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PROPOSED ADOPTION OF RULE 3.21, RICE STRAW EMISSION REDUCTION CREDITS

FINAL STAFF REPORT

November 26, 2008

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I. EXECUTIVE SUMMARY

On December 10, 2008, the Yolo-Solano Air Quality Management District (District) Board of Director's will consider the proposed adoption of Rule 3.21, RICE STRAW EMISSION REDUCTION CREDITS. This rule establishes procedures which ensure federal recognition of the banking of Emission Reduction Credits (ERCs) resulting from the permanent reduction of open field burning of rice straw.

The main requirements for Rule 3.21 will be:

1. An application will be required to bank ERCs under this program. There will be two (2) types of applications: new applications and re-certification applications. Those parties who previously banked rice straw ERCs may surrender their existing ERCs and apply to "re-certify" their credits. Any other parties who can substantiate that they grew rice during the 1988 - 1992 baseline may submit a "new" banking application to obtain credits.
2. All applications must be received within 6 months of rule adoption.
3. Each applicant must show that the property for which the application is submitted grew and burned rice in the baseline period between 1988 and 1992.
4. Each applicant must show that the property for which the application is submitted is limited by deed restriction to burning in any calendar year no more than 25% of the rice growing acreage.

This rule is expected to affect landowners whose parcels grew rice during the baseline period of 1988 to 1992. In our District, there were eight (8) parties who previously banked ERCs from this source category. Of those, 2 were for crops other than rice, and will therefore not be affected by this rule.

It is expected that most (if not all) of the parties with rice straw ERCs will re-bank their existing certificates in accordance with this rule. In addition, the program will be available to other landowners who either did not know about the program previously or who previously chose not to participate in the program. The District does not know how many other new parties might apply to bank credits, but expect this to be a very small number.

The adoption of Rule 3.21 is an action taken by a regulatory agency to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. The proposed rule will neither have a significant or detrimental effect on the environment. Therefore, staff have prepared a Notice of Exemption to satisfy the requirements of the California Environmental Quality Act (CEQA). The notice states that the adoption of Rule 3.21 is exempt from the requirements of CEQA pursuant to Section 15308, Actions by Regulatory Agencies for Protection of the Environment.

A. BACKGROUND

Overview of source category

Rice straw burning in the Sacramento Valley was “phased down” pursuant to state law adopted in 1991 (California Health & Safety Code 41865). Some Districts in the Sacramento Federal Non-attainment Area (SFNA) have previously used their existing banking rules to issue ERCs to growers. The United States Environmental Protection Agency (EPA) did not recognize the credits issued as being valid offsets for “federal purposes” (i.e. major modification projects or new major stationary sources).

The SFNA Districts have worked in conjunction with the Sacramento Valley Basin Control Council (BCC) and the California Rice Commission to address all concerns and comments raised by the California Air Resources Board (ARB) and the US EPA. This working group created a white paper and model rule, upon which this local rule is based on.

II. DISCUSSION OF PROPOSED RULE 3.21 REQUIREMENTS

Listed below are descriptions of the proposed requirements for Rule 3.21.

Section 100 General

Section 101 - Purpose: As discussed above, our District has previously issued ERCs (in accordance with our Rule 3.5, Emission Reduction Credits), however the EPA did not recognize these credits. Therefore, the purpose of this rule is to provide a federally recognized procedure for quantifying and certifying rice straw burning emission reductions. This will be the only process available for growers to receive federally recognized credits from cessation (phasedown) of rice straw burning.

Section 200 Definitions

Proposed Rule 3.21 provides definitions to clarify terms used in the rule, and to improve overall enforceability and compliance. Many of the definitions come from other District rules or the State and Federal law.

Section 212 - Historic Burn Fraction (HBF): Based on historic burn records for Yolo-Solano, in 1988, there were 19,969 acres burned, which was 95.1 % of the acres planted in 1987. In 1990, there were 23,192 acres burned, which was 96.6 % of the acres planted in 1989. Therefore, using the average of these years, the HBF for Yolo-Solano was 96%.

Section 300 Standards

Section 301 - Determination if a parcel is eligible: This section defines which parcels qualify to generate ERCs. The parcel has to be in the District and the applicant must demonstrate (see section 402.2 & 402.3) that rice straw burning occurred on the parcel during the baseline. For example, if a grower has one thousand (1,000) acre parcel that they are applying for credits on, these sections will verify that the 1,000 acres are in the District and

that rice straw burning occurred on the parcel between 1988 and 1992.

Section 302 - Determination of available acreage: This section establishes the amount of acreage that is eligible for banking. This is done by adding up all of the acres which were used to grow rice during the baseline and multiplying times the HBF. In the above example, for that 1,000 acre parcel, the available acreage for banking is 960 acres (1,000 x 0.96).

