

AGENDA

BOARD OF DIRECTORS EASTERN KERN AIR POLLUTION CONTROL DISTRICT

Special Meeting
Wednesday, November 13, 2024
2:00 P.M.

Location: Eastern Kern Air Pollution Control District Board Room
414 W. Tehachapi Blvd., Suite D, Tehachapi, CA 93561

Ridgecrest City Hall
100 W. California Ave., Ridgecrest, CA 93555

Zoom Video Conferencing - <https://zoom.us>
Meeting ID # 826 861 7254

DISTRICT TO RECONVENE

DIRECTORS: Davies (Chairman), Peters, Gorman, and Creighton

ROLL CALL

SALUTE TO FLAG

CONSENT AGENDA/OPPORTUNITY FOR PUBLIC COMMENT: All items listed with a (-CA) are consent items and considered routine and noncontroversial by District staff. Consent items will be considered first and may be approved by one motion if no member of the Board or public wishes to comment or ask questions. If comment or discussion is desired by anyone, the item will be removed from the consent agenda and will be considered in listed sequence with an opportunity for any member of the public to address the Board concerning the item before action is taken.

STAFF RECOMMENDATIONS SHOWN IN CAPS AFTER EACH ITEM

PUBLIC PRESENTATIONS

- 1) This portion of the meeting is reserved for persons to address the Board on any matter not on this agenda but under jurisdiction of the Board. Board members may respond briefly to statements made or questions posed. They may ask questions for clarification; make referrals to staff for information or request staff to report to the Board at a later meeting. In addition, the Board may take action to direct staff to place a matter of business on a future agenda. **SPEAKERS ARE LIMITED TO TWO MINUTES. PLEASE STATE YOUR NAME BEFORE MAKING YOUR PRESENTATION. THANK YOU.**

BOARD MEMBER PRESENTATIONS OR ANNOUNCEMENTS

- 2) On their own initiative, Board members may make brief announcements or brief reports on their own activities. They may ask questions for clarification, make referrals to staff or take action to have staff place a matter of business on a future agenda [Gov. Code Sec. 54954.2(a)].

HEARINGS

- 3-CA) Re-Appointment of Hearing Board Member – REAPPOINT MR. CHRIS ELLIS TO THE HEARING BOARD FOR A THREE-YEAR TERM ENDING NOVEMBER 30, 2027.
- 4) Adoption of Amendments to Rule 425, Stationary Gas Turbines (Oxides of Nitrogen) – OPEN HEARING; RECEIVE PUBLIC COMMENT; CLOSE HEARING; ADOPT AMENDED RULE 425, STATIONARY GAS TURBINES (OXIDES OF NITROGEN), AND RESOLUTION NUMBER 2024-001-11.
- 5) Adoption of Amendments to Rule 425.3, Portland Cement Kilns (Oxides of Nitrogen) – OPEN HEARING; RECEIVE PUBLIC COMMENT; CLOSE HEARING; ADOPT AMENDED RULE 425.3, PORTLAND CEMENT KILNS (OXIDES OF NITROGEN), AND RESOLUTION NUMBER 2024-002-11.

DISTRICT REQUESTS

- 6-CA) Environment Protection Agency’s Inflation Reduction Act (IRA) Grant – APPROVE RESOLUTION NO. 2024-003-11 AND AUTHORIZE THE AIR POLLUTION CONTROL OFFICER TO SIGN AND SUBMIT THE GRANT APPLICATION, AND TO TAKE ALL OTHER STEPS NECESSARY TO RESERVE AND RECEIVE THE IRA GRANT FUNDS.
- 7-CA) California Air Resources Board’s Carl Moyer Heavy Duty Engine Program (CMP) Year 27 – APPROVE AND AUTHORIZE RESOLUTION NO. 2024-004-11 REQUESTING THE DISTRICT’S FULL ALLOCATION OF YEAR 27 CMP FUNDS; AUTHORIZE THE APCO TO SUBMIT THE APPLICATION REQUESTING SAID FUNDS; SIGN THE GRANT AWARD LETTER; AND DO ALL OTHER ACTS NECESSARY TO RESERVE AND RECEIVE YEAR 27 CMP FUNDS.
- 8-CA) Carl Moyer Program Grant Agreement with Ryan Hanzel to Replace a Diesel-Fueled Clark Loader – AUTHORIZE CHAIRMAN TO SIGN AGREEMENT

11-001-2024 WITH RYAN HANZEL FOR THE PURCHASE OF A NEW LOW-EMITTING LOADER.

9-CA) Carl Moyer Program Grant Agreement with Brian A. Cain to Replace a Diesel-Fueled Bobcat – AUTHORIZE CHAIRMAN TO SIGN AGREEMENT 11-002-2024 WITH BRIAN A. CAIN FOR THE PURCHASE OF A NEW LOW-EMITTING COMPACT WHEELED LOADER.

10-CA) Carl Moyer Program Grant Agreement with Tracy Cartwright to Replace a Diesel-Fueled Kubota Tractor – AUTHORIZE CHAIRMAN TO SIGN AGREEMENT 11-003-2024 WITH TRACY CARTWRIGHT FOR THE PURCHASE OF A NEW LOW-EMITTING TRACTOR.

11-CA) List of Regulatory Control Measures to be Considered for Amendment or Adoption During 2025. – RECEIVE AND FILE DISTRICT LIST OF 2025 REGULATORY CONTROL MEASURES, WHICH COULD BE CONSIDERED FOR AMENDMENT OR ADOPTION DURING CALENDAR YEAR 2025.

MATTERS FOR EXECUTIVE APPROVAL

12) 2025 Proposed Board Meeting Dates and Locations. – APPROVE AND AUTHORIZE THE AIR POLLUTION CONTROL OFFICER TO MAKE THE CALENDAR YEAR 2025 BOARD OF DIRECTORS MEETING SCHEDULE THE ABOVE PROPOSED DATES OR DIFFERENT DATES AS APPROVED BY YOUR BOARD.

13-CA) Summary of Proceedings for Meeting of September 5, 2024 – APPROVE AND FILE.

DOCUMENTS FOR FILING

14-CA) DISTRICT Notice of Violation's update – RECEIVE AND FILE.

DISTRICT UPDATES

15) APCO Report (Verbal)

ADJOURN TO THURSDAY, JANUARY 9, 2025, 2:00 PM, REGULAR BOARD SESSION AT EASTERN KERN AIR POLLUTION CONTROL DISTRICT BOARD ROOM, 414 W. TEHACHAPI BLVD., SUITE D, TEHACHAPI, CA.

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Americans with Disabilities Act (Government Code Section 54953.2)

Disabled individuals, who need special assistance to attend or participate in a meeting of the Eastern Kern Air Pollution Control District (EKAPCD), may request assistance at the EKAPCD, 2700 “M” St Ste. 302, Bakersfield, CA 93301 or by calling 661-862-5250. Every effort will be made to reasonably accommodate individuals with disabilities by making meeting materials available in alternative formats. Requests for assistance should be made at least three (3) working days in advance, whenever possible.



Eastern Kern

Air Pollution Control District

Gary Ray, Jr.
Air Pollution Control Officer

November 13, 2024

Board of Directors
Eastern Kern APCD
2700 "M" Street, Suite 302
Bakersfield, California 93301

SUBJECT: Re-Appointment of Hearing Board Member

Honorable Board:

The Eastern Kern Air Pollution Control District (District) Hearing Board is currently staffed with 5 members. The Hearing Board hears variances, abatements, and permit appeals. Mr. Chris Ellis's position on the Hearing Board expired on November 12, 2024. District Staff contacted Mr. Ellis and inquired if he would be amenable to serving another term. Mr. Ellis agreed to serve another 3-year term.

The normal tenure of a Hearing Board Member is 3 years. Therefore, if re-appointed, Mr. Ellis's term would expire on November 7, 2027. However, to ensure there is no lapse in having a full Hearing Board, the District is requesting Mr. Ellis's term end on November 30, 2027.

IT IS RECOMMENDED your Board appoint Mr. Chris Ellis to the Hearing Board for a three-year term, ending November 30, 2027.

Sincerely,

Gary Ray, Jr.
Air Pollution Control Officer

GR:cb



Eastern Kern

Air Pollution Control District

Gary Ray, Jr.
Air Pollution Control Officer

November 13, 2024

Board of Directors
Eastern Kern APCD
2700 "M" Street, Suite 302
Bakersfield, California 93301

SUBJECT: Adoption of Amendments to Rule 425, Stationary Gas Turbines (Oxides of Nitrogen)

Honorable Board:

Eastern Kern Air Pollution Control District (District) is proposing to adopt amendments to Rule 425, Stationary Gas Turbines (Oxides of Nitrogen). On September 18, 2024, the District held a public workshop at the District Board Room in Tehachapi, CA to present proposed amendments to Rule 425. District staff submitted copies of the proposed amendments to the California Air Resources Board (CARB) and Region IX of the U.S. Environmental Protection Agency (EPA) for an initial review prior to the workshop. A 30-day public review and comment period followed the workshop. No comments were received.

Rule 425 is being amended to lower current nitrogen oxide (NOx) limits for a Westinghouse W251B10 gas turbine with Authority to Construct issued before January 1, 1983, using dry low-NOx combustors from 25 ppmv to 20 ppmv at 15% O₂ when fired with gaseous fuel. A federal reporting requirement is also being added. Rule 425 will become effective immediately upon Board adoption. A Notice of Public Hearing was duly published more than 30 days prior to this hearing in the following newspapers: Mojave Desert News, Tehachapi News, and Bakersfield Californian. The notice requested written comments on amended Rule 425 and associated staff report by November 6, 2024. A copy of the staff report, which includes the proposed amendments to the rule is attached.

IT IS RECOMMENDED your Board Open Hearing; Receive Public Comment; Close Hearing; Adopt Amended Rule 425, Stationary Gas Turbines (Oxides of Nitrogen), and Resolution Number 2024-001-11.

Sincerely,

Gary Ray, Jr.
Air Pollution Control Officer

GR: JC: CB

Eastern Kern Air Pollution Control District

Rule 425 STATIONARY GAS TURBINES (OXIDES OF NITROGEN)

ADOPTION STAFF REPORT

November 13, 2024

Prepared by

**Jeremiah Cravens
Senior Air Quality Specialist**

**Eastern Kern Air Pollution Control District
2700 "M" Street, Suite 302
Bakersfield, California 93301
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I. INTRODUCTION

The Eastern Kern Air Pollution Control District (District) is proposing to adopt amendments to Rule 425, Stationary Gas Turbines (Oxides of Nitrogen), originally adopted August 16, 1993, and amended January 11, 2018. Rule 425 sets emissions standards for nitrogen oxides (NOx) produced by the operation of stationary gas turbines. Rule 425 is being amended to address deficiencies the U.S Environmental Protection Agency (EPA) identified in the January 11, 2018, amendment.

Proposed amendments to Rule 425 will be presented to the District's Governing Board for adoption at its regular Board Meeting held November 13, 2024, beginning 2 P.M. at the District's Board Room in Tehachapi, CA. Staff held a public workshop on September 18, 2024, in Tehachapi at the District's Board Room to present, discuss and receive comments on proposed amendments to Rule 425. The District submitted copies of the proposed amendments to the California Air Resources Board (CARB) and the Region IX office of the U.S. Environmental Protection Agency (EPA) for an initial review prior to the workshop. A 30-day public review and comment period followed the workshop.

Appendix A: Amended Rule 425, Stationary Gas Turbines (NOx).

Appendix B: Strikeout underline edits Rule 425, Stationary Gas Turbines (NOx).

Appendix C: Response to Comments.

II. BACKGROUND

Stationary gas turbines emit NOx from combustion of fuels. NOx is a precursor pollutant, that when emitted, can photochemically react with volatile organic compounds (VOCs) in the atmosphere and form ground-level ozone. Ozone can have significant negative impacts to human health and the environment. Areas within the U.S. are given classification levels based on the concentrations of regulated air pollutants. The Federal Clean Air Act (FCAA) require ozone nonattainment areas classified as "Moderate" or above to submit State Implementation Plan (SIP) provisions that implement RACT. RACT is required for VOC sources that are subject to Control Techniques Guidelines (CTGs) and for all major stationary sources of ozone precursors (NOx or VOC).

While there is no CTG for this source category, EPA has published an Alternative Control Techniques (ACT) document titled, "NOx Emissions from Stationary Gas Turbines" (EPA 453/R-93-007, January 1993), which describes available control techniques and their estimated costs. The California Air Resources Board (CARB) has published a guidance titled, "Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for the Control of NOx from Stationary Gas Turbines" (May 18, 1992).

These guidance documents along with other state and local rules for this category were used to help evaluate the RACT requirements of CAA §182(b)(2) and §182(f).

On March 27, 2008 (73 FR 16435), the EPA revised the 8-hour ozone National Ambient Air Quality Standard (NAAQS) from 0.084 parts per million (ppm) to 0.075 ppm (2008 ozone NAAQS). May 11, 2017, the District adopted its RACT demonstration for the 2008 ozone NAAQS (2017 RACT SIP) and submitted it to the EPA on August 9, 2017. The District's ozone nonattainment area was classified as "Moderate" at the time of submittal and, therefore, EPA evaluated the submittal based on that classification. Currently, the District's ozone nonattainment area is classified as "Severe" for the 2008 ozone NAAQS.

The District identified Rule 425 as one of three rules with deficiencies in the 2017 RACT SIP submittal. Rule 425 needed to be revised to demonstrate RACT for non-CTG major sources of NOx. On January 11, 2018, the District adopted an extensive revision of Rule 425 to address the deficiencies and fulfill RACT requirements.

III. EPA RULE EVALUATION

February 2023, EPA released a Technical Support Document (TSD) evaluation of the 2018, Rule 425 amendment. The TSD evaluation indicates that amended Rule 425 largely fulfills the relevant CAA §110 and part D requirements and strengthens the SIP by tightening NOx limits for most units regulated by the rule. It is also noted that the amendments helps ensure enforceability, have clear and applicable requirements, and the monitoring, recordkeeping, reporting and other provisions sufficiently ensure that affected sources and regulators can evaluate and determine compliance consistently. However, EPA is recommending a simultaneous limited approval and limited disapproval of the 2018 amendment pursuant to CAA §110(k)(3) and §301(a) due to the following deficiencies:

The amendment revised the NOx limits for the Westinghouse W251B10 turbine to 25 ppmv for gaseous fuel and 65 ppmv for liquid fuel. The submission does not justify the limits for this unit as meeting current RACT requirements.

The SIP Rule (August 16, 1993) calculated the Westinghouse W251B10 turbine NOx limits based on the EFF, LHV, HHV of the unit depending on fuel type. Calculating the NOx limit using an EFF of 25 (the lowest applicable value), the NOx limit for gas-fired fuel would be 20 ppm and oil-fired fuel 42 ppm. The District provided historical data showing EFF values and corresponding ppmv values below the new 25 ppmv limit for much of the year. The limits in SIP Rule are more stringent than the limits in the 2018 Rule, resulting in a relaxation of the rule. This relaxation has not been supported with an analysis of the revision's impact on attainment and RFP. As a result, the submission has not shown compliance with the requirement of CAA §110(l).

However, a limited approval would add the 2018 amendment of Rule 425 to the SIP, replacing the current SIP-approved version. EPA states this is advisable because the amendment strengthens the SIP by tightening NOx limits for most units regulated by the rule.

If finalized as proposed, the limited disapproval would start sanctions and a Federal Implementation Plan (FIP) clock. The FIP clock could be stopped by the submittal of an amended rule revision resolving the noted deficiencies. The EPA also recommends Section VI.B, Monitoring and Recordkeeping of the rule be revised while it is open to clarify “what proper work practices” will be required during periods of startup and shutdown to limit NOx emissions.

This staff report discusses the proposed revisions to Rule 425 needed to address the deficiencies identified by the EPA in the TSD. Specifically, the revised NOx limits for the Westinghouse W251B10 turbine needed to achieve full EPA approval and stop the FIP clock.

IV. APPLICABILITY

Upon adoption, provisions of the proposed amendments to District Rule 425 will be applicable to all stationary gas turbines with a rating equal to or greater than 0.88 megawatts (MW) operating within the Eastern Kern Air Pollution Control District jurisdiction.

V. DEFINITIONS

Definitions for APCO, Parts Per Million (ppmv), and Standard Conditions have been added to Rule 425. Please see Appendix A and B for the complete definitions.

VI. REQUIREMENTS

The following NOx emission limits listed in Section V, Requirements of Rule 425 for the owner or operator of a Westinghouse W251B10 with Authority to Construct issued before January 1, 1983, using dry low-NOx combustors is being revised **from:**

1. 25 ppmv at 15% O2 when fired with gaseous fuel or,
2. 65 ppmv at 15% O2 when fired with liquid fuel.

To:

- 20 ppmv at 15% O2 when fired with gaseous fuel.

The Westinghouse W251B10 can only be operated with gaseous fuels. Liquid fuel is no longer approved for use. Therefore, there is only a revised NOx limit for the Westinghouse W251B10 when fired with gaseous fuel. Please see Table 1 of Appendix A and B for complete NOx emissions limits

VII. ADMINISTRATIVE REQUIREMENTS

Section VI, Administrative Requirements contains revised language to aid in clarity. The following Federal Reporting requirement has also been added:

At least every six (6) calendar months, the owner or operator shall submit an excess emissions and continuous monitoring system performance report to the APCO according to 40 CFR 60.7(c). The report shall cover each continuous monitoring system required by Section VI.B.1 and B.2. An excess emission occurs for any unit operating period in which the requirements in Section V are not met. This semi-annual monitoring report may be aligned with the due dates of other reporting requirements to avoid duplication (e.g., semiannual compliance reporting required by title V of the federal Clean Air Act).

For each performance test conducted, the owner or operator shall submit a test protocol to the APCD 30 days prior to any testing and submit a performance test report to the APCO within 60 days of completion of the testing.

VIII. ECONOMIC IMPACTS

Pursuant to California Health & Safety Code (CH&SC) §40920.6(a), the District is required to analyze the cost effectiveness of new rules or rule amendments that implement Best Available Retrofit Control Technology (BARCT) or all feasible measures. Amended Rule 425 employs federal RACT requirements, not BARCT on all feasible measures, and is therefore not subject to the cost effectiveness analysis mandate.

IX. ENVIRONMENTAL IMPACTS

Both the California Environmental Quality Act (CEQA) and CARB policy require an evaluation of the potential adverse environmental impacts of proposed projects. The intent of amended Rule 425 is to protect public health by reducing the public's exposure to potentially harmful NOx emissions. An additional consideration is the impact that the proposed rule may have on the environment. The District has determined that no significant adverse environmental impacts should occur as a result of adopting amendments to Rule 425.

Pursuant to the Section 15061, Subsections (2) & (3) of the CEQA Guidelines, staff will prepared and file a Notice of Exemption for this project upon adoption.

X. SOCIOECONOMIC IMPACTS

CHSC Section 40728.5 exempts districts with a population of less than 500,000 persons from the requirement to assess the socioeconomic impacts of proposed rules. Eastern Kern County population is below 500,000 persons.

XI. RULE APPROVAL PROCESS

The District accepted written comments and concerns from persons interested in Amended Rule 425, Stationary Gas Turbines (Oxides of Nitrogen), for a period of 30 days following the workshop held in Tehachapi. Staff anticipates the revised Rule will be adopted by the District's Governing Board at its November 13, 2024, meeting. A hearing notice was published at least 30-days prior to the meeting.

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APPENDIX A:

PROPOSED AMENDMENT RULE 425

**STATIONARY GAS TURBINES
(OXIDES OF NITROGEN)**

425 Staff Report – Proposed Amendment

RULE 425 Stationary Gas Turbines (Oxides of Nitrogen) - Adopted 8/16/93, Amended 1/11/18, 11/13/24

I. Purpose

The purpose of this Rule is to limit oxides of nitrogen (NOx) emissions from stationary gas turbines.

II. Applicability

The provisions of this Rule shall apply to any stationary gas turbine with a rating equal to or greater than 0.88 megawatts (MW) operating in the Eastern Kern Air Pollution Control District (District).

III. Definitions

- A. APCO: Air Pollution Control Officer of the Eastern Kern Air Pollution Control District.
- B. Combined Cycle: Any stationary gas turbine operated for both the production of electrical energy from shaft work and the useful energy produced from heat recovered from its exhaust gases.
- C. Dry Low-NOx Combustor: Any gas turbine engine combustor using staging, air/fuel premixing or other design features to reduce NOx emissions.
- D. Gaseous Fuel: Any fuel existing as gas at standard conditions.
- E. Liquid Fuel: Any fuel, including distillate and residual oil, existing as liquid at standard conditions.
- F. Oxides of Nitrogen (NOx): Total nitrogen oxides (expressed as NO₂).
- G. Power Augmentation: An increase in the gas turbine shaft output and/or the decrease in gas turbine fuel consumption by the addition of energy recovered from exhaust heat.
- H. Parts Per Million Volume (ppmv): Measure of the concentration of gaseous or liquid substances in the atmosphere or other media.
- I. Rating: Manufacturer's continuous electrical output megawatt (MW) specification for a gas turbine system.
- J. Simple Cycle: Any stationary gas turbine in which all electric generators are driven by shaft work from fuel combustion.
- K. Selective Catalytic Reduction (SCR): A post-combustion control technology that utilizes a reducing agent, such as ammonia, injected into the exhaust gas stream where it converts NOx to molecular nitrogen in the presence of a catalyst.

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- L. Stationary Gas Turbine: Any gas turbine system, with or without power augmentation, which is permanently attached to a foundation, or is not a portable gas turbine. The gas turbine is not self-propelled nor intended to be propelled while performing its function, although it may be mounted onto a foundation. Two or more gas turbines powering a common shaft shall be treated as one gas turbine.
- M. Standard Conditions: A gas temperature of 68° Fahrenheit (20° Celsius) and an absolute pressure of 14.7 pounds per square inch (760-millimeters of mercury). Results of all analyses and tests shall be calculated or reported at this gas temperature and pressure.
- N. Shutdown Period: The time necessary to cease operation of a gas turbine from operating under load conditions. The time shall not exceed one (1) hour.
- O. Startup Period: The time necessary to bring operation of a gas turbine up to the designed rating. The time shall not exceed six (6) hours for combined cycle gas turbine power plants or two (2) hours for simple cycle gas turbine power plants.

IV. Exemptions

The provision of this Rule shall not apply to the operation of stationary gas turbines under the following conditions:

- A. Emergency standby units demonstrated to operate less than 200 hours per year.
- B. Units rated less than 4 MW that operate less than 877 hours per year.
- C. Laboratory units used in research and testing for the advancement of gas turbine technology.
- D. Units operated exclusively for firefighting and/or flood control.
- E. Turbines used in test cells and test stands.
- F. Portable equipment registered in accordance with California Air Resources Board (CARB) regulations under 13 CCR 2450-2465, Portable Equipment Registration Program (PERP) or 13 CCR 2420 Off-road Compression-ignition Engines and Equipment. Portable turbines used by the Department of Defense or National Guard exclusively used for military tactical support or other federal emergency purposes.

