
**ENVIRONMENTAL PROTECTION
AGENCY**

40 CFR Part 52

[EPA-R09-OAR-2008-0566; FRL-8741-7]

**Revisions to the California State
Implementation Plan, Great Basin
Unified Air Pollution Control District,
Kern County Air Pollution Control
District, Mohave Desert Air Quality
Management District**

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a disapproval of revisions to the Great Basin Unified Air Pollution Control District (GBUAPCD) portion of the California State Implementation Plan (SIP), and limited approval and limited disapproval of revisions to the Kern County Air Pollution Control District (KCAPCD) and Mohave Desert Air Quality Management District (MDAQMD) portions of the SIP. These revisions concern particulate matter (PM) emissions from fugitive dust sources. We are proposing action on local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by December 18, 2008.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2008-0566, by one of the following methods:

1. *Federal eRulemaking Portal:* www.regulations.gov. Follow the online instructions.

2. *E-mail:* steckel.andrew@epa.gov.

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail.

www.regulations.gov is an "anonymous access" system, and EPA will not know your identity or contact information

unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Jerry Wamsley, EPA Region IX, (415) 947-4111, wamsley.jerry@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
GBUAPCD	401	Fugitive Dust	12/04/06	03/07/07
KCAPCD	402	Fugitive Dust	11/03/04	01/13/05
MDAQMD	403.1	Fugitive Dust Control	11/25/96	03/03/97

On July 23, 2007, February 16, 2005, and August 12, 1997 respectively, EPA found that the GBUAPCD Rule 401, KCAPCD Rule 402, MDAQMD Rule 403.1 submittals met the completeness criteria in 40 CFR Part 51, Appendix V. These criteria must be met before formal EPA review begins.

B. Are there other versions of these rules?

On June 6, 1977, EPA approved a prior version of GBUAPCD Rule 401 into the State Implementation Plan (SIP); see 42 *Federal Register* (FR) 28883. There have been no intervening submittals of Rule 401. We have not approved prior versions of KCAPCD Rule 402 and MDAQMD 403.1 into the SIP and there have been no intervening submittals of these rules to consider and we are acting on the most recent submittal of these two rules.

C. What is the purpose of the submitted rules?

PM contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung

function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires States to submit regulations that control PM emissions. These rules are designed to limit the emissions of visible air contaminants, usually but not always particulate matter (PM) emissions at industrial sites, unpaved roads, and open areas. EPA's technical support document (TSD) for each rule has more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating these rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193). In addition, SIP rules must implement Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), in moderate PM nonattainment areas, and Best Available Control Measures (BACM), including Best Available Control Technology (BACT), in serious PM nonattainment areas (see CAA sections 189(a)(1) and 189(b)(1)).

The GBUAPCD regulates a PM nonattainment area classified as serious (see 40 CFR part 81). The overwhelming significant source of PM emissions in the Owens Valley Planning Area (OVPA) is the Owens dry lakebed. Consequently, BACM measures are required for the lakebed sources of emissions (see 68 FR 48305). At present, Rule 401 regulates other sources of fugitive dust emissions that are not determined to be significant within the 1998 BACM SIP and in comparison with PM emissions from the Owens dry lakebed. Consequently, Rule 401 must meet our enforceability criteria in implementing its requirements, but not specific BACM or RACM requirements for its sources of PM emissions. Also, Rule 401 is not a required Clean Air Act PM submittal.

KCAPCD regulates a PM attainment area in the Indian Wells Valley, formerly classified as a moderate PM nonattainment area. (see 40 CFR part 81). The Indian Wells Valley maintenance plan did not assign Rule 402 to its list of six RACM measures and the rule is not cited as being a principal SIP control measure in attaining and maintaining the PM-10 standard (see 68

FR 24386). Subsequently, the Kern County portion of the Indian Wells Valley has maintained its attainment of the 24 hour and annual PM-10 standard. Consequently, Rule 402 need not fulfill RACM and the rule is not a required CAA submittal. However, to be approved into the SIP, the rule must meet the enforceability criteria as described by Section 110(a) of the CAA.