The District knows the total acres that were burned during the baseline, but not the individual growers who burned those acres. As established in the White Paper (and approved by EPA and ARB), the “representative” year for Yolo-Solano is 1989, during which time there were 28,279 acres burned. If the District receives applications with total available acreage of more than 28,279 acres, the District will adjust the values available for individual applications based on section 404.

Section 303 - Determination of annual emission reductions available: As established between the Districts in the SFNA, the ARB, and EPA, 75% of the emissions will be bankable under this program. This section establishes the formula as available acreage times 0.75 times the emission factors. These emission factor values came from an ARB memo released in 2000 (predominately from Brian Jenkins’ “Atmospheric Pollutant Emission Factors from Open Burning of Agricultural and Forest Biomass by Wind Tunnel Simulations”, 1996, UC Davis).

Section 304 - Determination of quarterly emission reductions available: This section establishes the quarterly breakdown of the annual emissions. These values came from the Manual of Procedures (MOP).

Section 305 - Priority reserve adjustment: Consistent with Rule 3.5, the District will adjust the reductions with 1.05 reductions equaling 1.0 ERCs. The balance (adjustment) are deposited in the District’s priority reserve bank.

Section 306 - Deed restriction: This section requires that prior to issuing ERCs, a deed restriction be placed on the parcel. The deed restriction must limit the agricultural burning on the parcel consistent with the ERC. This section (along with 307 and 308) was added at the request of the EPA to establish federal enforceability of the program.

Section 307 - Restricted burn list: This section requires that the District place the parcel on our “restricted burn list”, which is a feature of our agricultural burn program.

Section 308 - Burning prohibition: This section requires that any parcel that obtained ERCs can not burn more than 25% of the rice growing acreage.

Section 400 Administrative Requirements

This section establishes all of the administrative requirements associated with this program.

III. COMPARISON TO OTHER APPLICABLE REGULATIONS AND REQUIREMENTS

California Health and Safety Code (CH&SC) Section 40727.2 requires districts to perform a comparative alternative analysis of any new control standard. Since there are no new control standards being proposed with this rule, this analysis can not be performed.

IV. IMPACTS OF THE PROPOSED RULE

Emissions Impacts

The open field burning of rice straw creates emissions for all criteria pollutants: Nitrogen Oxides (NOx), Carbon Monoxide (CO), Particulate Matter less than 10 microns (PM10), Volatile Organic Compounds (VOCs), and Sulfur Oxides (SOx). This rule will not result in any emission reductions.

Cost Effectiveness

CH&SC Section 40703 requires the District, in the process of the adoption of any rule or regulation, to consider and make public its findings related to the cost effectiveness of the rule. Cost effectiveness for rulemaking purposes is calculated by dividing the cost of air pollution controls required by the rule by the amount of air pollution reduced.

This rule is not a control measure, and therefore a cost effectiveness can't be performed.

Socioeconomic Impacts

CH&SC Section 40728.5 (a) requires the District, in the process of the adoption of any rule or regulation, to consider the socioeconomic impact if air quality or emission limits may be significantly affected. However, districts with a population of less than 500,000 persons are exempt from the provisions of Section 40728.5 (a). The District's population is estimated to be approximately 310,000 and well below the 500,000 person threshold. Therefore, a socioeconomic analysis for this rulemaking is not required.

Incremental Cost Effectiveness

CH&SC Section 40920.6 requires an assessment of the incremental cost-effectiveness for proposed regulations relative to ozone, Carbon Monoxide (CO), Sulfur Oxides (SOx), Nitrogen Oxides (NOx), and their precursors. Incremental cost-effectiveness is defined as the difference in control costs divided by the difference in emission reductions between two potential control options that can achieve the same emission reduction goal of a regulation.

This rule is not a control measure, and therefore an incremental cost effectiveness can't be performed.

Impacts to the District

The District will receive applications as a result of this rule, however, the rule requires

application fees to be submitted with applications, so there will be cost recovery for the required work.

V. ENVIRONMENTAL IMPACTS OF METHODS OF COMPLIANCE

California Public Resource Code Section 21159 requires the District (at the time of adopting a rule requiring the installation of pollution control equipment, or a performance standard) to perform an environmental analysis of the reasonably foreseeable methods of compliance. This rule does not require installation of control equipment or a performance standard, therefore this analysis is not required.