V. Requirements

A. Emission Limits

The owner or operator of any stationary gas turbine unit shall not operate such unit under load conditions, excluding the startup or shutdown period, which results in the measured NOx emissions concentration exceeding the compliance limits listed in Table 1, averaged over one (1) hour, based on four consecutive 15-minute averages.

TABLE 1

| Stationary Gas Turbine Unit | Compliance Limit NO _x , ppmv at 15% O ₂ | |
|---|--|-------------|
| | Gaseous Fuel | Liquid Fuel |
| Rated 0.88 MW to Less Than 2.9 MW OR Greater Than or Equal to 4 MW That Operate Less Than 877 Hour/Year | 42 | 65 |
| 2.9 MW to Less Than 10 MW | 25 | 65 |
| 10.0 MW and Greater | 9 | 25 |
| Owner or operator of a Westinghouse W251B10 with Authority to Construct issued before January 1, 1983, using dry low-NO _x combustors | 20 | N/A |

B. Startup/Shutdown Combined Cycle Units

NO_x emissions shall comply with at least one of the following limits averaged over the duration of the startup or shutdown period:

1. 70 ppmv at 15% O₂ for turbines fired with gaseous fuel or,
2. 226 ppmv at 15% O₂ for turbines fired with liquid fuel.

C. Startup/Shutdown Simple Cycle Units

NO_x emission shall be kept to a minimum by use of the following:

1. Manufacturer’s recommendation for operation during startup and shutdown.
2. Injection of water as soon as reasonably possible.
3. Maintaining proper air to fuel ratios.

VI. Administrative Requirements

A. Emission Control Plan

The owner or operator of any existing stationary gas turbine subject to this Rule shall submit to the APCO for approval an emissions control plan, including a schedule of increments of progress to be taken to meet or exceed requirements of Section V to comply with the compliance schedule prescribed by Section VIII.
An emissions control plan shall be submitted for each stationary gas turbine subject to this Rule, including:

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1. District permit number,
2. Gas turbine manufacturer's name and model number,
3. Rated electrical energy output (MW) and rated heat recovery (Btu/hr),
4. Type of fuel (gas and/or liquid),
5. Last year's fuel consumption (cubic feet of gas or gallons of liquid),
6. Last year's hours of operation,
7. Type of emissions control to be applied to engine, and
8. Documentation showing current NO_x emissions concentration.

B. Monitoring and Recordkeeping

The owner or operator of any stationary gas turbine subject to the provisions of this rule shall perform the following actions:

1. Install, operate, and maintain in calibration equipment capable of continuously measuring and recording the following:
 - a. Control system operating parameters:
 - i. Periodic NO_x emission concentrations,
 - ii. Turbine exhaust oxygen concentration,
 - iii. Air-to-fuel ratio,
 - iv. Flow rate of reducing agents added to turbine exhaust,
 - v. Catalyst inlet and exhaust temperature,
 - vi. Catalyst inlet and exhaust oxygen concentration,
 - vii. Other operational characteristics.
 - b. Elapsed time of operation measured by an hourly meter.
2. For units 10 MW or greater, the owner or operator shall monitor the exhaust gas NO_x concentrations. The NO_x monitoring system shall meet EPA requirements as specified in 40 CFR Part 60, Appendix B, Specification 2, or other systems approved by EPA. The owner or operator shall submit information to the APCO demonstrating that the emission monitoring system has data gathering and retrieval capability.
3. Prior to issuance of a Permit to Operate, information must be submitted to the APCO correlating the control system operating parameters to the associated NO_x output. This information may be used by the APCO to determine compliance when there is no continuous emission monitoring system for NO_x available, or when the continuous emission monitoring system is not operating properly.
4. Provide source test information regarding the exhaust gas NO_x concentration at ISO conditions corrected to 15 percent oxygen on a dry basis.
5. Maintain a daily stationary gas turbine engine operating log that includes actual startup and shutdown times, total hours of operation, type and quantity of fuel used (liquid/gas), and actions taken to comply with Section V.C. for simple cycle turbines.

425 Staff Report – Proposed Amendment

6. All records required by this Rule shall be maintained on-site for a period of five (5) years and made available to the APCO upon request.

C. Compliance Testing

The owner or operator of any stationary gas turbine subject to provisions of this rule shall conduct annual testing using the methods specified in Section VI.D.

D. Test Methods

1. NOx emissions shall be determined using EPA Method 7E or EPA Method 20 or ARB Method 100.
2. Exhaust gas Oxygen (O₂) concentration content shall be determined using EPA Method 3A or ARB Method 100.

E. Federal Reporting

1. At least every six (6) calendar months, the owner or operator shall submit an excess emissions and continuous monitoring system performance report to the APCO according to 40 CFR 60.7(c). The report shall cover each continuous monitoring system required by Section VI.B.1 and B.2. An excess emission occurs for any unit operating period in which the requirements in Section V are not met. This semi-annual monitoring report may be aligned with the due dates of other reporting requirements to avoid duplication (e.g., semiannual compliance reporting required by title V of the federal Clean Air Act).
2. For each performance test conducted, the owner or operator shall submit a test protocol to the APCD 30 days prior to any testing and submit a performance test report to the APCO within 60 days of completion of the testing.

F. Exempt Units

Exempt units shall comply with the following:

1. The owner or operator of any unit exempt under Section IV shall submit support documentation to the APCO within seven days if the hour-per-year limit is exceeded. If the hour-per-year limit is exceeded, the exemption shall be permanently withdrawn. Within 30 days after the exceedance, the owner or operator shall submit an application for Authority to Construct that details a plan to meet the applicable limits specified in Section V of this Rule. The application shall include a schedule of increments of progress for the installation of the required control equipment. This schedule shall not exceed four years from the date of the receipt of Authority to Construct application.
2. A public service unit operating during a state of emergency, when such emergency is declared by proclamation of the Governor of the State of California and when the unit is located in the specific geographical location identified in the proclamation, shall be excluded from the hour-per-year limit.

VII. Calculations

NOx emissions concentrations shall be calculated using the following equation:

$$NO_x = (NO_{x_{obs}}) (P_{ref}/P_{obs})^{0.5} (288 K/T_{amb})^{1.53} (e^{19(H_{obs}-0.00633)})$$

Where:

- NO_x = NO_x emissions concentration (ppmv) corrected to 15 percent oxygen and ISO standard conditions on a dry basis.
- NO_{x_{obs}} = Measured stack gas NO_x emissions concentration (ppmv) corrected to 15 percent oxygen on a dry basis.
- P_{ref} = Standard atmospheric pressure (14.7 psia).
- P_{obs} = Atmospheric pressure measured at site during testing, psia.
- H_{obs} = Absolute ambient humidity measured at site during testing, pounds water per pound dry air.
- e = transcendental constant (2.718).
- T_{amb} = Ambient air temperature in K and measured at site during testing.

VIII. Compliance Schedule

An owner or operator of a stationary gas turbine subject to this Rule shall comply with all applicable requirements within 30-days of Board adoption. This includes submittal of a complete Authority to Construct application for all necessary equipment modifications, if applicable.

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APPENDIX B:

PROPOSED AMENDMENT RULE 425

**STATIONARY GAS TURBINES
(OXIDES OF NITROGEN)**

STRIKEOUT UNDERLINE

RULE 425 Stationary Gas Turbines (Oxides of Nitrogen) - Adopted 8/16/93, Amended 1/11/18, 11/13/24

I. Purpose

The purpose of this Rule is to limit oxides of nitrogen (NOx) emissions from stationary gas turbines.

II. Applicability

The provisions of this Rule shall apply to any stationary gas turbine -with a rating equal to or greater than 0.88 megawatts (MW) operating in the Eastern Kern Air Pollution Control District (District).

III. Definitions

A. APCO: Air Pollution Control Officer of the Eastern Kern Air Pollution Control District.

~~A.B.~~ Combined Cycle: Any stationary gas turbine operated for both ~~for~~ the production of electrical energy from shaft work and the useful energy produced from heat recovered from its exhaust gases.

~~B.C.~~ Dry Low-NOx Combustor: Any gas turbine engine combustor using staging, air/fuel premixing or other design features to reduce NOx emissions.

~~C.D.~~ Gaseous Fuel: Any fuel existing as gas at standard conditions.

~~D.E.~~ Liquid Fuel: Any fuel, including distillate and residual oil, existing as liquid at standard conditions.

~~E.F.~~ Oxides of Nitrogen (NOx): Total nitrogen oxides (expressed as NO₂).

G. Power Augmentation: An increase in the gas turbine shaft output and/or the decrease in gas turbine fuel consumption by the addition of energy recovered from exhaust heat.

~~F.H.~~ Parts Per Million Volume (ppmv): Measure of the concentration of gaseous or liquid substances in the atmosphere or other media.

~~G.I.~~ Rating: Manufacturer's continuous electrical output megawatt (MW) specification for a gas turbine system.

H.J. Simple Cycle: Any stationary gas turbine in which all electric generators are driven by shaft work from fuel combustion.

I.K. Selective Catalytic Reduction (SCR): A post-combustion control technology that utilizes a reducing agent, such as ammonia, injected into the exhaust gas stream where it converts NOx to molecular nitrogen in the presence of a catalyst.

425 Staff Report – Strikeout

~~J.L.~~ Stationary Gas Turbine: Any gas turbine system, with or without power augmentation, which is permanently attached to a foundation, or is not a portable gas turbine. The gas turbine is not self-propelled nor intended to be propelled while performing its function, although it may be mounted onto a foundation. Two or more gas turbines powering a common shaft shall be treated as one gas turbine.

~~K.M.~~ Standard Conditions: A gas temperature of 68° Fahrenheit (20° Celsius) and an absolute pressure of 14.7 pounds per square inch (760-millimeters of mercury). Results of all analyses and tests shall be calculated or reported at this gas temperature and pressure. ~~As defined in Rule 102, Subsection RR.~~

~~L.N.~~ Shutdown-Down Period: The time necessary to cease operation of a gas turbine from operating under load conditions. The time shall not exceed one (1) hour.

~~M.O.~~ Startup-Up Period: The time necessary to bring operation of a gas turbine up to the designed rating. The time shall not exceed six (6) hours for combined cycle gas turbine power plants or two (2) hours for simple cycle gas turbine power plants.

IV. Exemptions

The provision of this Rule shall not apply to the operation of stationary gas turbines under the following conditions:

- A. Emergency standby units demonstrated to operate less than 200 hours per year.
- B. Units rated less than 4 MW that operate less than 877 hours per year.
- C. Laboratory units used in research and testing for the advancement of gas turbine technology.
- D. Units operated exclusively for firefighting and/or flood control.
- E. Turbines used in test cells and test stands.
- F. Portable equipment registered in accordance with California Air Resources Board (CARB) regulations under 13 CCR 2450-2465, Portable Equipment Registration Program (PERP) or 13 CCR 2420 Off-road Compression-ignition Engines and Equipment. Portable turbines used by the Department of Defense or National Guard exclusively used for military tactical support or other federal emergency purposes.

V. Requirements

A. Emission Limits

The owner or operator of any stationary gas turbine unit shall not operate such unit under load conditions, excluding the start~~up~~-~~up~~ or shut~~down~~-~~down~~ period, which results in the measured NOx emissions concentration exceeding the compliance limits listed below in Table 1, averaged over one (1) hour, based on four consecutive 15-minute averages.

TABLE 1

| <u>Stationary Gas Turbine Unit Size</u> <u>Megawatt (MW) Rating</u> | <u>Compliance Limit</u> <u>NOx, ppmv at 15% O₂</u> | |
|--|--|---------------------------|
| | <u>Gaseous Fuel</u> | <u>Liquid Fuel</u> |
| Units Rated 0.88 MW to Less Than 2.9 MW OR Units Greater Than or Equal to 4 MW That Operate Less Than 877 Hour/Year | 42 | 65 |
| 2.9 MW to Less Than 10 MW | 25 | 65 |
| 10.0 MW and Greater | 9 | 25 |
| <u>Owner or operator of a Westinghouse W251B10</u> <u>with Authority to Construct issued before</u> <u>January 1, 1983, using dry low-NOx combustors</u> | <u>20</u> | <u>N/A</u> |

~~B. The owner or operator of Westinghouse W251B10 with Authority to Construct issued before January 1, 1983 using dry low-NOx combustors shall have the following NOx emission limits:~~

- ~~1. 25 ppmv at 15% O₂ when fired with gaseous fuel or,~~
- ~~2. 65 ppmv at 15% O₂ when fired with liquid fuel.~~

~~C.~~ B. Startup-up/Shutdown-down Combined Cycle Units

The NOx emissions shall ~~meet~~ comply with at least one of the following limits averaged over the duration of the start~~up~~ up or shut~~down~~ down period:

1. 70 ppmv at 15% O₂ for turbines fired with gaseous fuel or,
2. 226 ppmv at 15% O₂ for turbines fired with liquid fuel.

~~D.~~ C. Startup-up/Shutdown-down Simple Cycle Units

The NOx emission shall be kept to a minimum by use of the following:

1. Manufacturer’s recommendation for operation during start~~up~~ up and shut~~down~~ down.
2. Injection of water as soon as reasonably possible.
3. Maintaining proper air to fuel ratios.

VI. Administrative Requirements

A. Emission Control Plan

425 Staff Report – Strikeout

The owner or operator of any existing stationary gas turbine subject to this Rule shall submit to the APCO for approval an emissions control plan, including a schedule of increments of progress to be taken to meet or exceed requirements of Section V to comply with the compliance schedule prescribed by Section VIII.

An emissions control plan shall be submitted for each stationary gas turbine subject to this Rule, including:

1. District permit number,
2. Gas turbine manufacturer's name and model number,
3. Rated electrical energy output (MW) and rated heat recovery (Btu/hr),
4. Type of fuel (gas and/or liquid),
5. Last year's fuel consumption (cubic feet of gas or gallons of liquid),
6. Last year's hours of operation,
7. Type of emissions control to be applied to engine, and
8. Documentation showing current NOx emissions concentration.

B. Monitoring and Recordkeeping

The owner or operator of any stationary gas turbine subject to the provisions of this rule shall perform the following actions:

1. Install, operate, and maintain in calibration equipment capable of continuously measuring and recording the following:
 - a. Control system operating parameters:
 - i. Periodic NOx emission concentrations,
 - ii. Turbine exhaust oxygen concentration,
 - iii. Air-to-fuel ratio,
 - iv. Flow rate of reducing agents added to turbine exhaust,
 - v. Catalyst inlet and exhaust temperature,
 - vi. Catalyst inlet and exhaust oxygen concentration,
 - vii. Other operational characteristics.
 - b. Elapsed time of operation measured by an hourly meter.
2. For units ~~with~~ 10 MW or greater, the owner or operator shall monitor the exhaust gas NOx concentrations. The NOx monitoring system shall meet EPA requirements as specified in 40 CFR Part 60, Appendix B, Specification 2, or other systems approved by EPA. The owner or operator shall submit information to the ~~Air Pollution Control Officer~~ APCO ~~the information demonstrating that the~~ emission monitoring system has data gathering and retrieval capability.
3. ~~Submit to the Air Pollution Control Officer,~~ p Prior to issuance of a Permit to Operate, information must be submitted to the APCO correlating the control system operating parameters to the associated NOx output. This information may be used by the ~~Air Pollution Control Officer~~ APCO to determine compliance when there is no continuous emission monitoring system for NOx available, or when the continuous emission monitoring system is not operating properly.

425 Staff Report – Strikeout

4. Provide source test information regarding the exhaust gas NO_x concentration at ISO conditions corrected to 15 percent oxygen on a dry basis.
5. Maintain a daily stationary gas turbine engine operating log, ~~including, on a daily basis, that includes~~ actual start ~~up~~ and stop ~~shutdown~~ times, total hours of operation, and type and quantity of fuel used (liquid/gas), and actions taken to comply with Section V.C. for simple cycle turbines.
6. All records required by this Rule shall be maintained on-site for a period of five (5) years and made available to the APCO upon request. ~~Maintain and make all records available for District inspection at any time for a period of five (5) years.~~

C. Compliance Testing

The owner or operator of any stationary gas turbine subject to provisions of this rule shall conduct annual testing using the methods specified in Section VI.D ~~below.~~

D. Test Methods

1. ~~Oxides of nitrogen (NO_x)~~ emissions shall be determined using EPA Method 7E or EPA Method 20 or ARB Method 100.
2. Exhaust gas Oxygen (O₂) concentration content shall be determined using EPA Method 3A or ARB Method 100.

E. ~~Exempt Units~~ Federal Reporting

1. At least every six (6) calendar months, the owner or operator shall submit an excess emissions and continuous monitoring system performance report to the APCO according to 40 CFR 60.7(c). The report shall cover each continuous monitoring system required by Section VI.B.1 and B.2. An excess emission occurs for any unit operating period in which the requirements in Section V are not met. This semi-annual monitoring report may be aligned with the due dates of other reporting requirements to avoid duplication (e.g., semiannual compliance reporting required by title V of the federal Clean Air Act).
2. For each performance test conducted, the owner or operator shall submit a test protocol to the APCD 30 days prior to any testing and submit a performance test report to the APCO within 60 days of completion of the testing.

~~E.F.~~ Exempt Units

Exempt units shall comply with the following:

1. The owner or operator of any unit exempt under Section IV shall submit support documentation to the ~~Air Pollution Control Officer~~ APCO within seven days if the hour-per-year limit is exceeded. If the hour-per-year limit is exceeded, the

exemption shall be permanently withdrawn. Within 30 days after the exceedance, the owner or operator shall submit an application for Authority to Construct that details a plan to meet the applicable limits specified in Section V of this Rule. ~~Included in the application, the~~ The owner or operator application shall submit include a schedule of increments of progress for the installation of the required control equipment. This schedule shall not exceed four years from the date of the receipt of Authority to Construct application.

2. A public service unit operating during a state of emergency, when such emergency is declared by proclamation of the Governor of the State of California and when the unit is located in the specific geographical location identified in the proclamation, shall be excluded from the hour-per-year limit.

VII. Calculations

NOx emissions concentrations shall be calculated using the following equation:

$$\text{NOx} = (\text{NOx}_{\text{obs}}) (P_{\text{ref}}/P_{\text{obs}})^{0.5} (288 \text{ K}/T_{\text{amb}})^{1.53} (e^{19(\text{Hobs}-0.00633)})$$

Where:

| | | |
|--------------------|---|---|
| NOx | = | NOx emissions concentration (ppmv) corrected to 15 percent oxygen and ISO standard conditions on a dry basis. |
| NOx _{obs} | = | Measured stack gas NOx emissions concentration (ppmv) corrected to 15 percent oxygen on a dry basis. |
| P _{ref} | = | Standard atmospheric pressure (14.7 psia). |
| P _{obs} | = | Atmospheric pressure measured at site during testing, psia. |
| H _{obs} | = | Absolute ambient humidity measured at site during testing, pounds water per pound dry air. |
| e | = | transcendental constant (2.718). |
| T _{amb} | = | Ambient air temperature in K and measured at site during testing. |

VIII. Compliance Schedule

~~An owner or operator of a stationary gas turbine subject to Section V~~ this Rule and not currently achieving such limits shall comply with all applicable requirements within 30-days of Board adoption. This includes submittal of a complete Authority to Construct application for all necessary equipment modifications, if applicable. ~~of Section V in accordance with the following schedule:~~

- A. ~~By (18 months after rule adoption date), submit to the Control Officer a compliance plan, and a complete application for Authority to Construct for all necessary equipment modifications subject to Rule 201.~~
- B. ~~By January 1, 2021, demonstrate full compliance.~~

APPENDIX C

PROPOSED AMENDMENT RULE 425

STATIONARY GAS TURBINES (OXIDES OF NITROGEN)

RESPONSE TO COMMENTS

Rule 402 - Response to Comments

On September 18, 2024, the District held a public rule development workshop at the District Board Room in Tehachapi, CA to present proposed amendments to Rule 425, Stationary Gas Turbines (Oxides of Nitrogen). The District also submitted copies of the proposed revisions to the Air Resources Board (CARB) and the Region IX office of the U.S. Environmental Protection Agency (EPA) for a 30-day review.

Industry representatives present at the 9/18/2024, workshop provided no questions but expressed their appreciation for the effort and willingness of District staff to work with them while drafting amendments to the rule. No written public comments were received by the District following the workshop.

CARB did not provide comments on proposed amendments to Rule 425 following the workshop.

I. EPA COMMENTS

In prior discussions, the District indicated it was appropriate to remove the liquid NO_x limit for the Westinghouse turbine because the unit only uses gaseous fuel. Please ensure the Staff Report includes this rationale.

DISTRICT

The requested information is included in Section VI of the staff report.

EPA

For the federal reporting language added to the draft rule, we are concerned the language is a bit circular and unclear exactly what reporting is being required. Here's our suggestion for the rule that would perhaps provide some better clarity:

1. At least every six (6) calendar months, the owner or operator shall submit an excess emissions and continuous monitoring system performance report to the APCO according to 40 CFR 60.7(c). The report shall cover each continuous monitoring system required by Section VI.B.1 and B.2. An excess emission occurs for any unit operating period in which the requirements in Section V are not met. This semi-annual monitoring report may be aligned with the due dates of other reporting requirements to avoid duplication (e.g., semiannual compliance reporting required by title V of the federal Clean Air Act).

2. For each performance test conducted, the owner or operator shall submit a test protocol to the APCD 30 days prior to any testing and submit a performance test report to the APCO within 60 days of completion of the testing.

DISTRICT

The requested language has been included in Section VI of the Rule.

Section 1. RECITALS:

(a) The Eastern Kern Air Pollution Control District (District) is authorized by Health and Safety Code section 40702 to make and enforce all necessary and proper orders, rules and regulations to accomplish the purposes of Division 26 of the Health and Safety Code; and

(b) The Air Pollution Control Officer ("APCO") for said District has recommended that the Board of Directors of the Eastern Kern Air Pollution Control District ("Board") consider adopting certain revisions to the Rules and Regulations of the District; and

(c) A notice of a public hearing on November 13, 2024, at the hour of 2:00 p.m. at the District Board Chambers, 414 W. Tehachapi Boulevard Suite D Tehachapi, California, 93561 to consider the adoption of amended Rule 425, Stationary Gas Turbines (Oxides of Nitrogen), was duly given; and

(d) The matter was heard at the time and place so specified, evidence was received and all persons desiring to be heard in said matter were given an opportunity to be heard.

Section 2. IT IS RESOLVED by the Governing Board of the Eastern Kern Air Pollution Control District as follows:

1. This Board does hereby revise the Rules and Regulations of the District as set forth in Exhibit "A" attached hereto and incorporated herein by this reference. The foregoing referenced Rules and Regulations attached hereto as Exhibit "A" are hereby adopted as revisions to the Rules and Regulations of the District with said amendments to be effective November 13, 2024.

