



AIR POLLUTION CONTROL DISTRICT

# 2013 Rule 310 Annual Accountability Report

---

For Fiscal Year 2012-2013

July 31, 2013

This Rule 310 Annual Accountability Report was prepared by the Air Pollution Control District (Air District) to fulfill the obligations of Section E.9 of Rule 310 – Operational Development Fee.

## **I. EXECUTIVE SUMMARY**

On November 6, 2007 the Air District's Board of Directors adopted Rule 310 to assist in the reduction of excess emissions resulting from new land development in the Imperial County. The adoption of Rule 310 provided the Air District with a sound method for mitigating the emissions produced from the operation of new commercial and residential development projects throughout the County of Imperial and incorporated cities. The essential mechanism utilized by Rule 310 requires project proponents of new commercial and residential projects to mitigate their operational emissions. The project proponent is given three options by the rule, either provide for off-site mitigation, pay an operational development fee, or choose to mitigate through a combination of both. Although the Air District encourages project proponents to come up with off-site mitigation projects, the reality has been that off-site project specific mitigation is not only difficult to develop but is time consuming and expensive. As a result, payment of a fee is overwhelmingly the elected choice by project proponents.

As per Rule 310 requirements, mitigation fees collected through the implementation of Rule 310 during each Fiscal Year (FY) are separated into two accounts. The designation of each account is specific to the pollutant to be mitigated. The Air District has assigned the accounts to help maintain accountability, prevent intermingling of funds and to help identify cost effectiveness of the program. Account 1 includes the funds for the reduction of Ozone Precursor emissions and Account 2 includes funds for the reduction of PM10 emissions. As is true with any accountability process there are administrative fees which cannot be avoided. Rule 310 addresses the issue by allowing the Air District a percentage of the funds collected. The rule allows, no greater than 10% of the funds for use by the Air District to offset the cost of administration. The ending of a FY, June 30<sup>th</sup>, triggers the preparation of two specific events applicable to compliance with Rule 310. The first is the preparation of the Annual Accountability Report (AAR) and the second is the Request for Proposals (RFP). The publication of availability of the AAR and the RFP are published on August 1<sup>st</sup> of each year.

Thus, on August 1<sup>st</sup> of each year, the Air District makes available through a RFP process the funds collected the previous FY. The funds are utilized to fund various mitigation projects throughout the County of Imperial. The Air District encourages any person seeking funding for a mitigation project to develop and submit a written Mitigation Project Report (MPR) to the Air District during the RFP process, which ends by October 1<sup>st</sup>. While section E.6 of Rule 310 spells out the requirements for a MPR the Air District recognizes that assistance may be necessary by proponents during the development of their proposals. Therefore, the Air District encourages proponents to call and seek the guidance from our engineering staff.

In order to provide transparency, on August 1<sup>st</sup> of each year, the Air District has and will continue to prepare and publish an AAR describing the total amount of off-site fees received; total monies spent; total monies remaining; a list of all projects funded; total emission reductions realized; and the overall cost-effectiveness factor for the projects funded. This AAR includes the previous FY 2012-2013 activities.

## **II. BACKGROUND**

As with many other geographical areas, growth in human population and vehicle population is inevitable. The California Department of Finance most recent (January 2013) human population projections indicate that the Imperial County population will increase by 21% between 2010 and 2020. According to projections, the Imperial County will have over 47,500 new residents by the year 2020. Additionally, the total number of new vehicles and vehicle miles traveled (VMT) are also expected to increase. From 2010 to 2020 the Imperial County is expected to see a 24% increase in vehicle population and a 14% increase in VMT. Unfortunately, growth results in increased area source emissions from activities such as increased consumer product use, fuel combustion, and landscape maintenance. Although there are many emission reduction rules in place, not all emissions resulting from new land development can be mitigated on-site. For this reason, the Air District developed Rule 310 as it can assist in mitigating the excess emissions incapable of being mitigated on-site.

