



AIR POLLUTION CONTROL DISTRICT

2011 Rule 310 Annual Accountability Report

For Fiscal Year 2010-2011

July 31, 2011

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 30th, 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 for the AAR and the RFP are published on August 1st of each year.

Thus, on August 1st 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 1st. 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 1st 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 2010-2011 activities.

II. BACKGROUND

As with many other geographical areas, growth in human population and vehicle population is inevitable. The California Department of Finance projects that the human population in the Imperial County will increase by 20% between 2010 and 2020, this is estimated to be over 44,000 new residents by the year 2020. Additionally, the total number of new vehicles and vehicle miles traveled (VMT) are also expected to increase at a fast rate. 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 through their implementation. For this reason, the Air District developed Rule 310 as it can assist in mitigating the excess emissions.

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 14th, and August 15, 2007. From October 5th 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 received their approval. To inform city officials and representatives of the impact Rule 310 could potentially have on their cities, Air District staff presented the Rule 310 to all seven city councils. The presentations were given during regular city council meetings and they took place between September 19th 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 met with representatives of all the cities and the county's building departments to explain the requirements of Rule 310, to formally request their cooperation and assistance, and to setup a Rule 310 application submittal system 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. The resulting implementation process included a pre-permit review process by each city or county agency. During the pre-permit review period if a city or county agency determines that a project is subject to Rule 310 requirements, the applicant is asked to fill out a Rule 310 application and to pay the appropriate fees directly to the Air District. This would require the applicant to visit the Air District with requested plot maps and engineering designs, an application and 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 is 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 requested the submittal of a monthly permit issuance and building report for each affected city and county building department. The cities and the county are currently submitting these reports to the Air District.

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 is 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 indicates that a temporary 50% reduction would not impact to any significance the reduction of excess emissions as required by 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) was passed by the Air District Board of Directors on February 3, 2009¹. The following three (3) resolutions approve 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 terminates December 31, 2011.

¹ On 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 have been approved by the Air District Board of Directors. The most current resolution automatically terminates on December 31, 2011.

IV. RULE 310 AMENDMENTS

As per the request of the Air District Board of Directors, on June 14, 2010 the Air District executed the agreement for services with Michael Brandman Associates (MBA) a third party consultant to provide an overall assessment of Rule 310 and its associated documents. The assessment was requested by the Air District Board of Directors to ensure that Rule 310 was working effectively and to amend the rule if necessary. MBA developed two substantive technical documents. The first document entitled “Nexus Assessment Technical Report” examined the Rule 310 Fee Collection and Fee Use in light of the general nexus principles and California State regulations. The second document entitled, “Rule 310 Operational Development Fee Assessment” examined the use of fees for verification of mitigation of impact by funded projects.

The conclusions by MBA support the finding that Rule 310 is consistent with state law regarding fees and taxes. Like many rules, MBA identified areas by which if clarified or amended could strengthen the reasonable relationship between development projects and the fees assessed by Rule 310. Examples of recommendations included definitions for clarity, the addition of land use categories, the addition of alternative fee’s as well as some minor recommendations, such as the development of a “Frequently Asked Questions” fact sheet.

After reviewing both documents, the Air District began its own internal intensive review which included research into the recommended land use categories and performed additional modeling to either propose new fees or reaffirm existing fees. The review by MBA and the Air District identified the following amendments: Provide a definition for “industrial” and one for “warehouse”, add in the fee schedule “warehouses” as a land use category with its own fee and include a section which allows any project a second review of their fees. A couple of minor administrative clean up changes such as changes for consistency purposes to acronyms and the deletion of unnecessary wording was removed.

The proposed amended Rule 310, its Staff Report and its supporting documentation was taken to the Air District Board of Directors for adoption on June 28, 2011. The rule was approved by a 4-0 vote. A copy of the recently amended Rule 310, the Staff Report and its supporting documents can be found in the Air Districts website.

V. FEE SCHEDULE

Table 1 is the Rule 310 fee schedule that applicants were subject to paying between January 1, 2010 and December 31, 2010. As per Section D of Rule 310, the Consumer Price Index (CPI) prompted an increase in 2011 and therefore the Rule 310 fees increased in 2011. The 2011 fee schedule can be seen in **Table 2**. Furthermore, as stated in Section IV, the Rule 310 amendments included the addition of a warehouse land use category to the Fee Schedule. The amended Rule 310 fee schedule for 2011

can be seen in **Table 3**. These schedules do not reflect the 50% reduction as approved by the February 3, 2009, December 8, 2009, June 22, 2010, and December 14, 2010 Board Resolutions.