2. The findings of this Board, based on the evidence submitted at the hearing upon which its decision is based, are as follows:

a. The proposed revisions to the Rules and Regulations will adopt amended Rule 425 to lower current nitrogen oxide (NOx) limits for a Westinghouse W251B10 gas turbine with Authority to Construct issued before January 1, 1983, using dry low-NOx combustors from 25 ppmv to 20 ppmv at 15% O₂ when fired with gaseous fuel; and

b. All notices required to be given by law have been duly given in accordance with Health and Safety Code section 40725, and the Board has allowed public comment, both oral and written, in accordance with Health and Safety Code section 40726; and

c. The written analysis required by Health and Safety Code section 40727.2, which identifies all existing federal air pollution control requirements that apply to the same equipment or source type as the rule proposed for adoption or modification, and also identifies any of the District's existing or proposed rules that apply to the same equipment or source type, was prepared by the District. A copy of the analysis was made available to the public from the District.

3. Further findings of this Board as required by Health and Safety Code Section 40727 are as follows:

a. The proposed revisions are necessary to accomplish the purposes of Division 26 of the Health and Safety Code and to comply with state and/or federal Clean Air Act requirements; and

b. The Board is authorized to adopt and revise rules and regulations as may be necessary or proper to execute the powers and duties granted to, and imposed upon, the District by Health and Safety Code section 40702; and

c. The Board has reviewed the proposed revisions and has determined that the said provisions are set forth in clear and concise language so that their meaning can be easily understood by the persons directly affected by them; and

d. The proposed revisions are in harmony with, and not in conflict with or contradictory to, existing District Rules and Regulations, statutes, court decisions, or state or federal regulations; and

e. The revised Rules and Regulations are being implemented in compliance with Health and Safety Code section 40001 which requires the District to adopt and enforce rules and regulations to achieve and maintain the state and federal ambient air quality standards in all areas affected by emissions sources under its jurisdiction, and enforce all applicable provisions of state and federal law.

4. This Board finds, based on the staff report filed with this Board and the record of its rule adoption hearing, and pursuant to sections 40703 and 40922 of the Health and Safety Code, that the Rules and Regulations contained in Exhibit "A" are the most cost effective of the available control measures considered by this Board.

5. This Board finds that Amended Rule 425, Stationary Gas Turbines (Oxides of Nitrogen), poses no significant impact on the environment and is exempt from California Environmental Quality Act (CEQA) Guidelines pursuant to the Section 15061, Subsections (2) & (3).

6. District staff is directed to prepare a Notice of Exemption for this project, and the Secretary of this Board is hereby directed to file the Notice of Exemption with the Kern County Clerk.

7. The District shall maintain a record of this rule-making proceeding in accordance with Health and Safety Code section 40728.

8. The Secretary of this Board is hereby directed, for the purposes of conforming to Section 40704 of the Health and Safety Code, to cause a certified copy of this Resolution, together with the Rules and Regulations adopted herein, to be filed with the California Air Resources Board (CARB).

9. The Secretary of this Board is further directed to cause a certified copy of this Resolution to be forwarded to the APCO for said District and to the County Counsel of Kern County.

10. The APCO for said District is directed to transmit said rule to CARB for submittal to EPA for incorporation in the District's State Implementation Plan (SIP).

11. The Board authorizes the APCO for said District to include in the submittal or subsequent documentation any technical corrections, clarifications, or additions that may be needed to secure EPA approval, provided such changes do not alter the substantive requirements of the approved rule.

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Eastern Kern

Air Pollution Control District

Gary Ray, Jr.
Air Pollution Control Officer

November 13, 2024

Board of Directors
Eastern Kern APCD
2700 "M" Street, Suite 302
Bakersfield, California 93301

SUBJECT: Adoption of Amendments to Rule 425.3, Portland Cement Kilns (Oxides of Nitrogen)

Honorable Board:

Eastern Kern Air Pollution Control District (District) is proposing to adopt amendments to Rule 425.3, Portland Cement Kilns (Oxides of Nitrogen). On September 18, 2024, the District held a public workshop at the District Board Room in Tehachapi, CA to present proposed amendments to Rule 425.3. District staff submitted copies of the proposed amendments to the California Air Resources Board (CARB) and Region IX of the U.S. Environmental Protection Agency (EPA) for an initial review prior to the workshop. A 30-day public review and comment period followed the workshop. No comments were received.

Rule 425.3 is being amended to include nitrogen oxide (NOx) emission limits during periods of shutdown and startup. The definitions for shutdown and startup are also being revised to match language in 40 CFR 63, LLL (Cement NESHAP), and a federal reporting requirement is being added. Rule 425.3 will become effective immediately upon Board adoption. A Notice of Public Hearing was duly published more than 30 days prior to this hearing in the following newspapers: Mojave Desert News, Tehachapi News, and Bakersfield Californian. The notice requested written comments on amended Rule 425.3 and associated staff report by November 6, 2024. A copy of the staff report, which includes the proposed amendments to the rule is attached.

IT IS RECOMMENDED your Board Open Hearing; Receive Public Comment; Close Hearing; Adopt Amended Rule 425.3, Portland Cement Kilns (Oxides of Nitrogen), and Resolution Number 2024-002-11.

Sincerely,

Gary Ray, Jr.
Air Pollution Control Officer

GR: JC: CB

Eastern Kern Air Pollution Control District

Rule 425.3 PORTLAND CEMENT KILNS (OXIDES OF NITROGEN)

ADOPTION STAFF REPORT

November 13, 2024

Prepared by

**Jeremiah Cravens
Senior Air Quality Specialist**

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I. INTRODUCTION

The Eastern Kern Air Pollution Control District (District) is proposing to adopt amendments to Rule 425.3, Portland Cement Kilns (Oxides of Nitrogen), originally adopted October 13, 1994. Rule 425.3 set emissions standards for nitrogen oxides (NOx) produced by cement kilns to levels consistent with Reasonably Available Control Technology (RACT), to satisfy the 1990 Federal Clean Air Act (FCAA). Rule 425.3 is being amended to address deficiencies the U.S Environmental Protection Agency (EPA) have identified in the March 8, 2018, amendment of Rule 425.3.

Proposed amendments to Rule 425.3 will be presented to the District's Governing Board for adoption at its regular Board Meeting held November 13, 2024, beginning 2 P.M. at the District's Board Room in Tehachapi, CA. Staff held a public workshop on September 18, 2024, in Tehachapi at the District's Board Room to present, discuss and receive comments on proposed amendments to Rule 425.3. The District submitted copies of the proposed amendments to the California Air Resources Board (CARB) and the Region IX office of the U.S. Environmental Protection Agency (EPA) for an initial review prior to the workshop. A 30-day public review and comment period followed the workshop.

Appendix A: Amended Rule 425.3, Portland Cement Kilns (NOx).

Appendix B: Strikeout underline edits Rule 425.3, Portland Cement Kilns (NOx).

Appendix C: Response to Comments.

II. BACKGROUND

NOx is a precursor pollutant, that when emitted, can photochemically react with volatile organic compounds (VOCs) in the atmosphere and form ground-level ozone. High levels of ground-level ozone can result in significant negative impacts to human health and the environment. Areas within the United States are given classification levels based on the concentrations of regulated air pollutants. Sections 182(b)(2) and (f) of the FCAA require ozone nonattainment areas classified as "Moderate" or above to submit State Implementation Plan (SIP) provisions that implement RACT. Specifically, RACT is required for volatile organic compound (VOC) sources that are subject to Control Techniques Guidelines (CTGs) and for all major stationary sources of ozone precursors (NOx or VOC).

The District has jurisdiction over the Eastern Kern ozone nonattainment area (eastern portions of Kern County, excluding Indian Wells Valley). Although Portland Cement Kilns are considered major sources of NOx emissions there are no CTGs applicable to them. However, Portland cement manufacturing facilities

425.3 – Adoption Staff Report

are still required to implement RACT-level controls. Therefore, on October 13, 1994, the District adopted Rule 425.3 to limit NO_x emissions resulting from the operation of existing Portland Cement Kilns. The EPA approved Rule 425.3 and included it into the State Implementation Plan (SIP) on July 20, 1999 (64 FR 38832).

On March 27, 2008 (73 FR 16435), the EPA revised the primary ozone National Ambient Air Quality Standard (NAAQS) from 0.084 parts per million (ppm) to 0.075 ppm. On May 11, 2017, the District adopted its RACT demonstration for the 2008, 8-hour ozone NAAQS (2017 RACT SIP) and submitted it to the EPA on August 9, 2017. The District's ozone nonattainment area was classified as "Moderate" at the time of submittal and, therefore, EPA evaluated the submittal based on that classification. Currently, the District's ozone nonattainment area is classified as "Severe" for the 2008, 8-hour ozone NAAQS.

The District identified Rule 425.3 as one of three rules with deficiencies in the 2017 RACT SIP submittal that needed to be corrected in order to demonstrate RACT for non-CTG major sources of NO_x. As a result, the District amended Rule 425.3 on March 8, 2018 to correct the RACT deficiencies and fulfill RACT requirements, specifically lowering NO_x emission limits.

III. EPA RULE EVALUATION

February 2023, EPA released a Technical Support Document (TSD) evaluation of the 2018, Rule 425.3 amendment. Although the TSD evaluation indicates that the revised NO_x emission limit is more stringent and strengthens the SIP, EPA notes Rule 425.3 contains multiple exemptions for periods of startup, shutdown, and breakdown/malfunction (SSM). EPA does not believe the SSM provisions are approvable into the SIP because the rule fails to provide appropriate alternative emission limitations (AELs) that minimize the frequency of SSM events or minimize the impact of emissions during SSM events. Therefore, the EPA recommended a limited approval and limited disapproval of the 2018, Rule 425.3 amendment (CAA §§ 110(k)(3) and 301(a)).

The limited approval would add the 2018 amendment of Rule 425.3 to the SIP, replacing the current SIP-approved version. EPA states this is advisable because several sections of the amendment are SIP-strengthening, (e.g., more stringent NO_x emission limits and longer retention times of records).

The limited disapproval is due to the emission limit exemptions for periods of SSM. EPA believes the revised NO_x limit established in the rule is not continuous due to the SSM exemptions and inconsistent with FCAA requirements. If finalized as proposed, the limited disapproval would start sanctions and a Federal Implementation Plan (FIP) clock. The FIP clock could be stopped by the submittal of an amended rule revision resolving the SSM deficiencies.

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This staff report discusses the proposed amendments to Rule 425.3 and revisions needed to address the deficiencies identified by the EPA. Specifically, the removal of the SSM provisions to achieve full EPA approval and stop the FIP clock.

IV. APPLICABILITY

Upon adoption, provisions of the proposed amendments to District Rule 425.3 will be applicable to all Portland cement manufacturing facilities operating within the Eastern Kern Air Pollution Control District jurisdiction.

V. DEFINITIONS

The definition of *Low NOx Burner* is being removed because it is no longer needed. The definitions for *Shutdown* and *Startup* are being revised to align with language of 40 CFR 63, LLL § 63.1341 (Cement NESHAP). The definitions are revised as follows:

Shutdown: The cessation of kiln operation. Shutdown begins when feed to the kiln is halted and ends when continuous kiln rotation ceases.

Startup: The time from when a shutdown kiln first begins firing fuel until it begins producing clinker. Startup begins when a shutdown kiln turns on the induced draft fan and begins firing fuel in the main burner. Startup ends when feed is being continuously introduced into the kiln for at least 120 minutes or when the feed rate exceeds 60 percent of the kiln design limitation rate, whichever occurs first.

VI. EXEMPTIONS

The exemptions section is being removed due to EPA applicability issues with SSM provisions.

VII. REQUIREMENTS

The NOx emission limits listed in Section IV, Requirements of Rule 425.3 are being revised as follows: The owner or operator of a Portland cement kiln subject to this Rule, shall not exceed the following NOx emission limits:

1. 2.8 lb/ton of clinker produced over a 30 operating-day rolling average, excluding periods of startup and shutdown as defined in this rule: and
2. 21,528 lb/day only during periods of startup or shutdown as defined in this rule.

425.3 – Adoption Staff Report

Historical Continuous Emissions Monitoring (CEMS) data from the cement plants operating within the District was used to determine the 21,528 lb/day startup and shutdown NOx limit.

VIII. ADMINISTRATIVE REQUIREMENTS

Section V, Administrative Requirements contains revised language to aid in clarity. A requirement to maintain records of calculated NOx emission rates from the kiln in lbs/day during periods of startup and shutdown has been added along with the following updated reporting requirement:

At least every six (6) calendar months, the owner or operator shall submit an excess emissions and continuous monitoring system performance report to the APCO according to 40 CFR 60.7(c). The report shall cover each continuous monitoring system required by Section IV. An excess emission occurs for any unit operating period in which the requirements in Section IV.A are not met. This semi-annual monitoring report may be aligned with the due dates of other reporting requirements to avoid duplication (e.g., semiannual compliance reporting required by title V of the federal Clean Air Act).

For each performance test conducted, the owner or operator shall submit a test protocol to the APCO 30 days prior to any testing and submit a performance test report to the APCO within 60 days of completion of the testing.

IX. ECONOMIC IMPACTS

Pursuant to California Health & Safety Code (CH&SC) §40920.6(a), the District is required to analyze the cost effectiveness of new rules or rule amendments that implement Best Available Retrofit Control Technology (BARCT) or all feasible measures. Amended Rule 425.3 employs federal RACT requirements, not BARCT on all feasible measures, and is therefore not subject to the cost effectiveness analysis mandate.

X. ENVIRONMENTAL IMPACTS

Both the California Environmental Quality Act (CEQA) and ARB policy require an evaluation of the potential adverse environmental impacts of proposed projects. The intent of amended Rule 425.3 is to protect public health by reducing the public's exposure to potentially harmful NOx emissions. An additional consideration is the impact that the proposed rule may have on the environment. District has determined that no significant adverse environmental impacts should occur as a result of adopting amendments to Rule 425.3.

Pursuant to the Section 15061, Subsections (2) & (3) of the CEQA Guidelines, staff will prepare and file a Notice of Exemption for this project upon adoption.

425.3 – Adoption Staff Report

XI. SOCIOECONOMIC IMPACTS

CHSC Section 40728.5 exempts districts with a population of less than 500,000 persons from the requirement to assess the socioeconomic impacts of proposed rules. Eastern Kern County population is below 500,000 persons.

XII. RULE APPROVAL PROCESS

The District accepted written comments and concerns from persons interested in Amended Rule 425.3, Portland Cement Kilns (Oxides of Nitrogen), for a period of 30 days following the workshop held in Tehachapi. Staff anticipates the revised Rule will be adopted by the District's Governing Board at its November 13, 2024, meeting. A hearing notice was published at least 30-days prior to the meeting.

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APPENDIX A:

PROPOSED AMENDMENT RULE 425.3

**PORTLAND CEMENT KILNS
(OXIDES OF NITROGEN)**

425.3 Staff Report – Proposed Amendment

RULE 425.3 Portland Cement Kilns (Oxides of Nitrogen) - Adopted 10/13/94, Amended 3/8/18, 11/13/24

I. Purpose

The purpose of this Rule is to limit nitrogen oxide (NOx) emissions from Portland cement kilns.

II. Applicability

Provisions of this Rule shall apply to all Portland cement manufacturing facilities operating in the Eastern Kern Air Pollution Control District (District).

III. Definitions

- A. 30-Operating Day Rolling Average: Total of all hourly emissions data (in pounds) fuel was combusted in a cement kiln, in the preceding 30 operating-days, divided by the total number of tons of clinker produced in that kiln during the same 30-day period.
- B. Clinker: The product of feedstock sintered in a kiln which is then ground and mixed with additives to make cement.
- C. Continuous Emissions Monitoring System (CEMS): An instrument satisfying the requirements of 40 CFR, Part 60.
- D. Kiln: Any device including associated preheater and precalciner devices that produce clinker by heating limestone and other raw materials for subsequent production of Portland cement.
- E. Nitrogen Oxide (NOx) Emissions: The sum of nitric oxide (NO) and nitrogen dioxide (NO₂) in the flue gas, collectively expressed as nitrogen dioxide.
- F. Operating Day: A calendar day during which Portland cement is manufactured by the kiln. An operating day includes all valid data obtained in any daily 24-hour period during which the kiln operates and excludes any measurements made during the daily 24-hour period when the kiln was not operating or was in startup or shutdown.
- G. Portland Cement: A hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates, usually containing one or more of the forms of calcium sulfate as an interground addition.
- H. Portland Cement Manufacturing Facility: Any facility that produces Portland cement or associated products, as defined in the Standard Industrial Classification Manual as Industry Number 3241, Portland Cement Manufacturing.

425.3 Staff Report – Proposed Amendment

- I. Shutdown: The cessation of kiln operation. Shutdown begins when feed to the kiln is halted and ends when continuous kiln rotation ceases.
- J. Startup: The time from when a shutdown kiln first begins firing fuel until it begins producing clinker. Startup begins when a shutdown kiln turns on the induced draft fan and begins firing fuel in the main burner. Startup ends when feed is being continuously introduced into the kiln for at least 120 minutes or when the feed rate exceeds 60 percent of the kiln design limitation rate, whichever occurs first.

IV. Requirements

- A. Emissions Limits: The owner or operator of a Portland cement kiln subject to this Rule, shall not exceed the following NOx emission limits:
 - 1. 2.8 lb/ton of clinker produced over a 30 operating-day rolling average, excluding periods of startup and shutdown as defined in this rule: and
 - 2. 21,528 lb/day only during periods of startup or shutdown as defined in this rule.
- B. Emissions Monitoring: The owner or operator of a Portland cement manufacturing facility shall provide, properly install, maintain, calibrate, and operate a continuous emission monitoring system (CEMS), as defined in Section III.C., for each emission point from the kiln.
- C. Production Monitoring: The owner or operator of a Portland cement manufacturing facility shall determine hourly clinker production by one of the following two methods:
 - 1. Install, calibrate, maintain, and operate a permanent weigh scale system to measure and record weight rates in tons-mass per hour of the amount of clinker produced. The system of measuring hourly clinker production must be maintained within ± 5 percent accuracy; or
 - 2. Install, calibrate, maintain, and operate a permanent weigh scale system to measure and record weight rates in tons-mass per hour of the amount of feed to the kiln. The system of measuring feed must be maintained within ± 5 percent accuracy. Calculate the hourly clinker production rate using a kiln specific feed to clinker ratio based on reconciled clinker production determined for accounting purposes and recorded feed rates. This ratio must be updated monthly. Note that if this ratio changes at clinker reconciliation, the new ratio must be used going forward, but a retroactive change in clinker production rates previously estimated is not required.

425.3 Staff Report – Proposed Amendment

V. Administrative Requirements

- A. Annual Demonstration of Compliance: The owner or operator of a Portland cement manufacturing facility shall demonstrate compliance with this Rule by conducting annual testing, not more than 13 months after the most recently conducted testing, pursuant to the following test methods:
1. NO_x stack testing for purposes of this Rule shall be conducted using EPA Test Method 7E.
 2. Stack gas flow rate testing for purposes of this Rule shall be conducted using EPA Test Method 2.
 3. Any owner or operator of a kiln subject to this Rule shall convert observed NO_x concentrations to a mass emission rate using the following formula (for purposes of this calculation, standard conditions are @ 68° F and 29.92 inches Hg):

$$\text{lb/hr} = 7.1497 \times 10^{-6} (\text{ppmv})(\text{dscfm})$$

Parts Per Million by Volume: (ppmv)

Dry Standard Cubic Feet per Minute: (dscfm)
 4. For the purposes of this Rule, NO_x shall be calculated as NO₂ on a dry basis.
- B. Recordkeeping: Any owner or operator subject to the requirements of this Rule shall maintain records of the following:
1. Results of any testing conducted to determine compliance with this Rule as specified in Section V.A.
 2. Daily clinker production rates and kiln feed rates. During each quarter of operation, you must determine, record, and maintain the ongoing accuracy of the system of measuring hourly clinker production (or feed mass flow).
 3. Calculated NO_x emission rates from the kiln in lbs/ton of clinker produced for each day of operation of the kiln.
 4. Results of performance testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS required by this rule.
 5. Date, time, duration, and calculated NO_x emission rates from the kiln in lbs/day, for each period of startup or shutdown.

Such records shall be retained for a minimum of 60 months from date of entry and be made available to District staff upon request.

425.3 Staff Report – Proposed Amendment

- C. Reporting: Any owner or operator subject to this Rule shall meet the following reporting requirements:
1. Report to the APCO: date, time, duration, magnitude, nature and cause (if known), and corrective action taken of any exceedance.
 2. At least every six (6) calendar months, the owner or operator shall submit an excess emissions and continuous monitoring system performance report to the APCO according to 40 CFR 60.7(c). The report shall cover each continuous monitoring system required by Section IV. An excess emission occurs for any unit operating period in which the requirements in Section IV.A are not met. This semi-annual monitoring report may be aligned with the due dates of other reporting requirements to avoid duplication (e.g., semiannual compliance reporting required by title V of the federal Clean Air Act).
 3. For each performance test conducted, the owner or operator shall submit a test protocol to the APCO 30 days prior to any testing and submit a performance test report to the APCO within 60 days of completion of the testing.

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APPENDIX B:

PROPOSED AMENDMENT RULE 425.3

**PORTLAND CEMENT KILNS
(OXIDES OF NITROGEN)**

STRIKEOUT UNDERLINE

425.3 Staff Report – Strikeout

RULE 425.3 Portland Cement Kilns (Oxides of Nitrogen) - Adopted 10/13/94, Amended 3/8/18, 11/13/24

I. Purpose

The purpose of this Rule is to limit nitrogen oxide (NOx) emissions from Portland cement kilns.

II. Applicability

Provisions of this Rule shall apply to all Portland cement manufacturing facilities operating in the Eastern Kern Air Pollution Control District (District).

III. Definitions

A. 30-Operating Day Rolling Average: Total of all hourly emissions data (in pounds) fuel was combusted in a cement kiln, in the preceding 30 operating-days, divided by the total number of tons of clinker produced in that kiln during the same 30-day period.

