

Eastern Kern Air Pollution Control District

Rule 301.4 GREENHOUSE GAS FEE

FINAL STAFF REPORT

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I. BOARD ADOPTION

Rule 301.4, Greenhouse Gas Fee was adopted by the Eastern Kern Air Pollution Control District (District) Governing Board on January 12, 2012 at the January 2012 Board meeting.

II. INTRODUCTION

The District adopted Rule 301.4, Greenhouse Gas Fee to compensate for state and federal Greenhouse Gas (GHG) requirements. Rule 301.4, Greenhouse Gas Fee will align with certain requirements of AB32 (California State Climate Change Law) and the U.S. Environmental Protection Agency's (EPA) GHG Tailoring Rule.

Appendix A is a complete copy of adopted Rule 301.4, Greenhouse Gas Fee.

Appendix B is a response to comments following the 11/9/2011 Workshop and 1/12/2012 Board Meeting.

III. BACKGROUND

In May 2010, EPA approved a GHG rule commonly referred to as the "Tailoring Rule" which adjusted or tailored the applicability thresholds for federal permitting requirements for GHGs and provided an implementation schedule. The Tailoring Rule was adopted because the primary GHG carbon dioxide (CO₂) is emitted at higher rates from most operations and processes than the pollutants historically regulated under the CAA and the existing thresholds were not appropriate.

Furthermore, in addition to the federal and local requirements contained in the District's permitting programs, recent state laws affecting GHGs such as AB32 (California State Climate Change Law) will further tighten the mandatory controls on pollutants in the District.

These upcoming GHG requirements for major sources will impose additional work on the District. Rule 301.4 will share a portion of the District's increased administrative and regulatory costs with high emitting GHG stationary sources.

IV. REQUIREMENTS

The requirements of Rule 301.4 shall apply to any stationary source that has actual GHG emissions greater than or equal to 100,000 tons in the prior calendar year of Carbon Dioxide Equivalent (CO₂e) as calculated in accordance with 40 CFR Part 98.

GHG emissions reported to the District shall be expressed in short tons, not metric tons. This is to maintain consistency with other District rules pertaining to GHG emissions.

Each source subject to Rule 301.4 shall pay a CPI Adjusted GHG fee per ton of CO₂e being emitted. This fee is in addition to any permit or other fee authorized to be collected from such sources.

V. CO₂ EQUIVALENT

CO₂ Equivalent (CO₂e) means that GHGs are expressed in CO₂ equivalents based on their Global Warming Potential (GWP) relative to CO₂. CO₂ has a GWP of one. Methane is twenty-one times more effective at warming the atmosphere when compared to CO₂, therefore methane has a GWP of twenty-one.

To determine the CO₂e emissions from a source, the mass emissions of the individual GHG are multiplied by the GWP of that GHG; this is done for each GHG and then all are added together. To complete the example, a source with one ton of CO₂ and one ton of methane emissions is said to emit twenty two tons of CO₂e.

VI. CPI ADJUSTED GHG FEE

CPI Adjusted means adjusted by the percentage, if any, by which the Consumer Price Index (CPI) for the year exceeds the CPI for calendar year 1989. The CPI Adjusted GHG Fee shall be one-tenth of one percent (0.1%) of the CPI Adjusted Part 70 Presumptive Minimum Fee (\$/ton), published each year by EPA, and rounded down to the nearest one-tenth of one cent.

Example: EPA's CPI Adjusted Part 70 Presumptive Minimum Fee (\$/ton) effective for the 12-month period of September 1, 2011 through August 31, 2012 is \$45.55. For a June 2012 permit renewal the CPI Adjusted GHG Fee would be rounded down to 4.5 cents (\$0.045) per ton of CO₂e.

VII. FEE PAYMENT

Source(s) subject to Rule 301.4 are required to submit an annual GHG emissions report to the District by the thirty-first day of March of each year. Source is then required to make payment in full within 30 days after receiving GHG fee invoice from the District.

VIII. CALIFORNIA CONSTITUTIONAL REQUIREMENTS

Rule 301.4 Meets California’s fee requirements. Determination: Costs incurred to the District for permitting, inspection and regulation of sources by the District may be charged as fees as allowed in Article XIII C, § 1, (e)(3) of the California Constitution. Federal major sources for GHGs were not previously regulated by the District. The proposed fee and existing fees on major sources are not anticipated to exceed the cost of their permitting, inspection and regulation.

IX. ECONOMIC IMPACTS

Rule 301.4, Greenhouse Gas Fee poses increased costs to industries that annually emit equal to or greater than 100,000 tons of CO₂e.

X. SOCIOECONOMIC IMPACTS

California Health and Safety Code 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. Eastern Kern County population is below 500,000 persons.

