

STAFF REPORT

For Board Adoption Hearing

Rule 511 – *Delinquency Penalties/Late Fees*

Proposed Amended Rule Release Date: May 25, 2021

Schedule of Meetings

- Date of Public Workshop on Proposed Amended Rule:
 - 2:00 p.m., Thursday, June 10, 2021 via Teleconference

Schedule of Hearing

- Date of Board Adoption Hearing:
 - 10:00 a.m., Thursday, June 24, 2021, Butte County Association of Governments Board Room, 326 Huss Lane, CA 95928

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Rule 511 – *Delinquency Penalties/Late Fees*

Proposed Amended Rule Release Date: May 25, 2021

Public Adoption Hearing: June 24, 2021 at 10:00 a.m.
Butte County Association of Governments Board Room
326 Huss Lane, Chico, CA 95928

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Attachment B Notice of Public Workshop and Hearing

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STAFF REPORT

Executive Summary

The federal Clean Air Act, California Health and Safety Code, and local Rule and Regulations of the Butte County Air Quality Management District (District) establish requirements on the District to develop, implement and enforce numerous programs designed to achieve and maintain ambient air quality standards and protect public health. These programs have primarily been from District fee sources, such as user fees (including burn permit fees and stationary source permit fees), State subvention funding and Department of Motor Vehicle surcharges collected as required by various rules contained in the District Rules and Regulations. The District does not utilize any County or City general funds.

The District proposes to amend Rule 511 – Delinquency Penalties/Late Fees. The proposed amendments change the delinquency penalty notification/late fee schedule to provide an additional 15 days for a facility to make payment prior to incurring a late fee. These changes will increase office process efficiency by aligning the delinquent fee review with other invoicing processes and will allow facilities more time for invoices to be paid.

1.0 PURPOSE

To amend Rule 511 – *Delinquency Penalties/Late Fees*.

2.0 APPLICABILITY

Proposed amended Rule 511 – *Delinquency Penalties/Late Fees* is applicable to all facilities and individuals who receive invoices from the District. This rule is required to establish a firm deadline of when invoice payments are due.

3.0 DISCUSSION

Background:

The current process is time consuming and inefficient with action being restarted every 15 or more days depending on the timing of customer invoicing. These changes will increase office process efficiency by aligning the delinquent fee review with other invoicing processes and will allow facilities more time for invoices to be paid.

4.0 PROPOSED RULE AMENDMENTS

The proposed amendments change the delinquency penalty schedule from 45 days to 60 days before initial late fees are applied and from 15 days to 30 days before any subsequent additional late fees are applied. This will change the delinquency penalty notification/late fee schedule to provide an additional 15 days for a facility to make payment prior to incurring a late fee.

5.0 COST IMPACTS/COST EFFECTIVENESS:

The proposed amended rule does not change the cost of late fees. It only changes the timeline of when late fees are applied. Facilities and individuals will have more time to pay an invoice before late fees are incurred. District staff hours associated with late fee invoicing should reflect a slight reduction using the proposed timeline since the process will be more efficient and in line with other invoicing processes.

6.0 ALTERNATIVES:

The Governing Board may choose to:

- a) Approve the rule as proposed;
- b) Direct staff to modify the proposed amended rule after receiving public comments during the hearing; or
- c) Take no action or deny the proposed amendments.

7.0 ENVIRONMENTAL REVIEW AND COMPLIANCE

Staff has determined that proposed amended rule is exempt from CEQA requirements and therefore considered to be ministerial in nature and thus are statutorily exempt from CEQA, pursuant to state CEQA Guidelines Section 15268 – Ministerial Projects, as defined by CEQA Guidelines Section 15369.

8.0 REQUIRED FINDINGS:

Findings required by Division 26 of the California Health and Safety Code requires local districts to comply with a rule adoption protocol as set forth in Section 40727 of the Code. This section has been revised through legislative mandate to contain six findings that the District must make when developing, amending, or repealing a rule or regulation. These findings, and their definitions are included in the following table.

FINDING	DEFINITION	REFERENCE
Authority	A 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 this division and other statutory provisions.	California Health and Safety Code Division 26, Part 3, Sections 40000 and 40001, 40702, and 42300 et. seq., are provisions of law that provide the District with the authority to adopt rules.
Necessity	The District has demonstrated a need for the Rule, or for Rule amendment or repeal.	Federal and State law requires the District maintain a minor and major source permitting program. The proposed rule provides the requirements to implement the federal

		requirements.
Clarity	The Rule is written or displayed so that its meaning can easily be understood by the persons directly affected by it.	There is no indication that the proposed amended rule is written in such a manner that persons affected by the rule cannot easily understand it.
Consistency	This Rule is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or State or federal regulations.	The District has found that the proposed amended rule is consistent with applicable statutory requirements.
Non-Duplication	The Rule does not impose the same requirements as an existing State or federal regulation, unless the District finds that the requirements are necessary and proper to execute the powers and duties granted to, and imposed upon, the District.	The proposed rule duplicates federal rules or regulations for permitting programs. The duplicative requirements are necessary in order to execute the powers and duties imposed upon the District.
Reference	Any statute, court decision, or other provision of law that the district implements, interprets, or makes specific by adopting, amending, or repealing a regulation.	California Health and Safety Code Division 26, Part 3, Sections 40000 and 40001, 40702, and 42300; Clean Air Act amendments of 1990 and related regulations.