Rule 310 was developed through a public process that included the formation of a local Joint Advisory Committee (JAC) whose membership included representatives from Imperial County Planning Department, cities representatives, Caltrans, COLAB, Imperial Irrigation District, Building Industry Association, Holt Group, McMillan Homes, Development Design & Engineering, D.R. Horton, Duggins Construction, El Centro Regional Medical Center, Clean Air Initiative Group, Center for Health Education and Prevention, and the ICAPCD. The Air District held three public workshops for the proposed rule on August 14<sup>th</sup>, and August 15, 2007. From October 5<sup>th</sup> through November 5, 2007, the general public was given an opportunity to comment on the rule and the findings of the staff report. Comments provided by the public were incorporated into the proposed rule. The Air Pollution Control District Advisory Board (APCDAB) met to discuss the proposed new rule on August 22, 2007 and recommend approval.

As part of an extensive public outreach effort, Air District staff provided presentations to all the city councils. During the presentations, questions and concerns regarding the impacts, requisites, and benefits of Rule 310 were addressed. The presentations were given during regular city council meetings and they took place between September 19<sup>th</sup> and October 18, 2007. On November 6, 2007, Rule 310-Operational Development Fee was adopted by the Air District Board of Directors.

## **III. IMPLEMENTATION**

After the adoption of Rule 310, Air District staff in collaboration with local municipalities, setup the Rule 310 application submittal procedures that would work for everyone

involved. Cities and county representatives were asked to inform applicants about the requirements of Rule 310, which included an explanation that a building permit may be withheld. Both city and county agencies were asked to advise applicants to either visit or contact the Air District for more information. If during the Air District's review of the project it is found that the applicant's project is subject to Rule 310, the applicant will be required to fill out and submit a Rule 310 application, submit a copy of the site plans and pay the appropriate fees. Once the Air District is satisfied that all conditions of Rule 310 are met, two copies of a signed and stamp Rule 310 application are given to the applicant. One of the copies is submitted to the appropriate city or county building department while the second copy is for the applicant/developer records. In order to maintain compliance, the Air District currently requests the submittal of a monthly building report from each affected city and county building department. The cities and the county have been submitting these reports to the Air District on a monthly basis.

Since the adoption and implementation of Rule 310 back in 2007, most construction and development companies are now very familiar with the requirements of Rule 310. During the early stages of the rule's implementation the Air Pollution Control Officer (APCO) granted a temporary exemption for development projects which had submitted and paid site plan review fees prior to January 1, 2008. This exemption allowed development companies to continue with their projects without affecting their financial standing. However, on December 31, 2010, the temporary exemption ended and as of January 1, 2011 all projects, regardless of when they submitted their site plans are required to comply fully with Rule 310.

Recognizing that our nation was experiencing a severe recession, since 2008, the APCO recommended and the Air District Board of Directors approved a temporary reduction in the applicable Rule 310 fees in the amount equal to 50%. The analysis by the Air District indicated that a temporary 50% reduction would not hinder the intent of Rule 310. Simply put, the Air District would still be able to continue to meet Rule 310 emission reduction goals so long as the 50% reduction did not remain permanent but was transitory in nature. The first of four (4) resolutions (Resolution No. 2009-006) passed by the Air District Board of Directors on February 3, 2009<sup>1</sup>. The following three (3) resolutions approved a continuance of the 50% reduction:

1. Resolution No. 2009-094 adopted December 8, 2009 terminated June 30, 2010.
2. Resolution No. 2010-040 adopted June 22, 2010 terminated December 31, 2010.
3. Resolution No. 2010-085 adopted December 14, 2010 terminated December 31, 2011.

