

Yolo-Solano Air Quality Management District
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YOLO-SOLANO
AIR QUALITY MANAGEMENT DISTRICT

**PROPOSED ADOPTION OF
RULE 4.5
FEDERAL CLEAN AIR ACT SECTION 185 PENALTY FEES**

PROPOSED STAFF REPORT

April 8, 2024

Prepared by: Eden Winniford
Reviewed by: Paul Hensleigh and Ben Beattie

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I. EXECUTIVE SUMMARY

Ozone is a highly reactive gas that is both a natural and a man-made product that occurs in the Earth's upper atmosphere (stratosphere) and lower atmosphere (troposphere). Tropospheric or ground-level ozone is formed primarily from photochemical reactions between two major classes of air pollutants, volatile organic compounds (VOC) and nitrogen oxides (NOx)¹.

The Yolo-Solano Air Quality Management District (District) is the local agency with the primary responsibility for the control of air pollution generated from stationary and area-wide sources in all of Yolo County and northeastern Solano County. The District is located within the SFNA, which is currently designated as severe nonattainment for the 1997, 2008, and 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS).

On May 8, 2024, the District's Board of Directors will consider adopting Rule 4.5, FEDERAL CLEAN AIR ACT SECTION 185 PENALTY FEES. Rule 4.5 will require the assessment of annual penalty fees for major stationary sources of VOC or NOx if the Sacramento Federal Nonattainment Area (SFNA) fails to demonstrate attainment of any 8-hour federal air quality standard promulgated by the United States Environmental Protection Agency (EPA) on or after March 12, 2008 by the respective attainment year and only for an ozone standard for which the SFNA is listed as Severe or Extreme. For the 2008 8-hour standard – 0.075 parts per million (ppm) – the SFNA has an attainment date of July 2025. For the 2015 8-hour standard – 0.070 ppm – the SFNA has an attainment date of August 2033.²

The proposed rule will not have a significant or detrimental effect on the environment. Therefore, staff prepared a Notice of Exemption to satisfy the requirements of the California Environmental Quality Act (CEQA). The notice states that the adoption of Rule 4.5 is exempt from the requirements of CEQA pursuant to Section 15308, Actions by Regulatory Agencies for Protection of the Environment.

A. BACKGROUND

History

The Federal Clean Air Act (FCAA) requires areas in nonattainment of the NAAQS to develop a state implementation plan (SIP) describing how state and local air pollutant emission reduction measures will result in attainment of air quality standards and compliance with the FCAA. Section 185³ of the FCAA requires SIPs for ozone nonattainment areas classified as severe and extreme to provide that, if the area fails to attain the ozone NAAQS by the applicable attainment date, each major stationary source of VOCs or NOx located in the area must pay a fee to the state (or air district) as a penalty. The SFNA has an attainment year of 2025 for the 2008 8-hour ozone standard and 2033 for the 2015 8-hour ozone standard.

On January 17, 2023, the EPA issued a Finding of Failure to Submit a required SIP element for the 2008 8-

¹ U.S. EPA. *What is ozone and where is it in the atmosphere?* Research Triangle Park, NC. Last updated July 11, 2023. <https://www.epa.gov/ozone-pollution-and-your-patients-health/what-ozone>.

² "Sacramento Regional 2015 NAAQS 8-hour Ozone Attainment and Reasonable Further Progress Plan." El Dorado County Air Quality Management District (AQMD), Feather River AQMD, Placer County Air Pollution Control District, Sacramento Metropolitan AQMD, Yolo-Solano AQMD. August 2023.

³ 42 U.S.C. § 7511d.

hour ozone NAAQS to portions of the SFNA which did not submit a FCAA Section 185 penalty fee rule, including the District. With this Finding of Failure to Submit, the District, along with the other air districts in the SFNA, except for the Feather River Air Quality Management District, is now under a regulatory clock to complete the penalty fees regulation and submit it to the SIP before sanctions are applied by U.S. EPA. An emission offset sanction, which would increase the emission offset ratio to 2:1, would take effect on August 16, 2024. The second sanction, a federal highway funding sanction, would be applied on February 16, 2025. If the District does not adopt and submit a penalty fee rule into the SIP, U.S. EPA must adopt and enforce the penalty fee rule through a Federal Implementation Plan.