XI. ENVIRONMENTAL IMPACTS

No significant environmental impacts are expected as a result of Rule 301.4. Pursuant to the Section 15061, Subsections (2) & (3) and Section 15273 of the California Environmental Quality Act (CEQA) Guidelines, staff has prepared and filed a Notice of Exemption for this project.

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APPENDIX A:
ADOPTED RULE 301.4
GREENHOUSE GAS FEE

RULE 301.4 Greenhouse Gas Fee - Adopted 1/12/12**I. Applicability**

Requirements of this Rule shall apply to any stationary source that has actual Greenhouse Gas (GHG) emissions, in the prior calendar year, greater than or equal to 100,000 tons of Carbon Dioxide Equivalent (CO₂e) as calculated in accordance with 40 CFR Part 98.

II. Fee

Each source subject to this Rule shall pay a CPI Adjusted GHG fee per ton of CO₂e being emitted. This fee is in addition to any permit or other fees authorized to be collected from such sources. Payment shall be made in full within 30 days after receiving GHG fee invoice from District.

III. CPI Adjusted GHG Fee

CPI Adjusted means adjusted by the percentage, if any, by which the Consumer Price Index (CPI) for the year exceeds the CPI for calendar year 1989. The CPI Adjusted GHG Fee shall be one-tenth of one percent (0.1%) of the CPI Adjusted Part 70 Presumptive Minimum Fee (\$/ton), published each year by the Environmental Protection Agency (EPA), and rounded down to the nearest one-tenth of one cent.

Example: EPA's CPI Adjusted Part 70 Presumptive Minimum Fee (\$/ton) effective for the 12-month period of September 1, 2011 through August 31, 2012 is \$45.55. For a June 2012 permit renewal the CPI Adjusted GHG Fee would be rounded down to 4.5 cents (\$0.045) per ton of CO₂e.

IV. Fee Determination

Sources subject to this Rule shall submit an annual report of GHG emissions to the District no later than the thirty-first day of March. Annual GHG fee shall be determined by multiplying the actual CO₂e emissions of all GHG as determined in Section IV.A. or IV.B. below by the CPI Adjusted Fee for GHG (Annual GHG Fee = CO₂e tons/yr * CPI Adjusted GHG Fee).

A. For a Source that has been issued a Title V Permit:

The source shall provide the actual CO₂e emissions as required in District Rule 201.1, Permits to Operate for Sources Subject to Title V of the Federal Clean Air Act Amendments of 1990, Section VII.B.7.f.

B. For a source subject to Title V that has not yet been issued a Title V Permit:

Actual CO₂e emissions for the prior calendar year shall be calculated in accordance with 40 CFR Part 98, Mandatory Greenhouse Gas Reporting and reported to the District.

APPENDIX B:

RULE 301.4

GREENHOUSE GAS FEE

RESPONSE TO COMMENTS

I. ARB & EPA COMMENTS

The District submitted a copy of the proposed Rule 301.4, Greenhouse Gas Fee dated October 25, 2011 to ARB and EPA for a 30-day review. ARB and EPA had no comments pertaining to Rule 301.4 and stated that the District has authority under Article XIII C, § 1, (e)(3) of the California Constitution to implement fees.

II. PUBLIC COMMENTS

A request was made by an industry representative at the November 9, 2011 workshop in Rosamond, CA to include the term “actual emissions” in Section I, Applicability of Rule 301.4. The District included the term in the proposed draft of Rule 301.4.

Section I, Applicability now reads: Requirements of this Rule shall apply to any stationary source that has actual Greenhouse Gas (GHG) emissions, in the prior calendar year, greater than or equal to 100,000 tons of Carbon Dioxide Equivalent (CO₂e) as calculated in accordance with 40 CFR Part 98.

An industry representative asked: *Why is the District proposing this new fee rule?*

The District believes that the GHG Fee Rule is required because upcoming GHG requirements for major stationary sources will impose additional work on the District. Rule 301.4 is intended to share a portion of the District’s increased administrative and regulatory costs for major stationary sources.

An industry representative asked: *What annual GHG report does the District require?*

As stated in Draft Rule 301.4, Title V sources should report GHG emissions as required under Section VII.B.7.f. of Rule 201.1. Non-title V sources should calculate their GHG emissions in accordance with 40 CFR Part 98, Mandatory Greenhouse Gas Reporting and submit the data to the District by March 31 of each year.

The following comment was made at the January 12, 2012 Board Meeting regarding Rule 301.4 adoption: *How can the District staff report say that there is no significant cost associated with Rule 301.4, Greenhouse Gas Fee if it is a fee rule?*

District staff explained that the Rule 301.4, Greenhouse Gas Fee Staff Report does not say there is not significant impact associated with the rule and quoted Section VIII, Economic Impacts of the 12/9/2011 Rule 301.4 Staff Report which states: “Draft Rule 301.4, Greenhouse Gas Fee poses increased costs to industries that annually emit equal to or greater than 100,000 tons of CO₂e.”