On January 1, 2012, the Rule 310 fees returned to their original levels however, the Air District Board of Directors approved a continued reduction to the applicable Rule 310 fees in the amount equal to 50%. Resolution No. 2012-043 was adopted on April 17, 2012 and was scheduled to terminate on December 31, 2012. Subsequently, Resolution

---

<sup>1</sup> February 3, 2009 the Air District Board of Directors approved a one (1) year temporary reduction of Rule 310-Operational Development Fee in amount not to exceed fifty percent (50%) for the applicable fee. Subsequently, three additional temporary reductions were approved by the Air District Board of Directors. The resolution allowed the reduction to continue until December 31, 2011.

No. 2012-155 was adopted on December 4, 2012 which extended the 50% Rule 310 fee reduction until December 31, 2013.

#### IV. FEE SCHEDULE

**Table 1** is the Rule 310 fee schedule that applicants were subject to paying between January 1, 2012 and December 31, 2012<sup>2</sup>. As per Section D of Rule 310, the Consumer Price Index (CPI) prompted an increase in 2013 and therefore the Rule 310 fees increased in 2013. The 2013 fee schedule can be seen in **Table 2**. These schedules do not reflect the 50% reduction as approved by the April 17, 2012 and December 4, 2012 Board Resolutions.

**Table 1. 2012 Rule 310 Fee Schedule**

		Ozone Precursors	PM10	Total
D.1	Residential Single Family Dwelling	\$341.00/Unit	\$201.00/Unit	\$542.50/Unit
D.2	Residential Multiple Family Dwelling	\$252.00/Unit	\$161.00/Unit	\$413.00/Unit
D.3	Commercial	\$0.96/sq.ft.	\$0.64/sq.ft.	\$1.60/sq.ft.
D.4	Warehouse (below 148 ADT)*	\$0.30/sq.ft	\$0.08/sq.ft.	\$0.38/sq.ft.

\* The applicant must demonstrate that the warehouse will generate below 148 Average Daily Trips (ADT) by use of either a Traffic Study or the institute of Transportation of Engineers (ITE) Trip Generation Manual.

**Table 2. 2013 Rule 310 Fee Schedule**

		Ozone Precursors	PM10	Total
D.1	Residential Single Family Dwelling	\$347.00/Unit	\$205.00/Unit	\$552.00/Unit
D.2	Residential Multiple Family Dwelling	\$256.00/Unit	\$164.00/Unit	\$420.00/Unit
D.3	Commercial	\$0.96/sq.ft.	\$0.64/sq.ft.	\$1.60/sq.ft.
D.4	Warehouse (below 148 ADT)*	\$0.30/sq.ft	\$0.08/sq.ft.	\$0.38/sq.ft.

\* The applicant must demonstrate that the warehouse will generate below 148 Average Daily Trips (ADT) by use of either a Traffic Study or the institute of Transportation of Engineers (ITE) Trip Generation Manual.

#### V. PROJECT SELECTION

As per section E.7 of Rule 310, the Air District established a Rule 310 Review Committee that is responsible for the evaluation, selection and approval of the proposed mitigation projects based on the cost effectiveness of each project. The review committee is composed of nine individuals each representing different public and

<sup>2</sup> Rule 310 was amended on June 28, 2011 to include a fee schedule for warehouse developments. Prior to this amendment, warehouses would pay the same fee as a commercial project.

private sectors. The selection of the representation of the nine sectors provides impartiality to all project proponents requesting funding. The Review Committee which consists of a County Representative; an APCD Advisory Board member, a member of the local Construction Industry, a representative of the Planning Profession, a Public Representative, a representative of the Joint Chamber of Commerce, a representative of the Health Service Community, a representative of the Imperial County Transportation Commission, and a representative of an all industry-wide Agency was established by the Air District Board of Directors to evaluate those mitigation projects requesting funding. Although the Air District reviews the projects and makes recommendations, the decision to fund projects comes from the Review Committee.