This rule is an administrative rule and the proposed amendments will neither have a significant nor detrimental effect on the environment or humans due to unusual circumstances. In addition, the adoption of proposed Rule 3.21 is an action taken to protect the environment. Therefore, staff have determined that the project is categorically exempt from the requirements of the CEQA pursuant to Section 15308, Actions by Regulatory Agencies for Protection of the Environment. Staff prepared a Notice of Exemption (NOE) to meet the CEQA Guidelines (Attachment B).

VI. REGULATORY FINDINGS

Section 40727(a) of the CH&SC requires that prior to adopting or amending a rule or regulation, an air district's board make findings of necessity, authority, clarity, consistency, nonduplication, and reference. The findings must be based on the following:

1. Information presented in the District's written analysis, prepared pursuant to CH&SC Section 40727.2;
2. Information contained in the rulemaking records pursuant to CH&SC Section 40728; and
3. Relevant information presented at the Board's hearing for adoption of the rule.

The required findings are:

Necessity: The rule adoption is required in order to obtain federal recognition of the ERCs which are spelled out in state law (section 41865 of the CH&SC).

Authority: The District is authorized to adopt rules and regulations by CH&SC, Sections 40001, 40702, 40716, 41010 and 41013.

Clarity: District staff have reviewed the proposed rule and determined that it can be easily understood by the affected industry. In addition, the record contains no evidence that the persons directly affected by the rule cannot understand the rule. (CH&SC Section 40727(b)(3)).

Consistency: The proposed rule does not conflict with and is not contradictory to, existing statutes, court decisions, or state or federal regulations. (CH&SC Section 40727(b)(4)).

Non-Duplication: The proposed rule does not duplicate any state laws or regulations, regarding the attainment and maintenance of state and federal air quality limits. (CH&SC Section 40727(b)(5)).

Reference: The District must refer to any statute, court decision, or other provision of law that the District implements, interprets, or makes specific by adopting, amending or repealing the rule.

VII. PUBLIC COMMENTS AND STAFF RESPONSES

Staff held a public workshop on October 30, 2008, to discuss the proposed adoption of Rule 3.21. Notification was sent to surrounding Air Districts, City Managers within the District, building/planning/community development departments within the District, all city and county libraries within the District, all Board members, agricultural commissioners, the farm bureaus, ERC brokers, and all existing agricultural burn ERC holders. The workshop notice was published in the Vacaville Reporter, Woodland Democrat, and the Davis Enterprise.

A copy of the public workshop notice, the draft staff report, and draft rule language, was posted on the District’s web page. The workshop was attended by 15 people. In response to the notice and/or workshop, the District received the following comments:

Comment 1. Several people commented that the language of section 302 was unclear as to how the 75% and 96% (HBF) related to the total limit of 28,279 acres.

Response 1. The 28,279 acres is the representative annual quantity of acres that were actually burned during the baseline.

The term “rice growing acreage” which is used in section 302 is defined as the amount of acres used for the production of rice, not necessarily the amount that was burned. Therefore, it is necessary to multiply these acres (rice growing acreage) times the HBF to establish the number of acres which would have been burned during the baseline (the available acreage). For our District, using the HBF of 96%, this means that 29,457 acres would have been in rice production to end up with 28,279 acres burned. If the District receives applications with “available acreage” adding up to more that 28,279 acres (which would correspond to rice growing acreage adding up to 29,457 acres), then the District will adjust the values.

As shown in table A4 of the white paper, the annual emissions that resulted from burning of the 28,279 acres were:

VOC emissions (tons)	CO emissions (tons)	NOx emissions (tons)	PM10 emissions (tons)	SOx emissions (tons)
199.37	2,434.82	220.58	267.24	46.66

Of the above amounts, only 75% of the emissions are bankable with federal recognition under this program. To make these calculations more clear, the District will move the 75% factor to section 303.

Comment 2. There were several questions about the use of the term "parcel" in sections 306 & 307 (of the draft version). The term parcel is defined in section 213 to mean the whole piece of land registered with the assessor's office. Section 306 would require that the (whole) "parcel" be on the restricted burn list, however if only a portion of the parcel grew rice during the baseline (and therefore only a portion of the parcel is participating in this banking program), the comment was made that only a portion of the parcel should be restricted.

Response 2. The District concurs, and has revised the language of section 306 & 307.