B. Clinker: The product of feedstock sintered in a kiln which is then ground and mixed with additives to make cement.

C. Continuous Emissions Monitoring System (CEMS): An instrument satisfying the requirements of 40 CFR, Part 60.

~~D. Low NOx Burner: Type of cement kiln burner that results in decreasing NOx emissions and has an indirect firing system and a series of channels or orifices that:~~

~~1. Allow for the adjustment of the volume, velocity, pressure, and direction of the air carrying the fuel (known as primary air) and the combustion air (known as secondary air) into the kiln; and~~

~~2. Impart high momentum and turbulence to the fuel stream to facilitate mixing of the fuel and secondary air.~~

~~E. Kiln: Any device including associated preheater and precalciner devices that produce clinker by heating limestone and other raw materials for subsequent production of Portland cement.~~

~~F. Nitrogen Oxides (NOx) Emissions: The sum of nitric oxide (NO) and nitrogen dioxide (NO2) in the flue gas, collectively expressed as nitrogen dioxide.~~

~~G. Operating Day: A calendar day during which Portland cement is manufactured by the kiln. An operating day includes all valid data obtained in any daily 24-hour period during which the kiln operates and excludes any measurements made during the daily 24-hour period when the kiln was not operating or was in startup or shutdown.~~

425.3 Staff Report – Strikeout

- ~~H.G.~~ Portland Cement: A hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates, usually containing one or more of the forms of calcium sulfate as an interground addition.
- ~~H.~~ Portland Cement Manufacturing Facility: Any facility that produces Portland cement or associated products, as defined in the Standard Industrial Classification Manual as Industry Number 3241, Portland Cement Manufacturing.
- ~~J.~~ Shutdown: The cessation of kiln operation. Shutdown begins when feed to the kiln is halted and ends when continuous kiln rotation ceases. ~~The period of time between when kiln raw material feed and fuel to the kiln begin to be decreased to reduce the kiln operating temperature until both feed and fuel are no longer fed into the kiln and it has ceased operation. A shutdown period shall not last more than 36 hours.~~
- ~~K.~~ Startup: The time from when a shutdown kiln first begins firing fuel until it begins producing clinker. Startup begins when a shutdown kiln turns on the induced draft fan and begins firing fuel in the main burner. Startup ends when feed is being continuously introduced into the kiln for at least 120 minutes or when the feed rate exceeds 60 percent of the kiln design limitation rate, whichever occurs first. ~~Period of time after non-production of clinker during which a cement kiln is heated to operating temperature from a lower temperature and feed rate is increased to normal production levels. A startup period shall not last longer than 48 hours.~~

~~IV.~~ Exemptions

~~The requirements of Section V of this Rule shall not apply to:~~

- ~~A. Startup and shutdown as defined in this rule; and~~
- ~~B. Breakdown conditions qualifying under District Rule 111.~~

IV. Requirements

- A. Emissions Limits: ~~Effective March 8, 2018, No person shall operate a Portland cement manufacturing facility unless 30 operating day rolling average of NOx emissions from the kiln do not exceed:~~ The owner or operator of a Portland cement kiln subject to this Rule, shall not exceed the following NOx emission limits:
- 2.8 lb/ton of clinker produced over a 30 operating-day rolling average, excluding periods of startup and shutdown as defined in this rule; or and
 - 21,528 lb/day only during periods of startup or shutdown as defined in this rule. ~~3.4 lb/ton of clinker produced if low NOx burner or low NOx precalciner was installed and made operational by January 1, 2007.~~
- B. Emissions Monitoring: ~~Any person who operates~~ The owner or operator of a Portland cement manufacturing facility shall provide, properly install, maintain, calibrate, and

425.3 Staff Report – Strikeout

operate a continuous emission monitoring system (CEMS), as defined in Section III.C., for each emission point from the kiln.

- C. Production Monitoring: ~~Any person who operates~~ The owner or operator of a Portland cement manufacturing facility shall determine hourly clinker production by one of the following two methods:
1. Install, calibrate, maintain, and operate a permanent weigh scale system to measure and record weight rates in tons-mass per hour of the amount of clinker produced. The system of measuring hourly clinker production must be maintained within ± 5 percent accuracy; or
 2. Install, calibrate, maintain, and operate a permanent weigh scale system to measure and record weight rates in tons-mass per hour of the amount of feed to the kiln. The system of measuring feed must be maintained within ± 5 percent accuracy. Calculate the hourly clinker production rate using a kiln specific feed to clinker ratio based on reconciled clinker production determined for accounting purposes and recorded feed rates. This ratio must be updated monthly. Note that if this ratio changes at clinker reconciliation, the new ratio must be used going forward, but a retroactive change in clinker production rates previously estimated is not required.

VI. Administrative Requirements

- A. Annual Demonstration of Compliance: ~~Any person who operates~~ The owner or operator of a Portland cement manufacturing facility shall demonstrate compliance with this Rule by conducting annual testing, not more than 13 months after the most recently conducted testing, pursuant to the following test methods:
1. NO_x stack testing for purposes of this Rule shall be conducted using EPA Test Method 7E.
 2. Stack gas flow rate testing for purposes of this Rule shall be conducted using EPA Test Method 2.
 3. Any owner or operator of a kiln subject to this Rule shall convert observed NO_x concentrations to a mass emission rate using the following formula (for purposes of this calculation, standard conditions are @ 68° F and 29.92 inches Hg):
$$\text{lb/hr} = 7.1497 \times 10^{-6} (\text{ppmv})(\text{dscfm})$$

Parts Per Million by Volume: (ppmv)

Dry Standard Cubic Feet per Minute: (dscfm)
 4. For the purposes of this Rule, NO_x shall be calculated as NO₂ on a dry basis.
- B. Recordkeeping: Any owner or operator ~~person~~ subject to the requirements of this ~~rule~~ Rule shall maintain records of the following:

425.3 Staff Report – Strikeout

1. Results of any testing conducted to determine compliance with this Rule as specified in Section VI.A;
2. Daily clinker production rates and kiln feed rates. During each quarter of operation, you must determine, record, and maintain the ongoing accuracy of the system of measuring hourly clinker production (or feed mass flow);
3. Calculated NOx emission rates from the kiln in lbs/ton of clinker produced for each day of operation of the kiln;
- ~~4. Date, time, and duration of any startup, shutdown or malfunction in the operation of any unit, emissions control equipment or emission monitoring equipment; and~~
- ~~5. Results of performance testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS required by this rule.~~
5. Date, time, duration, and calculated NOx emission rates from the kiln in lbs/day, for each period of startup or shutdown.

Such records shall be retained for a minimum of 60 months from date of entry and be made available to District staff upon request.

- C. Reporting: Any owner or operator person subject to this Rule shall meet the following reporting requirements:
1. Report to the APCO: date, time, duration, magnitude, nature and cause (if known), and corrective action taken of any exceedance;
 2. At least every six (6) calendar months, the owner or operator shall submit an excess emissions and continuous monitoring system performance report to the APCO according to 40 CFR 60.7(c). The report shall cover each continuous monitoring system required by Section IV. An excess emission occurs for any unit operating period in which the requirements in Section IV.A are not met. This semi-annual monitoring report may be aligned with the due dates of other reporting requirements to avoid duplication (e.g., semiannual compliance reporting required by title V of the federal Clean Air Act).
 3. For each performance test conducted, the owner or operator shall submit a test protocol to the APCO 30 days prior to any testing and submit a performance test report to the APCO within 60 days of completion of the testing. Supply APCO copy of all test protocols at least 30 days prior to testing and copy of test results within 60 days following testing.

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APPENDIX C

PROPOSED AMENDMENT RULE 425.3

PORTLAND CEMENT KILNS (OXIDES OF NITROGEN)

RESPONSE TO COMMENTS

Rule 402.3 - Response to Comments

On September 18, 2024, the District held a public rule development workshop at the District Board Room in Tehachapi, CA to present proposed amendments to Rule 425.3, Portland Cement Kilns (Oxides of Nitrogen). The District also submitted copies of the proposed revisions to the Air Resources Board (CARB) and the Region IX office of the U.S. Environmental Protection Agency (EPA) for a 30-day review.

Industry representatives present at the 9/18/2024, workshop provided no questions but expressed their appreciation for the effort and willingness of District staff to work with them while drafting amendments to the rule. The District received one written comment from National Cement, however, no written public comments were received by the District following the workshop. CARB did not provide comments on proposed amendments to Rule 425.3. following the workshop.

I. NATIONAL CEMENT COMMENT

I appreciate your continued communication regarding this topic. I do have one concern regarding the definition of 'Shutdown'. I am in agreement with the shutdown beginning when feed is halted, but there are some cases where the kiln will remain rotating through the aid of the donkey motor between shutdown and startup.

For example, if a shutdown is required the kiln will continue to rotate to ensure cooling of the tube occurs uniformly to avoid catastrophic buckling. This is especially important during rain or high winds, which we are no stranger to at this elevation.

DISTRICT

These definitions are from 40 CFR 63, LLL (cement NESHAP) so National Cement is already subject to these requirements. I would like to point out that shutdown does not have a time limit, only a NOx limit of 21,528 lb/day. According to the definition, the facility will remain in a period of shutdown for as long as the kiln is rotating. The main thing is NOx stays below 21,528 lb/day during shutdown. As long as you are below that limit you will be in compliance regardless of actual duration of shutdown.

The transition from shutdown to startup is when the kiln turns on the induced draft fan and begins firing fuel in the main burner. There are additional conditions describing when startup ends. Please see the rule definition of startup for all provisions.

II. EPA COMMENTS

We recommend adding specific recordkeeping requirements for startup/shutdown periods in Section VB. For example: Calculated NOx emission rates from the kiln in lbs/day for each startup and shutdown period.

DISTRICT

Recording keeping language is included in Section V.B.5. of the amended rule.

Rule 402.3 - Response to Comments

EPA

Please ensure the Staff Report includes the data used to determine the new startup/shutdown limit.

DISTRICT

This information is included in Section VII of the staff report.

EPA

The existing language in V.C is nearly sufficient on its own – but lacks clarity on when reporting is required and what an exceedance is. You could remove V.D and update V.C as follows:

At least every six (6) calendar months, the owner or operator shall submit an excess emissions and continuous monitoring system performance report to the APCO according to 40 CFR 60.7(c). The report shall cover each continuous monitoring system required by Section IV. An excess emission occurs for any unit operating period in which the requirements in Section IV.A are not met. This semi-annual monitoring report may be aligned with the due dates of other reporting requirements to avoid duplication (e.g., semiannual compliance reporting required by title V of the federal Clean Air Act).

For each performance test conducted, the owner or operator shall submit a test protocol to the APCO 30 days prior to any testing and submit a performance test report to the APCO within 60 days of completion of the testing.

DISTRICT

The requested language has been included in Section V of the Rule.

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**BEFORE THE AIR POLLUTION CONTROL BOARD
EASTERN KERN AIR POLLUTION CONTROL DISTRICT**

In the matter of:)
)
ADOPTION OF AMENDED)
RULE 425.3, PORTLAND CEMENT)
KILNS (OXIDES OF NITROGEN) OF)
THE EASTERN KERN AIR)
POLLUTION CONTROL DISTRICT)
_____)

Resolution No. 2024-002-11

I, Cristina Bolton, SECRETARY TO THE AIR POLLUTION CONTROL BOARD OF THE EASTERN KERN AIR POLLUTION CONTROL DISTRICT, certify that the following Resolution, proposed by Director _____ and seconded by Director _____, was duly passed and adopted by said Board at an official meeting on this 13th day of November, 2024, by the following vote:

AYES:

NOES:

ABSENT:

(District Seal)

CRISTINA BOLTON
Secretary to the Air Pollution Control Board of
the Eastern Kern Air Pollution Control District

By _____

R E S O L U T I O N

Section 1. RECITALS:

(a) The Eastern Kern Air Pollution Control District (District) is authorized by Health and Safety Code section 40702 to make and enforce all necessary and proper orders, rules and regulations to accomplish the purposes of Division 26 of the Health and Safety Code; and

(b) The Air Pollution Control Officer ("APCO") for said District has recommended that the Board of Directors of the Eastern Kern Air Pollution Control District ("Board") consider adopting certain revisions to the Rules and Regulations of the District; and

(c) A notice of a public hearing on November 13, 2024, at the hour of 2:00 p.m. at the District Board Chambers, 414 W. Tehachapi Boulevard Suite D Tehachapi, California, 93561 to consider the adoption of amended Rule 425.3, Portland Cement Kilns (Oxides of Nitrogen), was duly given; and

(d) The matter was heard at the time and place so specified, evidence was received and all persons desiring to be heard in said matter were given an opportunity to be heard.

Section 2. IT IS RESOLVED by the Governing Board of the Eastern Kern Air Pollution Control District as follows:

1. This Board does hereby revise the Rules and Regulations of the District as set forth in Exhibit "A" attached hereto and incorporated herein by this reference. The foregoing referenced Rules and Regulations attached hereto as Exhibit "A" are hereby adopted as revisions to the Rules and Regulations of the District with said amendments to be effective November 13, 2024.

2. The findings of this Board, based on the evidence submitted at the hearing upon which its decision is based, are as follows:

a. The proposed revisions to the Rules and Regulations will adopt amended Rule 425.3 to include a nitrogen oxide (NOx) emission limit during periods of startup and shutdown and revise the definitions of startup and shutdown to align with the language of 40 CFR 63, LLL § 63.1341 (Cement NESHAP); and

b. All notices required to be given by law have been duly given in accordance with Health and Safety Code section 40725, and the Board has allowed public comment, both oral and written, in accordance with Health and Safety Code section 40726; and

c. The written analysis required by Health and Safety Code section 40727.2, which identifies all existing federal air pollution control requirements that apply to the same equipment or source type as the rule proposed for adoption or

modification, and also identifies any of the District's existing or proposed rules that apply to the same equipment or source type, was prepared by the District. A copy of the analysis was made available to the public from the District.

3. Further findings of this Board as required by Health and Safety Code Section 40727 are as follows:

a. The proposed revisions are necessary to accomplish the purposes of Division 26 of the Health and Safety Code and to comply with state and/or federal Clean Air Act requirements; and

b. The Board is authorized to adopt and revise rules and regulations as may be necessary or proper to execute the powers and duties granted to, and imposed upon, the District by Health and Safety Code section 40702; and

c. The Board has reviewed the proposed revisions and has determined that the said provisions are set forth in clear and concise language so that their meaning can be easily understood by the persons directly affected by them; and

d. The proposed revisions are in harmony with, and not in conflict with or contradictory to, existing District Rules and Regulations, statutes, court decisions, or state or federal regulations; and

e. The revised Rules and Regulations are being implemented in compliance with Health and Safety Code section 40001 which requires the District to adopt and enforce rules and regulations to achieve and maintain the state and federal ambient air quality standards in all areas affected by emissions sources under its jurisdiction, and enforce all applicable provisions of state and federal law.

4. This Board finds, based on the staff report filed with this Board and the record of its rule adoption hearing, and pursuant to sections 40703 and 40922 of the Health and Safety Code, that the Rules and Regulations contained in Exhibit "A" are the most cost effective of the available control measures considered by this Board.

5. This Board finds that Amended Rule 425.3, Portland Cement Kilns (Oxides of Nitrogen), poses no significant impact on the environment and is exempt from California Environmental Quality Act (CEQA) Guidelines pursuant to the Section 15061, Subsections (2) & (3).

6. District staff is directed to prepare a Notice of Exemption for this project, and the Secretary of this Board is hereby directed to file the Notice of Exemption with the Kern County Clerk.

7. The District shall maintain a record of this rule-making proceeding in accordance with Health and Safety Code section 40728.

8. The Secretary of this Board is hereby directed, for the purposes of conforming to Section 40704 of the Health and Safety Code, to cause a certified copy of this Resolution, together with the Rules and Regulations adopted herein, to be filed with the California Air Resources Board (CARB).

9. The Secretary of this Board is further directed to cause a certified copy of this Resolution to be forwarded to the APCO for said District and to the County Counsel of Kern County.

10. The APCO for said District is directed to transmit said rule to CARB for submittal to EPA for incorporation in the District's State Implementation Plan (SIP).

11. The Board authorizes the APCO for said District to include in the submittal or subsequent documentation any technical corrections, clarifications, or additions that may be needed to secure EPA approval, provided such changes do not alter the substantive requirements of the approved rule.

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Eastern Kern

Air Pollution Control District

Gary Ray, Jr.
Air Pollution Control Officer

November 13, 2024

Board of Directors
Eastern Kern APCD
2700 "M" Street, Suite 302
Bakersfield, California 93301

SUBJECT: Air Monitoring Inflation Reduction Act Grant

Honorable Board:

Through the Inflation Reduction Act (IRA), signed into law by the Federal government in August 2022, the Environmental Protection Agency (EPA) announced available funding for air agencies. These funds are intended to assist air agencies in establishing new ambient air monitoring sites and maintaining, operating, or updating existing networks.

District staff has prepared the grant application, including developing a project plan and estimating project costs (attached). The District would use the funding to enhance the data quality assurance for existing ozone and particulate matter monitoring and preserve the existing operating monitoring network in Eastern Kern County. The District's tentative funding allocation is \$139,939 over five years (FY 2024-2025 through FY 2029-2030).

Staff requests your Board approve Resolution No. 2024-003-11, which authorizes the Air Pollution Control Officer (APCO) to complete and submit all necessary documents to secure and receive available IRA grant funds.

IT IS RECOMMENDED that your Board adopt Resolution No. 2024-003-11, which authorizes the APCO to sign and submit the grant application; and do all other acts necessary to reserve and receive the IRA grant funds.

Sincerely,

Gary Ray, Jr.
Air Pollution Control Officer

GR:BG:cb

Project Title: Existing Multipollutant Monitoring Sites Enhancement in the Eastern Kern Air Pollution Control District

Applicant Information:

Eastern Kern Air Pollution Control District
2700 M Street, Suite 302
Bakersfield, CA 93301
Contact Person: Heather Handy, Air Quality Specialist
Phone Number: 661 862-5250
e-mail: ekapcd@kerncounty.com

Amount of Funding Requested: \$139,939

Project Period: Fiscal Year 2024/2025 – 2028/2029

Existing air pollutant monitoring stations in Eastern Kern County:

Canebrake station (site ID: 06-029-0017)
Ridgecrest station (site ID: 06-029-0018)

Project Description:

The proposed project includes three components: 1) enhancing the data quality assurance for existing ozone monitoring, 2) enhancing the data quality assurance for existing particulate matter monitoring, and 3) preserving the operation of the monitoring network in Eastern Kern County.

1. Enhancing Data Quality Assurance for Existing Ozone Monitoring

- a) The Eastern Kern Air Pollution Control District (District) proposes to purchase two (2) ozone analyzers (Teledyne API T400 UV absorption ozone analyzer). They will replace the existing ozone analyzers at the sites.
- b) In addition to ozone analyzers, the District also proposes to purchase a total of two (2) ozone calibrators (Teledyne API T703U trace-level photometric ozone calibrator). They will be equipped at each site to conduct automatic QC checks daily.
- c) Lastly, the District proposes to purchase two (2) data loggers (Agilair 8872 data logger). This data logger will compile the data from the monitoring station and provide automated submission of data to EPA and CARB.

The proposed instrument purchase also includes the annual calibration/maintenance for a 5-year period. These instruments will enhance the District's ozone monitoring operation and ensure the ozone data quality is accurate, reliable, and defensible. The total funding request for Component 1 is \$67,000. The detailed estimated funding requests are in the attachment.

2. Enhancing Data Quality Assurance for Existing Particulate Matter Monitoring

- a) The District proposes to purchase a Beta Attenuation Mass Monitor (Met One Instruments, Inc. BAM 1020). The BAM 1020 will replace an existing monitor.

This instrument will enhance the District's particulate matter monitoring operation and ensure the data quality is accurate, reliable, and defensible. The total funding request for Component 2 is \$22,000. The detailed estimated funding request is included in the attachment.

3. Preserving Monitoring Network Operation

- a) The District also requests funding to support the staffing expenses. Currently, the District has an Air Quality Specialist and a consultant responsible for monitoring network operations and data reporting. Air monitoring is an important tool for improving air quality, protecting public health, and ensuring compliance with strengthened ambient air quality standards. The District requests additional funding (equal to 25% of staffing operational expenses, and an annual contract with a consultant) that will assist the District to sustain the monitoring network operation for a 5-year period.

This funding request will help sustain the District's air monitoring network, which reports air quality data to track compliance with ambient air quality standards to protect public health. The total funding request for Component 3 is \$338,550. The detailed estimated funding request is included in the attachment.

Inflation Reduction Act (IRA)

Funding request to support monitoring activities in Eastern Kern County

| | | | | |
|------------------------|--|-----------------|------------|----------|
| Personnel | | | | |
| | Air Quality Specialist | \$40 per hour | 520 hours | \$20,800 |
| Fringe Benefits | | | | |
| | 70% of Personnel Cost (FICA, Health, Retirement) | | | \$14,560 |
| Travel | | | | |
| | National Conference (Lodging, Per-diem, Registration, Travel) | | | \$2,500 |
| | Training (Lodging, Per-diem, Registration, Travel) | | | \$1,500 |
| | Local Travel (Audits, Maintenance, Meetings, QA/QC) | \$0.67 per mile | 5000 miles | \$3,350 |
| Contractual | | | | |
| | Consultant (assist with audits, protocols, data evaluation, instrument install, trouble shooting) | \$25,000 | annual | \$25,000 |
| Equipment | | | | |
| | Item | Cost/item | # | |
| | MetOne BAM1020 PM Monitor | \$22,000 | 1 | \$22,000 |
| | Teledyne T400 | \$9,000 | 2 | \$18,000 |
| | Teledyne T703 | \$13,000 | 2 | \$26,000 |
| | Agilaire 8872 Data Logger | \$9,000 | 2 | \$18,000 |
| | Instrument Calibration | | | \$5,000 |

| | |
|--|------------------|
| Personnel | \$20,800 |
| Fringe Benefits | \$14,560 |
| Travel | \$7,350 |
| Contractual | \$25,000 |
| Equipment | \$17,800 |
| | |
| Annual Total | \$85,510 |
| | |
| TOTAL (5 Years) | \$427,550 |
| IRA Direct Funding Allocation (a & b) | \$139,939 |

**BEFORE THE AIR POLLUTION CONTROL BOARD
EASTERN KERN AIR POLLUTION CONTROL DISTRICT**

In the matter of:

Air Monitoring Inflation Reduction Act
Grant

)
)
)
)
)

Resolution No. 2024-003-11

I, Cristina Bolton, SECRETARY TO THE AIR POLLUTION CONTROL BOARD OF THE EASTERN KERN AIR POLLUTION CONTROL DISTRICT, certify that the following Resolution, proposed by Director _____ and seconded by Director _____, was duly passed and adopted by said Board at an official meeting on this 13th Day of November 2024, by the following vote:

AYES:

NOES:

ABSENT:

(District Seal)

CRISTINA BOLTON
Secretary to the Air Pollution Control Board of
the Eastern Kern Air Pollution Control District

By _____

R E S O L U T I O N

Section 1. WHEREAS:

(a) The Environmental Protection Agency (EPA) has announced grant funds available through the Inflation Reduction Act (IRA); and

(b) Grant funds are intended to assist air agencies in establishing new ambient air monitoring sites and maintaining, operating, or updating existing networks; and

(c) The Eastern Kern Air Pollution Control District (District) will utilize IRA funds to maintain, operate, and update existing network.

