



MCCV \* PO Box 1564 \* Modesto, CA 95353 \* 209.523.0886  
CLFP \* 1755 Creekside Oaks Drive St 250 \* Sacramento, CA 95833 \* 916.640.8150

**Joint Comments from MCCV & CLFP**  
Proposed Amendments to Rule 4306  
*November 16, 2007*

The Manufacturers Council of the Central Valley (MCCV) and California League of Food Processors (CLFP) appreciate the opportunity to provide comments to the San Joaquin Valley Unified Air Pollution Control District (District) regarding proposed revisions to Rule 4306. MCCV and CLFP collectively represent dozens of food processors and other manufacturing firms in Central California, and many of these companies have boilers that are subject to the provisions of Rule 4306.

Both organizations are collecting detailed technical and economic data to present to the District regarding the proposed rule amendments, but we would like to focus our initial comments on several general issues related to the timing, focus, technical feasibility, and financial implications of the District's proposal. To that end, and as previously noted by stakeholders during the October 30 workshop, the current compressed comment period does not allow for the development of any meaningful dialog. Extending the comment period to the second week of December would enable our members time to develop more detailed comments in regard to this very significant proposed rule modification.

The District clearly faces a daunting challenge in its efforts to fast track compliance with the eight hour Ozone Plan. In addition to the limited incentive funding available for inducing accelerated emissions reductions, the District's efforts are complicated by the rapidly growing population of the region and the fact that most of the "low hanging fruit" has long been harvested in terms of emissions improvements from stationary sources. MCCV and CLFP recognize that, despite these obstacles, the District has a regulatory mandate and public health imperative to move forward aggressively to achieve substantial reductions in NOx emissions.

The District's singular focus on attaining its objectives should be tempered with the recognition that environmental compliance achieved at any, and all, cost may have severe long term economic consequences for the region and foster a perception that the San Joaquin Valley has an uncertain, costly, and hostile business environment. The economic consequences of this and many other District rules can be substantial. If, for example, a food processor reduces or eliminates operations due to excessive environmental compliance costs this will have a direct impact not only on the plant's workers, but also on the many farmers, truckers, packaging companies, equipment manufacturers, ingredient suppliers, and energy providers that rely on the processor for their livelihood. The District surely appreciates the expansive, yet fragile, web of business activity that supports local

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communities in the Valley, and the need for a vibrant economy to provide the financial resources necessary to improve environmental quality.

MCCV and CLFP believe that the District's proposed reduction in the NO<sub>x</sub> emission standard to 5 ppmv for large boilers is flawed from technical, environmental, and economic perspectives. We will be providing more specific comments to the District later in the course of the proceedings, but some key general concerns can be summarized as follows:

❖ **Timing of the Proposed Amendments and the Need for Regulatory Certainty:**

The rapidity of change in NO<sub>x</sub> emissions regulations for large boilers has been exceptional, and is a point of real concern to the business community. The District initiated new emissions requirements for large boilers with the adoption of Rule 4306 in September, 2003. Rule 4306 was amended in March, 2005, less than two years after the first regulations. Again, less than two years later, the District proposed in its April, 2007 Ozone Plan to tighten the NO<sub>x</sub> emissions standards, and that proposal was the genesis for the amendments now under consideration. Adopting or proposing three new sets of rules within a four year period is an extraordinarily aggressive approach to regulating this source category.

The 2005 District rulemaking was an important decision point for many food processors and manufacturers. Depending on the type of boiler used and the compliance path chosen, firms had two to three years to conform with the NO<sub>x</sub> emissions limits. Firms had to evaluate their options and costs carefully and make significant investment decisions. The decision to install ultra low NO<sub>x</sub> boilers was made by many companies in the belief that switching to the new technology would fully satisfy their regulatory obligations for many years. Some of the retrofits and replacements have only recently been completed and a few are not yet underway. *At no point did the District indicate that, in less than three years, the Rule might be significantly altered again. Had the District clearly signaled that intention in 2005 many firms clearly would have made different decisions that would have proven much less costly in the long-run.* As a result, some companies fear that any investments made to comply with the proposed rule may be rendered useless in just a few years if the District lowers the emissions standard again.