MDAQMD regulates a PM nonattainment area in the Trona subregion of the Searles Valley, classified as a moderate PM nonattainment area. (see 40 CFR part 81). On August 5, 2002, EPA found that the Trona area met the 24 hour and annual PM-10 standard as of December 31, 1994 (see 67 FR 50805 and 66 FR 31873), meaning that between 1992 and 1994 no violations of either PM standard were recorded. Subsequently, the area has maintained its attainment of the 24 hour and annual PM-10 standards. Rule 403.1 need not fulfill RACM because the area was in attainment of the standard at the time of designation and the rule would not advance the area's attainment date (see 57 FR 13560, April 16, 1992). To be approved into the SIP, the rule must meet the enforceability criteria as described by Section 110(a) of the CAA. For the purposes of a maintenance plan, Rule 403.1 contains contingency measure provisions; however, EPA has neither approved a maintenance plan for the Trona subregion, nor has EPA invoked the need to implement these contingency measures.

Guidance and policy documents that we use to help evaluate specific enforceability and RACM or BACM requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
4. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
5. "State Implementation Plans for Serious PM-10 Nonattainment Areas, and Attainment Date Waivers for PM-10

Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 59 FR 41998 (August 16, 1994).

6. "PM-10 Guideline Document," EPA 452/R-93-008, April 1993.

7. "Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures," EPA 450/2-92-004, September 1992.

B. Do the rules meet the evaluation criteria?

GBUAPCD Rule 401 contains provisions which do not meet the evaluation criteria concerning enforceability. These provisions are summarized below and discussed further in the TSD.

KCAPCD Rule 402 improves the SIP by establishing more stringent emission limits, control measures, and monitoring requirements. The rule is largely consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. However, the rule has provisions which do not meet the evaluation criteria regarding enforceability. These provisions are summarized below and discussed further in the TSD.

MDAQMD Rule 403.1 improves the SIP by establishing more stringent emission limits, control measures, and monitoring requirements. The rule is largely consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. However, the rule has provisions which do not meet the evaluation criteria regarding enforceability. These provisions are summarized below and discussed further in the TSD.

C. What are the rule deficiencies?

Regarding Rule GBUAPCD Rule 401, the provisions listed below conflict with section 110 and part D of the Act and prevent full approval of the SIP revision.

1. The rule lacks a 20% opacity limit. GBUAPCD should either incorporate or reference such a 20% opacity limit.
2. The rule lacks a clear description of required control measures for meeting the rule's opacity and property line PM emission limits. GBUAPCD should also remove the "reasonable precautions" language.
3. GBUAPCD should either provide a precise wind speed exemption from the rule's emission standards, or delete the language concerning "normal wind conditions".
4. GBUAPCD should remove director's discretionary language in Section D.1.

5. As specified by the PM-10 plan, GBUAPCD should define required BACM provisions beyond those already adopted to reduce Owens dry lakebed dust emissions, and specify an enforceable implementation schedule.

Regarding Rule KCAPCD Rule 402, the provisions listed below conflict with section 110 and part D of the Act and prevent full approval of the SIP revision.

1. The definitions for "open storage piles" and "prevailing wind direction" contain instances of APCO discretion that should be delimited by specific criteria for adjudicating the issues within these definitions.

2. The rule provides an overly broad exemption for agricultural operations.

3. The rule provides an overly broad exemption for actions required by federal or state endangered species legislation, or the Surface Mining and Reclamation Act.

4. The rule provides an overly broad exemption for public parks and recreation areas such as county, state, and national parks, recreation areas, forests, and monuments.

5. The rule provides exemptions for contractors provided reasonably available control measures were implemented prior to a contract termination date and a final grading inspection. However, no records are required to demonstrate implementation of reasonably available control measures.

6. Monitoring provisions are set aside for large operations for a calendar quarter. This exemption from monitoring is not justified or explained.

7. The rule states that no visible emissions are allowed beyond the property line of an active operation; however, the rule does not specify an opacity limit and the test methods for determining compliance for unpaved roads which are exempted from the property line limit.

8. The suggested reasonably available control measures for fugitive dust listed in Table 1 are not specific and lack standards for determining compliance and allied test methods.

9. Large operations may set aside applying control measures if the APCO concurs that "special technical, e.g., non-economic circumstances" prevent control measure implementation. This exemption is vague and allows for inappropriate Director's Discretion. KCAPCD should define the circumstances that may prevent control measure implementation and the criteria the APCO will use to decide these issues.