Section 2. IT IS RESOLVED by the Governing Board of the Eastern Kern Air Pollution Control District as follows:

1. The Air Pollution Control Officer for the District is hereby authorized and empowered to sign and submit the IRA grant application, receive funds on behalf of the District, and do all other acts necessary to receive said funds.

2. The District accepts all terms and conditions of the Inflation Reduction Act grant application and reporting requirements.

3. The Secretary of this Board shall cause copies of this Resolution to be sent to the following:

Air Pollution Control Officer

###



Eastern Kern

Air Pollution Control District

Gary Ray, Jr.
Air Pollution Control Officer

November 13, 2024

Board of Directors
Eastern Kern APCD
2700 "M" Street, Suite 302
Bakersfield, California 93301

SUBJECT: California Air Resources Board Carl Moyer Heavy Duty Engine Program Year 27

Honorable Board:

Eastern Kern Air Pollution Control District (District) received a solicitation from the California Air Resources Board (CARB) in October requesting the District apply for their Year 27 allocation of Carl Moyer Heavy Duty Engine Program (CMP) grant funds. To reserve these funds, a completed CMP application package, which includes an approved supporting Board resolution, must be submitted to CARB. The District's tentative allocation of Year 27 funds is \$457,809. This includes \$389,138 for eligible projects and \$68,671 for administrative costs. The District is required to provide DMV AB 923 matching funds of \$68,671 to obtain the full allocation of Year 27 funds.

District staff recommends your Board adopt Resolution 2024-004-11 and authorize the Air Pollution Control Officer (APCO) to complete and submit the Year 27 CMP application package to CARB. The application package will request the full allocation of \$457,809. A copy of the Year 27 CMP application is attached.

IT IS RECOMMENDED your Board adopt Resolution No. 2024-004-11 requesting the District's full allocation of Year 27 CMP funds; authorize the APCO to submit the application requesting said funds; sign the grant award letter; and do all other acts necessary to reserve and receive Year 27 CMP funds.

Sincerely,

Gary Ray, Jr.
Air Pollution Control Officer

GR: JC: CB

Attachment 3: Carl Moyer Program Application

The California Air Resources Board must receive this application by the due date specified in the Solicitation Memo <https://ww2.arb.ca.gov/administrative-forms-carl-moyer-program-community-air-protection-incentives>.

Send the Air District's signed application to MSCD Grants at MSCDGrants@arb.ca.gov with a CC to your Air District Liaison.

Section 1: Applicant Air District

| | |
|---|--|
| Air District Name: Eastern Kern APCD | |
| Street Address: 2700 "M" Street, Suite 302 | City/Zip Code: 93301 |
| Contact Person: Jeremiah Cravens | Telephone Number: (661) 862-5250 |
| E-mail: Cravensj@kerncounty.com | |
| The address provided above matches the address provided on the Air District's Data Record Form (STD 204) or Government Agency Tax Payer ID Form | |
| <input checked="" type="checkbox"/> Yes | |
| <input type="checkbox"/> If no, the Air District will be submitting a corrected STD. 204 or Government Agency Taxpayer ID Form to CARB. | |

Section 2: Program Administration

| | |
|--|--|
| Moyer Year: Moyer Year 27 | Fiscal Year: Fiscal Year 24-25 |
| Based on the box selected below, this will determine your percentage of administration funds Per the Moyer Guidelines | |
| <input type="checkbox"/> Air District is with one million or more inhabitants ¹ Select Percentage | |
| <input checked="" type="checkbox"/> Air District is under one million inhabitants ¹ 15% | |
| If the Air District wishes to request a program administration grant percentage lower than the amount allowed in the Carl Moyer Guidelines, check the box and enter the percentage. | |
| <input type="checkbox"/> The Air District requests program administration funds be included in this grant at a lower portion than allowed by the Carl Moyer Guidelines (Chapter 3). Percent of the total grant: | |

¹ This currently reflects the current and proposed admin percentages

Section 3: Air District Request of Carl Moyer Program Funding

Check one box and enter the dollar amount (if applicable).

| | | |
|---|----|-----------|
| <input checked="" type="checkbox"/> Tentative allocation ("Total Allocation" amount from Attachment 1): | \$ | \$457,809 |
| <input type="checkbox"/> Greater amount than tentative allocation, if available: | \$ | |
| Sum of tentative allocation plus greater amount: | \$ | |
| <input type="checkbox"/> Less amount than the tentative allocation, but more than minimum | \$ | |
| Sum of tentative allocation minus the lesser amount | \$ | |
| <input type="checkbox"/> Minimum allocation of \$200,000 (no match required). | | |
| <input type="checkbox"/> Minimum allocation and authorizes the funds be designated to the Rural District Assistance Program (RAP) for the current fiscal year. | | |
| <input type="checkbox"/> Tentative allocation and authorizes the funds be designated to a lead air district for the current fiscal year. Identify the lead air district: | | |
| <input type="checkbox"/> No Carl Moyer Program funds. Air District declines all funding for this fiscal year. | | |

**Section 4: Air District Matching Funds
 (15% Of Funding Request, For Applications Over \$200,000)**

The Total Air District Match is based on the:

Tentative allocation: \$457,809
 Total Air District Match: \$68,671

Request Allocation (Tentative allocation plus greater amount)
 Total Air District Match:

Other
 Total Air District Match:

Specify match funding by Source and Amount (The total should equal the total amount indicated above):

| Source of Funding | Dollar Amount |
|---|---------------|
| AB 923 | \$68,671 |
| | |
| | |
| Estimated In-Kind Administration: (Up to 15% of Total District Match) | |

Attachment 3: Carl Moyer Program Application

Section 5: Board Resolution

An Air District should not submit a completed application if the district does not have approval/authority from their governing board or is not scheduled to go before their governing board to participate.

Check one box and complete the date (if applicable).

- This application has been duly approved and authorized by the Air District Board, as specified in the attached resolution.
- This application is scheduled to go before the Air District Board.
Date scheduled to go before the Air District Board: November 7, 2024

Section 6: Air District Contact Information

| Air District Air Pollution Control Officer | Telephone Number | Email Address |
|--|------------------|---------------------|
| Gary Ray, Jr. | (661) 862-5250 | RayG@kerncounty.com |

| Air District Carl Moyer Program Manager | Telephone Number | Email Address |
|---|------------------|-------------------------|
| Jeremiah Cravens | (661) 862-5250 | Cravensj@kerncounty.com |

Section 7: Air District APCO/EO Approved Signature

To the best of my knowledge and belief, the information in this application is true and correct. Unless my Air district has declined or designated these grant funds, an up-to-date Carl Moyer Program District Policies and Procedures Manual, based on current Carl Moyer Program Guidelines, is maintained at the Air District's office.

| | |
|---|----------------------------------|
| Signature of Air Pollution Control Officer: <i>Gary Ray, Jr.</i> | Date of Signature: 09/25/2024 |
|---|----------------------------------|

**BEFORE THE AIR POLLUTION CONTROL BOARD
EASTERN KERN AIR POLLUTION CONTROL DISTRICT**

In the matter of:

CARL MOYER MEMORIAL AIR
QUALITY STANDARDS
ATTAINMENT PROGRAM YEAR 27
GRANT AWARD

)
)
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)
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Resolution No. 2024-004-11

I, Cristina Bolton, SECRETARY TO THE AIR POLLUTION CONTROL BOARD OF THE EASTERN KERN AIR POLLUTION CONTROL DISTRICT, certify that the following Resolution, proposed by Director _____ and seconded by Director _____, was duly passed and adopted by said Board at an official meeting on this 13th day of November, 2024, by the following vote:

AYES:

NOES:

ABSENT:

(District Seal)

CRISTINA BOLTON
Secretary to the Air Pollution Control Board of
the Eastern Kern Air Pollution Control District

By _____

RESOLUTION

Section 1. RECITALS:

(a) California Health and Safety Code sections 44275-44299.2 authorize the California Air Resources Board (CARB) to allocate Carl Moyer Program (CMP) funds to local air quality districts to provide financial incentives to both the public and private sectors to implement eligible projects to reduce emissions from on-road, marine, locomotive, agricultural, and off-road diesel engines; and

(b) Carl Moyer Program Year 27 funds must be administered in accordance with the requirements included in the approved 2017 CMP Guidelines, Advisories, and Updated Chapters; and

(c) The Eastern Kern Air Pollution Control District (District) desires to implement one or more projects with CMP Year 27 funds.

Section 2. IT IS RESOLVED by the Governing Board of the Eastern Kern Air Pollution Control District as follows:

1. The Air Pollution Control Officer for the District is hereby authorized and empowered to submit an application to CARB for CMP Year 27 funds on behalf of the District; to reserve the required matching funds from the Motor Vehicle Fees Trust Fund; to sign and submit the Award letter to CARB; and do all other acts necessary to receive said funds.

2. The District accepts all terms and conditions of the Year 27 CMP grant award.

3. The Secretary of this Board shall cause copies of this Resolution to be sent to the following:

Air Pollution Control Officer
County Counsel
California Air Resources Board

###



Eastern Kern

Air Pollution Control District

Gary Ray, Jr.
Air Pollution Control Officer

November 13, 2024

Board of Directors
Eastern Kern APCD
2700 "M" Street, Suite 302
Bakersfield, California 93301

SUBJECT: Carl Moyer Program Grant Agreement with Ryan Hanzel to Replace a Diesel-Fueled Clark Loader

Honorable Board:

Ryan Hanzel (Grantee) has applied for funding through the Eastern Kern Air Pollution Control District (District) Carl Moyer Program (CMP). The CMP provides funding for the voluntary retirement and replacement of eligible high-emitting diesel-fueled equipment.

The Grantee has proposed a project that meets eligibility criteria of the CMP. Agreement 11-001-2024 will provide up to \$23,870.00 in CMP funds to replace a 1987, diesel-fueled, Tier 0, Clark loader with a new low-emitting, certified Tier IV loader. The equipment is used 100 percent of the time within Eastern Kern for construction related activities.

The Grantee is responsible for any project costs exceeding the District maximum funding amount. The loader will be permanently removed from service and salvaged once the new loader has been purchased and placed in service. Staff recommends the project be approved for funding.

Three copies of the proposed agreement, a copy of which is attached, were sent to the Grantee to be approved by signature and are expected to be returned to the District prior to the Board Meeting. If any significant changes are identified by the Grantee, the item will be withdrawn and the Agreement will be held to the January 2025, Board Meeting.

IT IS RECOMMENDED your Board approve and authorize Chairman to sign Agreement 11-001-2024 with Ryan Hanzel for the purchase of a new low-emitting loader.

Sincerely,

Gary Ray, Jr.
Air Pollution Control Officer

GR: JC: CB

AGREEMENT BETWEEN
EASTERN KERN AIR POLLUTION CONTROL DISTRICT
AND
RYAN HANZEL

THIS AGREEMENT is made and entered into this 13th day of November 2024, by and between the EASTERN KERN AIR POLLUTION CONTROL DISTRICT (“DISTRICT”), and RYAN HANZEL (“GRANTEE”). DISTRICT and GRANTEE are referred to individually as “Party” and collectively as “Parties.”

WITNESSETH:

WHEREAS:

- (a) The California Clean Air Act encourages local air pollution control districts to reduce emissions from motor vehicles and heavy duty engines and the State Implementation Plan (SIP), California’s plan to attain ambient air quality standards, includes motor vehicle and heavy duty engine emission reduction goals;
- (b) Starting in 1998, through the California budget process, funds have been allocated for the “Carl Moyer Memorial Air Quality Standards Attainment Program (hereinafter “CMP”), codified in California Health and Safety Code Section 44275 et seq.;
- (c) CMP guidelines provide a mechanism for the DISTRICT to provide funds for the repower or replace of older high-emitting heavy-duty diesel-fueled vehicles with new low-emitting engines and vehicles;
- (d) GRANTEE has proposed a project that meets the eligibility criteria of the DISTRICT and the CMP, and has been recommended for funding by the DISTRICT; and
- (e) GRANTEE represents that it is willing and able to perform the activities set forth herein;

NOW, THEREFORE, IT IS AGREED between the Parties as follows:

1. **Project.** GRANTEE shall perform all activities necessary to complete the project described in **Exhibit A**, which is attached hereto and incorporated herein by this reference. GRANTEE agrees to furnish all labor, materials, equipment, licenses, permits, fees, and other incidentals necessary to perform and complete, on schedule and in a professional manner, the activities described herein.

The purpose of this project is to reduce emissions from an older high-emitting diesel fueled backhoe through equipment replacement. To achieve this purpose, GRANTEE agrees to replace an existing 1987, diesel-fueled Tier 0, Clark loader with a new lower-emission certified Tier IV diesel fueled loader, and maintain it for the duration of the Agreement.

GRANTEE is prohibited from removing the new vehicle from service during the term of this Agreement specified in **Section 6, Term**, unless the vehicle becomes inoperable through failure of components or systems, and these failures cannot be repaired, and such failure is not caused by GRANTEE's negligence, misuse, or malfeasance.

2. **Period of Performance/Timetable.** GRANTEE shall commence performance of work and diligently prosecute said work in accordance with the project implementation schedule and deadlines for performance indicated in **Exhibit A**, unless this Agreement is terminated sooner as provided for elsewhere in this Agreement.

3. **Payments.**

a. The total obligation of the DISTRICT under this Agreement shall not exceed twenty-three thousand eight hundred seventy dollars (\$23,870). GRANTEE shall, if necessary, obtain through other sources sufficient additional monies to fund the total cost of the project as outlined in **Exhibit A**. Upon request by DISTRICT, satisfactory written evidence of such funding commitments shall be provided to DISTRICT prior to the release by DISTRICT of any funds under this Agreement. In the event funding from other sources for the total cost of the project is not received by GRANTEE, DISTRICT reserves the right to terminate or renegotiate this Agreement. In that event, if requested by the DISTRICT, GRANTEE shall return any DISTRICT funds previously paid to GRANTEE.

b. Advanced payments shall not be permitted. Payments will be permitted only at such time as equivalent activities have been satisfactorily rendered. Claims and all supporting documentation shall be submitted directly to DISTRICT.

c. All invoices for payment shall be submitted in a form approved by the DISTRICT and shall contain a detailed description of the work completed for which payment is being requested, including all proper documentation and receipts of expenses incurred. Payment will be made to GRANTEE within thirty (30) days of receipt and approval of each invoice by the DISTRICT.

d. The amount to be paid to GRANTEE under this Agreement includes all sales and use taxes incurred pursuant to this Agreement, if any, including any such taxes due on equipment purchased by the GRANTEE. The GRANTEE shall not receive additional compensation for reimbursement of such taxes and shall not decrease work to compensate therefore.

e. Concurrently with the submission of any claim for payment, GRANTEE shall certify (through copies of invoices, issued checks, receipts, etc.) that complete payment has been made to any and all suppliers, sub-contractors or consultants who have provided materials or performed work for which payment is being requested by GRANTEE. It is understood that all costs and expenses incidental to GRANTEE's performance of services under this Agreement shall be borne exclusively by GRANTEE.

f. Any compensation which is not expended by GRANTEE pursuant to the terms and conditions of this Agreement by the project completion date shall automatically revert to the DISTRICT. Only expenditures incurred by the GRANTEE in the direct performance of this Agreement will be reimbursed by the DISTRICT. Only allowable expenditures, as

determined in the sole discretion of the DISTRICT, will be reimbursed by the DISTRICT. All final claims shall be submitted by GRANTEE within sixty (60) days following the final month of activities for which payment is claimed. No action will be taken by DISTRICT on claims submitted beyond the 60-day closeout period.

4. **Inspection, Audit, and Record Retention.** GRANTEE shall retain project records and allow DISTRICT, CARB, or their designated representatives to inspect the project as provided in **Exhibit A** attached hereto, during the entire contract term specified in **Section 6, Term**, of this Agreement.

Project records shall include, but not be limited to, resolution from a governing board (or a duly authorized official with authority to make financial decisions) authorizing the submittal of the application and identifying the individual authorized to implement the equipment replacement project, vendor quote(s), executed contract(s), copy of purchase order(s) for the new replacement equipment, copy of the CARB executive order for the new engine, invoices, proof of payment, copy of registration, and documentation of the disposal of the replaced (old) equipment.

5. **Destruction of Replaced Equipment.** Replaced (old) equipment and engine must be rendered permanently inoperable to ensure that emission reductions are real. Equipment frame rails shall be completely cut, and engine shall have a hole knocked or cut in the engine block (at least 3 inches in diameter). GRANTEE may also take replaced equipment to a certified salvage facility to be dismantled. Dismantle means “to punch, crush, stamp, hammer, shred, or otherwise render permanently and irreversibly incapable of functioning as originally intended.” No reimbursement shall be made until GRANTEE provides proof to the DISTRICT that the old equipment has been destroyed.

6. **Term.** This Agreement shall be deemed in force as of the date first written above. The Agreement shall remain in effect until GRANTEE has operated the new equipment for three (3) consecutive years and has maintained records per **Section 4, Inspection, Audit, and Record Retention** for an additional two years.

7. **Assignment.** GRANTEE shall not assign, sublet, or transfer this Agreement, or any part hereof. GRANTEE shall not assign any monies due or which become due to GRANTEE under this Agreement without the prior express and written approval by the DISTRICT.

8. **Negation of Partnership.** In performance of all services under this Agreement, GRANTEE shall be, and acknowledges that GRANTEE is, in fact and law, an independent contractor and not an agent or employee of DISTRICT. GRANTEE has and retains the right to exercise full supervision and control of the manner and methods by which GRANTEE shall perform its work under this Agreement. GRANTEE retains full supervision and control over the employment, direction, compensation and discharge of all persons assisting GRANTEE in the performance of work hereunder. However, DISTRICT shall retain the right to administer this Agreement so as to verify that GRANTEE is performing its obligations in accordance with the terms and conditions thereof. With respect to GRANTEE employees, if any, GRANTEE shall be solely responsible for payment of wages, benefits and other compensation, compliance with all occupational safety, welfare, and civil rights laws, tax withholding and payment of employee taxes, whether federal, state, or local, and compliance with any and all other laws regulating employment.

9. **Disclosure Statement.** The GRANTEE certifies that no other requests for grant or incentive funding for the project, described in **Exhibit A** of this Agreement, have been submitted or will be submitted to any other party, including but not limited to vehicle dealers, vehicle manufacturers, other air districts, the ARB, or any other government agency. If the GRANTEE or any other third party designee is found to have submitted multiple applications or signed multiple agreements for this project without disclosing the information to the DISTRICT, the DISTRICT will pursue at least one or more of the following actions:

- a. The GRANTEE may be disqualified from all DISTRICT funding sources for this project; and
- b. The GRANTEE may be banned from submitting future applications to any and all CMP, AB 923, or MCAP solicitations; and
- c. The DISTRICT may seek civil penalties against the GRANTEE for such conduct.

10. **Indemnification.** GRANTEE agrees to indemnify, defend, and hold harmless DISTRICT and DISTRICT's agents, Board members, elected and appointed officials and officers, employees, volunteers, and authorized representatives from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, and expenses (including, but not limited to, reasonable attorneys' fees of County Counsel and counsel retained by DISTRICT, expert fees, costs of staff time, and investigation costs) of whatever kind or nature that arise out of or are in any way connected with any act or omission of GRANTEE or GRANTEE's officers, agents, employees, independent contractors, sub-contractors of any tier, or authorized representatives. Without limiting the generality of the foregoing, the same shall include injury or death to any person or persons; damage to any property, regardless of where located, including the property of DISTRICT; and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Agreement on behalf of GRANTEE by any person or entity.

11. **Insurance.** GRANTEE, in order to protect DISTRICT and its Board members, officials, agents, officers, and employees against all claims and liability for death, injury, loss and damage as a result of GRANTEE actions in connection with the performance of GRANTEE obligations, as required in this Agreement, shall secure and maintain insurance as described below. GRANTEE shall not perform any work under this Agreement until GRANTEE has obtained all insurance required under this section and the required certificates of insurance have been filed with and approved by the DISTRICT. GRANTEE shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon submission of any claim by GRANTEE or DISTRICT as an additional insured.

a. During the performance of all work described in **Exhibit A**, GRANTEE shall maintain, or require that all sub-contractors hired by GRANTEE to perform work on the project maintain, the following insurance coverages:

(1) Workers' Compensation Insurance in accordance with the provisions of section 3700 of the Labor Code.

GRANTEE shall require any sub-contractors to provide workers' compensation for all of the subcontractors' employees, unless the subcontractors' employees are covered

by the insurance afforded by GRANTEE. If any class of employees engaged in work or services performed under this Agreement is not covered by California Labor Code section 3700, GRANTEE shall provide and/or require each subcontractor to provide adequate insurance for the coverage of employees not otherwise covered.

GRANTEE shall also maintain employer's liability insurance with limits of one million dollars (\$1,000,000) for bodily injury or disease.

(2) Commercial General Liability Insurance, including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement), Personal Injury (including bodily injury and death), and Property Damage for liability arising out of the GRANTEE's performance of work under this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

(3) Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering the equipment to be purchased under this Agreement, with coverage equal to the policy limits, which shall not be less than one million dollars (\$1,000,000) each occurrence.

(4) The Commercial General Liability and Automobile Liability Insurance required in this subparagraph a. shall include an endorsement naming the DISTRICT and DISTRICT's Board members, officials, officers, agents and employees as additional insureds for liability arising out of this Agreement and any operations related thereto. Said endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 11 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 11 85.

(5) Any self-insured retentions in excess of \$100,000 must be declared on the Certificate of Insurance or other documentation provided to DISTRICT and must be approved by the APCO for DISTRICT.

b. Prior to GRANTEE commencing any of its obligations under this Agreement, evidence of insurance in compliance with the requirements above shall be furnished to the DISTRICT by Certificate of Insurance. Receipt of evidence of insurance that does not comply with above requirements shall not constitute a waiver of the insurance requirements set forth above.

c. Cancellation of Insurance – All insurance coverages required under this Agreement shall be maintained until the completion of all work to be performed hereunder, and shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice by GRANTEE in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. GRANTEE (and any sub-contractors hired by GRANTEE) shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

d. All insurance shall be issued by a company or companies listed in the current “Best’s Key Rating Guide” publication with a minimum of an “A-; VII” rating, or in special circumstances, be pre-approved by the DISTRICT.

e. If GRANTEE is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, GRANTEE shall provide coverage equivalent to the insurance coverages and endorsements required above. The DISTRICT will not accept such coverage unless the DISTRICT determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by GRANTEE is equivalent to the above-required coverages.

f. All insurance afforded by GRANTEE, and any sub-contractors hired by GRANTEE, pursuant to this Agreement shall be primary to and not contributing to any other insurance or self-insurance maintained by DISTRICT. An endorsement shall be provided on all policies which shall waive any right of recovery (waiver of subrogation) against the DISTRICT. A waiver of subrogation is only required when GRANTEE’s personnel deliver services or perform services for DISTRICT while on DISTRICT property.

g. Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve GRANTEE for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude the DISTRICT from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.

h. Failure by GRANTEE or any sub-contractors hired by GRANTEE to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by GRANTEE. DISTRICT, at its sole option, may terminate this Agreement and obtain damages from GRANTEE resulting from said breach. Alternatively, DISTRICT may purchase such required insurance coverage, and without further notice to GRANTEE, DISTRICT shall deduct from sums due to GRANTEE any premiums and associated costs advanced or paid by DISTRICT for such insurance. If the balance of monies obligated to GRANTEE pursuant to this Agreement is insufficient to reimburse DISTRICT for the premiums and any associated costs, GRANTEE agrees to reimburse DISTRICT for the premiums and pay for all costs associated with the purchase of said insurance. Any failure by DISTRICT to take this alternative action shall not relieve GRANTEE of its obligation to obtain and maintain the insurance coverages required by this Agreement.