For clarity, the District provides the following hypothetical situations as examples:

Example 1

Parcel acreage = 1,000 acres

Rice growing acreage = 1,000 acres

Available acreage = $1,000 * 0.96 = 960$ acres

ERCs issued: $960 \text{ acres} * 0.75 = 720$ acres * Emission factors

Deed restriction, limit burning to less than $1,000 * 0.25 = 250$ acres

Example 2

Parcel acreage = 1,000 acres

Rice growing acreage = 400 acres

Available acreage = $400 * 0.96 = 384$ acres

ERCs issued: $384 \text{ acres} * 0.75 = 288$ acres * Emission factors

Deed restriction, of the 400 acres participating, limit burning to less than $400 * 0.25 = 100$ acres (the other 600 acres not encumbered)

Comment 3. A question was asked related to the timing of section 402.4. Section 402 states that "the application shall contain...a copy of the deed restriction..." However within the parenthesis of 402.4, it states this must be provided prior to final issuance. There was some concern that having the landowner encumber the property prior to even submitting the application was a bit premature.

Response 3. The District concurs and has revised the language of section 402.4.

Comment 4. Several questions were asked related to the interaction between this rule and 3.5, specifically related to priority reserve and fees.

Response 4. It is the District staff's intent to apply the priority reserve provisions and fee provisions to this program. In order to make this rule a stand alone rule for banking of ERCs, rather than try and rely on those provisions in rule 3.5,

they will be added to this rule in new section 305 and 402.5.

Comment 5. The District received a verbal and written (e-mail) comment from Steve Hill of Sierra Research. The comment stated that for “new applicants”, they must wait until the end of the close of the application period (and possibly another 180 days after that) to learn the value of their credits. There is concern that with this scenario, “it will be difficult or impossible for sellers to enter into contracts involving these credits”. The commentor recommended a scenario with a shorter (111 day) application deadline for those applicants who meet the documentation requirements of 404.2. This would allow the ERC quantities to be determined much sooner.

Response 5. The District recognizes that uncertainty associated with not knowing how many parties will submit applications and with what records could make it difficult or impossible to market the potential credits. In establishing a 1 year filing period, the District along with the working group of other Districts and the rice commission considered that allowing 1 year would ensure that anybody who grew rice during the baseline could have the opportunity to participate. After receiving this comment, District staff believes that it would be more straightforward to maintain a single deadline, however have proposed to change that deadline to 6 months instead of 1 year.

District staff believes that a deadline shorter than 6 months might be too limiting on sources submitting applications. Also, on a concurrent path to receiving and approving the applications, before any credits will be federally recognized, the District and the region must adopt our SIP attainment demonstration and also, this rule must be submitted and approved into the SIP.

Subsequent to the public workshop and addressing the comments, staff prepared a public hearing notice for the hearing which will be held December 10, 2008. The notice was sent to all the same parties which received the public workshop notice. The hearing notice was also published in the Vacaville Reporter, Woodland Democrat, and the Davis Enterprise on November 4th. A copy of the public hearing notice and updated documents (proposed staff report and proposed rule language), were posted on the District’s web page.

In response to the notice, the District received no additional comments. A copy of the updated documents (final staff report and final rule language) were provided to the Governing Board prior to the hearing and posted on the District’s web page

VIII. REFERENCES

1. “Sacramento Federal Non-Attainment Area Rice Straw Emission Reduction Credit Model Rule Support Document (White Paper)”, October 16, 2008
2. SFNA Rice Straw ERC Model Rule, October 16, 2008

ATTACHMENT A

**PROPOSED RULE 3.21, RICE STRAW EMISSION REDUCTION CREDITS;
STRIKE-OUT UNDERLINE VERSION**

RULE 3.21 RICE STRAW EMISSION REDUCTION CREDITS
ADOPTED December 10, 2008

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100 GENERAL

101 PURPOSE: The purpose of this Rule is to provide a federally recognized procedure for quantifying and certifying rice straw burning emission reductions, and issuing the resulting Emission Reduction Credit (ERC) certificates.

This rule provides the only process by which ERC certificates issued for reductions in rice straw burning may be stored for later use to meet federal new source review offset requirements. Once issued in accordance with this rule, the procedures in Rule 3.5 EMISSION REDUCTION CREDITS shall be used as the administrative mechanism for sources to transfer ERCs to other sources for use as offsets.

102 APPLICABILITY: The provisions of this Rule shall apply to any agricultural operation that grew rice and burned rice straw in the District during the baseline period.

200 DEFINITIONS: Unless otherwise defined below, the terms used in this Rule are the same as defined in District Rule 3.5, EMISSION REDUCTION CREDITS, Rule 3.4, NEW SOURCE REVIEW, or Rule 1.1, GENERAL PROVISIONS, in that order of priority.

201 AGRICULTURAL BURNING: Open outdoor fires used in the growing of crops. For the purpose of this Rule, agricultural burning is considered to be a source and such activity requires an agricultural burn permit.

202 AGRICULTURAL BURN PERMIT: A permit issued by the District, which is required in order to conduct an agricultural burn.

