

**PLACER COUNTY AIR POLLUTION CONTROL DISTRICT
BOARD OF DIRECTORS**

**Thursday, October 11, 2007
2:30 P.M.**

Meeting Minutes

The Board of Directors of the Placer County Air Pollution Control District met in session at 2:30 P.M., Thursday, October 11, 2007 at the Placer County Board of Supervisors' Chambers, 175 Fulweiler Avenue, Auburn, California. Representing the District was: Tom Christofk, Air Pollution Control Officer; Todd Nishikawa, Compliance and Enforcement Manager; Yu-Shuo Chang, Planning and Monitoring Manager, and John Finnell, Senior Air Pollution Control Engineer.

- 1. Call to Order: Chairman Holmes**
- 2. Flag Salute:**
- 3. Roll Call / Determination of a Quorum**

Present: Mike Holmes, Tom Millward, Robert Weygandt, Jim Holmes, Kent Nakata, Peter Hill, and Jim Gray

Absent: Kirk Uhler and Sherrie Blackmun

- 4. Approval of Minutes:** August 9, 2007, Regular Board Meeting
Motion: Kent Nakata, second: Robert Weygandt; approved unanimously
- 5. Public Comment:** No public comment
- 6. Synopsis of Agenda (information only, no action needed)**
- 7. Approval of Agenda:**
Motion: Jim Gray, second: Kent Nakata; approved unanimously

Public Hearing / Action Items

- 8. Adoption of Rule 411, Indemnification of District: (Public Hearing/Action)**
Continuation of August 9, 2007 Public Hearing regarding the proposed adoption of Rule 411, Indemnification of District and staff proposal for approval of Resolution #07-07 thereby adopting Rule 411.

Mr. Christofk opened the discussion by explaining that, as directed by the Board at the August 9, 2007 meeting, District Staff held workshops allowing the public to speak with District staff and County Counsel in order to have their concerns heard. He then turned the item over to Mr. Nishikawa for further explanation. The Board also had asked that staff contact other air districts to find out which ones have had issues with lawsuits or indemnification. Both of these requests have been addressed and the outcome is contained in

the board memo, attachments and exhibits.

Two workshops were held in Auburn and one in Tahoe. A total of five permitted sources were represented by attendees. The comment letters, a synopsis of main concerns and responses to those concerns by County Counsel, as well as alternative proposals to the rule are included in the Board packet.

Staff did some research and contacted other air districts. They found that Butte County, Tehama County, South Coast AQMD, San Diego County APCD and Santa Barbara County APCD have all adopted indemnification rule provisions. Ventura County APCD has proposed adoption of a rule but not yet adopted one. Yolo-Solano AQMD and Amador APCD are both considering adopting an indemnification rule. The issue has also been a topic for discussion among the California Air Pollution Control Officers Association (CAPCOA) during recent sessions. Mr. Nishikawa did inquire of the other air districts to find out if they had any litigation which prompted adoption of this rule. Ventura County reported that they were anticipating litigation and that was what had prompted them to go forward with the rule. Many air districts were set into action because of Tehama County APCD's recent defense of its hearing board which has cost that county an excess of \$300,000.

District Staff believe that this rule is necessary for risk management purposes although there is no current anticipation of litigation against the District. The proposed rule requires indemnification of the District in a manner agreed to by both parties. Having a standing indemnification requirement provides the District with an underlying means to limit risk to overall District operations from litigation costs from the defense of the permit of a single applicant. Having such a rule would ensure that this District would not find itself in the same situation that Tehama County APCD found itself in. To manage potential risk to the District, the indemnification requirement must be mandatory and not be a voluntary agreement with the permit holder. If it is left as a voluntary matter, Staff believe that the District's risk would be the same as if no indemnification rule were adopted. If indemnification is required of a permit applicant, the District will consult with the permit applicant to establish the scope and terms of indemnification which would describe and prescribe the responsibilities of each party. This would be done on a case by case basis since there is no "one size fits all" for this type of agreement.

Mr. Nishikawa introduced Mr. Brian Wirtz who is the District's Counsel on this item and was in attendance to answer questions. Mr. Nishikawa concluded his presentation and said he would entertain any questions. Chairman Jim Holmes asked for questions or comments from the Board and as there were none, he opened the public comment session. Mr. John Dunlap, representing a coalition of several permitted sources/businesses came forward to speak.