12. Termination.

a. Breach of Agreement - The DISTRICT may immediately suspend or terminate this Agreement, in whole or in part, where in the determination of the DISTRICT, CONTRACTOR has:

- (1) Illegally or improperly used funds;
- (2) Failed to comply with any term of this Agreement;
- (3) Submitted to the DISTRICT a substantially incorrect or incomplete report;
or
- (4) Improperly performed services.

In no event shall any payment by the DISTRICT constitute a waiver by the DISTRICT of any breach of this Agreement or any default, which may then exist on the part of the GRANTEE. Neither shall such payment impair or prejudice any remedy available to the DISTRICT with respect to the breach or default. The DISTRICT shall have the right to demand of the GRANTEE the repayment to the DISTRICT of any funds disbursed to the GRANTEE under this Agreement which in the judgment of the DISTRICT were not expended in accordance with the terms of this Agreement. The GRANTEE shall promptly refund any such funds upon demand. In addition to immediate suspension or termination, DISTRICT may impose any other remedies available at law, in equity, or otherwise specified in this Agreement.

b. Without Cause - DISTRICT may terminate this Agreement at any time upon giving GRANTEE at least thirty (30) days' advance written notice of its intention to terminate. In such case, the GRANTEE shall, subject to **Section 3**, be paid for all actual costs incurred up to the time of the termination.

c. Early Termination – Provisions of this Agreement may be terminated prior to completion of the term if vehicle becomes inoperable through mechanical failure of components or systems directly related to the use of the vehicle, and such failure is not caused by GRANTEE's negligence, misuse, or malfeasance. GRANTEE shall submit written documentation supporting any basis for early termination for the approval of DISTRICT.

d. Reimbursement for Early Termination - GRANTEE is obligated to maintain and operate equipment for three (3) consecutive years. Should GRANTEE desire to terminate this Agreement prior to the end date for reasons other than those stated in **subparagraph c.** above, GRANTEE shall reimburse DISTRICT for a prorated share of the funds provided under this Agreement.

e. The prorated share for which GRANTEE shall be liable shall be 100% if the termination occurs within the first year of the three (3) year reporting period; 60% if termination occurs between years one (1) and two (2); 30% between years two (2) and three (3). The reimbursable amount shall be paid to DISTRICT within sixty (60) days of the termination date.

13. **Notices.** All notices required or provided for in this Agreement shall be provided to the Parties at the following addresses, by personal delivery or deposit in the U.S. Mail, postage prepaid, registered or certified mail, addressed as specified below. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices shall be deemed received five (5) days after deposit. A Party may change the address to which notice is to be given by giving notice as provided above.

To DISTRICT

Gary Ray, Jr., APCO
Eastern Kern Air Pollution Control Dist.
2700 M Street, Suite 302
Bakersfield, CA 93301

To GRANTEE

Ryan Hanzel
19415 Red Apple Avenue
Tehachapi, CA 93561

Nothing in this Agreement shall be construed to prevent or render ineffective delivery of notices required or permitted under this Agreement by personal service.

14. **Conflict of Interest.** The Parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees. GRANTEE agrees that they are unaware of any financial or economic interest of any public officer or employee of the DISTRICT relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, the DISTRICT may immediately terminate this Agreement by giving written notice thereof. GRANTEE shall comply with the requirements of Government Code section 87100 et seq. during the term of this Agreement.
15. **Sole Agreement.** This document contains the entire agreement of the Parties relating to the services, rights, obligations, and covenants contained herein and assumed by the Parties respectively. No inducements, representations, or promises have been made, other than those recited in this Agreement. No oral promise, modification, change, or inducement shall be effective or given any force or effect.
16. **Authority to Bind DISTRICT.** It is understood that GRANTEE, in GRANTEE's performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has no authority to bind DISTRICT to any agreements or undertakings.
17. **Modifications of Agreement.** This Agreement may be modified in writing only, signed by the Parties in interest at the time of the modification.
18. **Nonwaiver.** No covenant or condition of this Agreement can be waived except by the written consent of DISTRICT. Forbearance or indulgence by DISTRICT in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by GRANTEE. DISTRICT shall be entitled to invoke any remedy available to DISTRICT under this Agreement or by law or in equity despite said forbearance or indulgence.
19. **Choice of Law/Venue.** The Parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the State of California. This Agreement has been entered into and is to be performed in the County of Kern. Accordingly, the Parties agree that the venue of any action relating to this Agreement shall be in the County of Kern.
20. **Confidentiality.** GRANTEE shall not, without the written consent of the DISTRICT, communicate confidential information, designated in writing or identified in this Agreement as such, to any third party and shall protect such information from inadvertent disclosure to any third party in the same manner that they protect their own confidential information, unless such disclosure is required in response to a validly issued subpoena or other process of law. The provisions of this paragraph shall survive the termination of this Agreement.
21. **Enforcement of Remedies.** No right or remedy herein conferred on or reserved to DISTRICT is exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing by law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time.

22. **Severability**. Should any part, term, portion, or provision of this Agreement be decided finally to be in conflict with any law of the United States or the State of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the agreement that the Parties intended to enter into in the first instance.
23. **Compliance with Law**. GRANTEE shall observe and comply with all applicable local, state, and federal laws, ordinances, rules, and regulations now in effect or hereafter enacted, each of which are hereby made a part hereof and incorporated herein by reference.
24. **Captions and Interpretation**. Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provisions of this Agreement shall be interpreted for or against a Party because that Party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
25. **Time of Essence**. Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof, and each such provision is hereby made and declared to be a material, necessary, and essential part of this Agreement.
26. **Counterparts**. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
27. **Nondiscrimination**. Neither GRANTEE, nor any officer, agent, employee, servant, or subcontractor of GRANTEE, shall discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, or sex, either directly, indirectly, or through contractual or other arrangements.
28. **Non-Collusion Covenant**. GRANTEE represents and agrees that it has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of this Agreement with DISTRICT. GRANTEE has received from DISTRICT no incentive or special payments, nor considerations not related to the provision of services under this Agreement.
29. **Political Activity and Lobbying Prohibited**. None of the funds, materials, property, or services provided under this Agreement shall be used for any political activity, or to further the election or defeat of any candidate for public office contrary to federal or state laws, statutes, regulations, rules, or guidelines. In addition, none of the funds provided under this Agreement shall be used for publicity, lobbying, or propaganda purposes designed to support or defeat legislation before the Congress of the United States of America or the Legislature of the State of California.
30. **No Third Party Rights**. Other than as expressly set forth herein, this Agreement will not be deemed to provide third parties with any remedy, claim, right of action, or other right.

31. **Compliance with IRCA.** GRANTEE acknowledges that GRANTEE, and all subcontractors hired by GRANTEE to perform services under this Agreement, are aware of and understand the Immigration Reform and Control Act (IRCA). GRANTEE is and shall remain in compliance with the IRCA and shall ensure that any subcontractors hired by GRANTEE to perform services under this Agreement are in compliance with IRCA. In addition, GRANTEE agrees to indemnify, defend, and hold harmless DISTRICT, its agents, officers, and employees, from any liability, damages, or causes of action arising out of or relating to any claims that GRANTEE's employees, or the employees of any subcontractor hired by GRANTEE, are not authorized to work in the United States for GRANTEE or its subcontractor and/or any other claims based upon alleged IRCA violations committed by GRANTEE or GRANTEE's subcontractor(s).

Remainder of Page Intentionally Left Blank

32. **Signature Authority.** Each Party has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement.

IN WITNESS TO WHICH, each Party to this Agreement has signed this Agreement upon the date indicated, and agrees, for itself, its employees, officers, partners, and successors, to be fully bound by all terms and conditions of this Agreement.

**EASTERN KERN AIR POLLUTION
CONTROL DISTRICT**

RYAN HANZEL

By _____
Chairman, District Board
"DISTRICT"

By _____
Ryan Hanzel
"GRANTEE"

APPROVED AS TO CONTENT:
Air Pollution Control District

APPROVED AS TO FORM:
Agency Attorney

By _____
Gary Ray, Jr., APCO

By _____
Attorney

APPROVED AS TO FORM:
Office of the County Counsel

By _____
Phillip Hall, Deputy

EXHIBIT A

AGREEMENT No. 11-001-2024

Project Location: Equipment located in Tehachapi, CA and primarily used within Eastern Kern County.

Description of Project: DISTRICT will provide Carl Moyer funds to replace a 1987, diesel-fueled, Tier 0, Clark Loader, VIN 473D289CB, with a new Certified Tier IV, loader.

Project Implementation Schedule: Old equipment shall be replaced by November 13, 2025.

Allowable Expenditure: DISTRICT will pay up to a maximum of \$23,870.00 of the eligible costs, not to exceed 18% of the total project cost associated with replacing the 1987, Clark loader as identified in the Description of Project above.

GRANTEE is responsible for any project costs exceeding the maximum DISTRICT costs specified above.

Equipment and Recordkeeping Requirements:

1. GRANTEE shall notify DISTRICT upon receipt of new equipment.
2. GRANTEE shall destroy replaced (old) equipment in accordance with **Section 5, Destruction of Replaced Equipment** prior to reimbursement.
3. DISTRICT shall conduct inspection to verify operation of new equipment and destruction of old equipment prior to reimbursement.
4. GRANTEE shall maintain and operate new equipment for at least three (3) consecutive years.
5. GRANTEE shall report annual hours of operation to DISTRICT by January 31 of each year in accordance with **Section 7, Reporting Requirements**.
6. DISTRICT staff shall have rite-of-passage for periodic inspections.



Eastern Kern

Air Pollution Control District

Gary Ray, Jr.
Air Pollution Control Officer

November 13, 2024

Board of Directors
Eastern Kern APCD
2700 "M" Street, Suite 302
Bakersfield, California 93301

SUBJECT: Carl Moyer Program Grant Agreement with Brian A. Cain to Replace a Diesel-Fueled Bobcat

Honorable Board:

Brian A. Cain (Grantee) has applied for funding through the Eastern Kern Air Pollution Control District (District) Carl Moyer Program (CMP). The CMP provides funding for the voluntary retirement and replacement of eligible high-emitting diesel-fueled equipment.

The Grantee has proposed a project that meets eligibility criteria of the CMP. Agreement 11-002-2024 will provide up to \$52,126.00 in CMP funds to replace a 1990, diesel-fueled, Tier 0, Bobcat with a new low-emitting, certified Tier IV compact wheeled loader. The equipment is used 100 percent of the time within Eastern Kern for ranching and farming activities.

The Grantee is responsible for any project costs exceeding the District maximum funding amount. The old Bobcat will be permanently removed from service and salvaged once the new equipment has been purchased and placed in service. Staff recommends the project be approved for funding.

Three copies of the proposed agreement, a copy of which is attached, were sent to the Grantee to be approved by signature and are expected to be returned to the District prior to the Board Meeting. If any significant changes are identified by the Grantee, the item will be withdrawn and the Agreement will be held to the January 2025, Board Meeting.

IT IS RECOMMENDED your Board approve and authorize Chairman to sign Agreement 11-002-2024 with Brian A. Cain for the purchase of a new low-emitting compact wheeled loader.

Sincerely,

Gary Ray, Jr.
Air Pollution Control Officer

GR: JC: CB

AGREEMENT BETWEEN
EASTERN KERN AIR POLLUTION CONTROL DISTRICT
AND
BRIAN A. CAIN

THIS AGREEMENT is made and entered into this 13th day of November 2024, by and between the EASTERN KERN AIR POLLUTION CONTROL DISTRICT (“DISTRICT”), and BRIAN A. CAIN (“GRANTEE”). DISTRICT and GRANTEE are referred to individually as “Party” and collectively as “Parties.”

WITNESSETH:

WHEREAS:

- (a) The California Clean Air Act encourages local air pollution control districts to reduce emissions from motor vehicles and heavy duty engines and the State Implementation Plan (SIP), California’s plan to attain ambient air quality standards, includes motor vehicle and heavy duty engine emission reduction goals;
- (b) Starting in 1998, through the California budget process, funds have been allocated for the “Carl Moyer Memorial Air Quality Standards Attainment Program (hereinafter “CMP”), codified in California Health and Safety Code Section 44275 et seq.;
- (c) CMP guidelines provide a mechanism for the DISTRICT to provide funds for the repower or replace of older high-emitting heavy-duty diesel-fueled vehicles with new low-emitting engines and vehicles;
- (d) GRANTEE has proposed a project that meets the eligibility criteria of the DISTRICT and the CMP, and has been recommended for funding by the DISTRICT; and
- (e) GRANTEE represents that it is willing and able to perform the activities set forth herein;

NOW, THEREFORE, IT IS AGREED between the Parties as follows:

1. **Project.** GRANTEE shall perform all activities necessary to complete the project described in **Exhibit A**, which is attached hereto and incorporated herein by this reference. GRANTEE agrees to furnish all labor, materials, equipment, licenses, permits, fees, and other incidentals necessary to perform and complete, on schedule and in a professional manner, the activities described herein.

The purpose of this project is to reduce emissions from an older high-emitting diesel fueled backhoe through equipment replacement. To achieve this purpose, GRANTEE agrees to replace an existing 1990, diesel-fueled Tier 0, Bobcat with a new lower-emission certified Tier IV diesel fueled compact loader, and maintain it for the duration of the Agreement.

GRANTEE is prohibited from removing the new vehicle from service during the term of this Agreement specified in **Section 6, Term**, unless the vehicle becomes inoperable through failure of components or systems, and these failures cannot be repaired, and such failure is not caused by GRANTEE's negligence, misuse, or malfeasance.

2. **Period of Performance/Timetable.** GRANTEE shall commence performance of work and diligently prosecute said work in accordance with the project implementation schedule and deadlines for performance indicated in **Exhibit A**, unless this Agreement is terminated sooner as provided for elsewhere in this Agreement.

3. **Payments.**

a. The total obligation of the DISTRICT under this Agreement shall not exceed fifty-two thousand one hundred twenty-six dollars (\$52,126). GRANTEE shall, if necessary, obtain through other sources sufficient additional monies to fund the total cost of the project as outlined in **Exhibit A**. Upon request by DISTRICT, satisfactory written evidence of such funding commitments shall be provided to DISTRICT prior to the release by DISTRICT of any funds under this Agreement. In the event funding from other sources for the total cost of the project is not received by GRANTEE, DISTRICT reserves the right to terminate or renegotiate this Agreement. In that event, if requested by the DISTRICT, GRANTEE shall return any DISTRICT funds previously paid to GRANTEE.

b. Advanced payments shall not be permitted. Payments will be permitted only at such time as equivalent activities have been satisfactorily rendered. Claims and all supporting documentation shall be submitted directly to DISTRICT.

c. All invoices for payment shall be submitted in a form approved by the DISTRICT and shall contain a detailed description of the work completed for which payment is being requested, including all proper documentation and receipts of expenses incurred. Payment will be made to GRANTEE within thirty (30) days of receipt and approval of each invoice by the DISTRICT.

d. The amount to be paid to GRANTEE under this Agreement includes all sales and use taxes incurred pursuant to this Agreement, if any, including any such taxes due on equipment purchased by the GRANTEE. The GRANTEE shall not receive additional compensation for reimbursement of such taxes and shall not decrease work to compensate therefore.

e. Concurrently with the submission of any claim for payment, GRANTEE shall certify (through copies of invoices, issued checks, receipts, etc.) that complete payment has been made to any and all suppliers, sub-contractors or consultants who have provided materials or performed work for which payment is being requested by GRANTEE. It is understood that all costs and expenses incidental to GRANTEE's performance of services under this Agreement shall be borne exclusively by GRANTEE.

f. Any compensation which is not expended by GRANTEE pursuant to the terms and conditions of this Agreement by the project completion date shall automatically revert to the DISTRICT. Only expenditures incurred by the GRANTEE in the direct performance of this Agreement will be reimbursed by the DISTRICT. Only allowable expenditures, as

determined in the sole discretion of the DISTRICT, will be reimbursed by the DISTRICT. All final claims shall be submitted by GRANTEE within sixty (60) days following the final month of activities for which payment is claimed. No action will be taken by DISTRICT on claims submitted beyond the 60-day closeout period.

4. **Inspection, Audit, and Record Retention.** GRANTEE shall retain project records and allow DISTRICT, CARB, or their designated representatives to inspect the project as provided in **Exhibit A** attached hereto, during the entire contract term specified in **Section 6, Term**, of this Agreement.

Project records shall include, but not be limited to, resolution from a governing board (or a duly authorized official with authority to make financial decisions) authorizing the submittal of the application and identifying the individual authorized to implement the equipment replacement project, vendor quote(s), executed contract(s), copy of purchase order(s) for the new replacement equipment, copy of the CARB executive order for the new engine, invoices, proof of payment, copy of registration, and documentation of the disposal of the replaced (old) equipment.

5. **Destruction of Replaced Equipment.** Replaced (old) equipment and engine must be rendered permanently inoperable to ensure that emission reductions are real. Equipment frame rails shall be completely cut, and engine shall have a hole knocked or cut in the engine block (at least 3 inches in diameter). GRANTEE may also take replaced equipment to a certified salvage facility to be dismantled. Dismantle means “to punch, crush, stamp, hammer, shred, or otherwise render permanently and irreversibly incapable of functioning as originally intended.” No reimbursement shall be made until GRANTEE provides proof to the DISTRICT that the old equipment has been destroyed.

6. **Term.** This Agreement shall be deemed in force as of the date first written above. The Agreement shall remain in effect until GRANTEE has operated the new equipment for five (5) consecutive years and has maintained records per **Section 4, Inspection, Audit, and Record Retention** for an additional two years.

7. **Assignment.** GRANTEE shall not assign, sublet, or transfer this Agreement, or any part hereof. GRANTEE shall not assign any monies due or which become due to GRANTEE under this Agreement without the prior express and written approval by the DISTRICT.

8. **Negation of Partnership.** In performance of all services under this Agreement, GRANTEE shall be, and acknowledges that GRANTEE is, in fact and law, an independent contractor and not an agent or employee of DISTRICT. GRANTEE has and retains the right to exercise full supervision and control of the manner and methods by which GRANTEE shall perform its work under this Agreement. GRANTEE retains full supervision and control over the employment, direction, compensation and discharge of all persons assisting GRANTEE in the performance of work hereunder. However, DISTRICT shall retain the right to administer this Agreement so as to verify that GRANTEE is performing its obligations in accordance with the terms and conditions thereof. With respect to GRANTEE employees, if any, GRANTEE shall be solely responsible for payment of wages, benefits and other compensation, compliance with all occupational safety, welfare, and civil rights laws, tax withholding and payment of employee taxes, whether federal, state, or local, and compliance with any and all other laws regulating employment.

9. **Disclosure Statement.** The GRANTEE certifies that no other requests for grant or incentive funding for the project, described in **Exhibit A** of this Agreement, have been submitted or will be submitted to any other party, including but not limited to vehicle dealers, vehicle manufacturers, other air districts, the ARB, or any other government agency. If the GRANTEE or any other third party designee is found to have submitted multiple applications or signed multiple agreements for this project without disclosing the information to the DISTRICT, the DISTRICT will pursue at least one or more of the following actions:

- a. The GRANTEE may be disqualified from all DISTRICT funding sources for this project; and
- b. The GRANTEE may be banned from submitting future applications to any and all CMP, AB 923, or MCAP solicitations; and
- c. The DISTRICT may seek civil penalties against the GRANTEE for such conduct.

10. **Indemnification.** GRANTEE agrees to indemnify, defend, and hold harmless DISTRICT and DISTRICT's agents, Board members, elected and appointed officials and officers, employees, volunteers, and authorized representatives from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, and expenses (including, but not limited to, reasonable attorneys' fees of County Counsel and counsel retained by DISTRICT, expert fees, costs of staff time, and investigation costs) of whatever kind or nature that arise out of or are in any way connected with any act or omission of GRANTEE or GRANTEE's officers, agents, employees, independent contractors, sub-contractors of any tier, or authorized representatives. Without limiting the generality of the foregoing, the same shall include injury or death to any person or persons; damage to any property, regardless of where located, including the property of DISTRICT; and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Agreement on behalf of GRANTEE by any person or entity.

11. **Insurance.** GRANTEE, in order to protect DISTRICT and its Board members, officials, agents, officers, and employees against all claims and liability for death, injury, loss and damage as a result of GRANTEE actions in connection with the performance of GRANTEE obligations, as required in this Agreement, shall secure and maintain insurance as described below. GRANTEE shall not perform any work under this Agreement until GRANTEE has obtained all insurance required under this section and the required certificates of insurance have been filed with and approved by the DISTRICT. GRANTEE shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon submission of any claim by GRANTEE or DISTRICT as an additional insured.

a. During the performance of all work described in **Exhibit A**, GRANTEE shall maintain, or require that all sub-contractors hired by GRANTEE to perform work on the project maintain, the following insurance coverages:

(1) Workers' Compensation Insurance in accordance with the provisions of section 3700 of the Labor Code.

GRANTEE shall require any sub-contractors to provide workers' compensation for all of the subcontractors' employees, unless the subcontractors' employees are covered

by the insurance afforded by GRANTEE. If any class of employees engaged in work or services performed under this Agreement is not covered by California Labor Code section 3700, GRANTEE shall provide and/or require each subcontractor to provide adequate insurance for the coverage of employees not otherwise covered.

GRANTEE shall also maintain employer's liability insurance with limits of one million dollars (\$1,000,000) for bodily injury or disease.

(2) Commercial General Liability Insurance, including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement), Personal Injury (including bodily injury and death), and Property Damage for liability arising out of the GRANTEE's performance of work under this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

(3) Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering the equipment to be purchased under this Agreement, with coverage equal to the policy limits, which shall not be less than one million dollars (\$1,000,000) each occurrence.

(4) The Commercial General Liability and Automobile Liability Insurance required in this subparagraph a. shall include an endorsement naming the DISTRICT and DISTRICT's Board members, officials, officers, agents and employees as additional insureds for liability arising out of this Agreement and any operations related thereto. Said endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 11 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 11 85.