203 AGRICULTURAL OPERATION: Equipment used exclusively in the growing of agricultural crops or in the commercial raising of fowl or animals.

204 AIR POLLUTION CONTROL OFFICER (APCO): The Air Pollution Control Officer of the Yolo-Solano Air Quality Management District (District), or his or her designee.

205 APPLICANT: For a new application, the owner (or his/her designee) of the parcel. For a re-certification application, the current owner (or his/her designee) of an existing rice straw burning ERC.

- 206 APPLICANT DESIGNEE: The person, company, or entity submitting an application on behalf of the applicant. Such designee shall provide written authorization signed by the applicant to serve as the designee.
- 207 BANKING: The system of quantifying, certifying, recording, and storing ERCs for future use and transfer. This system shall be called the ERC Bank.
- 208 BASELINE PERIOD: Calendar years 1988 through 1992.
- 209 CERTIFIED: ERCs which have been evaluated under the requirements of this Rule and other applicable District, State, and Federal Rules and Regulations and which have been granted by the APCO.
- 210 EMISSION REDUCTION CREDITS (ERCs): Reductions of actual emissions that are registered with the District in accordance with the requirements of Rule 3.5, EMISSION REDUCTION CREDITS.
- 211 HISTORIC BURN FRACTION (HBF): The amount of rice (as a percentage of the amount planted) which was burned during the baseline period, equal to 96%.
- 212 NEW APPLICATION: An application submitted in accordance with this rule for which the District has not already issued an ERC for reductions in rice straw burning for a parcel(s) prior to adoption of this Rule.
- 213 PARCEL: A legally identifiable piece of land as registered with a County Assessor's office for property tax purposes and assigned an Assessor's Parcel Number (APN).
- 214 RE-CERTIFICATION APPLICATION: An application submitted in accordance with this rule for which the District has previously issued an ERC for reductions in rice straw burning for a parcel(s) prior to adoption of this Rule.
- 215 REGISTER: The document that records all ERC deposits, withdrawals, transfers, and transactions.
- 216 RESTRICTED BURN LIST: A list (maintained by the District) of parcels which have restrictions related to future agricultural burning.
- 217 RICE STRAW BURNING: The intentional open burning of rice

straw material. For the purpose of this Rule, rice straw burning is considered to be a source and such activity requires an agricultural burn permit.

218 RICE STRAW BURNING EMISSION REDUCTIONS: Emission reductions that qualify for banking pursuant to Section 41865 of the California Health and Safety Code.

219 RICE GROWING ACREAGE: The amount of acreage contained in a parcel that was used for the production of rice during the baseline period.

220 SURPLUS: The amount of emission reductions that are, at the time of generation of an ERC, not otherwise required by federal, state, or local law, not required by any legal settlement or consent decree, and not relied upon to meet any requirement related to the California State Implementation Plan (SIP). However, emission reductions required by a state statute that provides that the subject emission reductions shall be considered surplus may be considered surplus for purposes of this Rule if those reductions meet all other requirements of this Section. Examples of federal, state, and local laws, and of SIP-related requirements, include, but are not limited to, the following:

220.1 The federally-approved California SIP;

220.2 Other adopted State air quality laws and regulations not in the SIP, including but not limited to, any requirement, regulation, or measure that: (1) the District or the State has included on a legally-required and publicly-available list of measures that are scheduled for adoption by the District or the State in the future; or (2) is the subject of a public notice distributed by the District or the State regarding an intent to adopt such revision;

220.3 Any other source- or source-category specific regulatory or permitting requirement, including, but not limited to, Reasonable Available Control Technology (RACT), New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), Best Available Control Measures (BACM), Best Available Control

Technology (BACT), and the Lowest Achievable Emission Rate (LAER); and

220.4 Any regulation or supporting documentation that is required by the federal Clean Air Act but is not contained or referenced in 40 Code of Federal Regulations (CFR) Part 52, including but not limited to: assumptions used in attainment and maintenance demonstrations (including Reasonable Further Progress demonstrations and milestone demonstrations), including any proposed control measure identified as potentially contributing to an enforceable near-term emissions reduction commitment; assumptions used in conformity demonstrations; and assumptions used in emissions inventories.

300 STANDARDS

301 DETERMINATION IF A PARCEL IS ELIGIBLE: A particular parcel qualifies to generate ERCs under this rule if the following requirements are met:

301.1 The parcel is located in the Sacramento Federal Non-attainment Area (SFNA); and

301.2 Rice straw burning occurred on the parcel during the baseline period.

302 DETERMINATION OF AVAILABLE ACREAGE: The available acreage for generating ERCs shall be determined by adding all of the rice growing acreage of an applicant's eligible parcels and multiplying by the HBF. In no case shall the total available acreage for the entire District exceed 28,279 acres. In the event that the District receives applications for which the total available acreage exceeds 28,279 acres, the District shall lower the amount of available acreage for each application in accordance with section 404.