10. The rule should specify that all records demonstrating compliance

should be maintained for two years and made available to the Control Officer upon request.

Regarding Rule MDAQMD Rule 403.1, the provisions listed below conflict with section 110 and part D of the Act and prevent full approval of the SIP revision.

1. The following terms should be defined: Brackish water, paved roads used for industrial activity, Dust Control Plan, industrial fugitive dust sources, industrial fugitive dust sources, and exterior transfer lines.

2. Sections C.2.(a)(i), C.2.(b)(i), C.2(d)(i), C.4(d)(i) state that weekly brackish water treatments or biweekly sweeping and collection are presumed to be sufficient for meeting the required Road Surface Silt Loading standard. However, compliance with the rule's silt loading standard needs to be confirmed by observations using the appropriate test method.

3. At Section C.4.(b), there is a requirement to permanently eliminate 2,750 square feet of bulk material storage piles that were exposed during 1990; however, it is unclear how this provision can be enforced effectively given the lack of specificity within the rule concerning these storage piles.

4. Section C.5 does not provide a date certain by which the BLM and the District jointly prepare a dust control plan that reduces BLM PM-10 emissions by at least 20 percent relative to 1990 levels.

5. The exemption for agricultural operations at Section D(1)(a) should be removed.

6. In Section F.1(c), the rule should state explicitly what the freeboard requirements are instead of incorporating the California Vehicle Code by reference. Also, these requirements should be incorporated within the appropriate paragraph in Section C.

D. EPA Recommendations To Further Improve the Rules

We have no additional recommendations.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) of the Act, we are proposing a disapproval of the submitted GBUAPCD Rule 401. If finalized, this action would retain the existing 1977 SIP rule in the SIP and sanctions, pursuant to section 179 of the Act, would not be imposed because Rule 401 is not a required CAA submittal. Note that the submitted rule has been adopted by the GBUAPCD, and EPA's final disapproval would not prevent the local agency from enforcing

it. Our disapproval sets aside incorporation of the submitted rule within the SIP.

EPA is proposing a limited approval of KCAPCD Rule 402 to improve the SIP, as authorized in sections 110(k)(3) and 301(a) of the Act. If finalized, this action would incorporate the submitted Rule 402 into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3). If this disapproval is finalized, sanctions will not be imposed under section 179 of the Act, because Rule 402 is not a required submittal under the CAA and is not an essential RACM under the Indian Wells Maintenance Plan. Note that the submitted rule has been adopted by the KCAPCD, and EPA's final limited disapproval would not prevent the local agency from enforcing it.

EPA is proposing a limited approval of MDAQMD Rule 403.1 to improve the SIP, as authorized in sections 110(k)(3) and 301(a) of the Act. If finalized, this action would incorporate the submitted Rule 403.1 into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3). If this disapproval is finalized, sanctions will not be imposed under section 179 of the Act, because Rule 403.1 is not an essential RACM given the ongoing clean data observed in the Trona subregion since 1992. Note that the submitted rule has been adopted by the MDAQMD, and EPA's final limited disapproval would not prevent the local agency from enforcing it.

We will accept comments from the public on the proposed disapproval of GBUAPCD Rule 401 and the proposed limited approvals and limited disapprovals of KCAPCD Rule 402 and MDAQMD Rule 403.1 for the next 30 days.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction

Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing

requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (*Federalism*) and 12875 (*Enhancing the Intergovernmental Partnership*). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to

ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a state rule implementing a Federal standard.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today’s action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate

matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 20, 2008.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E8–27301 Filed 11–17–08; 8:45 am]

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KERN COUNTY AIR POLLUTION CONTROL DISTRICT

RULE 402 -FUGITIVE DUST

(Adopted 11/29/93, Amended 3/07/94, 9/7/95, 11/3/4)

I. **Purpose**

The purpose of this Rule is to reduce the amount of respirable particulate matter (PM₁₀) emitted from significant man-made fugitive dust sources and in an amount sufficient to maintain National Ambient Air Quality Standards. Rule 419 shall still be used to prevent/correct specific public nuisances and health hazards.

II. **Applicability**

The provisions of this Rule shall apply to specified bulk storage, earthmoving, construction and demolition, and man-made conditions resulting in wind erosion. It shall also apply to unpaved roadways located in the Kern County portion of the "Searles Valley Planning Area" shown on Page 402-11.

