

**REPORT TO TEHAMA COUNTY AIR POLLUTION CONTROL DISTRICT BOARD**

<b>SUBJECT</b>		<b>BOARD MEETING DATE 07/21/2020 Attachment</b>
<b>Amendment of Rule 2:11 D - Indirect Source Fees</b>		
<b>DEPARTMENT</b>	<b>AIR POLLUTION CONTROL DISTRICT</b>	

**Rule Summary**

Rule 2:11 D is designed to reduce emission from construction of new single and multifamily dwellings, as well as commercial structures and similar indirect sources of emissions. The authority to regulate indirect sources of emissions is part of the California Clean Air Act of 1988. Health and Safety Code section 40716, states that “a district may adopt and implement regulations to ... reduce or mitigate emissions from indirect and areawide sources of air pollution”. Furthermore, Health and Safety Code section 42311, subdivision (g) specifically allows district to adopt a schedule of fees on areawide or indirect sources which are regulated, but for which permits are not issued, to cover the costs of District programs related to this source.

Rule 2:11D became effective on July 1, 2011 per Board action of October 26, 2010. On June 21, 2011, staff presented the Board with a proposal to delay implementation of Rule 2:11D for a 6 month time period in order to incorporate modeling results from the new emissions modeling software (CalEEMod) into the District’s procedures for calculating fees and mitigations, which were approved by the Board on July 26, 2011. On January 10, 2012, the Board took further action to delay implementation until July 1, 2012. On July 1, 2012 the District began implementing the Rule at the 50% level, reaffirmed implementation at the 50% level with Board actions on January 10, 2013 and February 11, 2014, and again reaffirmed implementation at the 50% level with Board actions on January 10, 2013, February 11, 2014, and March 03, 2015.

Staff has previously presented the required Accountability Reports for the first two years of implementation through June 30, 2014. The most recent report is attached for information purposes. While the first two years of implementation did not result in significant funding, funding during the 2014/2015 fiscal year will include receipted funding due to the Walmart Supercenter project and new Courthouse, plus other smaller projects. The District expects to have close to \$100,000 for available projects in Fall 2015.

Staff believes that it would be appropriate to maintain the existing fee structure for an additional 1-year period so that staff can continue to gauge funding collected against cost effectiveness of projects that receive funding. In addition, USEPA is currently in the process of revising the National Ambient Air Quality Standard (NAAQS) for Ozone which may result in a re-designation of Tehama County as “nonattainment” for the federal standards as early as late 2015, with requirements for air quality planning and emission reductions likely due prior to 2020. Maintaining the existing fee structure through 2020

would allow the District to begin any processes related to NAAQS revisions, and then potentially modify this rule as part of that planning process.

The proposed rule amendment constitutes a temporary suspension of implementation of the full fee amount set in the previously approved Indirect Source Fee Rule, while maintaining the current fee structure, this action is consequently not subject to Prop. 26, and does not require voter approval either at this time or upon expiration of the delay period.

The following documents are attached:

- 1) Proposed Rule 2:11D with changes tracked
- 2) Resolution
- 3) Public Hearing Notice as published in the Red Bluff Daily News
- 4) Clean copy of Rule 2:11D
- 5) FY 2013/2014 Accountability Report

**Previous Board Actions:**

July 22, 2008: Staff presentation to District Board of Directors on concept of air quality impact fees, and District proposal to perform a fee study using in house resources.

November 25, 2008: Staff presentation to District Board of Directors regarding impact fees, and direction to staff to proceed with rulemaking process.

October 6, 2009: Public Hearing to receive comment on Proposed Rule 2:11 D

October 27, 2009: Public Hearing to receive comment on Proposed Rule 2:11 D

November 10, 2009: Public Hearing to receive comment on Proposed Rule 2:11 D. District Board vote of 3-2 to take no action to adopt the proposed rule at that time and direct staff to bring back the Proposed Rule for consideration in parallel with future County Development Impact Fees.

September 14, 2010: Informational presentation to the Board to present changes to fee amounts based on draft of Tehama County Development Impact Fee proposal.

October 19, 2010: Public Hearing to receive comment on Proposed Rule 2:11 D. District Board vote of 5-0 to accept changes as presented by staff to add appeal process and delayed implementation and continue the Public Hearing to October 26, 2010.

