

STAFF REPORT

Proposed Amendments to Rule 440 Portable Equipment Registration

Date of Release: August 22, 2011

Schedule of Meetings

- Dates of Public Workshop: 2:00 p.m., Thursday, September 8, 2011, City of Chico Council Chambers, 421 Main Street, Chico, CA
- Date of Board Hearing: 10:00 a.m., Thursday, September 22, 2011, Chico City Council Chambers, 421 Main Street, Chico, CA

Prepared by: Jason Mandly, Air Quality Compliance Specialist II

Reviewed by: Robert McLaughlin, Assistant Air Pollution Control Officer

Approved by: W. James Wagoner, Air Pollution Control Officer

STAFF REPORT

**Proposed Amendments to Rule 440—
Portable Equipment Registration**

Date of Release: ****

Date of Board Consideration for Adoption: September 22, 2011

Public Hearing: Thursday, September 22, 2011
Chico City Council Chambers
421 Main Street, Chico, CA

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Proposed Amendments to Rule 440— Portable Equipment Registration

STAFF REPORT

Executive Summary

The California Air Resources Board (CARB) adopted the Statewide Portable Equipment Registration Program (PERP) on March 27, 1997 to allow portable engines and equipment units to operate throughout California without District-issued permits. The CARB adopted the Airborne Toxic Control Measure for Diesel Particulate Matter From Portable Engines Rated at 50 Horsepower and Greater (Portable ATCM) on February 26, 2004 to reduce diesel particulate emissions from portable engines. The Butte County Air Quality Management District (District) Board adopted Rule 440—Portable Equipment Registration in November, 2005 to provide a local alternative to the PERP program and to allow those who registered an alternative method to comply with the Portable ATCM. The CARB amended both the PERP regulation and the Portable ATCM on February 19, 2011. These amendments included language allowing Districts to register Tier 1 and Tier 2 engines that have operated in California at any time during the period from January 1, 2008 to December 31, 2010. Because Rule 440 requirements and compliance dates are based on the requirements in the ATCM, District staff is proposing amendments to update the rule.

1.0 PURPOSE

The purpose of proposed amendments to Rule 440—Portable Equipment Registration is to change the definition of a resident emissions unit to match the requirements in the State Airborne Toxics Control Measure (ATCM) for Diesel Particulate Matter from Portable Diesel-Fueled Engines Rated at 50 Horsepower or Greater. The proposed amendments will also make minor clarifications to emission unit applicability.

2.0 APPLICABILITY

Rule 440—Portable Equipment Registration is applicable to all portable engine rated at 50 brake horsepower and greater and certain particulate matter generating portable emissions units that operate in Butte County that are not registered with the PERP or in another district's comparable program. The proposed amendments maintain the same exemptions as in Rule 400—Permit Requirements, including exempting equipment used in agricultural operations. Examples of such emissions units subject to the rule include:

- Diesel-fueled, or spark Ignition piston-type internal combustion engines, except for marine dredges, used in well drilling, service, or workover rigs; power generation (excluding cogeneration); pumps; compressors; pile drivers; welding; cranes; woodchippers; and, other similar portable emissions units approved by the APCO
- Concrete batch plants
- Sand and gravel screening, rock crushing, and unheated pavement crushing and recycling operations

- Confined abrasive blasting
- Unconfined abrasive blasting, and
- Tub Grinders and trommel screens.

3.0 REQUIREMENTS OF PROPOSED AMENDMENTS TO RULE 440

The proposed amendments to Rule 440 affect the following rule sections:

Section 2, 2.1 Applicability: This section and subsection is clarified to differentiate engines and their applicability from other emissions units.

Section 2.7 Applicability: This subsection clarifies that the APCO may approve other emissions units not listed in Section 2.

Section 4.13 Definition of Resident Emissions Unit: The dates in this definition have been updated to be consistent with the recent amendments to the State Portable ATCM. Emissions units that resided in the State of California at any time during the period from January 1, 2008 to December 31, 2010 would be considered resident emissions units. Tier 1 and Tier 2 portable engines greater than 50 brake horsepower that are classified as resident emissions units will be eligible for registration. Previously, resident emissions units had to have operated in the State of California prior to October 1, 2006. New units may also apply for registration.

4.0 COST IMPACTS/COST EFFECTIVENESS:

Cost of Compliance: The proposed amendments do not change the fees as originally set forth in Rule 440 and Rule 512—Portable Equipment Registration Fees. Since the hourly fee rate was changed and adopted in July 2011, the forms and other documents have been updated to reflect the current registration fees.

