

Technical Support Document
for
EPA's Proposed Rulemaking

on revisions to the
California State Implementation Plan

as submitted by the State of California, Air Resources Board
for the Kern County Air Pollution Control District

EPA's Analysis of
Kern County Air Pollution Control District's
Rule 402- Fugitive Dust

United States Environmental Protection Agency, Region IX
Air Division

July 2008

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**Kern County Air Pollution Control District (KCAPCD),
Rule 402 - Fugitive Dust**

Chronology of KCAPCD Adoption, Air Resources Board Submittal, and EPA Actions

- The KCAPCD Governing Board adopted Rule 402 on November 3, 2004.
- The State of California submitted Rule 402 to EPA on January 13, 2005 as a revision to the California State Implementation Plan (SIP).
- On February 16, 2005, EPA found complete California Air Resource Board's (CARB) submittal of Rule 402.

EPA has not incorporated a prior version of Rule 402 into the SIP.

Rule Summary

Kern County Air Pollution Control District Rule 402 - Fugitive Dust, is a rule designed to limit the emission of fugitive dust from multiple sources using required methods and practices such as road treatments to limit silt loading, specific construction scheduling, erosion controls, wind and water erosion controls, and removal of bulk storage piles. Rule 402 applies to owners or operators of unpaved and paved roads used for industrial activity, construction and demolition activity, industrial fugitive dust, activities on Bureau of Land Management land, and disturbed surface areas on public land.

Rule Evaluation

1. Statutory Requirements & PM Planning History

In Section 189 of the Clean Air Act Amendments of 1990 (CAA), Congress required that PM nonattainment areas implement in a stepwise manner all reasonably available control measures (RACM) rules for moderate non-attainment area, then all best available control measures (BACM) for serious non-attainment areas.

As part of the classification process brought on by the CAA, the Searles Valley was designated a moderate PM-10 nonattainment area. On August 6, 2002, EPA divided the Searles Valley PM-10 non-attainment area into 3 non-attainment areas, including the Indian Wells Valley in Kern County (see 67 *Federal Register* (FR) 50805). Later, on December 17, 2002, EPA proposed to approve the KCAPCD moderate area PM plans and redesignate the Indian Wells Valley to attainment based in part attaining the PM-10 air quality standard in 1999, 2000, and 2001 (see 67 FR 77196). The Indian Wells Valley PM-10 nonattainment area was redesignated as attaining the PM-10 standard on May 7, 2003 (see 68 FR 24386). Also, in this final action, EPA approved the KCAPCD's Indian Wells Valley PM maintenance plan. This Indian Wells Valley maintenance plan approval action 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 the PM-10 standard. 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 Clear Air Act submittal.

2. Evaluation of Rule

KCAPCD's Rule 402 includes the following significant provisions:

- general purpose and applicability;
- definitions used within the rule;
- exemptions from the rule; and,
- rule requirements with a Table of Suggested Fugitive Dust Reasonably Available Control Measures and special requirements for large operations; and,
- a compliance schedule.

We found several deficiencies within the rule. These deficiencies are discussed below.

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 without justification. (section IV.A.1)
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. (section IV.A.2)
4. The rule provides an overly broad exemption for public parks and recreation areas such as county, state, and national parks, recreations area, forests, and monuments without justification. (section IV.A.14)
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. (section IV.A.15)
6. Monitoring provisions are set aside for large operations for a calendar quarter. This exemption from monitoring is not justified or explained. (section IV.C)
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. (section V.A)
8. 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 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. (section V.D.3.b)

9. 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.
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.

3. Recommendations for Future Revisions

We have no recommendations, beyond those discussed above.

Recommendation

Section 110(k) of the CAA contains provisions governing EPA's review of plans and regulations submitted by State of California, air districts, and localities for inclusion in the California State Implementation Plan. EPA can propose one of four actions on Rule 402: full approval, conditional approval, limited approval/disapproval, or a full disapproval.

Rule 402 contains several enforceability related deficiencies. However, the rule does not jeopardize maintenance of the NAAQS given the attainment status of the area and the approval of Indian Wells maintenance plan; neither of which rely on Rule 402. Furthermore, there is no fugitive dust rule in the SIP for the Indian Wells non-attainment area; so, the addition of Rule 402 improves the SIP despite its deficiencies. In conclusion, EPA proposes a limited approval and limited disapproval of KCAPCD Rule 402 - Fugitive Dust Control for the Searles Valley Planning Area and inclusion into the California State Implementation Plan.

Attachments

1. KCAPCD, Rule 402 - Fugitive Dust Control for the Searles Valley Planning Area, adopted November 3, 2004.
2. "Issues Relating to VOC (Volatile Organic Compound) Regulation Cutpoints, Deficiencies, and Deviations," USEPA, May 28, 1988, cover piece only.
3. "Staff Report, Amendments to Rule 402 - Fugitive Dust Control for the Searles Valley Planning Area", Kern County Air Pollution Control District, November 3, 2004.