Mr. Dunlap commended the District Staff for the workshops and said that he felt they were very successful. He also said that Mr. Wirtz had been very helpful in "demystifying" the legal issues. He went on to say that he hoped the Board had looked at the alternative proposal for the indemnification language (included in the packet) which the coalition presented to District Staff at the workshops. He said that while he believes that District staff is being

responsible by bringing this issue to the Board, he and his coalition are concerned about this rule and believe it may be a solution in search of a problem. He said a successful defense would have to include the District and the Permittee and that District Counsel would have to be actively engaged. He provided an alternative proposal that touches on the concerns of small and large businesses. One item he was concerned about was that the staff proposal did not allow for relief from indemnification if a suit was brought due to staff errors on a permit. He also suggested that the indemnification agreement should not apply to every permit, especially small businesses, but that a cut point should be made and the agreement should only apply to projects that have a "regional significance". He believes that the planning department already uses this strategy and has developed some criteria that determine if a project has "regional significance". He said that he thinks the agreement should be voluntary and that most Permittee's would volunteer to enter into an agreement. He concluded by saying that it would be better to adopt a less stringent rule at first and leave room to tighten it up in the future if the need should arise.

The Board asked for County Counsel's response to Mr. Dunlap's comments. Mr. Wirtz came to the podium and said that in his opinion, the alternate proposal would significantly weaken the rule. It would drastically restrict the number of permits that the rule would apply to since it would apply only to new permits. Using the "regional significance" definition would further restrict the number of permits that the rule would apply to. While "regional significance" is a term used commonly in land use/development and planning contexts, the definition used for those areas may not fit this situation. No definition of the term has been offered in writing in the alternate proposal submitted by Mr. Dunlap's coalition. The term "regional significance" would have to be well defined before it was included in the agreement language. If it was not, District Staff would be put in the position of guessing which permits may have a legal challenge brought to them. Furthermore, the proposed changes would require that the agreement contain a mutually agreed upon condition to issuance which would require that the Permittee and the District meet in advance to discuss the terms regarding who would cover what in a defense before the permit is issued. To take the time to meet and agree on the details of a potential lawsuit before a permit is issued would be very time consuming and a waste of resources. As the rule is written now, these issues will be handled when and if a lawsuit is filed (section B-3). Mr. Wirtz re-iterated that to have the rule be a voluntary one would be like not having a rule at all, and that if the rule is adopted it must be a mandatory part of the agreement.

Director Hill had a question regarding the voluntary revocation process in section B of the rule. His concerns had to do with the possibility of having a non-cooperative Permittee and what options the District would have in that circumstance. Mr. Wirtz outlined several scenarios and the possible actions by the District including the revocation of a permit. He seemed to think it would be unlikely that things would ever go that far.

Director Gray proposed that there be language written into the rule that allows the District to waive indemnity if the circumstances called for it. He said that there should be a way for a Permittee to petition the Board to have the clause waived due to financial hardship and still keep their permit to operate intact. Mr. Christofk said that it was up to the Board to decide

how they wanted the rule to be written and that they could choose to include that language and direct Staff to change it.

After more discussion and comments from several Board members it was decided that they would form a committee to seek information from other air districts that either have or are considering an indemnification rule. Directors Hill and Gray volunteered and asked that there be a County Supervisor on the committee as well. Chairman Jim Holmes volunteered to fill that spot. Director Hill was named the Chairman of the committee. The issues they hope to obtain information on, with the assistance of District Staff are: what kinds of lawsuits are being brought, what issues are most likely to cause a lawsuit, was the suit brought to a new or existing permit and what was the total cost of defending/settling the suit. It was requested that Staff begin by contacting legal counsels for each district. Chairman Holmes asked that the committee conclude its research and have information to report by the next meeting on December 13, 2007. In the mean time, the public hearing will be kept open and continued to the meeting in December.

Motion: Continue public hearing to the December 13th 2007 regularly scheduled meeting: Jim Gray second: Mike Holmes, approved unanimously.

9. **Adoption of Rule 233, Biomass Boilers:** The amendment to Rule 233, Biomass Boilers, allows alternate NOx (nitrogen oxide) and CO (carbon monoxide) limits during startup and shutdown of a biomass boiler.

Mr. John Finnell, Senior Air Pollution Control Engineer, presented this item. He said this is an amendment to an existing rule which only affects two permitted sources in Placer County. The original rule pertains to biomass boilers which are major sources of NOx and are not located at a medium density fiberboard plant. The amendment allows for alternate emission limits during startup and shut down and redefines these terms.

Currently the definition of shutdown is to completely shut down the equipment to be cooled from normal operating temperature to ambient. The new definition would allow shutdown to begin when the boiler begins cooling, and shutdown will end when the boiler reaches 150 degrees F or less or, 24 hours have elapsed, or when fuel feed resumes. The emissions will still be monitored but the concentration limits for CO will be recalculated because the shutdown and startup process typically results in exceedences of CO concentration limits since the boiler is not working at its full efficiency during these processes. This was causing the facility to be out of compliance each time they shutdown and started up the boilers.