Staff proposes to stop the sanctions clock by adopting Rule 4.5, FEDERAL CLEAN AIR ACT SECTION 185 PENALTY FEES, to implement the required FCAA penalty fee for the 2008 and 2015 8-hour ozone standards, as well as all future 8-hour ozone standards for which the SFNA is classified as severe or extreme nonattainment by U.S. EPA, and submitting the rule into the SIP.

Overview of source category

This rule affects all major stationary sources of VOC or NOx. In an ozone nonattainment area classified as severe, the emissions threshold for classification as a major source of VOC or NOx is 25 tons of VOC or NOx per year. The eight currently permitted sources within the District that could be affected by this rule are:

- Bogle Winery Delta Facility
- California Medical Facility / California State Prison – Solano
- Conduit Infrastructure, LLC
- Yolo County Central Landfill
- Insulfoam, a Division of Carlisle Construction Materials, LLC
- University of California, Davis
- Woodland Biomass Power Ltd.

II. DISCUSSION OF PROPOSED RULE 4.5

The proposed Rule 4.5 is as follows:

Section 101 Purpose

The purpose of this Rule is to establish penalty fees pursuant to the Clean Air Act Sections 182(d) and 185(a) through 185(d).

Section 102 Applicability

As proposed, the provisions of this rule shall apply to major stationary sources of VOC and NOx within the District. Fees will be collected from major stationary sources if the SFNA fails to demonstrate attainment of any 8-hour federal air quality standard for ozone promulgated by the U.S. EPA on or after March 12, 2008 by the attainment date and only for an ozone standard for which the SFNA is listed as Severe or Extreme.

Section 104 Exemption

This exemption specifies that no sources will be required to remit the penalty fee for an ozone standard during an extension year for that standard.

Section 105 Cessation

This section specifies that no sources will be required to remit the penalty fee for an ozone standard for which the SFNA has been redesignated to attainment.

Section 106 Exemption

This exemption specifies that no source will be required to remit the penalty fee for an ozone standard until the U.S. EPA has determined the SFNA has failed to attain the respective standard.

Section 200 Definitions

The Rule proposes to define a total of seven terms in order to adequately describe all aspects of the rule and its requirements.

Section 401 Collection of Penalty Fees

This section of the Rule provides the mechanism for penalty fee collection.

Section 402 Penalty Fee Determination

This section of the Rule provides the formula the District will use to calculate the penalty fee amount it will collect from a major source of VOC or NOx.

Section 403 Penalty Fee Adjustment

This section of the Rule specifies how the District will annually adjust the penalty fee amount per ton by the change in the Consumer Price Index.

III. COMPARISON WITH OTHER APPLICABLE REGULATIONS AND REQUIREMENTS

Health and Safety Code Section 40727.2 requires districts to prepare a written comparative analysis of any new control standard that identifies all existing federal air pollution control requirements, including, but not limited to, emission control standards constituting best available control technology (BACT) that apply to the same equipment or source type as the rule or regulation proposed for adoption or modification by the District. Proposed Rule 4.5 does not establish new emission control measures and is administrative in nature, so this section is not applicable.

IV. IMPACTS OF THE PROPOSED RULEEmissions Impacts

This rule will provide an administrative mechanism to enforce the collection of penalty fees required by the FCAA and does not have a direct impact on emissions. Proposed Rule 4.5 will, at the minimum, maintain the air quality attainment status of the District.

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. The adoption of Rule 4.5 provides an administrative mechanism for the collection of penalty fees and does not have a direct impact on emissions, so this section is not applicable.

Fiscal Impacts

Rule 4.5 will not directly result in the assessment of penalty fees on major stationary sources since the penalty fees are not assessed unless U.S. EPA issues a finding of failure to attain an applicable 8-hour ozone standard. If triggered, the penalty fee amount for each ton of VOC or NO_x that is emitted in excess of 80% of an affected major source's baseline emissions is established in Section 185 of the FCAA and is based on the original fee amount of \$5,000 per ton. This fee was established in the 1990 amendments to the FCAA, and the U.S. EPA annually adjusts this amount by the Consumer Price Index (CPI). The 2023 adjusted Section 185 penalty fee is \$11,922.00⁴ per ton of VOC and NO_x emissions.

