

## NEW RULE 15.2

### DISTRICT INDEMNIFICATION

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#### BACKGROUND

On various occasions, the Ventura Air Pollution Control District has been the subject of claims or litigation from third parties regarding permitting activities. In order to guard against these actions, staff proposes Rule 15.2, District Indemnification. This rule will establish that permittees agree to hold

the District harmless against certain actions involving their Permit to Operate. This requirement applies to any permit issued according to Rule 10 (Permits Required), Rule 30 (Permit Renewal) and Rules 33 through 33.10 (Part 70 Permits).

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#### PROPOSED RULE

Draft new Rule 15.2 appears in Figure 1. The rule is based on language from a Conditional Use Permit (CUP) from the Planning Division of the County of

Ventura Resource Management Agency (Appendix A). Similar requirements appear in San Diego County APCD Rule 40 (Appendix B).

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#### EMISSION REDUCTION / COST EFFECTIVENESS

Health & Safety Code § 40703 states that the district must consider, and make public, "the cost-effectiveness of a control measure." Therefore, it is not necessary to calculate the cost-effectiveness of the proposed revision. Nevertheless, the proposed rule is administrative in nature and no additional costs to either the District or stakeholders are expected.

Proposed Rule 15.2 is not included in an AQMP control measure. In addition, because BACT requirements and feasible control measures are not involved, an incremental cost-effectiveness analysis under Health & Safety Code Section 40920.6 is not required.

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#### SOCIOECONOMIC IMPACT

Health & Safety Code § 40728.5 requires the Air Pollution Control Board consider the socioeconomic impact of any new rule or amendment to an existing rule if air quality or emission limits are significantly affected. Proposed Rule 15.2 is administrative in

nature and does not include emission limits. The proposed rule will significantly affect neither air quality nor emission limitations in Ventura County. Therefore, an evaluation of the requirements of Health & Safety Code § 40728.5 is not necessary.

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#### ENVIRONMENTAL IMPACTS OF METHODS OF COMPLIANCE / CEQA

##### Methods of Compliance

California Public Resources Code § 21159 requires the District to perform an environmental analysis of the reasonably foreseeable methods of compliance if the proposed rule requires "the installation of pollution control equipment, or [specifies] a

performance standard or treatment requirement..." Proposed Rule 15.2 is administrative in nature and does not involve a requirement to install air pollution control equipment. Therefore, an analysis is not necessary.

## Figure 1 Proposed Rule 15.2, District Indemnification

This regulation shall apply to any Permit to Operate or Authority to Construct issued pursuant to either Rule 10 (Permits Required), Rule 30 (Permit Renewal), or Rules 33 through 33.10 (Part 70 Permits).

- A. As a condition of issuance of any permit, the Permittee shall agree to defend, indemnify, and hold harmless, at the Permittee's sole expense, the District and its employees, officers, directors, contractors and agents from and against any claim or action brought against the District challenging either the District's decision to issue a permit to the Permittee, or the manner in which the District is interpreting or enforcing the terms and conditions of this permit and to pay all losses, liabilities, damages, penalties, costs, awards, judgments, fees (including reasonable attorney's fees) and expenses arising from such claim or action.
- B. As a condition of issuance of any permit, upon demand from the District, the Permittee shall reimburse the District for any court costs and/or attorney's fees which the District may be required by a court to pay as a result of any such action the Permittee defended or had control of the defense of the suit. The District may, at its sole discretion, participate in the defense of any such action, but such participation does not relieve the Permittee of its obligations under Section A above.
- C. Neither the issuance of a permit as conditioned above, nor compliance with the permit conditions thereof, relieves the Permittee from any responsibility otherwise imposed by law for damage to persons or property, nor shall the issuance of any permit hereunder serve to impose any liability upon the District, its officers or employees for injury or damage to persons or property.
- D. Except with respect to the District's sole negligence or intentional misconduct, the Permittee shall indemnify, defend and hold harmless the District, its officers, agents, and employees, from any and all claims, demands, costs, expenses, including attorney's fees, judgments or liabilities arising out of the construction, maintenance, or operations described in a permit issued hereunder, and as it may be subsequently modified pursuant to the terms and conditions of these Rule and Regulations.

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### CEQA Requirements

Staff has determined that proposed Rule 15.2 is exempt from the requirements of the CEQA under

Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility that these changes may have a significant effect on the environment.