Table 1. 2010 Rule 310 Fee Schedule

		Ozone Precursors	PM10	Total
D.1	Residential Single Family Dwelling	\$324.50/Unit	\$191.50/Unit	\$516.00/Unit
D.2	Residential Multiple Family Dwelling	\$240.00/Unit	\$153.00/Unit	\$393.00/Unit
D.3	Commercial	\$0.96/sq.ft.	\$0.64/sq.ft.	\$1.60/sq.ft.

Table 2. 2011 Rule 310 Fee Schedule (January 1st to June 27th, 2011)

		Ozone Precursors	PM10	Total
D.1	Residential Single Family Dwelling	\$328.50/Unit	\$194.00/Unit	\$522.50/Unit
D.2	Residential Multiple Family Dwelling	\$243.00/Unit	\$155.00/Unit	\$399.00/Unit
D.3	Commercial	\$0.96/sq.ft.	\$0.64/sq.ft.	\$1.60/sq.ft.

Table 3. 2011 Rule 310 Fee Schedule (Adopted June 28th, 2011)

		Ozone Precursors	PM10	Total
D.1	Residential Single Family Dwelling	\$328.50/Unit	\$194.00/Unit	\$522.50/Unit
D.2	Residential Multiple Family Dwelling	\$243.00/Unit	\$155.00/Unit	\$399.00/Unit
D.3	Commercial	\$0.96/sq.ft.	\$0.64/sq.ft.	\$1.60/sq.ft.
D.4	Warehouse (below 148) ADT)*	\$.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 Engineers (ITE) Trip Generation Manual.

VI. 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 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 APCO 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, 2010 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 mitigation funds collected during FY 2009/2010 which totaled \$106,000.00. The application deadline was October 1, 2010. The Air District received a total of five project proposals for the Ozone 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 May 4, 2011, the five projects (See Appendix A) were selected to receive Ozone funding (four of the nine committee members were not present for the voting of the project). Unfortunately, due to the development and inclusion of new requisites in the funding contracts, the disbursement of funds have been delayed a couple of months. Nevertheless, the Air District expects to release the funds within the first couple of months of the 2011/2012 FY. The five projects that will be funded are diesel engine retrofits for agricultural water pumps. Because of the amount of funding available, one of the five engines will only be partially funded. Since the available funds for the PM10 emission reduction projects were limited, the Air District decided to carry over those funds to the 2010/2011 FY year.

The final contracts for funding of the agricultural pumps are currently being reviewed by county counsel. Once the contracts are executed by both parties, the Air District will notify the business companies and allow them to purchase the replacement retrofit pumps. The Air District will then conduct an inspection of the new equipment and release the funds.

CONCLUSION OF PRIOR YEAR FUNDING

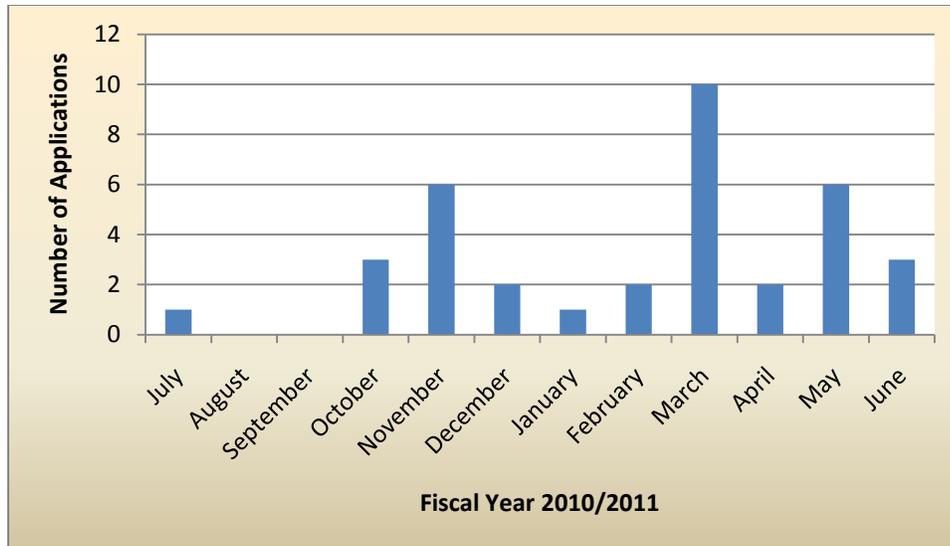
Eight diesel engines for agricultural water pumps as well as a new sewer jet cleaning system pump for the City of Calipatria received Rule 310 funds. The total distributed funds equaled \$167,767.92 which was \$28,912.08 short of the projected \$196,680.00 available for funding. The shortfall occurred for the following two reasons. First, one of the nine diesel engines was funded via a separate program, the Carl Moyer program, which eliminated the proposed diesel engine from funding under the Rule 310 program. Second, the actual cost for the replacement of two diesel engines came in lower than expected. All of the \$28,912.08 remaining in excess were carried over to the new funding cycle (FY 2009/2010).