The following calculation will be used to determine the amount of penalty fees that are owed by an affected major source:

$$\text{Fee} = \$5,000 * [E_A - (0.8 * E_B)] * (1 + \text{CPI})$$

Where:

Fee	=	Clean Air Act Penalty Fee
E _A	=	Actual emissions for the applicable penalty fee assessment year
E _B	=	Baseline emissions
CPI	=	Percent change in the Consumer Price Index since 1990

The baseline emissions are calculated for each ozone precursor pollutant, VOC and NO_x, for which the source is classified as a major stationary source, and are defined as follows:

- 1) For major stationary sources that began operation prior to the attainment year, the baseline emissions are the lower of:
 - a. the actual emissions during the attainment year, or
 - b. the emissions allowed under the facility's permit during the attainment year, or
 - c. the emissions allowed any applicable rules or regulations for the facility during the attainment year.
- 2) For a major stationary source that begins operation during the attainment year or that becomes a major stationary source during the attainment year, the baseline emissions are the lower of:
 - a. the emissions allowed under permit during the operational period as a major source, extrapolated over the entire attainment year, or
 - b. the actual emissions from the period the source operated as a major stationary source, extrapolated over the entire attainment year.

⁴ U.S. EPA, *Clean Air Act Section 185 Fee Rates Effective for Calendar Year 2023*. October 12, 2023. https://www.epa.gov/system/files/documents/2023-10/memorandum_sec-185-penalty-fees-for-year-2023_10-12-2023.pdf.

- 3) For a major stationary source that begins operation after the attainment year or that becomes a major stationary source after the attainment year, the baseline emissions are the lower of:
 - a. the emissions allowed under permit or any applicable rules for the facility during the first year of operation or the operational period as a major stationary source, extrapolated over the entire first year as a major stationary source, or
 - b. the actual emission from the first year of operation or the operational period as a major stationary source extrapolated over the year.

The attainment year that is used to establish the baseline emissions is specific to the ozone standard for which the SFNA is in severe or extreme nonattainment. The attainment year for the 2008 8-hour ozone standard is 2025, and the attainment year for the 2015 8-hour ozone standard is 2033.

If the penalty fees are triggered by U.S. EPA issuing a finding of failure to attain an applicable 8-hour ozone standard, the amount that each affected source would be responsible for in any year would directly depend on the actual emissions released by the source in that year. If an affected source were able to reduce its annual actual emissions to 80% or less than its baseline emissions for the applicable ozone standard during the attainment year, that source would not be responsible for paying any penalty fees. In contrast, a source emitted annual actual emissions in excess of 80% of the baseline emissions would be required to pay the CPI adjusted fee calculated above. This penalty fee would apply for each applicable 8-hour ozone standard until the District and the SFNA are in attainment of the standard.

Socioeconomic Impacts

California Health and Safety Code 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 345,000 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. Since proposed Rule 4.5 does not establish emission control measures, an incremental cost effectiveness evaluation is not applicable.

V. ENVIRONMENTAL IMPACTS OF METHODS OF COMPLIANCE

California Public Resource Code Section 21159 requires the District to perform an environmental analysis of the reasonably foreseeable methods of compliance. The analysis must include the following information:

1. An analysis of the reasonably foreseeable environmental impacts of the methods of compliance.
2. An analysis of the reasonably foreseeable mitigation measures.
3. An analysis of the reasonably foreseeable alternative means of compliance with the rule or regulation.

Proposed Rule 4.5 includes only administrative requirements. The proposed rule has no direct impact on emissions and thus an evaluation under this section cannot be performed.

The proposed rule will have neither a significant nor detrimental effect on the environment or humans due to unusual circumstances. In addition, the proposed rule adoption is considered to be an action taken to maintain and protect the environment. Therefore, staff has determined that the project is categorically exempt from the requirements of the California Environmental Quality Act (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 California Health & Safety Code (H&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 H&SC Section 40727.2;
2. Information contained in the rulemaking records pursuant to H&SC Section 40728; and
3. Relevant information presented at the Board's hearing for adoption of the rule.

The required findings are:

Necessity: It is necessary for the District to adopt this rule in order to comply with federal law and to stop the sanctions clock from the U.S. EPA.