October 26, 2010: Public Hearing to receive comment on Proposed Rule 2:11D. District Board vote of 4-1 to approve.

June 21, 2011: Staff Report to Board regarding proposed amendments to Rule 2:11D that would delay both phases of the rule by 6 months.

July 26, 2011: Public Hearing and approval of 6-month delay of fee implementation.

January 10, 2012: Public Hearing and approval of 6-month delay of fee implementation.

July 1, 2012: Rule implementation at 50% level begun.

January 10, 2013: 100% Implementation level delayed for one year, with continued implementation at 50% level.

February 11, 2014: 100% implementation level delayed for one year, with continued implementation at 50% level.

March 3, 2015: 100% implementation level delayed for five years, with continued implementation at 50% level.

### **SOCIOECONOMIC IMPACT:**

HSC Section 40728.5 exempts districts with a population of less than 500,000 persons from the requirement to assess the socioeconomic impacts of proposed rules. Tehama County population is below 500,000 persons.

### **WRITTEN ANALYSIS OF EXISTING FEDERAL AND DISTRICT REGULATIONS**

The proposed amended rule does not impose a new emission limit or standard, make an existing emission limit or standard more stringent, or impose new or more stringent monitoring, reporting, or recordkeeping requirements. Pursuant to Health and Safety Code section 40727.2, subdivision (g), the foregoing satisfies the requirement of a written analysis of existing regulations prior to adopting, amending, or repealing a regulation.

### **BOARD ACTIONS AND ALTERNATIVES:**

Staff requests the Board to do the following:

a) Hold a Public Hearing to take comments on proposed amendments to Rule 2:11D Indirect Source Fees

and;

b) RESOLUTION - Request adoption of a resolution amending Tehama County Air Pollution Control District Rule 2:11 D Indirect Source Fees by delaying full implementation of those fees until January 1, 2021.

or;

c) Propose changes to the text of the amendment to Rule 2:11D, and re-schedule the public hearing to consider the proposed Rule as revised.

or;

d) Take no action.

### **ENVIRONMENTAL REVIEW AND COMPLIANCE:**

The brief temporary delay in implementing fee collection under Rule 2:11D is not subject to review under the California Environmental Quality Act (CEQA) pursuant

to CEQA Guidelines sections 15060, subdivision (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061, subdivision (b)(3) (there is no possibility the activity in question may have a significant effect on the environment).

**REQUIRED FINDINGS**

FINDINGS	DEFINITIONS	REFERENCE
Authority	A district shall adopt rules and regulations and do such acts as may be necessary or proper to execute the powers and duties granted to, and imposed upon, the district by this division and other statutory provisions.	Health and Safety Code sections 40000, 40001, 40716, 40910, and 42311, subdivision (g) are provisions of law that provide the District with the authority to adopt this Rule.
Necessity	The District has demonstrated a need for the rule.	It is necessary for the District to achieve additional O3 precursor and PM10 reduction from indirect sources. The additional reductions will assist the District in its effort to attain air quality standards. Delaying implementation of the full effects of Rule 2:11D for a 6-month time period to allow for the completion of the program review started in March 3, 2015 that was impacted by the unforeseen effects of COVID-19.
Clarity	The rule is written or displayed so that the meaning can easily be understood by the persons directly affected by it.	There is no indication, at this time, that the proposed rule is written in such a manner that persons affected by the proposed rule cannot easily understand them.
Consistency	The proposed rule is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or State or federal regulations.	The District has found that the proposed rule is consistent with applicable statutory requirements.
Non-duplication	The proposed rule does not impose the same requirements as an existing State or federal regulation, unless the District finds that the requirements are necessary and proper and duties granted to, and imposed upon, the district.	The proposed rule does not duplicate any existing local, state, or federal requirements.

Reference	Any statute, court decision, or other provision of law that the district implements, interprets, or makes specific by adopting, amending, or repealing a regulation.	The proposed rule implements Health and Safety Code sections 40716, 40910, and 42311, subdivision (g).
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Respectfully submitted,

Joseph Tona  
Air Pollution Control Officer