

MONTEREY BAY AIR RESOURCES DISTRICT
REGULATION I
GENERAL PROVISIONS

RULE 110. INDEMNIFICATION OF DISTRICT

(Proposed 06-21-2017)

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PART 1 GENERAL

1.1 Purpose

The purpose of this rule is to establish a requirement that an Applicant that obtains or renews a Permit to Operate from the District defend and indemnify the District in the event of a legal challenge relating to the issuance of the permit.

1.2 Applicability

This rule shall apply to any source that applies for a Permit to Operate in accordance with Rule 200.

1.3 Exemptions

Reserved.

1.4 Effective Date

This Rule, as most recently revised, is effective on June 21, 2017. This rule applies prospectively only.

PART 2 DEFINITIONS

2.1 Air Pollution Control Officer

Executive Officer, or designee, of the Monterey Bay Air Resources District.

2.2 Applicant

An Applicant for issuance of a Permit to Operate.

2.3 Board

Governing body of the Monterey Bay Air Resources District.

2.4 District

The Monterey Bay Unified Air Pollution Control District dba Monterey Bay Air Resources District.

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2.5 Indemnity Agreement

An agreement between an Applicant for a Permit to Operate or Permit Holder and the District when a legal challenge is filed relating to a permit application or the issuance of a permit.

2.6 Permit Holder

The holder of a Permit to Operate issued by the District.

PART 3 REQUIREMENTS

- 3.1 The application for issuance of a Permit to Operate will contain an acknowledgment of the Applicant's obligation to defend and indemnify the District against third party challenges in accordance with this rule.
- 3.2 At the time of application or as a condition of issuance of a Permit to Operate, an Applicant or Permit Holder shall agree to defend and indemnify the District from any claim, action, liability, or proceedings, acts, or determinations taken done, or made as a result of the District's process and/or approval of the application or issuance of the Permit to Operate. The Applicant and Permit Holder's obligation to indemnify the District includes, but not be limited to: payment of all court costs and attorney fees, costs of any judgments or awards against the District, and damages or settlement costs.
- 3.3 Within 10 days of being served with a petition, complaint or other legal notice by a third party challenging an application to the District or the District's issuance of a permit, or the manner in which the District is interpreting or enforcing permit terms or conditions, the District shall notify the Applicant or Permit Holder in writing.
- 3.4 Within 30 days of the notification, the Applicant or Permit Holder will either negotiate and sign an Indemnity Agreement with the District or request revocation of the permit to avoid or minimize the expense associated with the Indemnity Agreement. If the Applicant or Permit Holder fails to respond to the notification by the District within the 30 day period, they shall be deemed noncompliant and the application subject to cancellation or the Permit to Operate subject to revocation by the District pursuant to Section 3.8 below.
- 3.5 If the Applicant or Permit Holder disagrees with the requirement to sign an Indemnity Agreement with the District, or any portion of the Indemnity Agreement, they may appeal to the District Board by filing an appeal request with the District within 30 days of receiving the notification by the District. The appeal will be placed on the agenda of a regularly scheduled meeting. Action on the application or Permit to Operate by the District shall be suspended pending a decision by the Board on the appeal.

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- 3.6 Failure on the part of the Applicant or Permit Holder to negotiate sign an Indemnity Agreement shall be deemed noncompliance and will result in the application being subject to cancellation or the permit being subject to revocation by the District, pursuant to Section 3.8, unless an appeal releasing the Applicant or Permit Holder has been granted by the District Board. Any such appeal will be processed as set forth in Section 3.5, above.
- 3.7 When any court action results in a ruling for the plaintiff or petitioner, the Applicant or Permit Holder may request from the court a determination of the percentage of fault caused by the District. If the court assigns fault to the District, the liability of the Applicant or Permit Holder shall be reduced by the percentage of fault caused by the District.
- 3.8 Any action to cancel an application or revoke a permit for noncompliance with this rule will be undertaken by the District under the procedures provided in these rules or applicable state or federal air pollution control laws for cancellation of the type of application or revocation of the type of permit at issue. For Permits to Operate, the District shall request revocation and the Hearing Board shall hear the revocation request, in the manner provided for in an order for abatement.
- 3.9 Once a Permit to Operate for a stationary source of emissions is revoked for noncompliance with this rule, or at the request of the Permit Holder, any new application will be evaluated as an application for new stationary source. At the sole discretion of the Air Pollution Control Officer, an Indemnification Agreement, as specified above, may be required before a decision on the new application is rendered.
- 3.10 Notice of this indemnification requirement shall be included in all forms of the District that are used by Applicants to apply for permits, permit modifications, or other actions by the District.