

RULE 3.22, INDEMNIFICATION OF DISTRICT

Adopted August 12, 2009

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100 GENERAL

101 **PURPOSE:** The purpose of this rule is to require the indemnification of the District when a third party challenges the issuance of a permit or the manner in which the District is interpreting or enforcing the terms and conditions of a permit.

102 **APPLICABILITY:** This rule shall apply to all permit applicants and all permit holders.

200 **DEFINITIONS:** Unless otherwise defined below, the terms in this rule are as defined in Rule 1.1, GENERAL PROVISIONS AND DEFINITIONS.

201 **GOVERNING BOARD:** The Board of Directors of the Yolo-Solano Air Quality Management District.

202 **PERMIT:** For the purpose of this rule the term permit shall include all of the following:

202.1 Authority to Construct issued pursuant to District Rule 3.1.

202.2 Permit to Operate issued pursuant to District Rule 3.1.

202.3 Federal Operating Permit issued pursuant to District Rule 3.8.

202.4 Agricultural Operating Permit issued pursuant to District Rule 11.1.

202.5 Confined Animal Facility Permit issued pursuant to District Rule 11.2.

300 REQUIREMENTS

301 **NOTIFICATION:** The District shall notify the applicant or permit holder in writing within 10 days of receiving a claim, petition, or other legal notice by a third party challenging the District's issuance or renewal of a permit or the manner in which the District is interpreting or enforcing permit terms or conditions.

302 **RESPONSE TO NOTIFICATION:** Within 30 days of the date on the notification, the applicant or permit holder shall, do one of the following:

302.1 Request cancellation of the application or the permit/registration;

302.2 Negotiate and sign an indemnity agreement with the District in accordance with Section 304; or.

302.3 File an appeal in accordance with Section 306.

303 FAILURE TO ACT: An applicant or permit holder who fails to comply with Section 302 shall:

303.1 be deemed non-compliant and the application shall be subject to cancellation or the permit subject to revocation pursuant to Section 308, and

303.2 be responsible for reimbursement to the District for all reasonable and necessary costs to defend from legal challenge the action of the District taken in relation to the application or permit, except as may be provided in an appeal approved by the District Governing Board pursuant to Section 306.

304 INDEMNITY AGREEMENT: The indemnity agreement shall include, but is not limited to: payments of all court costs and attorney fees, costs of any judgements or awards against the District, and damages or settlement costs. The indemnity agreement shall be negotiated with and to the satisfaction of the Air Pollution Control Officer (APCO).

305 SECURITY: On a case-by-case basis, and as related to the indemnity obligation provided in this Rule, the APCO may require security from the applicant and/or permit holder in a form determined by the APCO.

306 APPEAL: If the applicant or permit holder disagrees with the requirements of this Rule or is unable to negotiate and sign an indemnity agreement with the District, they may file an appeal to the Governing Board within 30 days of the date on the notification. The appeal will be placed on the agenda of a regularly scheduled meeting as soon as practicable. Action on the application/permit by the District shall be suspended pending a decision by the Governing Board on the appeal.

307 REMEDIES: When any court action results in a ruling for the plaintiff or petitioner, the applicant or permit holder shall have the right to file a claim against the District for contribution as to the portion caused by the willful misconduct of the District.

308 CANCELLATION OR REVOCATION: Any action to cancel an application or revoke a permit for non-compliance with this rule shall be undertaken by the District under the procedures provided in these rules or applicable state or federal air pollution control laws. For Permits to Operate, the District shall request revocation, and the Hearing Board shall hear the revocation request, in the manner provided for an order of abatement.

309 **NOTICE TO APPLICANTS:** Notice of this indemnification requirement shall be included in all District forms that are used by applicants to apply for or renew permits.