Authority: The District is authorized to adopt rules and regulations by California Health and Safety Code, Sections 40001, 40702, 40716, 41010 and 41013. [H&SC Section 40727 (b)(2)]

Clarity: The proposed rule is written so that the meaning can be easily understood by the persons directly affected by it. In addition, the record contains no evidence that the persons directly affected by the rule cannot understand the rule. [H&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. [H&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. [H&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. [H&SC Section 40727(b)(6)]

VII. PUBLIC COMMENTS AND STAFF RESPONSES

A public workshop notice was prepared and distributed to surrounding air districts, city managers within the District, building/planning/community development departments within the District, all Board members, all eight permitted major stationary sources, and one additional source that is not currently a major stationary source but has permitted emissions that are close to the threshold. The notice was also published in the Davis Enterprise, the Vacaville Reporter and the Woodland Daily Democrat. Copies of the workshop notice and draft documents were posted to the District’s web page. A public workshop was held on March 21, 2024. Representatives from all eight permitted major stationary sources that would be subject to the rule, as well as representatives from the additional stationary source that is close to the threshold, attended the workshop.

The District did not receive any comments.

A public hearing notice was prepared and distributed to all the same parties and was published in the Vacaville Reporter and the Woodland Daily Democrat. Copies of the public hearing notice and the proposed documents were posted on the District’s web page.

VIII. REFERENCES

“Sacramento Regional 2015 NAAQS 8-hour Ozone Attainment and Reasonable Further Progress Plan.” El Dorado County Air Quality Management District (AQMD), Feather River AQMD, Placer County Air Pollution Control District, Sacramento Metropolitan AQMD, Yolo-Solano AQMD. August 2023.

U.S. EPA, *Clean Air Act Section 185 Fee Rates Effective for Calendar Year 2023*. October 12, 2023. https://www.epa.gov/system/files/documents/2023-10/memorandum_sec-185-penalty-fees-for-year-2023_10-12-2023.pdf.

U.S. EPA. *What is ozone and where is it in the atmosphere?* Research Triangle Park, NC. Last updated July 11, 2023. <https://www.epa.gov/ozone-pollution-and-your-patients-health/what-ozone>.

ATTACHMENT A

**PROPOSED RULE 4.5, FEDERAL CLEAN AIR ACT SECTION 185 PENALTY FEES
STRIKE-OUT UNDERLINE VERSION**

ATTACHMENT B

NOTICE OF EXEMPTION FROM CEQA GUIDELINES

Notice of Exemption

To: Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

County Clerk
County of Yolo
625 Court Street Room 105
Woodland, CA 95695

County Clerk
Solano County
600 Texas Street
Fairfield, CA 94533

From: Yolo-Solano Air Quality Management District
1947 Galileo Court, Suite 103
Davis, CA 95618

Project Title: Adoption of Rule 4.5 – FEDERAL CLEAN AIR ACT SECTION 185 PENALTY FEES

Project Location: Yolo-Solano Air Quality Management District

Project description: The District is proposing to adopt Rule 4.5, FEDERAL CLEAN AIR ACT SECTION 185 PENALTY FEES. The District is proposing to adopt the rule to establish penalty fees for major sources of NOx and VOC pursuant to the Federal Clean Air Act Section 185.

Name of Public Agency Approving Project: Yolo-Solano Air Quality Management District
Name of Person or Agency Carrying Out Project: Yolo-Solano Air Quality Management District

Exempt Status:

- Ministerial
- Emergency Project
- Categorical Exemption (CEQA Guidelines Section 15308, Action by Regulatory Agency for Protection of the Environment)
- Statutory Exemption

Reason why project is exempt: The adoption of Rule 4.5 is an action taken to maintain and protect the environment and is therefore exempt from CEQA because it constitutes a Class 8 categorical exemption pursuant to CEQA Guidelines 15308.