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### ANALYSIS OF EXISTING FEDERAL AND DISTRICT REGULATIONS

California Health & Safety Code § 40727.2(a) requires districts to provide a written analysis of existing regulations prior to adopting, amending or repealing a regulation. Section 40727.2(a) states:

In complying with Section 40727, the district shall prepare a written analysis as required by this section. In the analysis, the district shall identify all existing federal air pollution control requirements, including, but not limited to, emission control standards constituting best available control technology for new or modified equipment, that apply to the same equipment or source type as the rule or regulation proposed for adoption or

modification by the district. The analysis shall also identify any of that district's existing or proposed rules and regulations that apply to the same equipment or source type, and all air pollution control requirements and guidelines that apply to the same equipment or source type and of which the district has been informed pursuant to subdivision (b).

Proposed Rule 15.2 includes no emission control standards; therefore, the requirements of Health & Safety Code § 40727.2(a) are satisfied pursuant to Health & Safety Code § 40727.2(g).

**Appendix A**  
**Example Of An Indemnification Condition**  
From A County of Ventura RMA Planning Division Conditional Use Permit

Condition Compliance/Financial Requirements/Limitations:

- a. As a condition of issuance and use of this Permit, including adjustment, modification or renewal of the Permit, the permittee agrees to:
- 1) defend, at the permittee's sole expense, any Action brought against the County by a third party challenging either its decision to issue this permit or the manner in which the County is interpreting or enforcing the conditions of the permit; and
  - 2) indemnify the County against any settlements, awards, or judgments, including attorney's fees, arising out of or resulting from any such action.

Upon demand from the County, the permittee shall reimburse the County for any court costs and/or attorney's fees which the County may be required by a court to pay as a result of any such action the permittee defended or had control of the defense of the suit. The County may, at its sole discretion, participate in the defense of any such action, but such participation shall not relieve the permittee of its obligations under this condition.

- b. Neither the issuance of a permit hereunder nor compliance with the conditions thereof shall relieve the permittee from any responsibility otherwise imposed by law for damage to persons or property, nor shall the issuance of any use permit hereunder serve to impose any liability upon the County of Ventura, its officers or employees for injury or damage to persons or property.

Except with respect to the County's sole negligence or intentional misconduct, the permittee shall indemnify, defend and hold harmless the County, its officers, agents, and employees, from any and all claims, demands, costs, expenses, including attorney's fees, judgments or liabilities arising out of the construction, maintenance, or operations described herein under Condition 1 (Permitted Use), as it may be subsequently modified pursuant to the conditions of this Permit.

Appendix B  
San Diego APCD District Indemnification Language

**San Diego Air Pollution Control District  
Regulation III: Fees**

**Rule 40. Permit And Other Fees** (Adopted June 22, 2005; Eff. July 1, 2005)

(d) AUTHORITY TO CONSTRUCT AND PERMIT TO OPERATE FEES

(8) Special Application Processing Provisions

(v) Requirement for Defense and Indemnification Agreement

On a case-by-case basis, where significant risk to the District is identified in connection with the processing of an application, the Air Pollution Control Officer may require a defense and indemnification agreement from the applicant. The agreement shall be in a form approved by the Air Pollution Control Officer. On a case-by-case basis, the Air Pollution Control Officer may determine to require security from the applicant. A determination to require security shall only be made by the Air Pollution Control Officer, and shall not be delegable. The Air Pollution Control Officer shall establish the form and amount of the security, as well as the time the security is to be provided to the District.

(vi) Indemnification

Each applicant, to the extent the applicant is at fault in causing liability to the District, shall indemnify the District, its agents, officers and employees (collectively "District Parties") from any claim, action, liability, or proceeding against the District Parties to attack, set aside, void or annul the applicant's project or any of the proceedings, acts or determinations taken, done or made as a result of District's processing and/or approval of the project, as specified below. Each applicant's obligation to indemnify shall apply to any lawsuit or challenge against the District Parties alleging failure to comply with the requirements of any federal, state, or local laws, including but not limited to requirements of these Rules and Regulations. This indemnification requirement shall be included in the application form provided to all applicants.

Each applicant's obligation to indemnify the District Parties shall include, but not be limited to, payment of all court costs and attorneys' fees, costs of any judgments or awards against the District, damages, and/or settlement costs, which arise out of District's processing and/or approval of the applicant's project, except that an applicant shall only be responsible for indemnifying the District Parties in the amount of liability which is equal to the proportion of fault caused by the applicant, as determined by a court. Where any court action results in a ruling for the plaintiff/petitioner, the applicant and the District shall request a determination on the percentage contribution of fault from the court which adjudicated the underlying challenge to the applicant's project.

Notwithstanding this subsection, when a defense and indemnification agreement is required for a project under subsection (d)(8)(v) above, the provisions of the defense and indemnification agreement shall apply to the applicant and not the provisions of this subsection.