III. **Definitions**

- A. Active Operation - activity capable of generating fugitive dust, including any open storage pile, earth-moving activity, construction/demolition activity, disturbed surface area, and non-emergency movement of motor vehicles on unpaved roadways and any parking lot served by an unpaved road subject to this Rule.
- B. Bulk Material - sand, gravel, soil, aggregate, and any other organic or inorganic solid matter capable of releasing dust.
- C. Calendar Quarter - consecutive three month period and each consecutive three-month period thereafter, beginning on the first day of the calendar month in which an activity qualifies as a large operation.
- D. Construction and Demolition Activity - any on-site mechanical activity preparatory to or related to building, alteration, rehabilitation, demolition or improvement of property, including the following activities: grading, excavation, loading, crushing, cutting, planing, shaping or ground breaking.
- E. Contractor - any person or company, or licensed construction contractor having a contractual arrangement to conduct an active operation subject to this Rule for another person.
- F. Contingency Measure - additional PM₁₀ control requirements automatically triggered in the event of failure to maintain the National Ambient Air Quality Standards for PM₁₀ in the Indian Wells Valley.
- G. Disturbed Surface Area - portion of the earth's surface having been physically moved, uncovered, destabilized, or otherwise modified from its undisturbed natural condition, thereby increasing the potential for emission of fugitive dust. Disturbed surface area does not include areas restored to a natural state with vegetative ground cover and soil characteristics similar to adjacent or nearby natural conditions.
- H. Dust Suppressant - water, hygroscopic materials, or non-toxic chemical stabilizers used

as treatment to reduce fugitive dust emissions. A suppressant shall not be used if prohibited by the Regional Water Quality Control Board, the California Air Resources Board, the Environmental Protection Agency, or any other applicable law, rule or regulation. All suppressants shall meet all specifications, criteria, or tests required by any federal, state, or local water agency. The use of dust suppressants shall be of sufficient concentration and application frequency to maintain a stabilized surface.

- I. Earth-Moving Activity - grading, earth cutting and filling, loading or unloading of dirt or bulk material, adding to or removing from open storage piles of bulk material, landfilling, or soil mulching.
- J. Fugitive Dust - any particulate matter becoming airborne, other than being emitted from an exhaust stack, directly or indirectly as a result of human activity.
- K. Inactive Disturbed Surface Area - any disturbed surface area upon which an active operation has not occurred for a period of at least ten consecutive days.
- L. Large Operation - any active operation, including vehicle movement on unpaved roadways, on property involving in excess of 100 contiguous acres of disturbed surface area, or any earth-moving activity exceeding a daily volume of 7,700 cubic meters (10,000 cubic yards) three times during the most recent 365-day period.
- M. Motor vehicle - any engine-powered device used to convey people, or freight and registered for use on public highways.
- N. Non-Routine - non-periodic active operation occurring no more than three times per year, lasting less than 30 cumulative days per year, and scheduled less than 30 days in advance.
- O. Open Storage Pile - any accumulation of bulk material with 5 percent or greater silt content not fully enclosed, covered or chemically stabilized, and attaining a height of three feet or more and a total surface area of 500 or more square feet. Silt content level shall be assumed to be 5 percent or greater unless a person shows, by sampling and analysis in accordance with ASTM Method C-136, the silt content is less. Results of ASTM Method C-136 are valid for 60 days from the date the sample was taken unless the Control Officer is provided with a logical explanation as to why the silt content should be considered constant. If he concurs it is constant, future sampling may be required to confirm this conclusion.
- P. Particulate Matter - any solid material, existing in finely divided form.
- Q. PM_{10} - particulate matter with an aerodynamic diameter smaller than or equal to 10 microns as measured by California Air Resources Board Test Method 501.
- R. Prevailing Wind Direction - from Southwest to Northeast (in the Indian Wells Valley) or as specified by the Control Officer as being representative of local conditions.
- S. Property Line - boundaries of an area in which either a person causing fugitive dust emissions or a person allowing fugitive dust emissions has ownership or legal right to use the property.
- T. Reasonably Available Control Measure (RACM) - any technique or procedure used to prevent or reduce the emission and airborne transport of fugitive dust. RACM's include, but are not limited to, application of dust suppressants, use of coverings or

enclosures, paving, enshrouding, planting, control of vehicle speeds, and any other measure recognized by the Control Officer as providing equivalent dust control. Table I (Page 402-4) and U.S. EPA's reference document "Control of Open Fugitive Dust Sources", Midwest Research Institute, September 1988 shall be used for guidance.

