RULE 310 OPERATIONAL DEVELOPMENT FEE

(Adopted 11/06/2007; Revised 12/02/2008; 01/01/2011; 06/28/2011; 01/01/2012 - 01/01/2017: Revised 12/12/2017 – 01/01/2027)

A. Purpose and Mitigation Alternatives

A.1 Purpose

The purpose of this rule is to provide the Imperial County Air Pollution Control District (APCD) 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. This rule will assist the APCD in attaining the State and federal ambient air quality standards for PM_{10} and Ozone.

A.2 Mitigation Alternatives

All project proponents have the three options listed below. The first option is simply to pay the operational development fee. The second option is to propose and implement a reduction project of your own. The third option involves an emissions review of your specific project.

A.2.a Residential, commercial, and warehouse projects may opt to pay a pre-determined project mitigation fee found in Section D below, or

A.2.b Develop and implement an Alternative Emission Reduction Plan (Plan) that reduces calculated emissions associated with the operations of the project. The applicable fee shall be reduced in proportion to either the partial or full mitigation of emissions as demonstrated by the approved Plan. The Alternative Emission Reduction Plan shall follow the requirements of Section F below, or

A.2.c An applicant may request a project specific operational emissions analysis to help reduce the mitigation fee. Case by case operational emissions analysis PM_{10} and NOx must follow the requirements of Section G below.

B. Definitions

For the purposes of this rule, and in addition to the definitions in Rule 101, Definitions, the following definitions shall apply:

B.1 AVERAGE DAILY TRIPS PER DAY (ADT): Means the average number of vehicles that cross a given point surface during a specific 24-hour period as determined by the most recent Institute of Transportation Engineers trip generation manual, tube counts, or observations. For warehouses the South Coast AQMD, Large Warehouse Distribution Center Trip Rates, report can be used. The rate of 2.59 trips per 1000 square feet for large

non-rail warehouses and 1.63 trips per 1000 square feet for large rail warehouses can be used.

B.2 COMMERCIAL: Commercial means any new construction, including additions of structures, which are not residential or industrial, as defined herein, and which are for profit.

B.3 INDUSTRIAL: Industrial means, for the purpose of this rule, any new construction, including additions to structures, whose primary function is subject to Rule 207, New and Modified Stationary Source Review Rule and/or Rule 201, Permits Required.

B.4 MINOR SUBDIVISION (PARCEL MAPS): Any division of land (real property) consisting of four or less lots.

B.5 MITIGATION: For the purpose of this rule, mitigation means an activity taken or conditions incorporated in a project to avoid, minimize, reduce, eliminate, or compensate emissions estimated to occur from new development projects.

B.6 OPERATIONAL DEVELOPMENT: Operational Development means any facility, building, structure, installation, real property, road or highway which attracts or may attract mobile sources of air pollution.

B.7 RESIDENTIAL: Residential means any construction of a family dwelling unit. Each dwelling shall be considered one unit. Residential projects can be placed in the following two categories:

B.7.a SINGLE FAMILY DWELLING: A building, including accessory buildings, used as living quarters by one family.

B.7.b MULTIPLE FAMILY DWELLING: A building, including accessory buildings, used as living quarters by multiple families residing independent of one another.

B.8 WAREHOUSE: A structure or room for the storage of merchandise or commodities which is considered a commercial enterprise for the purposes of this rule. A warehouse maybe either private or public.

C. Exemptions

The following construction units are exempt from provisions of this rule:

C.1 All Minor Subdivision residential projects of four or less single family dwelling units shall be exempted.

C.2 Low income residential projects, as certified by the department of Housing and Urban Development (HUD), directly aided by federal, State, or local housing funds shall be exempted. For multiple family dwelling projects, only those units that are directly aided by federal, State or local housing funds shall be exempt.

C.3 Reconstruction of any development project that is damaged or destroyed and is rebuilt to essentially the same use and intensity.

C.4 Remodeling of commercial, warehouse or industrial type buildings where no expansion of square footage occurs.

C.5 Remodeling or expansion at existing single family residential dwelling.

C.6 A development project on a facility whose primary functions are subject to Rule 207, New and Modified Stationary Source Review Rule and/or Rule 201, Permits Required. This exemption applies only to those emission units covered under these rules. However, facility generated off-site emissions within Imperial County shall be mitigated through the CEQA environmental review process.

D. Applicable Fee

Level 1 Projects: Any applicant applying for a building permit within the County of Imperial or any Incorporated city within Imperial County that seeks to gain a final discretionary approval for a development project, or any portion thereof, which upon full building-out will result on a potential to emit less than 137 lbs/day of NOx or ROG; or 150 lbs/day of PM_{10} shall pay the one time fees listed on the Level 1 Category.