303 DETERMINATION OF ANNUAL EMISSION REDUCTIONS AVAILABLE: The amount of annual emission reductions available shall be determined by multiplying the available acreage times 75% times the applicable emission factor in the following table:

<u>Pollutant</u>	<u>Emission Factor (lbs/acre)</u>
<u>Volatile Organic Compounds (VOC)</u>	<u>14.1</u>
<u>Nitrogen Oxides (NOx)</u>	<u>15.6</u>
<u>Carbon Monoxide (CO)</u>	<u>172.2</u>
<u>Particulate Matter less than 10 microns (PM10)</u>	<u>18.9</u>
<u>Sulfur Oxides (SOx)</u>	<u>3.3</u>

304 DETERMINATION OF QUARTERLY EMISSION REDUCTIONS AVAILABLE:
The emission reductions shall be quantified on a calendar quarter basis. The following percentages shall be used to determine the amount of emission reductions in each calendar quarter:

<u>Calendar Quarter</u>	<u>Percentage</u>
<u>First Quarter</u>	<u>28%</u>
<u>Second Quarter</u>	<u>26%</u>
<u>Third Quarter</u>	<u>8%</u>
<u>Fourth Quarter</u>	<u>38%</u>

305 PRIORITY RESERVE ADJUSTMENT: Before the APCO may issue an ERC, the calculated emission reductions shall be adjusted 1.05 emission reductions to 1.0 ERC. Emission reductions captured by this adjustment shall pass to the District's Priority Reserve Bank.

306 DEED RESTRICTION: Prior to the issuance of an ERC, a deed restriction shall be placed on the parcel or group of contiguous parcels for which ERCs will be granted and a copy provided to the District. The deed restriction shall prohibit agricultural burning on the parcel which is not consistent with the ERC.

307 RESTRICTED BURN LIST: Prior to the issuance of an ERC, the District shall place the parcel or group of contiguous parcels on the restricted burn list. In each calendar year, no agricultural burn permit may be issued for greater than 25% of the rice growing acreage of any parcel listed on the restricted burn list.

308 BURNING PROHIBITION: No person shall conduct agricultural burning on more than 25% of the rice growing acreage of a parcel which has received an ERC certificate pursuant to the provisions of this rule. In addition, applicants must comply with California Health & Safety Code (CH&SC) 41865.

400 ADMINISTRATIVE REQUIREMENTS

401 APPLICATION FILING DEADLINE: All applications to obtain rice straw ERC certificates in accordance with this rule shall be submitted by June 10, 2009. Applications submitted after June 10, 2009 shall not be eligible for ERCs under this rule.

402 APPLICATION REQUIREMENTS - NEW APPLICATIONS: The applicant shall submit one application for each parcel or for each set of contiguous parcels. The application shall contain the following information:

402.1 List of each parcel included in the application, including APN and any owner's designation or identifier.

402.2 The acreage of each parcel that was used to grow rice during the baseline period, and documentation of such acreage.

402.3 Documentation that rice straw burning occurred on the acreage of each parcel (identified above) during the baseline period. Examples of acceptable documentation include, but are not limited to, copies of a District burn permit, log books, pictures, or other District approved verifiable records. In the event that a burn permit or other records are not available, the District may accept a signed affidavit (under penalty of perjury) from the applicant certifying that rice straw on the parcel was burned during the baseline period.

402.4 A statement of intent to file a deed restriction required by Section 305 for each parcel or for each set of contiguous parcels for which an application is being submitted (A copy of the deed restriction must be provided prior to final issuance of the rice straw ERC certificate).

402.5 Filing fees for the evaluation and issuance of ERCs in accordance with District Rule 4.1, PERMIT FEES - STATIONARY SOURCE.

403 APPLICATION REQUIREMENTS - RE-CERTIFICATION APPLICATIONS:
The applicant shall submit one application for each existing ERC certificate. In addition to the information in 402, prior to re-issuance of the ERC, the applicant must surrender all previous certificates issued for rice straw burning on the parcel or group of contiguous parcels.

404 AVAILABLE ACREAGE ADJUSTMENT: In the event that the District receives applications in which the requested available acreage totals to more than 28,279 acres, the District shall lower the percentage available as follows:

404.1 The re-certification applications meeting the criteria of this rule shall get full credit on their acreage.

404.2 The applications with verifiable burn records will have second priority. If the total available acreage for all these applications along with the re-certification applications does not exceed 28,279 acres, these applications will get full credit. If the total of all these applications along with the re-certification applications exceeds 28,279 acres, these applications shall be adjusted proportionally so that the total acreage for which all rice straw burning ERCs are issued does not exceed 28,279 acres.