The proposed amendments will allow Tier 1 and Tier 2 portable engines greater than 50 brake horsepower that were operating in California between January 1, 2008 and December 31, 2010 to be eligible for registration. Previously, to be considered a resident emissions unit, the unit had to have been operating in California before October 1, 2006. The proposed amendments would allow a more recent scope of applicable engines to be eligible for registration in lieu of being forced to purchase a new engine that would meet District requirements.

Type of Business Affected: Portable emissions units are used by many industries. The current District registration program has issued certificates to local governmental agencies, such as Butte County Public Works, City of Chico, and City of Oroville; crushing and screening operations; tree chippers; water well drillers; and others. With the proposed amendments, owners/operators of unregistered Tier 1 and Tier 2 portable engines over 50 brake horsepower will be the primary entities affected.

Impact to Economy: The scope of use of portable emissions units in Butte County is unknown and, therefore, the impact to the economy of the proposed amendments cannot be fully determined.

Overall Costs: The proposed amendments do not propose any changes to the existing fee schedule of Rule 512—Portable Equipment Registration Fees as adopted in November, 2005. Rule 512 requires a \$65 application fee for each emissions unit and a \$159.50 registration fee for

the two-year registration period for the first emissions unit by a company and \$79.75 for each additional unit. The registration fee is based on the District's hourly rate of \$79.75 as set forth in Rule 509. Existing emissions units, which should have applied for registration by December 31, 2005, may also be subject to enforcement actions. Existing units which should have registered under the PERP or District's registration program will also be subject to civil penalties assessed under the District's civil penalty program.

District Costs: The costs to the District will involve the staff resources required to inform sources of rule requirements, process registrations, and perform inspections of the sources, and the costs of bringing non-complying sources into compliance with the rule.

5.0 ALTERNATIVES:

The Governing Board may choose to:

- a) Approve the rules as proposed;
- b) Direct staff to modify the proposed rules after receiving public comments during the hearing; or
- c) Take no action.

6.0 ENVIRONMENTAL REVIEW AND COMPLIANCE:

The adoption of proposed amendments to Rule 440 is categorically exempt from the California Environmental Quality Act (CEQA) under Sections 15307 and 15308 of the State CEQA Guidelines and no exceptions to these exemptions apply. This exemption is allowed when the rule will help improve air quality in Butte County. California Public Resources Code (Section 21159) requires an environmental analysis of the reasonably foreseeable methods of compliance. The District has concluded that no reasonably foreseeable adverse environmental impacts will be caused by adoption of the proposed amendments.

7.0 REQUIRED FINDINGS:

Division 26 of the California Health and Safety Code requires local districts to comply with a rule adoption protocol as set forth in Section 40727 of the Code and make the required findings. This section has been revised through legislative mandate to contain six findings that the District must make when developing, amending, or repealing a rule or regulation. These findings and their definitions are included in the following table.

Required Findings

FINDING	DEFINITION	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 26 and other statutory provisions.	The following California Health and Safety Code Sections are provisions of law that provide the District with the authority to adopt these amended rules: 40000 – Legislative finding and declaration, 40001 – Rules and Regulations, 40701 – General Powers, 40702 – Rules and Regulations,
Necessity	The District has demonstrated that a need for the rule, or for rule amendment or repeal exists.	The adoption of proposed amendments to Rule 440 is necessary to provide clarification of the existing rule and to ensure consistency with the State’s Air Toxic Control Measure for portable equipment.
Clarity	The rule is written or displayed so that its meaning can easily be understood by the persons directly affected by it.	The proposed amendments are written in such a manner that persons affected by the rule can easily understand it.
Consistency	This rule is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or State or federal regulations.	The proposed amendments to Rule 440 are consistent with applicable statutory requirements and consistent with recent amendments to the State’s Air Toxic Control Measure for portable equipment.
Non-Duplication	The 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 to execute the powers and duties granted to, and imposed upon, the district.	The proposed amendments do not impose requirements that duplicate existing laws or regulations.
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.	California Health and Safety Code, Division 26, Part 3, Sections 40000, 40001, 40701, 40702, and 41512.5.

8.0 REFERENCES

California Air Resources Board: Regulation, Staff Report, and related documents for 17 CCR Section 93116 for Diesel Particulate Matter from Portable Engines Rated at 50 Horsepower and Greater as amended February 19, 2011.