Lead Agency Contact Person: Gretchen Bennitt, Air Pollution Control Officer
Telephone Number: (530) 757-3650

Signature: _____ **Date:** _____ **Title:** _____

Notice of Exemption

To: Office of Planning and Research
1400 Tenth Street, Room 121
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County Clerk
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625 Court Street Room 105
Woodland, CA 95695

County Clerk
Solano County
600 Texas Street
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From: Yolo-Solano Air Quality Management District
1947 Galileo Court, Suite 103
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Project Title: Adoption of Rule 4.5 – FEDERAL CLEAN AIR ACT SECTION 185 PENALTY FEES

Project Location: Yolo-Solano Air Quality Management District

Project description: The District is proposing to adopt Rule 4.5, FEDERAL CLEAN AIR ACT SECTION 185 PENALTY FEES. The District is proposing to adopt the rule to establish penalty fees for major sources of NOx and VOC pursuant to the Federal Clean Air Act Section 185.

Name of Public Agency Approving Project: Yolo-Solano Air Quality Management District

Name of Person or Agency Carrying Out Project: Yolo-Solano Air Quality Management District

Exempt Status:

- Ministerial
- Emergency Project
- Categorical Exemption (CEQA Guidelines Section 15308, Action by Regulatory Agency for Protection of the Environment)
- Statutory Exemption

Reason why project is exempt: The adoption of Rule 4.5 is an action taken to maintain and protect the environment and is therefore exempt from CEQA because it constitutes a Class 8 categorical exemption pursuant to CEQA Guidelines 15308.

Lead Agency Contact Person: Gretchen Bennitt, Air Pollution Control Officer

Telephone Number: (530) 757-3650

Signature: _____ **Date:** _____ **Title:** _____

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Project description: The District is proposing to adopt Rule 4.5, FEDERAL CLEAN AIR ACT SECTION 185 PENALTY FEES. The District is proposing to adopt the rule to establish penalty fees for major sources of NOx and VOC pursuant to the Federal Clean Air Act Section 185.

Name of Public Agency Approving Project: Yolo-Solano Air Quality Management District

Name of Person or Agency Carrying Out Project: Yolo-Solano Air Quality Management District

Exempt Status:

- Ministerial
- Emergency Project
- Categorical Exemption (CEQA Guidelines Section 15308, Action by Regulatory Agency for Protection of the Environment)
- Statutory Exemption

Reason why project is exempt: The adoption of Rule 4.5 is an action taken to maintain and protect the environment and is therefore exempt from CEQA because it constitutes a Class 8 categorical exemption pursuant to CEQA Guidelines 15308.

Lead Agency Contact Person: Gretchen Bennitt, Air Pollution Control Officer
Telephone Number: (530) 757-3650

Signature: _____ **Date:** _____ **Title:** _____

ATTACHMENT C

RESOLUTION NO. 1X-XX

RESOLUTION NO. 1X-XX

RESOLUTION ADOPTING YOLO-SOLANO AIR QUALITY MANAGEMENT DISTRICT RULE 4.5

WHEREAS, California Health and Safety Code section 40702 provides that an air quality management district shall adopt rules and regulations 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 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, District staff identified requirements within the Federal Clean Air Act, Section 182(d) and 185(a) through 185(d), which required the adoption of RULE 4.5, FEDERAL CLEAN AIR ACT PENALTY FEES, to remain consistent with federal policy.

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 District Rule 4.5;
 - b. Authority: Health and Safety Code section 40702 permits the District to adopt District Rule 4.5;
 - c. Clarity: District Rule 4.5 as adopted is written so that its meaning can be easily understood by the persons directly affected by it;
 - d. Consistency: District Rule 4.5 as adopted 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 4.5 as adopted does not impose the same requirements as an existing state or federal regulation;
 - f. Reference: By adopting District Rule 4.5, the District meets the requirements of Health & Safety Code Sections 40702.
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 4.5 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 4.5 as set forth in Exhibit 1 (Attachment A of the Staff Report), which is attached and incorporated by reference. The adoption is effective May 8th, 2024.

PASSED AND ADOPTED by the Board of Directors of the Yolo-Solano Air Quality Management District this 8th day of May, 2024, by the following vote:

Ayes:

Noes:

Absent:

Abstain:

Mitch Mashburn, Chair Board of Directors
Yolo-Solano Air Quality Management District

Attest:

Approved as to Form:

Denise Almaguer, Clerk
Board of Directors

Hope Welton, District Counsel

ATTACHMENT D

WRITTEN COMMENTS RECEIVED