The issue of cost recovery is critical. A 10-year life cycle cost analysis was used by the District in its economic analysis of the 2005 amendments to rule 4306. Given that the District was using this time frame many firms made the (apparently false) assumption that they would not be expected to change their equipment again at least until the completion of the 10-year amortization period in 2015. However, the new Rule will require full compliance by June, 2011. *The current proposal would cause many firms to invest in new equipment well before they complete the 10-year investment period for the equipment that they purchased to comply with the 2005 amendments.* This never-ending cycle of chasing new technologies and regulatory compliance is entirely unreasonable, and sends the message to industry that regulations are subject to change at any time, regardless of the cost.

❖ **Technology Limits:**

In the 2007 Ozone Plan, the analysis prepared by the District's staff regarding further revisions to the large boiler rule concluded that ultra low NO<sub>x</sub> burners alone are "*not technologically capable of achieving 6 ppmv.*" The District has yet to disprove this statement or demonstrate that ultra low NO<sub>x</sub> burners can consistently achieve the

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proposed level of 5 ppmv under a wide range of actual operating conditions and across the diverse range of boiler and burner configurations.

Given the substantial economic implications the District should not rely on potential or theoretical equipment performance standards. There may be a few isolated cases where new ultra low NOx burners have achieved the 5 ppmv emissions level during source tests, but most likely these boilers are used to provide baseline load capacity, experience little or no variation, and operated under tightly managed conditions. These few cases are not representative of the vast majority of applications for ultra low NOx burners where loads and operating conditions can vary considerably. Most facilities will not be able to achieve a 5 ppmv NOx emissions limit unless they add selective catalytic reduction (SCR) equipment at great cost.

Some firms have already installed SCR equipment. It is our understanding that very few of these units are permitted at 5 ppmv. It is worth noting that requiring the proposed NOx emissions limitation across the board will affect the current equipment guarantees. Again, depending on how the boilers are used and the specific operating environment there will be a number of technical challenges to consistently meeting the proposed 5 ppmv NOx standard. The District has long pursued a strategy of implementing “technology forcing” regulations. However, one size does not fit all with respect to advanced boiler technology and the District may have reached, or will soon approach, the point of diminishing returns with respect to effective NOx emissions reductions.

There are also other consequences that the District must consider with a strategy that imposes a singular compliance option, namely SCR. These systems utilize a catalyst and ammonia or urea injection, and as a result maintenance and operation of these systems is complex. It also raised the potential issue of ammonia slip, which should be considered in the course of this proceeding.

❖ **Projected Total Source Category Emissions Reductions:**

The District projects that the proposed amendments will yield a 40 percent reduction in total NOx emissions from the 770 units affected, equivalent to about 8.85 tons per day. These estimates are based on the NOx permit level at each of these facilities, *not* on source tests, actual fuel consumption, and boiler usage patterns. Our members as a general rule do not operate their boilers at 100 percent of capacity for their entire permitted operating period. Load factors of only 60 percent to 80 percent are common. Also, some firms may keep active permits for boilers that are rarely used. So, total actual emissions are well below the District’s current NOx baseline. For the same reasons the District’s estimated emissions reductions are also significantly inflated.

*These “paper reductions” in emissions will tend to greatly overestimate the cost effectiveness of the proposal and inflate expectations as to how much this source category realistically has left to contribute to the cause of Valley-wide NOx emissions reductions.*

❖ **Economic Impact of the Rule:**

MCCV and CLFP are collecting data that we believe will demonstrate that the District greatly underestimated the cost of complying with the current Rule. We have filed an information request with the District to obtain data to assist our analysis. Further, we are collecting detailed data regarding the costs that will be incurred by firms to meet the proposed new standards. The objective is to obtain a clear understanding of what will be

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the actual costs per ton of NOx removed. Our belief is that the costs will prove to be extraordinarily high. Past and ongoing evaluation of the costs indicate a potential cost-effectiveness level in excess of \$150,000 per ton of NOx reduced, far in excess of the District's draft proposed cost effectiveness threshold of \$24,500 per ton. Given the large recent investments made by this source category in new emissions control equipment, the economic analysis should be a pivotal factor in whether the District moves forward with the new Rule.