(5) Any self-insured retentions in excess of \$100,000 must be declared on the Certificate of Insurance or other documentation provided to DISTRICT and must be approved by the APCO for DISTRICT.

b. Prior to GRANTEE commencing any of its obligations under this Agreement, evidence of insurance in compliance with the requirements above shall be furnished to the DISTRICT by Certificate of Insurance. Receipt of evidence of insurance that does not comply with above requirements shall not constitute a waiver of the insurance requirements set forth above.

c. Cancellation of Insurance – All insurance coverages required under this Agreement shall be maintained until the completion of all work to be performed hereunder, and shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice by GRANTEE in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. GRANTEE (and any sub-contractors hired by GRANTEE) shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

d. All insurance shall be issued by a company or companies listed in the current “Best’s Key Rating Guide” publication with a minimum of an “A-; VII” rating, or in special circumstances, be pre-approved by the DISTRICT.

e. If GRANTEE is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, GRANTEE shall provide coverage equivalent to the insurance coverages and endorsements required above. The DISTRICT will not accept such coverage unless the DISTRICT determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by GRANTEE is equivalent to the above-required coverages.

f. All insurance afforded by GRANTEE, and any sub-contractors hired by GRANTEE, pursuant to this Agreement shall be primary to and not contributing to any other insurance or self-insurance maintained by DISTRICT. An endorsement shall be provided on all policies which shall waive any right of recovery (waiver of subrogation) against the DISTRICT. A waiver of subrogation is only required when GRANTEE’s personnel deliver services or perform services for DISTRICT while on DISTRICT property.

g. Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve GRANTEE for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude the DISTRICT from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.

h. Failure by GRANTEE or any sub-contractors hired by GRANTEE to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by GRANTEE. DISTRICT, at its sole option, may terminate this Agreement and obtain damages from GRANTEE resulting from said breach. Alternatively, DISTRICT may purchase such required insurance coverage, and without further notice to GRANTEE, DISTRICT shall deduct from sums due to GRANTEE any premiums and associated costs advanced or paid by DISTRICT for such insurance. If the balance of monies obligated to GRANTEE pursuant to this Agreement is insufficient to reimburse DISTRICT for the premiums and any associated costs, GRANTEE agrees to reimburse DISTRICT for the premiums and pay for all costs associated with the purchase of said insurance. Any failure by DISTRICT to take this alternative action shall not relieve GRANTEE of its obligation to obtain and maintain the insurance coverages required by this Agreement.

12. Termination.

a. Breach of Agreement - The DISTRICT may immediately suspend or terminate this Agreement, in whole or in part, where in the determination of the DISTRICT, CONTRACTOR has:

- (1) Illegally or improperly used funds;
- (2) Failed to comply with any term of this Agreement;
- (3) Submitted to the DISTRICT a substantially incorrect or incomplete report;
or
- (4) Improperly performed services.

In no event shall any payment by the DISTRICT constitute a waiver by the DISTRICT of any breach of this Agreement or any default, which may then exist on the part of the GRANTEE. Neither shall such payment impair or prejudice any remedy available to the DISTRICT with respect to the breach or default. The DISTRICT shall have the right to demand of the GRANTEE the repayment to the DISTRICT of any funds disbursed to the GRANTEE under this Agreement which in the judgment of the DISTRICT were not expended in accordance with the terms of this Agreement. The GRANTEE shall promptly refund any such funds upon demand. In addition to immediate suspension or termination, DISTRICT may impose any other remedies available at law, in equity, or otherwise specified in this Agreement.

b. Without Cause - DISTRICT may terminate this Agreement at any time upon giving GRANTEE at least thirty (30) days' advance written notice of its intention to terminate. In such case, the GRANTEE shall, subject to **Section 3**, be paid for all actual costs incurred up to the time of the termination.

c. Early Termination – Provisions of this Agreement may be terminated prior to completion of the term if vehicle becomes inoperable through mechanical failure of components or systems directly related to the use of the vehicle, and such failure is not caused by GRANTEE's negligence, misuse, or malfeasance. GRANTEE shall submit written documentation supporting any basis for early termination for the approval of DISTRICT.

d. Reimbursement for Early Termination - GRANTEE is obligated to maintain and operate equipment for five (5) consecutive years. Should GRANTEE desire to terminate this Agreement prior to the end date for reasons other than those stated in **subparagraph c.** above, GRANTEE shall reimburse DISTRICT for a prorated share of the funds provided under this Agreement.

e. The prorated share for which GRANTEE shall be liable shall be 100% if the termination occurs within the first year of the five (5) year period; 80% if termination occurs between years one (1) and two (2); 60% between years two (2) and three (3); 40% between years three (3) and four (4); and 20% between years four (4) and five (5). The reimbursable amount shall be paid to DISTRICT within sixty (60) days of the termination date.

13. **Notices.** All notices required or provided for in this Agreement shall be provided to the Parties at the following addresses, by personal delivery or deposit in the U.S. Mail, postage prepaid, registered or certified mail, addressed as specified below. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices shall be deemed received five (5) days after deposit. A Party may change the address to which notice is to be given by giving notice as provided above.

To DISTRICT

Gary Ray, Jr., APCO
Eastern Kern Air Pollution Control Dist.
2700 M Street, Suite 302
Bakersfield, CA 93301

To GRANTEE

Brian A. Cain
29835 Highway 178
Onyx, CA 93255

Nothing in this Agreement shall be construed to prevent or render ineffective delivery of notices required or permitted under this Agreement by personal service.

14. **Conflict of Interest.** The Parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees. GRANTEE agrees that they are unaware of any financial or economic interest of any public officer or employee of the DISTRICT relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, the DISTRICT may immediately terminate this Agreement by giving written notice thereof. GRANTEE shall comply with the requirements of Government Code section 87100 et seq. during the term of this Agreement.
15. **Sole Agreement.** This document contains the entire agreement of the Parties relating to the services, rights, obligations, and covenants contained herein and assumed by the Parties respectively. No inducements, representations, or promises have been made, other than those recited in this Agreement. No oral promise, modification, change, or inducement shall be effective or given any force or effect.
16. **Authority to Bind DISTRICT.** It is understood that GRANTEE, in GRANTEE's performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has no authority to bind DISTRICT to any agreements or undertakings.
17. **Modifications of Agreement.** This Agreement may be modified in writing only, signed by the Parties in interest at the time of the modification.
18. **Nonwaiver.** No covenant or condition of this Agreement can be waived except by the written consent of DISTRICT. Forbearance or indulgence by DISTRICT in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by GRANTEE. DISTRICT shall be entitled to invoke any remedy available to DISTRICT under this Agreement or by law or in equity despite said forbearance or indulgence.
19. **Choice of Law/Venue.** The Parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the State of California. This Agreement has been entered into and is to be performed in the County of Kern. Accordingly, the Parties agree that the venue of any action relating to this Agreement shall be in the County of Kern.
20. **Confidentiality.** GRANTEE shall not, without the written consent of the DISTRICT, communicate confidential information, designated in writing or identified in this Agreement as such, to any third party and shall protect such information from inadvertent disclosure to any third party in the same manner that they protect their own confidential information, unless such disclosure is required in response to a validly issued subpoena or other process of law. The provisions of this paragraph shall survive the termination of this Agreement.
21. **Enforcement of Remedies.** No right or remedy herein conferred on or reserved to DISTRICT is exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing by law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time.

22. **Severability**. Should any part, term, portion, or provision of this Agreement be decided finally to be in conflict with any law of the United States or the State of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the agreement that the Parties intended to enter into in the first instance.
23. **Compliance with Law**. GRANTEE shall observe and comply with all applicable local, state, and federal laws, ordinances, rules, and regulations now in effect or hereafter enacted, each of which are hereby made a part hereof and incorporated herein by reference.
24. **Captions and Interpretation**. Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provisions of this Agreement shall be interpreted for or against a Party because that Party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
25. **Time of Essence**. Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof, and each such provision is hereby made and declared to be a material, necessary, and essential part of this Agreement.
26. **Counterparts**. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
27. **Nondiscrimination**. Neither GRANTEE, nor any officer, agent, employee, servant, or subcontractor of GRANTEE, shall discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, or sex, either directly, indirectly, or through contractual or other arrangements.
28. **Non-Collusion Covenant**. GRANTEE represents and agrees that it has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of this Agreement with DISTRICT. GRANTEE has received from DISTRICT no incentive or special payments, nor considerations not related to the provision of services under this Agreement.
29. **Political Activity and Lobbying Prohibited**. None of the funds, materials, property, or services provided under this Agreement shall be used for any political activity, or to further the election or defeat of any candidate for public office contrary to federal or state laws, statutes, regulations, rules, or guidelines. In addition, none of the funds provided under this Agreement shall be used for publicity, lobbying, or propaganda purposes designed to support or defeat legislation before the Congress of the United States of America or the Legislature of the State of California.
30. **No Third Party Rights**. Other than as expressly set forth herein, this Agreement will not be deemed to provide third parties with any remedy, claim, right of action, or other right.

31. **Compliance with IRCA.** GRANTEE acknowledges that GRANTEE, and all subcontractors hired by GRANTEE to perform services under this Agreement, are aware of and understand the Immigration Reform and Control Act (IRCA). GRANTEE is and shall remain in compliance with the IRCA and shall ensure that any subcontractors hired by GRANTEE to perform services under this Agreement are in compliance with IRCA. In addition, GRANTEE agrees to indemnify, defend, and hold harmless DISTRICT, its agents, officers, and employees, from any liability, damages, or causes of action arising out of or relating to any claims that GRANTEE's employees, or the employees of any subcontractor hired by GRANTEE, are not authorized to work in the United States for GRANTEE or its subcontractor and/or any other claims based upon alleged IRCA violations committed by GRANTEE or GRANTEE's subcontractor(s).

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32. **Signature Authority.** Each Party has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement.

IN WITNESS TO WHICH, each Party to this Agreement has signed this Agreement upon the date indicated, and agrees, for itself, its employees, officers, partners, and successors, to be fully bound by all terms and conditions of this Agreement.

**EASTERN KERN AIR POLLUTION
CONTROL DISTRICT**

BRIAN A. CAIN

By _____
Chairman, District Board
"DISTRICT"

By _____
Brian A. Cain
"GRANTEE"

APPROVED AS TO CONTENT:
Air Pollution Control District

APPROVED AS TO FORM:
Agency Attorney

By _____
Gary Ray, Jr., APCO

By _____
Attorney

APPROVED AS TO FORM:
Office of the County Counsel

By _____
Phillip Hall, Deputy

EXHIBIT A

AGREEMENT No. 11-002-2024

Project Location: Equipment is located and primarily used in Onyx, CA.

Description of Project: DISTRICT will provide Carl Moyer funds to replace a 1990, diesel-fueled, Tier 0, Bobcat, VIN 512219299, used exclusively for ranching and farming activities, with a new Certified Tier IV, compact wheeled loader.

Project Implementation Schedule: Old equipment shall be replaced by November 13, 2025.

Allowable Expenditure: DISTRICT will pay up to a maximum of \$52,126.00 of the eligible costs, not to exceed 80% of the total project cost associated with replacing the 1990, Bobcat as identified in the Description of Project above.

GRANTEE is responsible for any project costs exceeding the maximum DISTRICT costs specified above.

Equipment and Recordkeeping Requirements:

1. GRANTEE shall notify DISTRICT upon receipt of new equipment.
2. GRANTEE shall destroy replaced (old) equipment in accordance with **Section 5, Destruction of Replaced Equipment** prior to reimbursement.
3. DISTRICT shall conduct inspection to verify operation of new equipment and destruction of old equipment prior to reimbursement.
4. GRANTEE shall maintain and operate new equipment for at least five (5) consecutive years.
5. GRANTEE shall report annual hours of operation to DISTRICT by January 31 of each year in accordance with **Section 7, Reporting Requirements**.
6. DISTRICT staff shall have rite-of-passage for periodic inspections.



Eastern Kern

Air Pollution Control District

Gary Ray, Jr.
Air Pollution Control Officer

November 13, 2024

Board of Directors
Eastern Kern APCD
2700 "M" Street, Suite 302
Bakersfield, California 93301

SUBJECT: Carl Moyer Program Grant Agreement with Tracy Cartwright to Replace a Diesel-Fueled Kubota Tractor

Honorable Board:

Tracy Cartwright (Grantee) has applied for funding through the Eastern Kern Air Pollution Control District (District) Carl Moyer Program (CMP). The CMP provides funding for the voluntary retirement and replacement of eligible high-emitting diesel-fueled equipment.

The Grantee has proposed a project that meets eligibility criteria of the CMP. Agreement 11-003-2024 will provide up to \$31,228.00 in CMP funds to replace a 1979, diesel-fueled, Tier 0, Kubota tractor with a new low-emitting, certified Tier IV tractor. The equipment is used 100 percent of the time within Eastern Kern for ranching and farming activities.

The Grantee is responsible for any project costs exceeding the District maximum funding amount. The old tractor will be permanently removed from service and salvaged once the new tractor has been purchased and placed in service. Staff recommends the project be approved for funding.

Three copies of the proposed agreement, a copy of which is attached, were sent to the Grantee to be approved by signature and are expected to be returned to the District prior to the Board Meeting. If any significant changes are identified by the Grantee, the item will be withdrawn and the Agreement will be held to the January 2025, Board Meeting.

IT IS RECOMMENDED your Board approve and authorize Chairman to sign Agreement 11-003-2024 with Tracy Cartwright for the purchase of a new low-emitting tractor.

Sincerely,

Gary Ray, Jr.
Air Pollution Control Officer

GR: JC: CB

AGREEMENT BETWEEN
EASTERN KERN AIR POLLUTION CONTROL DISTRICT
AND
TRACY CARTWRIGHT

THIS AGREEMENT is made and entered into this 13th day of November 2024, by and between the EASTERN KERN AIR POLLUTION CONTROL DISTRICT (“DISTRICT”), and TRACY CARTWRIGHT (“GRANTEE”). DISTRICT and GRANTEE are referred to individually as “Party” and collectively as “Parties.”

WITNESSETH:

WHEREAS:

- (a) The California Clean Air Act encourages local air pollution control districts to reduce emissions from motor vehicles and heavy duty engines and the State Implementation Plan (SIP), California’s plan to attain ambient air quality standards, includes motor vehicle and heavy duty engine emission reduction goals;
- (b) Starting in 1998, through the California budget process, funds have been allocated for the “Carl Moyer Memorial Air Quality Standards Attainment Program (hereinafter “CMP”), codified in California Health and Safety Code Section 44275 et seq.;
- (c) CMP guidelines provide a mechanism for the DISTRICT to provide funds for the repower or replace of older high-emitting heavy-duty diesel-fueled vehicles with new low-emitting engines and vehicles;
- (d) GRANTEE has proposed a project that meets the eligibility criteria of the DISTRICT and the CMP, and has been recommended for funding by the DISTRICT; and
- (e) GRANTEE represents that it is willing and able to perform the activities set forth herein;

NOW, THEREFORE, IT IS AGREED between the Parties as follows:

1. **Project.** GRANTEE shall perform all activities necessary to complete the project described in **Exhibit A**, which is attached hereto and incorporated herein by this reference. GRANTEE agrees to furnish all labor, materials, equipment, licenses, permits, fees, and other incidentals necessary to perform and complete, on schedule and in a professional manner, the activities described herein.

The purpose of this project is to reduce emissions from an older high-emitting diesel fueled backhoe through equipment replacement. To achieve this purpose, GRANTEE agrees to replace an existing 1979, diesel-fueled Tier 0, Kubota tractor with a new lower-emission certified Tier IV diesel fueled tractor, and maintain it for the duration of the Agreement.

GRANTEE is prohibited from removing the new vehicle from service during the term of this Agreement specified in **Section 6, Term**, unless the vehicle becomes inoperable through failure of components or systems, and these failures cannot be repaired, and such failure is not caused by GRANTEE's negligence, misuse, or malfeasance.

2. **Period of Performance/Timetable**. GRANTEE shall commence performance of work and diligently prosecute said work in accordance with the project implementation schedule and deadlines for performance indicated in **Exhibit A**, unless this Agreement is terminated sooner as provided for elsewhere in this Agreement.

3. **Payments**.

a. The total obligation of the DISTRICT under this Agreement shall not exceed thirty-one thousand two hundred twenty-eight dollars (\$31,228). GRANTEE shall, if necessary, obtain through other sources sufficient additional monies to fund the total cost of the project as outlined in **Exhibit A**. Upon request by DISTRICT, satisfactory written evidence of such funding commitments shall be provided to DISTRICT prior to the release by DISTRICT of any funds under this Agreement. In the event funding from other sources for the total cost of the project is not received by GRANTEE, DISTRICT reserves the right to terminate or renegotiate this Agreement. In that event, if requested by the DISTRICT, GRANTEE shall return any DISTRICT funds previously paid to GRANTEE.

b. Advanced payments shall not be permitted. Payments will be permitted only at such time as equivalent activities have been satisfactorily rendered. Claims and all supporting documentation shall be submitted directly to DISTRICT.

c. All invoices for payment shall be submitted in a form approved by the DISTRICT and shall contain a detailed description of the work completed for which payment is being requested, including all proper documentation and receipts of expenses incurred. Payment will be made to GRANTEE within thirty (30) days of receipt and approval of each invoice by the DISTRICT.

d. The amount to be paid to GRANTEE under this Agreement includes all sales and use taxes incurred pursuant to this Agreement, if any, including any such taxes due on equipment purchased by the GRANTEE. The GRANTEE shall not receive additional compensation for reimbursement of such taxes and shall not decrease work to compensate therefore.

e. Concurrently with the submission of any claim for payment, GRANTEE shall certify (through copies of invoices, issued checks, receipts, etc.) that complete payment has been made to any and all suppliers, sub-contractors or consultants who have provided materials or performed work for which payment is being requested by GRANTEE. It is understood that all costs and expenses incidental to GRANTEE's performance of services under this Agreement shall be borne exclusively by GRANTEE.

f. Any compensation which is not expended by GRANTEE pursuant to the terms and conditions of this Agreement by the project completion date shall automatically revert to the DISTRICT. Only expenditures incurred by the GRANTEE in the direct performance of this Agreement will be reimbursed by the DISTRICT. Only allowable expenditures, as

determined in the sole discretion of the DISTRICT, will be reimbursed by the DISTRICT. All final claims shall be submitted by GRANTEE within sixty (60) days following the final month of activities for which payment is claimed. No action will be taken by DISTRICT on claims submitted beyond the 60-day closeout period.

4. **Inspection, Audit, and Record Retention.** GRANTEE shall retain project records and allow DISTRICT, CARB, or their designated representatives to inspect the project as provided in **Exhibit A** attached hereto, during the entire contract term specified in **Section 6, Term**, of this Agreement.

Project records shall include, but not be limited to, resolution from a governing board (or a duly authorized official with authority to make financial decisions) authorizing the submittal of the application and identifying the individual authorized to implement the equipment replacement project, vendor quote(s), executed contract(s), copy of purchase order(s) for the new replacement equipment, copy of the CARB executive order for the new engine, invoices, proof of payment, copy of registration, and documentation of the disposal of the replaced (old) equipment.

5. **Destruction of Replaced Equipment.** Replaced (old) equipment and engine must be rendered permanently inoperable to ensure that emission reductions are real. Equipment frame rails shall be completely cut, and engine shall have a hole knocked or cut in the engine block (at least 3 inches in diameter). GRANTEE may also take replaced equipment to a certified salvage facility to be dismantled. Dismantle means “to punch, crush, stamp, hammer, shred, or otherwise render permanently and irreversibly incapable of functioning as originally intended.” No reimbursement shall be made until GRANTEE provides proof to the DISTRICT that the old equipment has been destroyed.

6. **Term.** This Agreement shall be deemed in force as of the date first written above. The Agreement shall remain in effect until GRANTEE has operated the new equipment for three (3) consecutive years and has maintained records per **Section 4, Inspection, Audit, and Record Retention** for an additional two years.

7. **Assignment.** GRANTEE shall not assign, sublet, or transfer this Agreement, or any part hereof. GRANTEE shall not assign any monies due or which become due to GRANTEE under this Agreement without the prior express and written approval by the DISTRICT.

8. **Negation of Partnership.** In performance of all services under this Agreement, GRANTEE shall be, and acknowledges that GRANTEE is, in fact and law, an independent contractor and not an agent or employee of DISTRICT. GRANTEE has and retains the right to exercise full supervision and control of the manner and methods by which GRANTEE shall perform its work under this Agreement. GRANTEE retains full supervision and control over the employment, direction, compensation and discharge of all persons assisting GRANTEE in the performance of work hereunder. However, DISTRICT shall retain the right to administer this Agreement so as to verify that GRANTEE is performing its obligations in accordance with the terms and conditions thereof. With respect to GRANTEE employees, if any, GRANTEE shall be solely responsible for payment of wages, benefits and other compensation, compliance with all occupational safety, welfare, and civil rights laws, tax withholding and payment of employee taxes, whether federal, state, or local, and compliance with any and all other laws regulating employment.

9. **Disclosure Statement.** The GRANTEE certifies that no other requests for grant or incentive funding for the project, described in **Exhibit A** of this Agreement, have been submitted or will be submitted to any other party, including but not limited to vehicle dealers, vehicle manufacturers, other air districts, the ARB, or any other government agency. If the GRANTEE or any other third party designee is found to have submitted multiple applications or signed multiple agreements for this project without disclosing the information to the DISTRICT, the DISTRICT will pursue at least one or more of the following actions:

- a. The GRANTEE may be disqualified from all DISTRICT funding sources for this project; and
- b. The GRANTEE may be banned from submitting future applications to any and all CMP, AB 923, or MCAP solicitations; and
- c. The DISTRICT may seek civil penalties against the GRANTEE for such conduct.

10. **Indemnification.** GRANTEE agrees to indemnify, defend, and hold harmless DISTRICT and DISTRICT's agents, Board members, elected and appointed officials and officers, employees, volunteers, and authorized representatives from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, and expenses (including, but not limited to, reasonable attorneys' fees of County Counsel and counsel retained by DISTRICT, expert fees, costs of staff time, and investigation costs) of whatever kind or nature that arise out of or are in any way connected with any act or omission of GRANTEE or GRANTEE's officers, agents, employees, independent contractors, sub-contractors of any tier, or authorized representatives. Without limiting the generality of the foregoing, the same shall include injury or death to any person or persons; damage to any property, regardless of where located, including the property of DISTRICT; and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Agreement on behalf of GRANTEE by any person or entity.

11. **Insurance.** GRANTEE, in order to protect DISTRICT and its Board members, officials, agents, officers, and employees against all claims and liability for death, injury, loss and damage as a result of GRANTEE actions in connection with the performance of GRANTEE obligations, as required in this Agreement, shall secure and maintain insurance as described below. GRANTEE shall not perform any work under this Agreement until GRANTEE has obtained all insurance required under this section and the required certificates of insurance have been filed with and approved by the DISTRICT. GRANTEE shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon submission of any claim by GRANTEE or DISTRICT as an additional insured.

a. During the performance of all work described in **Exhibit A**, GRANTEE shall maintain, or require that all sub-contractors hired by GRANTEE to perform work on the project maintain, the following insurance coverages:

(1) Workers' Compensation Insurance in accordance with the provisions of section 3700 of the Labor Code.