404.3 For all remaining applications with affidavits for burn documentation, the amount of rice straw acreage determined to be available shall be adjusted proportionally so that the total acreage for which all rice straw burning ERCs are issued does not exceed 28,279 acres.

405 APPLICATION PROCESSING PROCEDURES:

405.1 COMPLETE APPLICATION: The APCO shall determine whether the application is complete not later than 30 days after receipt of the application for ERC certificates. If the APCO determines that the application is not complete, the

applicant shall be notified in writing of the decision specifying the information required. If the specified information is not submitted within 30 days the application shall be canceled by the APCO.

- 405.2 **ADDITIONAL INFORMATION:** Upon receipt of additional information for an incomplete application a new 30 day period to determine completeness shall begin. During the processing of the application, the APCO may request an applicant to clarify, amplify, correct, or otherwise supplement the information submitted in the application.
- 405.3 **PRELIMINARY DECISION:** Following acceptance of an application as complete, the APCO shall perform the evaluations required to determine compliance with all applicable District Rules and Regulations and make a preliminary written decision as to whether the emission reduction should be certified as ERCs. The decision should be supported by a succinct written analysis.
- 405.4 **PUBLICATION AND PUBLIC COMMENT:** Within 10 calendar days following a preliminary decision, the APCO shall publish, in at least one newspaper of general circulation in the District, a notice stating the preliminary decision of the APCO, noting how the pertinent information can be obtained, and inviting written public comment for a 30 day period following the date of publication.
- 405.5 **DEED RESTRICTION:** Within 90 calendar days of the public notice being published, the applicant shall submit a final copy of a legal deed restriction.
- 405.6 **PUBLIC INSPECTION:** The APCO shall make available for public inspection at the District office the information submitted by the applicant and the APCO's analysis no later than the date the notice of the preliminary decision is published, pursuant to Section 405.4. Further, all such information shall be transmitted to the California Air Resources

Board and the US Environmental Protection Agency (EPA) regional office, and to any party which requests such information no later than the date of publication.

405.7 FINAL ACTION: Within 180 days after the application filing deadline in Section 401 of this rule, the APCO shall take final action on the applications, after considering all written comments.

406 VIOLATIONS: Failure to comply with any provision or restriction of this rule shall be considered a violation of this rule.

500 MONITORING AND RECORDS

501 BURN RECORDS: For any parcel or group of contiguous parcels for which a rice straw ERC certificate has been issued, the initial ERC holder or current land owner shall keep records of the amount of acres, crop type and burning that has occurred during the previous 5 years.

600 PROGRAM EVALUATION: Within two (2) years after adoption of this rule, the District shall evaluate the program and submit an evaluation report to EPA. The report shall include a discussion of the total number of applications approved, total acreage subject to this rule, and total amount of ERCs issued.

ATTACHMENT B

NOTICE OF EXEMPTION FROM CEQA GUIDELINES

ATTACHMENT C
RESOLUTION NO. 08-15

RESOLUTION NO. 08-15

**RESOLUTION ADOPTING YOLO-SOLANO AIR QUALITY MANAGEMENT DISTRICT
RULES 3.21, RICE STRAW EMISSION REDUCTION CREDITS**

WHEREAS, California Health and Safety Code section 40702 provides that an air quality management 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 Division 26 of the Health and Safety Code; and

WHEREAS, Health and Safety Code section 40727 provides that before adopting, amending, or repealing a rule or regulation, a district board shall make findings of necessity, authority, clarity, consistency, nonduplication, and reference, based upon information developed pursuant to section 40727.2, information in the rulemaking record maintained pursuant to section 40728, and relevant information presented at the public hearing required by section 40725; and

WHEREAS, section 15308 of the California Environmental Quality Act (CEQA) Guidelines provides that actions taken by regulatory agencies as authorized by state law to assure the maintenance, restoration, or enhancement of the environment where the regulatory process involves procedures for protection of the environment, are categorically exempt from CEQA review (Class 8 Categorical Exemption); and

WHEREAS, California Health and Safety Code sections 39002 and 40000 provides that an air quality management district shall have the responsibility to control air pollution from all sources other than vehicular sources; and

WHEREAS, the purpose of adopting District Rule 3.21 is to establish procedures which ensure federal recognition of the banking of Emission Reduction Credits (ERCs) resulting from the permanent reduction of open field burning of rice straw.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Yolo-Solano Air Quality Management District hereby finds, authorizes, directs and declares as follows:

