Burn Reporting and Monitoring Support Program.

Under the program, CARB will be working with local air districts to facilitate the increase in prescribed burns called for to meet statewide goals, enhance air quality and smoke monitoring, and provide public outreach regarding the benefits of prescribed burns. To aid in the coordination and administration of the program, CARB has contracted with the California Air Pollution Control Officer's Association (CAPCOA) to coordinate the necessary statewide reporting as well as administer funds to reimburse local air district costs for participating in the program.

Consistent with the District's long-standing desire to promote and facilitate enhanced forest management practices including prescribed burning, in June 2019 the District entered into an MOU with CAPCOA. Under the MOU, the District will be reimbursed for

¹ SB 1260, Jackson. (2018, September 21). *Fire Prevention and Protection: Prescribed Burns*. Retrieved 1/10/20 from: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1260

² SB 901, Dodd. (2018, September). *Wildfires*. Retrieved 1/10/20 from: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB901

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prescribed burn program implementation costs up to \$122,500 over two years, with additional funding of up to \$500,000 available statewide to districts for reimbursement of costs associated with air monitoring of prescribed burn projects as well as any necessary travel and training. Several of the reimbursable program elements include tasks that are already being performed in the District's existing programs for implementing Title 17 and Rule 4106. This means the funding received from CARB will likely offset a significant portion of program costs that the District has traditionally relied on Rule 3160 to cover.

In light of this new funding source and in the interest of facilitating increased prescribed burning in the Valley, in September 2019 the District's Governing Board directed staff to amend Rule 3160 to allow the provisional suspension of the collection of prescribed burn fees on the condition that adequate targeted funding is received to cover the costs of administering and implementing the District's prescribed burn program. While the District believes that the fees charged under Rule 3160 to recover the costs of administering the smoke management duties mandated by state law represent only a small percentage of the total costs of one of these projects, we believe that removing any potential hurdles to fuel reduction efforts is imperative.

Under the proposed amendments, if the District receives sufficient funding from CARB, or other state or federal agencies in the future for similar targeted programs, the fees collected under Rule 3160 would be prorated proportional to the additional supplemental funding received in a year. CARB's Prescribed Burn Reporting and Monitoring Support Program was initially approved for two years. 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. It is likely that the program will continue in some form, but the level of funding available and scope of work that will be reimbursed could vary in future years, and there are no funding guarantees beyond the two years covered under the MOU. For these reasons the Rule 3160 amendments were crafted in a manner that will allow the District to recover its program costs in years when state or federal sources are unavailable, but enables the District to prorate, or even suspend the fees when sufficient state and/or federal funding is received.

III. SUMMARY OF EXISTING RULE 3160

Rule 3160 contains a fee schedule that is intended to recover costs associated with District programs directly related to prescribed burning activities within the San Joaquin Valley Air Basin. In summary, Rule 3160 establishes fee rates of \$7.00 per acre for broadcast burning, \$4.20 per acre for pile burning, and \$7.00 per acre for a combination of broadcast and pile burning on the same acreage. It establishes requirements for reporting acreage burned and a schedule for fee assessment and remittance. Rule

3160 also contains a fee exemption for any person or agency that burns less than or equal to 40 acres during a calendar year.

IV. PROPOSED AMENDMENTS TO RULE 3160

Draft amendments would allow the District to prorate or suspend fees for prescribed burning projects that provide a public benefit when sufficient funding is received through CARB's Statewide Prescribed Burn Reporting and Monitoring Support Program, or other similar targeted federal or state programs in the future.

Definitions (Section 3.0)

Section 3.2 – Public Benefit Prescribed Burn

A new definition that describes which types of projects that will be eligible for fee reductions. The intention is to use the state or federal funding to offset land manager costs for burn projects that benefit the public interest and support the goal of improving air quality by lessening the frequency and severity of future wildfires. Projects that only serve to benefit the land owner would not be eligible for fee proration/suspension.

Fee (Section 4.0)

Section 4.4 – Fee Reduction for Public Benefit Prescribed Burns

A new section is proposed which will effectively reduce the amount of fees collected under Rule 3160 from public benefit prescribed burn projects, on an annual basis, in an amount equivalent to the total state and federal funding dedicated to the prescribed burning program received by the District. If the amount of funding received for the prescribed burning program from state and federal sources equals or exceeds the total amount of fees that would otherwise be collected under Rule 3160 for public benefit prescribed burn projects in a given year, then the fees for that year will be suspended except for non-public benefit projects, and the program will be funded instead by the state and/or federal funding. Conversely, in years when no state or federal funding is available for the prescribed burning program, the fees in Rule 3160 will continue to be assessed in full as in prior years.