Level 2 Projects: Any applicant applying for a building permit within the County of Imperial or any Incorporated city within Imperial County that seeks to gain a final discretionary approval for a development project, or any portion thereof, which upon full building-out will result on a potential to emit or exceed 137 lbs/day of NOx or ROG; or 150 lbs/day of PM_{10} shall pay the one time fees listed on the Level 2 Category.

2027 FEES		Level 1 Applicable Fee	Level 2 Applicable Fee
D.1	Residential Single Family Dwelling	$ 310.50 /Unit	$ 714.00 /Unit
D.2	Residential Multiple Family Dwelling	$ 241.50 /Unit	$ 544.50 /Unit
D.3	Commercial, or	$ 0.72 /sq.ft.	$ 1.60 /sq.ft.
	Commercial (based on ADT)*	$ 180.00 /ADT	$ 400.00 /ADT
D.4	Warehouse, or	$ 0.72 /sq.ft.	$ 1.60 /sq.ft.
	Warehouse (based on ADT)*	$ 180.00 /ADT	$ 400.00 /ADT

* The applicant must demonstrate the warehouse Average Daily Trips (ADT) by use of either a Traffic Study or the Institute of Transportation Engineers (ITE) Trip Generation Manual.

Beginning January 1, 2018, this permit fee will be adjusted annually by multiplying the base permit fee for the previous year by the average percentage rate for the month of August of the previous year (rounded to the nearest half dollar) which is derived by a fraction, the numerator of which is the Revised Consumer Price Index for All Urban Consumer for the Rural Service Area #7 statistical area (All Items, Base 1982-84=100), (the "CPI"), and the denominator of which is the CPI for the same calendar month of the prior year. Notwithstanding the foregoing, in no event shall the permit fee be decreased and in no event shall any increase exceed 4% per year, without formal action by the Air Pollution Control District Board.

E. Administrative Requirements

E.1 The appropriate Operational Development Fees shall be paid to the APCD by the developer at the time of obtaining the building permit. On existing lots the fees shall be paid at the time of obtaining the building permit. If approved by the APCD, the developer may have the option to defer payment of these fees by signing a deferral agreement with the APCD which shall consists of the following:

E.1.a The applicant may request that the payment of Operational Development Fees be deferred to the time that a Certificate of Occupancy (or equivalent documentation) is issued such request must be made to the APCO in writing.

E.1.b Deferral requests shall be limited to developments which submit no less than ten (10) building permit applications at a time.

E.1.c The fees shall be paid at the current applicable rate at the time of final payment of the fees.

E.1.d If the fee is not paid at the time that a Certificate of Occupancy (or equivalent documentation) is issued, the fee shall be increased by one-half (½) the amount thereof. Non-payment of the increased fee within thirty (30) days shall result in applicant not being allowed for future deferral agreements.

E.1.e All of the foregoing must be set forth in a writing that is in a form acceptable to the County Counsel and executed by both parties.

E.2 Funds generated by Operational Development Fees shall be deposited into one single account and be redistributed by the APCD for various mitigation projects throughout the County of Imperial.

E.3 Funds will be allocated through a Request For Proposal (RFP) process for proposed mitigation projects based on the cost analysis and emissions reductions of each project.

E.4 RFPs shall be published by the APCD by August 1st of each year, based on the fees collected throughout the previous fiscal year.

E.5 Any person seeking funding for a mitigation project shall develop and submit a written Mitigation Project Report. The minimum criteria the proposed mitigation projects shall meet for considerations are the following:

E.5.a The proposed Mitigation Project Report shall contain a detailed project description, including sufficient information and documentation that supports the calculation of emissions and emissions reductions specified in the report.

E.5.b A thorough emission reduction analysis should be performed for the proposed mitigation project using emission factors from EPA document AP-42 “Compliance of Air Pollution Emission Factors”, the latest version of EMFAC, or other approved source(s). The emission reduction analysis shall include calculations for estimated emission reductions of all criteria pollutants on a daily and yearly basis. Documentation of emission factors and all assumptions shall be provided with the documentation.

E.5.c Emission reductions produced by the proposed mitigation projects must be above and beyond what is being required by any federal, State, or local regulation, memorandum of agreement/understanding with a regulatory agency, settlement agreement, mitigation requirement, or other legal mandate.