1. The Board of Directors has considered and hereby adopts by reference the staff report prepared in this matter.
2. The Board of Directors makes the following findings pursuant to Health and Safety Code section 40727:
 - a. Necessity: Information in the District's rulemaking record maintained pursuant

- to Health and Safety Code section 40728 demonstrates a need for adopting Rule 3.21;
- b. Authority: Health and Safety Code section 40702 permits the District to adopt Rule 3.21;
 - c. Clarity: District Rule 3.21, as proposed is written so that its meaning can be easily understood by the persons directly affected by it;
 - d. Consistency: District Rule 3.21, as proposed is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations;
 - e. Nonduplication: District Rule 3.21, as proposed does not impose the same requirements as an existing state or federal regulation;
 - f. Reference: District Rule 3.21 is consistent with provisions of the Clean Air Act.
3. The Board of Directors finds that the District has complied with the procedural requirements set forth in Chapters 6 and 6.5 of Part 3 of Division 26 of the Health and Safety Code.
4. The Board of Directors finds that adopting District Rule 3.21 is an action taken by a regulatory agency as authorized by state law to assure the maintenance, restoration, or enhancement of the environment where the regulatory process involves procedures for protection of the environment, and is therefore categorically exempt from CEQA review as a Class 8 Categorical Exemption.
5. The Board of Directors hereby adopts District Rule 3.21, Rice Straw Emission Reduction Credits as set forth in Exhibit 1 (Attachment A of the Staff Report), which is attached and incorporated by reference. The adopted rule is effective December 10, 2008.

PASSED AND ADOPTED by the Board of Directors of the Yolo-Solano Air Quality Management District this 10th day of December, 2008, by the following vote:

Ayes:

Noes:

Absent:

Abstain:

John Vasquez, Chair
Board of Directors

Attest:

Approved as to Form:

Kay Mahorney, Clerk
Board of Directors

Hope Welton, District Counsel

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ATTACHMENT D
WRITTEN COMMENTS RECEIVED

October 30, 2008



**sierra
research**

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Paul Hensleigh
Yolo Solano AQMD
1947 Galileo Ct., Suite 103
Davis, CA 95618

Dear Mr. Hensleigh:

Sierra Research offers the following comments on the draft Rule 3.21 Rice Straw Emission Reduction Credits.

The draft Rule allows an applicant for recertification to determine, with certainty, the value of ERCs that will be issued.

New applicants, however, must wait until the close of the application period before they will learn the value of their credits, and possibly until the end of the District's 180 day review period, because the available allowance cannot be determined until that time. Those who fall under Section 402.3 may find that the value of their credits is small, or even zero, depending upon the number of applicants who qualify under Section 402.2.

Because the value of credits that will be granted to an individual new applicant cannot be predicted until after the close of the application period, it will be difficult or impossible for sellers to enter into contracts involving those credits. It will be difficult or impossible for buyers to demonstrate control of the credits they need to meet regulatory requirements for new construction.

This problem could be addressed, or at least minimized, if new applicants with good documentation (applicants who meet the documentation requirement of 402.2) were able to have their applications evaluated sooner. In order to receive this special treatment, they would need to submit their applications sooner, as well.

We believe that the District is capable of providing notice to the affected industry such that a shorter time-frame would be reasonable for preferred treatment. Applicants with good documentation who miss the deadline will still qualify for credits. We understand that the District believes that all most or all applicants will end up with full value, and if this is so, no one will be negatively affected by the proposed changes. On the other hand, if ERC sales agreements cannot occur because of uncertainty in the value of new ERCs, then new applicants with good documentation may miss an opportunity to take advantage of the new rule.

We propose the following language changes:

401 APPLICATION FILING DEADLINE: All applications to obtain

rice straw ERC certificates in accordance with this rule shall be submitted by December 10, 2009. Applications submitted after December 10, 2009 shall not be eligible for ERCs under this rule.

401.1 In order to qualify for priority treatment under Section 404.2, the application must be submitted by March 31, 2009.

404.2 The applications with verifiable burn records will have second priority. If the total available acreage for all these applications along with the re-certification applications does not exceed 28,279 acres, these applications will get full credit. If the total of all these applications along with the re-certification applications exceeds 28,279 acres, these applications shall be adjusted proportionally so that the total acreage for which all rice straw burning ERCs are issued does not exceed 28,279 acres. Applications with verifiable burn records submitted after March 31, 2009 will be subject to Section 404.3.

Thank you for your consideration of our comments. Please feel free to contact me if you have any questions.

Very truly yours,



Steve Hill