All of the engines funded through last year's funding cycle continue to function as lower emission engines. Appendix B contains pictures of some of the new agricultural pumps as well as a picture of the sewer jet cleaning system pump operating in Calipatria.

VI. 2010-2011 RULE 310 PROGRAM ANALYSIS

Within the period of July 1, 2010 and June 30, 2011 the Air District received a total of thirty-six (36) 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 2010/2011 Fiscal Year



As shown in **Figure 1**, a very small number of Rule 310 applications were submitted to the Air District. The total amount of funds collected between July 1, 2010 and June 30, 2011 is \$114,947.90. The represented breakdown into each account is as follows: The total amount of funds collected to fund Ozone emission reduction projects is \$69,724.84. The total amount of funds collected to fund PM10 emission reduction projects is \$45,223.06. As mentioned above, the Air District is waiting on county counsel to review the contracts. Once the contracts are approved and executed by both parties, the Air District will distribute the funding. The Air District will make available any remaining funds through an RFP process which is schedule to start on August 1, 2011. **Table 4**, provides a summary of the fees collected during the 2010/2011 FY. Please note that **Table 4** is already deducting the total amount of Ozone funds committed for funding and collected in FY 2009/2010, leaving the funds available during the 2010/2011 FY.

Table 4 - Summary of Rule 310 Funds for the 2010/2011 FY

		Total Rule 310 Program		
		Ozone	PM10	Total
Beginning Balance	\$	112,149.95	56,238.67	168,388.62
Total Amount Off-Site Fees Received	\$	69,724.84	45,223.06	114,947.90
APCD Administration Fees for 2010/2011 FY	\$	0	0	0
Grand Total of Available Off-Site Fees Minus Administration Fees	\$	181,874.79	101,461.73	283,336.52
Total Amount Proposed For Spending (Contracted)	\$	106,000.00	0	106,000.00
Grand Total Balance of Available Off-Site Fees	\$	75,874.79	101,461.73	177,336.52

		Ozone	PM10
Total Off-Site Proposed Emissions Reductions	Tons	5.63	0
Total Proposed Average Emissions Reductions Cost Effectiveness	\$/Ton	18,827.70	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, only one deferral of off-site mitigation fees was issued in FY 2010/2011. The full payment of the off-site mitigation fee is expected in July 2011. As presented in **Table 4**, the Air District received off-site fees totaling \$114,947.90 from July 1, 2010 through June 30, 2011.

Total Expenditure of Off-Site Fees Received

Out of the 2009/2010 FY Ozone funds, \$106,000.00 are scheduled to be utilized to fund 5 emission reduction projects. Due to lack of funding, no PM10 projects were funded with the 2009/2010 PM10 funds. The balance remaining on both funds has been carried over to the 2010/2011 fund balance.

Total Emission Reduction Expected to be Realized in the Near Future

The Air District has commitments to fund five (5) Ozone emission reduction projects. All five projects are diesel engines for agricultural water pumps. Collectively the projects projected to be funded will achieve a total emission reduction of 11,260 lbs. of Ozone precursor emissions per year or 5.63 tons of emission reductions per year.

Overall Cost-Effectiveness of Proposed Funded Projects

Average overall cost-effectiveness is calculated based on total tons of emissions reduced NOx plus PM10, divided by total funds spent. For FY 2010/2011, the Air District is estimated to achieve emission reductions totaling 5.63 tons and will expend funds totaling \$106,000.00. The average cost-effectiveness is calculated to be \$18,827.70 per ton of Ozone emission precursors.

APPENDIX "A"

Project Title	Business Name	Amount Funded
Agricultural Water Pump Serial No. 66D18904	La Brucherie Farms	\$25,000.00
Agricultural Water Pump Serial No. 66D33110	La Brucherie Farms	\$25,000.00
Agricultural Water Pump Serial No. 10E08417	La Brucherie Farms	\$20,000.00
Agricultural Water Pump Serial No. 5EN01418	Marini Farms	\$18,000.00
Agricultural Water Pump Serial No. 7E6366	Marini Farms	\$18,000.00

APPENDIX "B"



Old Agricultural Water Pump Engine
at La Brucherie Farms



New Agricultural Water Pump Engine
at La Brucherie Farms



Old Agricultural Water Pump Engine



New Agricultural Water Pump Engine



Calipatria Old Sewer Jet Cleaning Pump



Calipatria New Sewer Jet Cleaning Pump