In years when state and/or federal funding only partially fund the District's prescribed burning program, fees will still be assessed, but will be prorated according to the procedure in this new section of the rule. When reporting completed acres to the District, agencies and individual burners will also be required to identify which burn projects meet the definition of a public benefit prescribed burn and are eligible for reduced fees. The District reserves full discretion to review each project and make the final determination whether or not a project qualifies as providing a public benefit. State and/or federal funding received by the District will be used to offset the fees for those

projects. The fee reductions will be distributed proportionately across all landowners based on the number of public benefit acres burned.

V. ANALYSES

A. Proposition 26 Analysis

Proposition 26, approved by California voters in 2010, requires increases in taxes to be approved by a vote of impacted residents. The proposed amendments would not result in an increase of any fees collected by the District. Furthermore, under the definitions in Proposition 26, the fees collected under Rule 3160 are not a tax, as they are charges imposed for reasonable regulatory costs.

B. Cost Effectiveness and Socioeconomic Impact Analysis

Pursuant to State law, the District is required to analyze the cost effectiveness of any proposed rule amendment that implements Best Available Retrofit Control Technology (BARCT). The proposed amendments do not add BARCT requirements and therefore are not subject to the cost effectiveness analysis mandate.

Additionally, State law requires the District to analyze the socioeconomic impacts of any proposed rule amendment that significantly affects air quality or strengthens an emission limitation. The proposed amendments will have neither effect, and are therefore not subject to the socioeconomic analysis mandate.

C. Rule Consistency Analysis

Pursuant to CH&SC Section 40727.2 (g) a rule consistency analysis of the draft rule is not required. The draft rule does not strengthen emission limits or impose more stringent monitoring, reporting, or recordkeeping requirements.

D. Environmental Impact Analysis

The amendments proposed to District Rule 3160 would allow the District to prorate or suspend fees for prescribed burning projects that provide a public benefit when sufficient funding is received through CARB's Statewide Prescribed Burn Reporting and Monitoring Support Program, or other similar state or federal programs in the future. Based on the District's investigation, substantial evidence supports the District's conclusion that the proposed amendments will not cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, and as such is not a "project" as that term is defined under the California Environmental Quality Act (CEQA) Guidelines § 15378.

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In addition, according to Section 15061 (b)(3) of the CEQA Guidelines, a project is exempt from CEQA if, “(t)he activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.” As such, substantial evidence supports the District’s assessment that assuming the amendment is a “project” under CEQA, it will not have any significant adverse effects on the environment.

Furthermore, the proposed amendment to District Rule 3160 is an action taken by a regulatory agency, the San Joaquin Valley Air Pollution Control District, as authorized by state law to assure the maintenance, restoration, enhancement, or protection of air quality in the San Joaquin Valley where the regulatory process involves procedures for protection of air quality. CEQA Guidelines §15308 (Actions by Regulatory Agencies for Protection of the Environment), provides a categorical exemption for “actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environmental degradation are not included in this exemption.” No construction activities or relaxation of standards are included in this project.

Therefore, for all of the above reasons, the proposed rule amendment is not subject to CEQA. Pursuant to Section 15062 of the CEQA Guidelines, staff will file a Notice of Exemption upon Governing Board approval of amendments to Rule 3160.

VI. RULE DEVELOPMENT PROCESS

A. Public Scoping Meeting for Rule 3160

The District hosted a public Scoping Meeting to discuss potential amendments and receive public comments on December 4, 2019, followed by a public comment period ending at 5:00 PM on December 18, 2019. All significant comments received have been reviewed and incorporated into the draft staff report as appropriate. A summary of significant comments and District responses are available in Appendix A.

B. Public Workshop for Rule 3160

The District held a public workshop to discuss draft amendments and receive public comments on January 22, 2020, followed by a public comment period ending at 5:00 PM on February 5, 2020. All significant comments received have been reviewed and incorporated into the draft staff report as appropriate. A summary of significant comments and District responses are available in Appendix A of this document.

C. Public Hearing for Rule 3160

In accordance with CH&SC Section 40725, the proposed amendments to Rule 3160 and the final draft staff report are being publicly noticed prior to the Governing Board public hearing to consider adoption of the proposed amendments, and made available on March 17, 2020. All significant comments received will be considered and incorporated into the proposed rule and staff report, as appropriate. The public is also invited to provide comments on the proposed amendments to Rule 3160 and staff report during the public hearing on April 16, 2020, for proposed adoption of this rule.

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