9.0 ATTACHMENTS

- Attachment A.** Proposed Amendments to Rule 440—Portable Equipment Registration
- Attachment B.** Notice of Public Hearing and Workshops
- Attachment C.** Proposed Resolution of Adoption
- Attachment D.** California Air Resources Board Airborne Toxic Control Measure for Diesel Particulate Matter from Portable Engines Rated at 50 Horsepower and Greater Amendments (Strikeout and Underline)

Attachment A

Proposed Amendments to

Rule 440—Portable Equipment Registration

Attachment B

Notice of Public Hearing and Workshops

NOTICE OF PUBLIC HEARING AND WORKSHOPS

NOTICE IS HEREBY GIVEN that the Butte County Air Quality Management District (District) Governing Board will hold a public hearing to consider adoption of proposed amendments to the following Rules:

Rule 440 - Portable Equipment Registration

Amendments to Rule 440 are proposed to allow unregistered portable engine that were operated in California between January 1, 2008 and December 31, 2010 to register their engines in Butte County provided that these engines are Tier certified engines.

Rule 1000- State Airborne Toxic Control Measures (ATCMs)

The proposed amendments to Rule 1000 will update the current list of State ATCMs that the District has incorporated by reference. Updates include adopting by reference the recent State ATCM for Reducing Formaldehyde Emissions from Composite Wood Products and the amendments to the State ATCM for Diesel Particulate Matter from Portable Diesel Engines Rated at 50 Horsepower or Greater.

Rule 1002- Air Toxic Control Measure for Stationary Compression Ignition Engines used at Stationary Sources

The proposed amendments to Rule 1002 will align the District's Rule with amendments made to 17 California Code of Regulations Section 93115, Airborne Toxic Control Measure for Stationary Compression Ignition Engines. This will primarily affect new stationary diesel-fueled emergency stand-by engines, including direct-drive fire pump engines, and new prime engines.

The time, date, and location of the public workshop and hearing are given below:

Public Workshop: September 8, 2011 at 2 p.m., City of Chico Council Chambers, 421 Main Street, Chico, CA

Public Hearing: September 22, 2011 at 10:00 a.m., City of Chico Council Chambers, 421 Main Street, Chico, CA

The Staff Report and proposed rules may be reviewed at the District office at the address below or on the District website: www.bcaqmd.org. For additional information please contact Jason Mandly at (530) 332-9400, ext. 102. Written comments on the proposed rules must be submitted by September 15, 2011 to: Board Clerk, Butte County Air Quality Management District, 629 Entler Avenue, Suite 15, Chico, CA 95928.

DATED: August 15, 2011

By: W. James Wagoner
AIR POLLUTION CONTROL OFFICER

Attachment C

Proposed Resolution of Adoption

RESOLUTION 2011-XX
BEFORE THE BOARD OF DIRECTORS OF
BUTTE COUNTY AIR QUALITY MANAGEMENT DISTRICT
STATE OF CALIFORNIA
ADOPTION OF PROPOSED AMENDMENTS TO
RULE 440, *PORTABLE EQUIPMENT REGISTRATION*

Resolution 2011-XX.....)
Adopt Proposed Amendments to)
Rule 440, *Portable Equipment Registration*.....)

WHEREAS, the Butte County Air Quality Management District Board obtains its authority to adopt, amend, or repeal rules and regulations from California Health and Safety Code Sections 40000, 40001, 40701, 40702;

AND WHEREAS, the Butte County Air Quality Management District Board has determined that the proposed amendments to Rule 440 are written such that the meaning can be understood by the persons directly affected by it (Health and Safety Code Section 40727(b)(3));

AND WHEREAS, the Butte County Air Quality Management District Board has determined that the proposed amendments to Rule 440 adopted herein are in harmony with, and not in conflict with or contradictory to existing statutes, court decisions, or state or federal regulations (Health and Safety Code Section 40727(b)(4));

AND WHEREAS, the Butte County Air Quality Management District Board conducted a public hearing on September 22, 2011 concerning the proposed amended Rule herein;

AND WHEREAS, the District staff has made notice of the public hearing adopting the proposed amendments to Rule 440, held two public workshop meetings, and received comments as included in the staff report, which are included herein as a record of those proceedings;

THEREFORE, BE IT RESOLVED, that the Butte County Air Quality Management District Board hereby adopts amended Rule 440, *Portable Equipment Registration*, as proposed in the attachments to the staff report.

On Motion of _____, Seconded by _____, the foregoing resolution is hereby PASSED AND ADOPTED on this 22nd day of September 2011 by the following:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

W. James Wagoner, Air Pollution Control Officer

Butte County Air Quality Management District

I hereby attest that this is a true and correct copy of the action taken by the
Butte County Air Quality Management District Board of Directors on
****.

ATTEST: _____
Patricia Cummings, Clerk of the Governing Board

Attachment D

**California Air Resources Board Airborne Toxic Control Measure for Diesel Particulate
Matter from Portable Engines Rated at 50 Horsepower and Greater Amendments
(Strikeout and Underline)**