On August 1, 2012 a RFP legal ad was published in the local newspaper and on the Imperial County website in order for the public, local agencies, cities, private developers and the general public to have an opportunity to apply for the Ozone and PM10 mitigation funds collected during FY 2011/2012. For that FY, \$97,000.00 was made available for Ozone mitigation projects and \$61,000.00 was made available for PM10 mitigation projects. The application deadline was November 1, 2012. The Air District received a total of three project proposals for the Ozone funds and one proposal for the PM10 mitigation funds.

The Air District provided the Rule 310 Committee with copies of all the project proposals and scheduled a meeting to discuss and vote on the projects. On February 26, 2013, the PM10 project was selected to receive the PM10 funds available. Two of the Ozone projects were not selected as they did not meet the 10 year project life and cost-effectiveness threshold requirements. The third Ozone project was already in violation of the State's Air Toxic Control Measure (ATCM) regulation and therefore could not be funded. The PM10 project that was selected to be funded consisted on the paving of a portion of South 5<sup>th</sup> Street, in Brawley, CA. Unfortunately in late June 2013, the City of Brawley who had applied for the PM10 funding notified the Air District that they were unable to gather sufficient outside funds to complete the project and requested to withdraw their application. The unused Ozone and PM10 funds are being carried over to the next funding cycle which will include monies collected during FY 2011/2012 and FY 2012/2013.

After suffering a couple of setbacks, the City of El Centro parking lot that was scheduled to be paved with 2010/2011 FY funds is finally under construction and is expected to be completed by August 2013. The three agricultural engines that were selected for funding on February 2012 with 2010/2011 FY funds were successfully completed and funded in August 2012

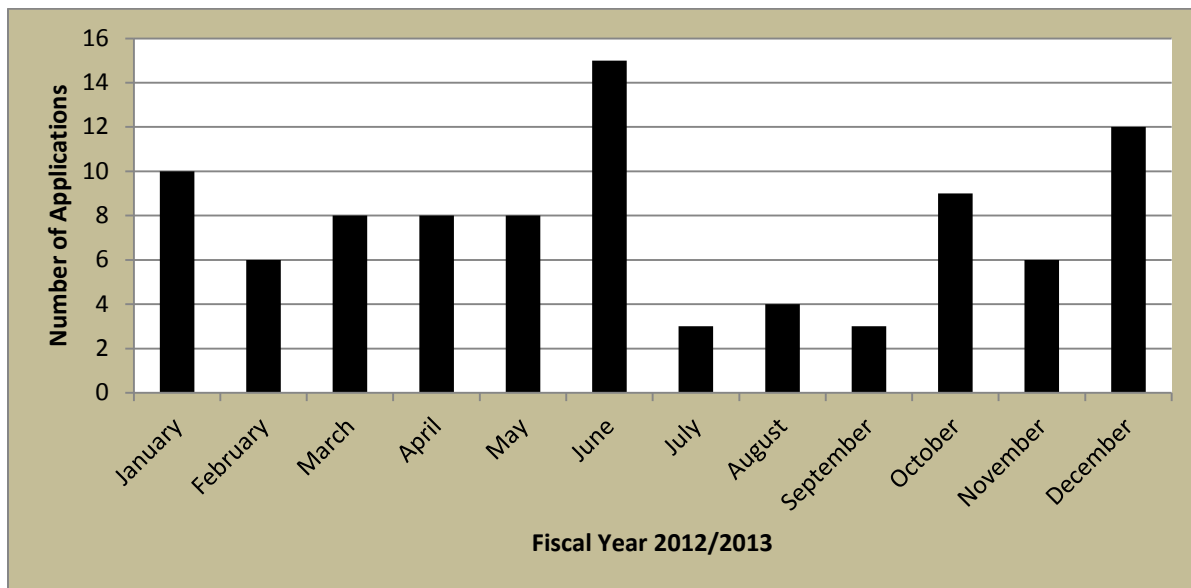
## **CONCLUSION OF PRIOR YEAR FUNDING**

No projects were funded with 2011/2012 funds. The Ozone projects did not meet the qualifications and therefore were not selected by the committee to receive funding. The PM10 project which was selected for funding had to withdraw its application due to insufficient funds to complete the entire project.