The definition of startup will be amended to include anytime the boiler is heated to normal operating temperatures rather than being heated from ambient to normal operating temperatures. The limitations for NOx and CO will be established in terms of mass emissions instead of the concentration of 115 ppmv (or 50% of the uncontrolled concentration). The mass emissions limits may be either the existing limitations in the existing permits or there may be new mass emission limitations established applicable only during startup and shutdown.

Also included in the rule is a requirement to limit to the number of startups and shutdowns allowed each year. This is a necessary control measure for the District because with the new mass emission limitations in place, chronic problems with the equipment could continue without being noticed or corrected. If an inspector sees an excessive number of startups and shutdowns that would be an indicator that something may be wrong. The cap will be set to allow a reasonable number of startups and shutdowns. The operator has the option of correcting any repetitive problem to eliminate this need for shutdowns and startups or of seeking a variance to allow more shutdowns and startups. During the variance approval process the reasons for the shutdowns can be closely examined and a compliance plan can be required to address repetitive causes.

Staff have met with and discussed the matter with both companies affected by this amendment and provided them an opportunity to comment. The proposed amendment does not relax the requirement to meet the existing NO_x emission limitation listed as a concentration of 115 ppmv corrected to 12% CO₂ during normal operations, nor will it allow relaxation of any other existing hourly, daily or quarterly limit of pounds per hour outside of the allowance for alternate limitations during startup and shutdown. It is not anticipated that these new limitations will result in more emissions.

Staff recommended that the Board open up public comment and consider adopting the amendment to Rule 233.

Chairman Jim Holmes opened up the public hearing and Dr. Ted Guth, representing Rio Bravo in Lincoln, came forward to speak. He stated that he appreciated all of the time District Staff, especially John Finnell, had given to this item and said he was in full support of the rule.

Motion: Peter Hill, second, Kent Nakata, approved unanimously

10. Air Pollution Control Officer's Report

County Biomass/Wildfire Overview:

Mr. Christofk introduced the County Wildfire and Biomass Program Manager, Brett Storey, to give a report on what is going on with that program. Mr. Storey said that the District has been very instrumental in promoting and financially supporting the program since the beginning. Mr. Storey showed a power-point presentation on what has been happening with the biomass and wildfire prevention program. He outlined the five year strategic plan to implement programs projects and technology; spoke about the policy team and County program implementation; federal, state and local collaborations, grant money; money earmarked for this program from Congressman Doolittle and money from the California State budget for the program. He went on to outline the numerous programs and their levels of success and concluded with potential joint relationships and projects with other agencies.

Mr. Storey gave much credit to Tom Christofk for assisting him with getting doors opened at many levels. He said that having a regulator with him when he spoke with elected officials seemed to ease their minds and make them more agreeable to his proposals. The programs

and projects are very extensive and far reaching. Every level of government has been involved and the buy in on the programs and the success rate has been better than expected.

Mr. Christofk said he realized that he hadn't given the Board a briefing on Biomass over the last few years and was pleased to be doing so now. He showed a chart that outlined a biomass emission-economic process model. This chart showed how biomass can be harvested to create energy rather than openly burning it which creates no harvestable energy plus it sends large amounts of emissions into the air. He said that if the biomass product could be burned in a controlled environment then there would be a decrease in all the emissions (PM, CO, Nox etc). The side benefits would be that greenhouse gasses would be reduced, there would be less impact on landfills and water quality and it would likely improve forest health. Because Placer County is considered a non-attainment zone for ozone, it would be difficult to permit any new large biomass facility; however, if the emission reductions could be factored in as credits, the possibility of permitting would increase significantly.

Chairman Holmes thanked Mr. Christofk and Mr. Storey for their work on the biomass issues and for the report. Mr. Storey said it would not have been possible to do the work he has done without the support of the APCD Board and Staff.

Mr. Christofk then briefed the Board on up-coming rule development and amendments. At the December Board meeting staff will be bringing an amendment to Rule 225 regarding wood burning and a new rule (Rule 412) regarding registration of agricultural use engines. There will be public work shops on both of these rules before the next Board meeting.

Mr. Christofk gave a brief update on the first quarter fiscal status of the district: expenses are under by about 56% due to the monies set aside for clean air grants and revenues are over by 20% of projected.

13. **Adjournment:** Chairman Holmes adjourned the meeting at 4:36 PM.

Margie Koltun, Clerk of the Board

NEXT REGULARLY SCHEDULED MEETING: Thursday, December 13, 2007 at 2:30 PM