E.5.d Mitigation projects must adhere to a minimum cost-effectiveness of the current monetary figure established by the Carl Moyer Program to offset one weighted ton of PM_{10} or Ozone Precursors.

E.5.e No emission reductions obtained by the proposed mitigation projects shall be utilized as marketable emission reduction credits, or to offset any emission reduction obligation of any individual or entity.

E.5.f Mitigation projects are obligated to have a minimum project life of ten years. Proposed projects possessing shorter life spans may be approved on a case-by-case basis, according to cost effectiveness, as approved by APCD Board of Directors. In addition, projects with shorter lives may be subject to additional funding restrictions, such as a lower cost-effectiveness limit and/or a project cost cap.

E.5.g Potential mitigation projects that do not meet designated criteria may be considered on a case-by-case basis if evidence supplied to the APCD demonstrates potential surplus, real, quantifiable and enforceable emission reduction benefits.

E.6 The ICAPCD will evaluate and recommend the proposed mitigation projects based on the cost effectiveness of each project. The APCD Board of Directors will authorize expenditure of funds on a public forum.

E.7 On August 1st of each year the Imperial County APCD will prepare an annual report which will include the following elements: total amount of off-site fees received; total monies spent; total monies remaining; a list of all projects funded; total emissions reductions realized; and the overall cost-effectiveness factor for the projects funded.

F. Alternative Emission Reduction Plan Requirements

Any person seeking full or partial exemption from this rule shall develop and submit for the APCD's approval a written Alternative Emission Reduction Plan. The Alternative Emission Reduction Plan shall meet all of the following requirements:

F.1 The Plan shall contain detailed project description, including sufficient information and documentation that supports the calculation of emissions and emissions reductions specified in the Plan.

F.2 A thorough emission reduction analysis should be performed for the Alternative Emission Reduction Plan using emission factors from EPA document AP-42 "Compliance of Air Pollution Emission Factors", the latest version of EMFAC, or other approved source(s). The emission reduction analysis shall include calculations for estimated emission reductions of NOx

and PM_{10} on a daily and yearly basis. Documentation of emission factors and all assumptions shall be provided with the documentation.

F.3 Emission reductions contained in the Plan shall be Real, Surplus, Quantifiable, and Enforceable.

F.4 Emission reductions contained in the Plan are obligated to have a minimum project life of ten years.

F.5 Emission reductions contained in the Plan can NOT be utilized as marketable emission reduction credits, or to offset any emission reduction obligation of any individual or entity.

F.6 The APCD shall be reimbursed by the applicant for any time and materials expended in the review and evaluation of an Alternative Emission Reduction Plan. The APCD shall provide the applicant a cost estimate for reviewing the Alternative Emission Reduction Plan. A minimum fee of 50% of the cost estimated shall be paid by the applicant at the time of submittal of the Alternative Emission Reduction Plan. The APCD will provide hourly time and materials rates to any applicant upon request.

G. Project Request for Review

Any applicant subject to this rule may request, in writing, a project review of operational NOx and PM_{10} emissions analysis. The analysis for a project review may be produced by or for the applicant. If the analysis is not provided by the applicant, the APCD shall perform the analysis of the project review. The analysis shall contain such information necessary to enable the APCD to properly assess the project and to finalize the review as requested. Such information may include but is not limited to the following:

G.1 Applicant name, address and contact information.

G.2 Detailed project description, including but not limited to

G.2.a Project Name – Proposed Business Name
G.2.b Site Size
G.2.c Site Plans
G.2.d Type of commercial business
G.2.e Square footage
G.2.f Loading facilities
G.2.g Amount of parking available
G.2.h Traffic study

G.3 If the applicant provides the analysis the applicant shall provide such information as to allow the APCD the ability to verify and confirm the

emissions analysis of operational NOx and PM_{10}. Such information shall include but is not limited to:

G.3.a The output files of the analysis of the operational NOx and PM_{10} emissions associated with the proposed project utilizing an approved land use modeling tool such as CalEEMod.

G.3.b The input files of the analysis of the operational NOx and PM_{10} emissions associated with the proposed project utilizing an approved land use modeling tool such as CalEEMod.

G.3.c If default values for trip generation were not used the supporting documentation validating the change in default values such as a traffic study.

G.4 The APCD shall be reimbursed by the applicant for any time and materials expended in the review and evaluation of a request for review under D.1 above. The APCD shall provide the applicant a cost estimate for either developing or reviewing the Project Request for Review. A minimum fee of 50% of the cost estimated shall be paid by the applicant at the time of submittal of the Project Request for Review. The APCD will provide hourly time and materials rates to any applicant upon request.