- U. Simultaneous Sampling - operation of two PM₁₀ samplers such that one sampler is started within five minutes of the other, and each sampler is operated for a consecutive period of not less than 290 minutes and not more than 310 minutes.
- V. Stabilized surface - previously disturbed surface area showing visual or other evidence of surface particle conglomeration after application of a dust suppressant.
- W. Unpaved Road - any straight or curved length of well-defined travel way for motor vehicles not covered by one or the following: concrete, asphaltic concrete, or asphalt.
- X. Wind Gust - maximum instantaneous wind speed, as measured by an anemometer or as provided by the nearest local meteorological station.

TABLE I
SUGGESTED

FUGITIVE DUST REASONABLY AVAILABLE CONTROL MEASURES

<u>Source Category</u>	<u>Control Measure</u>
Unpaved Road	Improve Road Surface Control Vehicular Traffic Speed Apply Dust Suppressants
Construction/Demolition Activity	Use Wind Breaks Apply Dust Suppressants
Earth-moving or Open Storage Pile	Use Wind Screens Use Enclosures Around Storage Piles Apply Dust Suppressants
Disturbed Surface Area	Use Fences/Barriers Vegetate Apply Dust Suppressants Cover with Gravel Compact Surface

NOTE: If water is selected as a dust suppressant, use of nonpotable water is encouraged.

IV. Exemptions

A. Provisions of this Rule shall not apply to:

1. Agricultural operations, including activities directly related to raising fowl or animals, or growing crops, for a profit;
2. Actions required by federal or state endangered species legislation, or the Surface Mining and Reclamation Act;
3. Any disturbed surface area less than three acres on residential property in the Indian Wells Valley (see page 11) and less than two acres in the remainder of the District;
4. Active operations conducted during emergency life-threatening situations, or in conjunction with any officially-declared disaster or state of emergency;
5. Active operations conducted by essential service utilities to provide electricity, natural gas, telephone, water and sewer during periods of service outages and emergency disruptions;
6. Unpaved roads that are not part of a large operation and are outside the Indian Wells Valley and unpaved roads within the Indian Wells Valley, provided such Indian Wells Valley roads:
 - a. are less than 75 (50, if contingency measure triggered) feet long or,
 - b. have a motor vehicle traffic volume less than 25 (15, if contingency measure triggered) vehicle-trips per day, or
 - c. have a motor vehicle traffic volume of 25 (15, if contingency measure triggered) vehicle-trips per day or more, not more than six times per year, or
 - d. provide access to not more than 10 residences;

Contingency measure is triggered if U.S. EPA publishes a finding in the Federal Register that KCAPCD's portion of the Searles Valley Planning Area (see Page 402-11) has failed to maintain National Ambient Air Quality Standards for PM₁₀.
7. Restorative grading of unpaved shoulders of paved roads;
8. Non-routine or emergency maintenance of flood control channels and water spreading basins;
9. Weed and dried vegetation removal required by a fire prevention/control agency;
10. Active operations conducted during freezing weather if applicable RACM involves application of water;
11. County or properly permitted private sanitary landfill disposal sites provided such sites conform to California Code of Regulations Title 14: Sections 17659, 17660 and 17706 (County) or KCAPCD dust control permit to operate conditions (private);