9.0 ATTACHMENTS

Attachment A	Rule 511 - <i>Delinquency Penalties/Late Fees</i> (Proposed Amendments)
Attachment B	Notice of Public Workshop and Hearing
Attachment C	Draft Resolution of Adoption

Attachment A
Rule 511 - *Delinquency Penalties/Late Fees* (Proposed Amendment)

Attachment B
Notices of Public Workshops and Hearing

Attachment C
Proposed Resolution of Adoption

Attachment A
Rule 511 - *Delinquency Penalties/Late Fees* (Proposed Amendment)

Rule 511 Delinquency Penalties/Late Fees

*(Adopted June 24, 1999; Recodified August 22, 2002, Amended June 23, 2005,
Amended February 26, 2009, Amended August 23, 2012, Proposed for Amendment June 24, 2021)*

RULE 511 CONTENTS

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7. PERMIT FEE DEFAULT
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9. IMPROPER PAYMENT OF FEES
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12. WAIVER OF PENALTY BY THE APCO

Rule 511

- 1 DELINQUENT FEE:** Fees assessed in accordance with Regulation V of these Rules and Regulations, including but not limited to, written authorizations from the Air Pollution Control Officer (APCO) for Authority to Construct permits or Permits to Operate, Certificates of Registration, Permits issued by the Hearing Board, or Burn Permits, shall be submitted within thirty (30) days of the issuance date of the Butte County Air Quality Management District's (DISTRICT) billing statement (invoice date) or the fee shall be considered delinquent and penalties may be assessed in accordance with this Rule.
- 2 TIMELY PAYMENT OF FEES:** For purposes of this Rule, any fee payment shall be considered to be timely if it is postmarked on or before the 30th day following the invoice date. If the 30th day falls on a Saturday, Sunday, or holiday, the fee payment may be postmarked on the next business day with the same effect as if it had been postmarked on the 30th day.
- 3 DELINQUENCY NOTICE:** If a fee payment is delinquent, the DISTRICT shall mail a reminder notice to the responsible party stating that a delinquency penalty will be assessed if payment is not received on or before the 45th-60th day from the invoice date.
- 4 DELINQUENCY PENALTY:** If fee payment is not received on or before the 45th 60th day from the invoice date, a delinquency penalty of 25% of the amount of the billed fee shall be added to the amount of the fee due. The delinquency penalty of 25% shall not exceed \$500. The DISTRICT shall notify the responsible party by mail of the fees due and penalty fee.
- 5 ADDITIONAL DELINQUENCY PENALTIES:** If any fee payment is delinquent and the fee plus the delinquency penalty is not received within fifteen (15)thirty (30) days of the DISTRICT's delinquency notification issued pursuant to Section 4 above, the delinquency penalty shall be increased to 50% of the original amount due, to a maximum of \$1,000, and the DISTRICT shall send a final notice to the responsible party by mail of the fees due and penalties assessed, and pending Court action if not paid within ten (10) days of the final notice.
- 6 FEE DEFAULT:** If fees assessed in accordance with Regulation V of these Rules and Regulations and delinquency penalties assessed in accordance with this Rule are not received within thirty (30) days of the DISTRICT's final notice, the responsible party shall be considered to be in default of his or her fee obligations and previous authorizations subject to delinquent fees shall be suspended. Operating equipment or pursuing open-burning activities under suspended authorizations shall be a violation of this Rule and the unauthorized operation or activity shall be violations to the appropriate authorization requirements of these DISTRICT Rules and Regulations.
- 7 PERMIT FEE DEFAULT**

7.1 In the event a Permit to Operate is suspended due to fee default, the APCO
Rule 511 ~~August 23, 2012,~~ 511-2
Proposed for Amendment June 24, 2021

shall petition the DISTRICT Hearing Board to hold a hearing to determine whether any or all of the facility's permits should be revoked pursuant to California Health and Safety Code Section 42307.