## VI. 2012-2013 RULE 310 PROGRAM ANALYSIS

Within the period of July 1, 2012 and June 30, 2013 the Air District received a total of ninety two (92) Rule 310 applications that were required to comply with the rule's conditions. All applicants/developers opted to pay the required fees. **Figure 1**, provides a breakdown of the Rule 310 applications received during the past Fiscal Year.

**Figure 1. Rule 310 Applications Received On 2012/2013 Fiscal Year**



As shown in **Figure 1**, the number of Rule 310 applications that were submitted to the Air District and were subject to Rule 310 fees have increased significantly from last year (41) to this year (92). The total amount of funds collected between July 1, 2012 and June 30, 2013 is \$601,761.04. The represented breakdown into each account is as follows: The total amount of funds collected to fund Ozone emission reduction projects is \$362,703.87. The total amount of funds collected to fund PM10 emission reduction projects is \$239,057.17. The Air District will make available the funds through an RFP process which is schedule to start on August 1, 2013. **Table 3**, provides a summary of the fees collected during the 2012/2013 FY.

**Table 3 - Summary of Rule 310 Funds for the 2012/2013 FY**

		Total Rule 310 Program		
		Ozone	PM10	Total
<b>Beginning Balance</b>	\$	*108,800.84	*162,736.93	*271,537.77
<b>Total Amount Off-Site Fees Received</b>	\$	**362,703.87	**239,057.17	601,761.04
<b>APCD Administration Fees for 2012/2013 FY</b>	\$	0	0	0
<b>Grand Total of Available Off-Site Fees Minus Administration Fees</b>	\$	471,504.71	401,794.10	873,298.81
<b>Total Amount Proposed For Spending (Contracted)</b>	\$	0	***101,400.00	***101,400.00
<b>Grand Total Balance of Available Off-Site Fees</b>	\$	471,504.71	300,394.10	771,898.81

\*Monies reflect remaining and/or awarded funds which have not been distributed from FY 2010/2011 and 2011/2012.

\*\*A small discrepancy in the balance of both the PM10 and Ozone total amount of off-site fees received was found and has been corrected accordingly. The table provides the accurate amounts collected for each account.

\*\*\*2010/2011 FY funds awarded for distribution in August 2013 or September 2013 when the project is complete.

		Ozone	PM10
<b>Total Off-Site Proposed Emissions Reductions With 2012/2013 FY Funds</b>	Tons	0	0
<b>Total Proposed Average Emissions Reductions Cost Effectiveness</b>	\$/Ton	0	0

**Total Amount of Off-Site Fees Received**

Provisions within Rule 310 allow applicants to defer payments of off-site mitigation fees to the time that a Certificate of Occupancy (or equivalent documentation) is issued, no deferment of off-site mitigation fees were issued in FY 2012/2013. One deferment application was issued in FY 2011/2012. The full payment of the off-site mitigation fee is expected once the project is built and receives its Certificate of Occupancy. This payment will be reflected in the Accountability Report that represents the FY in which the fee is paid. As presented in **Table 3**, the Air District received off-site fees totaling \$601,761.04 from July 1, 2012 through June 30, 2013.



### **Total Expenditure of Off-Site Fees Received**

No projects will be funded with the 2011/2012 FY Ozone and PM10 funds. The PM10 project that was selected to receive \$101,400 of 2010/2011 FY of PM10 funds is expected to receive its funds in August or September 2013. The balance remaining on both funds has been carried over to the 2012/2013 fund balance.

### **Total Emission Reduction Expected to be Realized in the Near Future**

Although the Air District had committed to fund a PM10 street paving project with 2011/2012 FY funds, the applicant withdrew its application in June 2013. No other projects were selected to receive funding with 2011/2012 funds.

### **Overall Cost-Effectiveness of Proposed Funded Projects**

No projects were funded with 2011/2012 FY funds.