We are also concerned with the cost effectiveness of this rule on units which are between 20 and 5 MMBtu/hr. The retrofit cost per ton of NOx reduction to go from 15 ppmv to 9 ppmv may be much higher for these smaller units and that is in cases where retrofitting is an option. There are a number of smaller units where no retrofit options are available, necessitating replacement of the boiler at considerable expense.

As stated earlier, the proposed emissions standard would become effective in 2011, four years prior to the completion of the 10-year life cycle cost period from the 2005 Rule amendments, and in some cases less than three years depending on the compliance period selected. This is an important factor that must be considered by the District.

*MCCV and CLFP request that the District's economic analysis of the current proposal include the overlapping payback periods and fully account for the stranded costs incurred by facilities that installed ultra low NOx burners and would now have to add SCR units.*

*We also suggest that the District revise the manner in which it annualizes costs. Rather than projecting a 10-year life cycle the District should instead calculate costs over a shorter time frame (e.g. five years) that more accurately reflects the rule revision schedule, and therefore more accurately reflects the true cost of compliance.*

❖ **Cumulative Compliance Costs:**

A major concern to the business community in California is the ever growing cumulative cost of complying with new environmental regulations. For example, food processors must not only meet new boiler emissions limits, but also new forklift emissions standards, wastewater discharge requirements, and a host of other state and federal environmental regulations. In addition, new emissions standards for diesel trucks and farm equipment are forthcoming, and the California climate change initiative will have a profound impact on virtually all industries. In addition, processors must cope with rising costs for energy and water and increasing commodity prices, all of which include embedded environmental compliance costs.

*Although the District is not compelled to consider cumulative compliance costs, MCCV and CLFP ask the District to factor into its socioeconomic analysis how the accelerated time frame for reducing boiler emissions will add to the cost of doing business in Central California and put local businesses at a distinct economic disadvantage relative to firms in other areas.*

❖ **Proposed CPUC Natural Gas Quality Standard:**

MCCV and CLFP believe that requiring that all gaseous fuel used to fire boilers meet CPUC quality standards will inhibit, or effectively eliminate, the use of biogas in boilers. At the urging of the California Energy Commission and California Environmental Protection Agency many agricultural and food processing firms are examining the potential for using

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anaerobic digesters for managing waste materials and generating energy on-site. However, if firms have to scrub their biogas to meet CPUC regulations, and routinely certify that the gas meets those standards, many will abandon using biogas in their boilers.

❖ **Summary**

MCCV and CLFP believe that the proposed amendments to Rule 4306 will be too costly, impose an unfair burden on industry, and yield very limited improvement in air quality. Further, amending Rule 4306 before firms have fully amortized the cost of the last round of mandated emissions reductions sends a very negative message to industry with respect to regulatory certainty, potential future District actions, and the economic climate for business in Central California. For these reasons, MCCV and CLFP strongly recommend that the District not amend the large boiler NOx emissions standards at this time.

Instead we recommend that the District refine its inventory for the large boiler category by more carefully reviewing permit and source test data. We believe that this will demonstrate that the actual emissions from this category are substantially below current estimates.

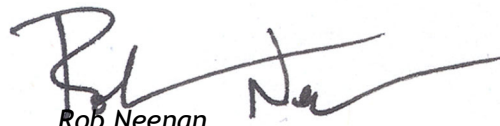
The District should recognize that a one-size-fits-all approach to boilers will not work; we are entering into a new era where most effective emissions reductions will be gained by allowing companies to incrementally reduce emissions as most appropriate, based on their unique equipment configuration and process demands. Implementing new rules over a sufficient time period will allow firms to make the necessary changes while ratcheting down emissions. We would strongly encourage the district to include advanced emission reduction options (AERO) in this rule as a means of achieving this goal.

If you have any questions regarding these comments please contact MCCV or CLFP.

Sincerely,



*Jan Marie Ennenga  
MCCV Executive Director*



*Rob Neenan  
CLFP Director of Regulatory Affairs*