- 7.2 After the DISTRICT has initiated a permit revocation action through the filing of an accusation with the DISTRICT Hearing Board, but before the revocation hearing is held, the permittee may still cure its default by submitting all outstanding fees, plus delinquency penalties and a \$150 revocation initiation fee.
- 7.3 If any Permit to Operate is revoked by the DISTRICT Hearing Board on account of such default, it may be reinstated or replaced with a new permit, upon written request of the permittee and upon payment of all outstanding fees, penalties, revocation initiation fee, and a reinstatement fee of \$250.
- 8 **SUSPENDED AND EXPIRED AUTHORIZATIONS:** A suspended or expired authorization does not preclude the responsible party from submitting another application and beginning the authorization process anew, although the delinquent fee and penalty shall become an obligation owed to the DISTRICT, which may be recovered along with any fee from such new application.
- 9 **IMPROPER PAYMENT OF FEES:** A fee payment that is timely paid but is less than the amount due shall not be accepted, and the time for proper payment continues to run.
- 10 **EXTENSION OF PAYMENT PERIOD BY THE APCO:** The 30-day payment period for fee payment required pursuant to Section 2 of this Rule may be extended for extraordinary circumstances at the discretion of the APCO. The adequacy of cause to extend the period shall be decided on a case-by-case basis by the APCO.
- 11 **NEGOTIATED PAYMENT SCHEDULE:** If a responsible party certifies to the APCO's satisfaction through a written declaration that payment in-full of fees would result in undue financial hardship, the APCO may negotiate an amended fee payment schedule, provided that the amended schedule includes reimbursing the DISTRICT for any increased costs of processing the extra payments. Failure to make any payments by any negotiated due date may result in penalties as otherwise authorized in this Rule and/or suspension of the permit.
- 12 **WAIVER OF PENALTY BY THE APCO:** The penalty for fee delinquency may be waived for extraordinary circumstances at the discretion of the APCO. The adequacy of cause to waive the penalty shall be decided on a case-by-case basis by the APCO.

Attachment B
Notices of Public Workshops and Hearing

NOTICE OF PUBLIC WORKSHOP AND HEARING

The Butte County Air Quality Management District (District) Governing Board will hold a public workshop and hearing to consider adoption of a proposed amendment to Rule 511- *Delinquency Penalties/Late Fees*. The time, date, and location of the public workshop and hearing are given below:

Public Workshop: 2:00 p.m. June 10, 2021 via Zoom (Zoom link on website or call)

Public Hearing: 10:00 a.m. June 24, 2021 Butte County Association of Governments Board Room, 326 Huss Lane, Chico, CA 95928

The Staff Report and proposed amended rule may be reviewed at the District office at the address below or on the District website: www.bcaqmd.org. For additional information please contact Patrick Lucey at (530) 332-9400, ext. 107. Written comments on the proposed rules must be submitted by June 21, 2021 to: Board Clerk, Butte County Air Quality Management District, 629 Entler Avenue, Suite 15, Chico, CA 95928.

DATED: May 25, 2021

BY: Stephen Ertle
Air Pollution Control Officer

Attachment C
Proposed Resolution of Adoption

**RESOLUTION 2021-17
BEFORE THE BOARD OF DIRECTORS OF
BUTTE COUNTY AIR QUALITY MANAGEMENT DISTRICT
STATE OF CALIFORNIA**

Resolution 2021-17)
Adopt Proposed Amended Rule 511)

WHEREAS, the Butte County Air Quality Management District Board obtains its authority to adopt, amend, or repeal rules and regulations from California Health and Safety Code Sections 40000, 40001, 40701, 40702;

AND WHEREAS, the Butte County Air Quality Management District Board has determined that the proposed rules are written such that the meaning can be understood by the persons directly affected by it (Health and Safety Code Section 40727(b)(3));

AND WHEREAS, the Butte County Air Quality Management District Board has determined that the proposed rules adopted herein are in harmony with, and not in conflict with or contradictory to existing statutes, court decisions, or state or federal regulations (Health and Safety Code Section 40727(b)(4));

AND WHEREAS, the Butte County Air Quality Management District Board has determined that the adoption of amended Rule 511, Delinquency Penalties/Late Fees, is necessary to improve invoicing process efficiency and align the delinquency penalties and late fees schedule with other invoicing processes;

AND WHEREAS, the Butte County Air Quality Management District Board has determined that the proposed amended Rule 511 does not duplicate local, state or federal rules or regulations for permitting programs;

AND WHEREAS, the District staff has made notice of and held a public workshop meeting on the proposed amended rule and received no comments;

AND WHEREAS, the Butte County Air Quality Management District Board conducted public hearings on June 24, 2021 concerning the proposed amended rules herein;

THEREFORE, BE IT RESOLVED, that the Butte County Air Quality Management District Board hereby adopts, with an effective date of June 24, 2021, amended Rule 511-*Delinquency Penalties/Late Fees*, as proposed in the attachments to the May 25, 2021.

On Motion of _____, Seconded by _____, the foregoing resolution is hereby PASSED AND ADOPTED by the Air Quality Management District Board of Directors on this 24th day of June, 2021 by the following:

AYES:

NOES:

ABSTAIN:

ABSENT:

Stephen Ertle, Air Pollution Control Officer
Butte County Air Quality Management District

I hereby attest that this is a true and correct copy of the action taken by the Butte County Air Quality Management District Board of Directors on June 24, 2021.

ATTEST: _____
Cora Collins, Clerk of the Governing Board