12. Blasting operations permitted by the California Division of Industrial Safety;
 13. Motion picture, television, and video production activities when dust emissions are required for visual effects. This exemption shall be obtained from the Control Officer;
 14. Officially-designated public parks and recreational areas, including national parks, national monuments, national forests, state parks, state recreational areas, and County regional parks;
 15. Any contractor subsequent to a contract termination date, provided such contractor implemented Reasonably Available Control Measures during the contractual period; and
 16. Any grading contractor, for a phase of active operations conducted after his completion of earth-moving activities, provided such contractor implemented Reasonably Available Control Measures during the entire phase of earth-moving activities and until the final grading inspection.
 17. Federal facilities (outside of Indian Wells Valley) required by the National Environmental Protection Act (NEPA) to implement fugitive dust RACM's for activities otherwise subject to this rule, provided District receives an up-to-date description, including RACM's employed, of such activities.
- B. Provisions of Subsection V.A. (visible emissions limit) shall not apply when wind gusts exceed 25 miles per hour, provided:
1. Table I (Page 402-4) Reasonably Available Control Measures are implemented for each applicable fugitive dust source type, or;
 2. A person has on file with the District an approved "High Wind Fugitive Dust Control Plan" indicating technical reasons why any Reasonably Available Control Measure cannot be implemented. Such Plan shall provide an alternative measure of fugitive dust control, if technically feasible, and shall be subject to the same approval conditions as specified in Section V.
- C. If applicable, provisions of Subsection V.D.2. (large operation PM₁₀ monitoring) shall not apply for a period of:
- a. One calendar quarter for each new large operation, or;
 - b. Fourteen calendar days after approval or conditional approval of a fugitive dust emission control plan.

V. **Requirements**

- A. A person shall not cause or allow emissions of fugitive dust from any active operation to remain visible in the atmosphere beyond the property line of the emission source. This Subsection shall not apply to unpaved roadways.
- B. A person shall utilize one or more Reasonably Available Control Measures to minimize fugitive dust emissions from each fugitive dust source type which is part of any active operation subject to this Rule, including unpaved roadways.

- C. For any large operation, except those satisfying Subsection V.D.3. (implementation of RACM's), a person shall not cause or allow downwind PM₁₀ ambient concentrations to increase more than 50 micrograms per cubic meter above upwind concentrations as determined by simultaneous upwind and downwind sampling. High-volume particulate matter samplers, or other EPA-approved equivalent method(s) for PM₁₀ monitoring shall be used. Samplers shall be:
- a. Operated, maintained, and calibrated in accordance with 40 Code of Federal Regulations (CFR), Part 50, Appendix J, or appropriate EPA-published documents for EPA-approved equivalent methods(s) for PM₁₀ sampling;
 - b. Reasonably placed upwind and downwind of the large operation based on prevailing wind direction and as close to the property line as feasible, such that other sources of fugitive dust between the sampler and the property line are minimized; and
 - c. Operated during active operations.
- D. Special Requirements for Large Operations
1. No person shall conduct or authorize conducting a large operation subject to requirements of this Rule without either: 1) conducting on-site PM₁₀ air quality monitoring and associated recordkeeping, or 2) filing for and obtaining an approved fugitive dust emissions control plan pursuant to Subsection V.D.3.
 2. Any person subject to Subsection V.D.1. electing to conduct on-site PM₁₀ monitoring and recordkeeping shall take the following actions:
 - a. Notify the Control Officer of intent to monitor PM₁₀ at least seven days prior to initiating such monitoring. Notification shall contain, at a minimum, the person's name, address, telephone number, brief description and location of the operation(s), and anticipated first date of sampling.
 - b. Be responsible for acquisition, calibration and operation of PM₁₀ samplers.
 - c. Collect samples on four separate days during each calendar quarter. Sampling shall be conducted during typical operations, and during prevailing wind direction conditions. All other provisions of this Rule shall continue to be applicable on days when monitoring is not conducted.
 - d. Collect samples on four additional days during one calendar quarter if requested by the Control Officer based on receipt of complaints from the public, visible dust emissions, or other determinations by District personnel indicating violations of conditions specified in Subsection V. C. may be occurring. Each sampling day shall be conducted during typical operations, and during prevailing wind direction conditions.
 - e. Conduct laboratory analyses in accordance with 40 CFR, Part 50, Appendix J, for all samples collected as required by Subsections V.D.2.c and V.D.2.d.
 - f. Compile and submit records to the District on a quarterly basis, not later than 30 days after the end of each calendar quarter. Such records shall include:
 - 1) Brief description and location of the operation(s);

- 2) Hours of active operations on days when particulate sampling occurred;
 - 3) Location, vendor, model, and serial number of PM₁₀ samplers used on each sampling day;
 - 4) Date, start and end times of all PM₁₀ sampling;
 - 5) Laboratory results (measured ambient concentrations) of all PM₁₀ samples;
 - 6) List of consultants, laboratories, and other groups of individuals responsible for collection, analysis, evaluation and validation of each PM₁₀ sample; and
 - 7) Documentation of any maintenance and calibration actions performed on each PM₁₀ sampler conducted in accordance with 40 CFR, Part 50, Appendix J.
3. Any person subject to Subsection V.D.1. electing to obtain an approved fugitive dust emissions control plan shall take the following actions:
- a. At least 45 calendar days prior to a calendar quarter during which air monitoring would be conducted in accordance with Subsection V.D.2. submit to the Control Officer a fugitive dust emissions control plan, including at least:
 - 1) Name(s), address(es), and phone number(s) of person(s) responsible for the preparation, submission, and implementation of the plan;
 - 2) Description and location of operation(s);
 - 3) Listing of all fugitive dust emissions sources included in the large operation;
 - 4) Description of Reasonably Available Control Measures to be applied to each source identified in Subsection V.D.3.a.3). Such description must be sufficiently detailed to demonstrate Reasonably Available Control Measures will be utilized and/or installed during all periods of active operations.
 - b. If there are special technical, e.g., non-economic, circumstances preventing use of Reasonably Available Control Measures for any source identified in Subsection V.D.3.a.3), justification shall be provided in lieu of the description required in Subsection V.D.3.a.4). A justification statement shall explain reason(s) why Reasonably Available Control Measures cannot be implemented.
4. The Control Officer shall either approve, conditionally approve, or disapprove the plan, in writing, within 30 calendar days of receipt of the plan. For a plan to be approved or conditionally approved, three conditions shall be satisfied:
- a. All sources of fugitive dust emissions shall be identified, e.g., earth-moving, storage piles, vehicular traffic on unpaved roads, etc.;

- b. For each source identified, at least one Reasonably Available Control Measure shall be implemented; and
 - c. If, after implementation of control measures, visible dust emissions cross property line(s), standby control measures, e.g., increased watering, shall be specified for immediate implementation.
5. If a plan can be conditionally approved with actions not specified in the plan, the applicant shall be notified in writing. Such modifications shall be incorporated into the plan within 30 days of receipt of the notice of conditional approval, or the plan shall be disapproved. A letter to the Control Officer stating such modifications will be incorporated into the plan shall be used as a basis to approve the plan.
 6. Any plan disapproved by the Control Officer shall require air monitoring and recordkeeping in accordance with Subsection V.D.2.
 7. Failure to comply with any provisions in an approved or conditionally approved plan shall result in a violation of Subsection V.D.1.
 8. An approved plan for a specific project shall be valid for a period of one year from date of approval or conditional approval. Plans shall be resubmitted, annually, at least 60 days prior to expiration date, or the plan shall be disapproved as of the expiration date. If all fugitive dust sources and corresponding Reasonably Available Control Measures or special circumstances remain identical to those identified in the previously approved plan, the resubmittal may contain a simple statement of "no-change". Otherwise a resubmittal shall contain all items specified in Subsections V.D.3.a. and V.D.3.b.
 9. A contractor may have on file with the District a pre-approved plan or plans for one or more types of large projects subject to Subsection V.D.3. Prior to initiation of any project, one or more applicable preapproved plans may be specified by the contractor in lieu of filing a new plan or plans.
 10. Any person subject to requirements of Subsection V.D.1. making changes to an active operation resulting in it not fitting the definition for a large operation for a period of at least one year, may request reclassification as a non-large operation. To obtain this reclassification, a person shall submit a request in writing to the Control Officer specifying actions having taken place to reduce disturbed surface area and/or earth-moving process rate to levels below criteria for large operations. A person shall also indicate criteria for a large operation will not be exceeded during the subsequent 12-month period. The Control Officer shall either approve or disapprove reclassification within 60 days from receipt of a reclassification request. The Control Officer shall disapprove the request if indicated changes cannot be verified. If approved, a person shall be relieved of all requirements under Subsections V.D.1, V.D.2, and V.D.3. Any person so reclassified shall again be subject to requirements of Subsection V.D.1. if, at any time subsequent to reclassification, criteria for large operations are met.

VI. Compliance Schedule

Any existing large operation becoming subject to this rule with its amendment on September 8, 2004, shall comply with Section V. no later than March 8, 2005.