GRANTEE shall require any sub-contractors to provide workers' compensation for all of the subcontractors' employees, unless the subcontractors' employees are covered

by the insurance afforded by GRANTEE. If any class of employees engaged in work or services performed under this Agreement is not covered by California Labor Code section 3700, GRANTEE shall provide and/or require each subcontractor to provide adequate insurance for the coverage of employees not otherwise covered.

GRANTEE shall also maintain employer's liability insurance with limits of one million dollars (\$1,000,000) for bodily injury or disease.

(2) Commercial General Liability Insurance, including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement), Personal Injury (including bodily injury and death), and Property Damage for liability arising out of the GRANTEE's performance of work under this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

(3) Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering the equipment to be purchased under this Agreement, with coverage equal to the policy limits, which shall not be less than one million dollars (\$1,000,000) each occurrence.

(4) The Commercial General Liability and Automobile Liability Insurance required in this subparagraph a. shall include an endorsement naming the DISTRICT and DISTRICT's Board members, officials, officers, agents and employees as additional insureds for liability arising out of this Agreement and any operations related thereto. Said endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 11 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 11 85.

(5) Any self-insured retentions in excess of \$100,000 must be declared on the Certificate of Insurance or other documentation provided to DISTRICT and must be approved by the APCO for DISTRICT.

b. Prior to GRANTEE commencing any of its obligations under this Agreement, evidence of insurance in compliance with the requirements above shall be furnished to the DISTRICT by Certificate of Insurance. Receipt of evidence of insurance that does not comply with above requirements shall not constitute a waiver of the insurance requirements set forth above.

c. Cancellation of Insurance – All insurance coverages required under this Agreement shall be maintained until the completion of all work to be performed hereunder, and shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice by GRANTEE in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. GRANTEE (and any sub-contractors hired by GRANTEE) shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

d. All insurance shall be issued by a company or companies listed in the current “Best’s Key Rating Guide” publication with a minimum of an “A-; VII” rating, or in special circumstances, be pre-approved by the DISTRICT.

e. If GRANTEE is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, GRANTEE shall provide coverage equivalent to the insurance coverages and endorsements required above. The DISTRICT will not accept such coverage unless the DISTRICT determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by GRANTEE is equivalent to the above-required coverages.

f. All insurance afforded by GRANTEE, and any sub-contractors hired by GRANTEE, pursuant to this Agreement shall be primary to and not contributing to any other insurance or self-insurance maintained by DISTRICT. An endorsement shall be provided on all policies which shall waive any right of recovery (waiver of subrogation) against the DISTRICT. A waiver of subrogation is only required when GRANTEE’s personnel deliver services or perform services for DISTRICT while on DISTRICT property.

g. Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve GRANTEE for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude the DISTRICT from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.

h. Failure by GRANTEE or any sub-contractors hired by GRANTEE to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by GRANTEE. DISTRICT, at its sole option, may terminate this Agreement and obtain damages from GRANTEE resulting from said breach. Alternatively, DISTRICT may purchase such required insurance coverage, and without further notice to GRANTEE, DISTRICT shall deduct from sums due to GRANTEE any premiums and associated costs advanced or paid by DISTRICT for such insurance. If the balance of monies obligated to GRANTEE pursuant to this Agreement is insufficient to reimburse DISTRICT for the premiums and any associated costs, GRANTEE agrees to reimburse DISTRICT for the premiums and pay for all costs associated with the purchase of said insurance. Any failure by DISTRICT to take this alternative action shall not relieve GRANTEE of its obligation to obtain and maintain the insurance coverages required by this Agreement.

12. Termination.

a. Breach of Agreement - The DISTRICT may immediately suspend or terminate this Agreement, in whole or in part, where in the determination of the DISTRICT, CONTRACTOR has:

- (1) Illegally or improperly used funds;
- (2) Failed to comply with any term of this Agreement;
- (3) Submitted to the DISTRICT a substantially incorrect or incomplete report;
or
- (4) Improperly performed services.

In no event shall any payment by the DISTRICT constitute a waiver by the DISTRICT of any breach of this Agreement or any default, which may then exist on the part of the GRANTEE. Neither shall such payment impair or prejudice any remedy available to the DISTRICT with respect to the breach or default. The DISTRICT shall have the right to demand of the GRANTEE the repayment to the DISTRICT of any funds disbursed to the GRANTEE under this Agreement which in the judgment of the DISTRICT were not expended in accordance with the terms of this Agreement. The GRANTEE shall promptly refund any such funds upon demand. In addition to immediate suspension or termination, DISTRICT may impose any other remedies available at law, in equity, or otherwise specified in this Agreement.

b. Without Cause - DISTRICT may terminate this Agreement at any time upon giving GRANTEE at least thirty (30) days' advance written notice of its intention to terminate. In such case, the GRANTEE shall, subject to **Section 3**, be paid for all actual costs incurred up to the time of the termination.

c. Early Termination – Provisions of this Agreement may be terminated prior to completion of the term if vehicle becomes inoperable through mechanical failure of components or systems directly related to the use of the vehicle, and such failure is not caused by GRANTEE's negligence, misuse, or malfeasance. GRANTEE shall submit written documentation supporting any basis for early termination for the approval of DISTRICT.

d. Reimbursement for Early Termination - GRANTEE is obligated to maintain and operate equipment for three (3) consecutive years. Should GRANTEE desire to terminate this Agreement prior to the end date for reasons other than those stated in **subparagraph c.** above, GRANTEE shall reimburse DISTRICT for a prorated share of the funds provided under this Agreement.

e. The prorated share for which GRANTEE shall be liable shall be 100% if the termination occurs within the first year of the three (3) year reporting period; 60% if termination occurs between years one (1) and two (2); 30% between years two (2) and three (3). The reimbursable amount shall be paid to DISTRICT within sixty (60) days of the termination date.

13. **Notices.** All notices required or provided for in this Agreement shall be provided to the Parties at the following addresses, by personal delivery or deposit in the U.S. Mail, postage prepaid, registered or certified mail, addressed as specified below. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices shall be deemed received five (5) days after deposit. A Party may change the address to which notice is to be given by giving notice as provided above.

To DISTRICT

Gary Ray, Jr., APCO
Eastern Kern Air Pollution Control Dist.
2700 M Street, Suite 302
Bakersfield, CA 93301

To GRANTEE

Tracy Cartwright
18518 Pellisier Road
Tehachapi, CA 93561

Nothing in this Agreement shall be construed to prevent or render ineffective delivery of notices required or permitted under this Agreement by personal service.

14. **Conflict of Interest.** The Parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees. GRANTEE agrees that they are unaware of any financial or economic interest of any public officer or employee of the DISTRICT relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, the DISTRICT may immediately terminate this Agreement by giving written notice thereof. GRANTEE shall comply with the requirements of Government Code section 87100 et seq. during the term of this Agreement.
15. **Sole Agreement.** This document contains the entire agreement of the Parties relating to the services, rights, obligations, and covenants contained herein and assumed by the Parties respectively. No inducements, representations, or promises have been made, other than those recited in this Agreement. No oral promise, modification, change, or inducement shall be effective or given any force or effect.
16. **Authority to Bind DISTRICT.** It is understood that GRANTEE, in GRANTEE's performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has no authority to bind DISTRICT to any agreements or undertakings.
17. **Modifications of Agreement.** This Agreement may be modified in writing only, signed by the Parties in interest at the time of the modification.
18. **Nonwaiver.** No covenant or condition of this Agreement can be waived except by the written consent of DISTRICT. Forbearance or indulgence by DISTRICT in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by GRANTEE. DISTRICT shall be entitled to invoke any remedy available to DISTRICT under this Agreement or by law or in equity despite said forbearance or indulgence.
19. **Choice of Law/Venue.** The Parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the State of California. This Agreement has been entered into and is to be performed in the County of Kern. Accordingly, the Parties agree that the venue of any action relating to this Agreement shall be in the County of Kern.
20. **Confidentiality.** GRANTEE shall not, without the written consent of the DISTRICT, communicate confidential information, designated in writing or identified in this Agreement as such, to any third party and shall protect such information from inadvertent disclosure to any third party in the same manner that they protect their own confidential information, unless such disclosure is required in response to a validly issued subpoena or other process of law. The provisions of this paragraph shall survive the termination of this Agreement.
21. **Enforcement of Remedies.** No right or remedy herein conferred on or reserved to DISTRICT is exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing by law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time.

22. **Severability**. Should any part, term, portion, or provision of this Agreement be decided finally to be in conflict with any law of the United States or the State of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the agreement that the Parties intended to enter into in the first instance.
23. **Compliance with Law**. GRANTEE shall observe and comply with all applicable local, state, and federal laws, ordinances, rules, and regulations now in effect or hereafter enacted, each of which are hereby made a part hereof and incorporated herein by reference.
24. **Captions and Interpretation**. Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provisions of this Agreement shall be interpreted for or against a Party because that Party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
25. **Time of Essence**. Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof, and each such provision is hereby made and declared to be a material, necessary, and essential part of this Agreement.
26. **Counterparts**. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
27. **Nondiscrimination**. Neither GRANTEE, nor any officer, agent, employee, servant, or subcontractor of GRANTEE, shall discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, or sex, either directly, indirectly, or through contractual or other arrangements.
28. **Non-Collusion Covenant**. GRANTEE represents and agrees that it has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of this Agreement with DISTRICT. GRANTEE has received from DISTRICT no incentive or special payments, nor considerations not related to the provision of services under this Agreement.
29. **Political Activity and Lobbying Prohibited**. None of the funds, materials, property, or services provided under this Agreement shall be used for any political activity, or to further the election or defeat of any candidate for public office contrary to federal or state laws, statutes, regulations, rules, or guidelines. In addition, none of the funds provided under this Agreement shall be used for publicity, lobbying, or propaganda purposes designed to support or defeat legislation before the Congress of the United States of America or the Legislature of the State of California.
30. **No Third Party Rights**. Other than as expressly set forth herein, this Agreement will not be deemed to provide third parties with any remedy, claim, right of action, or other right.

31. **Compliance with IRCA.** GRANTEE acknowledges that GRANTEE, and all subcontractors hired by GRANTEE to perform services under this Agreement, are aware of and understand the Immigration Reform and Control Act (IRCA). GRANTEE is and shall remain in compliance with the IRCA and shall ensure that any subcontractors hired by GRANTEE to perform services under this Agreement are in compliance with IRCA. In addition, GRANTEE agrees to indemnify, defend, and hold harmless DISTRICT, its agents, officers, and employees, from any liability, damages, or causes of action arising out of or relating to any claims that GRANTEE's employees, or the employees of any subcontractor hired by GRANTEE, are not authorized to work in the United States for GRANTEE or its subcontractor and/or any other claims based upon alleged IRCA violations committed by GRANTEE or GRANTEE's subcontractor(s).

Remainder of Page Intentionally Left Blank

32. **Signature Authority.** Each Party has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement.

IN WITNESS TO WHICH, each Party to this Agreement has signed this Agreement upon the date indicated, and agrees, for itself, its employees, officers, partners, and successors, to be fully bound by all terms and conditions of this Agreement.

**EASTERN KERN AIR POLLUTION
CONTROL DISTRICT**

By _____
Chairman, District Board
"DISTRICT"

TRACY CARTWRIGHT

By _____
Tracy Cartwright
"GRANTEE"

APPROVED AS TO CONTENT:
Air Pollution Control District

By _____
Gary Ray, Jr., APCO

APPROVED AS TO FORM:
Agency Attorney

By _____
Attorney

APPROVED AS TO FORM:
Office of the County Counsel

By _____
Phillip Hall, Deputy

EXHIBIT A

AGREEMENT No. 11-003-2024

Project Location: Equipment is located and primarily used in Tehachapi, CA.

Description of Project: DISTRICT will provide Carl Moyer funds to replace a 1979, diesel-fueled, Tier 0, Kubota tractor, VIN 11062, used exclusively for ranching and farming activities, with a new Certified Tier IV, tractor.

Project Implementation Schedule: Old equipment shall be replaced by November 13, 2025.

Allowable Expenditure: DISTRICT will pay up to a maximum of \$31,228.00 of the eligible costs, not to exceed 80% of the total project cost associated with replacing the 1979, Kubota tractor as identified in the Description of Project above.

GRANTEE is responsible for any project costs exceeding the maximum DISTRICT costs specified above.

Equipment and Recordkeeping Requirements:

1. GRANTEE shall notify DISTRICT upon receipt of new equipment.
2. GRANTEE shall destroy replaced (old) equipment in accordance with **Section 5, Destruction of Replaced Equipment** prior to reimbursement.
3. DISTRICT shall conduct inspection to verify operation of new equipment and destruction of old equipment prior to reimbursement.
4. GRANTEE shall maintain and operate new equipment for at least three (3) consecutive years.
5. GRANTEE shall report annual hours of operation to DISTRICT by January 31 of each year in accordance with **Section 7, Reporting Requirements**.
6. DISTRICT staff shall have rite-of-passage for periodic inspections.



Eastern Kern

Air Pollution Control District

Gary Ray, Jr.
Air Pollution Control Officer

November 13, 2024

Board of Directors
Eastern Kern APCD
2700 "M" Street, Suite 302
Bakersfield, California 93301

SUBJECT: List of Regulatory Control Measures to be Considered for Amendment or Adoption During 2025

Honorable Board:

Section 40923 of the California Health and Safety Code requires all California air districts to publish a list of Regulatory Control Measures (RCM) each year, which may be considered for amendment or adoption for the calendar year.

Attached is the Eastern Kern Air Pollution Control District (District) 2025 RCM list that will be published in the following newspapers before December 31, 2024: Bakersfield Californian, Daily Independent, Tehachapi News, and Mojave Desert News.

IT IS RECOMMENDED your Board receive and file District list of 2025 Regulatory Control Measures, which could be considered for amendment or adoption during calendar year 2025.

Sincerely,

Gary Ray, Jr.
Air Pollution Control Officer

GR: JC: CB



Eastern Kern

Air Pollution Control District

Gary Ray, Jr.
Air Pollution Control Officer

November 13, 2024

Board of Directors
Eastern Kern APCD
2700 "M" Street, Suite 302
Bakersfield, California 93301

SUBJECT: 2025 Proposed Board Meeting Dates and Locations

Honorable Board:

Below are the proposed dates and locations for the Eastern Kern Air Pollution Control District (District) Board of Directors meetings for 2025.

| District Board of Directors Meetings | | | |
|---|---------------------------|---------------------------------------|-----------------------|
| Proposed Meeting Dates | In Person Location | Via Zoom in District Locations | Different Date |
| January 9, 2025 | Tehachapi | Ridgecrest City Offices | |
| March 6, 2025 | Tehachapi | Ridgecrest City Offices | |
| May 1, 2025 | Tehachapi | Ridgecrest City Offices | |
| July 24, 2025 | Tehachapi | Ridgecrest City Offices | |
| September 4, 2025 | Tehachapi | Ridgecrest City Offices | |
| November 6, 2025 | Tehachapi | Ridgecrest City Offices | |

IT IS RECOMMENDED your Board authorize the Air Pollution Control Officer make the calendar year 2025 Board of Directors meeting schedule the above proposed dates or different dates as approved by your Board.

Sincerely,

Gary Ray, Jr.
Air Pollution Control Officer

GR: cb

SUMMARY OF PROCEEDINGS

BOARD OF DIRECTORS EASTERN KERN AIR POLLUTION CONTROL DISTRICT

Regular Meeting
Thursday, September 5, 2024
2:00 P.M.

Location: Eastern Kern Air Pollution Control District Board Room
414 W. Tehachapi Blvd., Suite D, Tehachapi, CA 93561

Ridgecrest City Hall
100 W. California Ave., Ridgecrest, CA 93555

Zoom Video Conferencing - <https://zoom.us>
Meeting ID # 826 861 7254

DISTRICT TO RECONVENE

DIRECTORS: Davies (Chairman), Creighton, Gorman, and Peters

ROLL CALL: 4 Present (Davies, Creighton -Tehachapi) (Gorman, Peters - Zoom)

SALUTE TO FLAG: Director Gorman

AIR POLLUTION CONTROL OFFICER: Gary Ray, Jr.

LEGAL COUNSEL: Phillip Hall (Via Zoom)

BOARD SECRETARY: Bernave Garcia

BOARD ACTION SHOWN AFTER EACH ITEM IN CAPS. The vote is placed in **bold** below each Board Action. For example, **Creighton-Peters** denotes Director Creighton made the motion and Director Peters seconded the motion.

CONSENT AGENDA/OPPORTUNITY FOR PUBLIC COMMENT: All items listed with a (-CA) were considered routine and approved by one motion.

Creighton - Peters: Roll call vote: Davies – Aye, Creighton – Aye, Gorman – Aye, Peters– Aye, 4 – Ayes

PUBLIC PRESENTATIONS

- 1) This portion of the meeting is reserved for persons to address the Board on any matter not on this agenda but under jurisdiction of the Board. Board members may respond briefly to statements made or questions posed. They may ask questions for clarification; make referrals to staff for information or request staff to report to the Board at a later meeting. In addition, the Board may take action to direct staff to place a matter of business on a future agenda. **SPEAKERS ARE LIMITED TO TWO MINUTES. PLEASE STATE YOUR NAME BEFORE MAKING YOUR PRESENTATION. THANK YOU. NO ONE HEARD.**

BOARD MEMBER PRESENTATIONS OR ANNOUNCEMENTS

- 2) On their own initiative, Board members may make brief announcements or brief reports on their own activities. They may ask questions for clarification, make referrals to staff or take action to have staff place a matter of business on a future agenda [Gov. Code Sec. 54954.2(a)].
NO ONE HEARD.

HEARINGS

- 3) Hearing to Consider Adoption of the Eastern Kern Air Pollution Control District’s Fiscal Year 2024-2025 Budget. – OPEN HEARING; RECEIVE PUBLIC COMMENT; CLOSE HEARING AND ADOPT THE RECOMMENDED BUDGET FOR FISCAL YEAR 2024-2025.
Creighton - Peters: Roll call vote: Davies – Aye, Creighton – Aye, Gorman – Aye, Peters– Aye, 4 – Ayes
- 4) Hearing to Present Eastern Kern APCD’s Annual AB2588 (Air Toxics) Report – OPEN HEARING; RECEIVE PUBLIC COMMENT; CLOSE HEARING; RECEIVE AND FILE THE DISTRICT’S ANNUAL AB2588 (AIR TOXICS) REPORT; AND DIRECT STAFF TO DISTRIBUTE REPORT
Creighton - Peters: Roll call vote: Davies – Aye, Creighton – Aye, Gorman – Aye, Peters– Aye, 4 – Ayes

DISTRICT REQUESTS

- 5-CA) Memorandum of Understanding (MOU) from California Air Pollution Control Officers Association for the District to receive EPA 105 Grant Funds – AUTHORIZE THE AIR POLLUTION CONTROL OFFICER TO SIGN THE MOU WITH THE CALIFORNIA AIR POLLUTION CONTROL OFFICERS ASSOCIATION, AND AUTHORIZE THE APCO TO DO ALL OTHER ACTS NECESSARY TO RECEIVE FUNDS FROM THE EPA 105 GRANT PROGRAM.
Creighton - Peters: Roll call vote: Davies – Aye, Creighton – Aye, Gorman – Aye, Peters– Aye, 4 – Ayes
- 6-CA) State Subvention Funds – AUTHORIZE THE AIR POLLUTION CONTROL OFFICER TO SIGN AND SUBMIT THE APPLICATION FOR STATE SUBVENTION FUNDS, AND TO TAKE ALL OTHER STEPS NECESSARY TO RECEIVE FUNDS.
Creighton - Peters: Roll call vote: Davies – Aye, Creighton – Aye, Gorman – Aye, Peters– Aye, 4 – Ayes

- 7-CA) 2025 DMV Grant Program Guidelines – APPROVE AND AUTHORIZE APCO TO IMPLEMENT NEW GUIDELINES.
Creighton - Peters: Roll call vote: Davies – Aye, Creighton – Aye, Gorman – Aye, Peters– Aye, 4 – Ayes
- 8-CA) Agreement No. 09-001-2024 with Joel Craig, Environmental Consultant for Data Processing and Training. Agreement costs shall not exceed \$150,000 for the five-year term of the agreement. – APPROVE AND AUTHORIZE CHAIRMAN TO SIGN AGREEMENT NO. 09-001-2024.
Creighton - Peters: Roll call vote: Davies – Aye, Creighton – Aye, Gorman – Aye, Peters– Aye, 4 – Ayes

MATTERS FOR EXECUTIVE APPROVAL

- 9-CA) Summary of Proceedings for Meeting of July 25, 2024 – APPROVE AND FILE.
Creighton - Peters: Roll call vote: Davies – Aye, Creighton – Aye, Gorman – Aye, Peters– Aye, 4 – Ayes

DOCUMENTS FOR FILING

- 10-CA) DISTRICT Notice of Violation's update – RECEIVE AND FILE.
Creighton - Peters: Roll call vote: Davies – Aye, Creighton – Aye, Gorman – Aye, Peters– Aye, 4 – Ayes

DISTRICT UPDATES

- 11) APCO Report (Verbal)

APCO COMMENTED ON A BALANCE BUDGET FOR THE FISCAL YEAR 2024-2025. APCO ANNOUNCED THAT APPLICATIONS FOR THE UPCOMING INCENTIVE PROGRAMS WILL BE ACCEPTED ON OCTOBER 1, 2024. THESE INCENTIVE PROGRAMS INCLUDE THE DMV VOUCHER PROGRAM, WHICH PROVIDES ASSISTANCE IN THE PURCHASE OF NEW ELECTRIC VEHICLES; WOODSMOKE REDUCTION PROGRAM TO HELP RESIDENTS REPLACE THEIR OLDER, HIGH EMITTING WOOD-BURNING STOVES; AND THE DMV GRANT PROGRAM, WHICH PROVIDES FUNDING FOR ELIGIBLE PROJECTS SUCH AS ROAD PAVING, EV CHARGING STATIONS,

**AND EDUCATIONAL OUTREACH, AMONG OTHERS WHICH
ARE LISTED ON THE DISTRICT’S WEBSITE.**

ADJOURN TO THURSDAY, NOVEMBER 7, 2024, 2:00 PM, REGULAR
BOARD SESSION AT EASTERN KERN AIR POLLUTION CONTROL
DISTRICT BOARD ROOM, 414 W. TEHACHAPI BLVD., SUITE D,
TEHACHAPI, CA.

###

(District Seal)



Bernave Garcia, Board Secretary
Eastern Kern APCD



Michael Davies, Chairman
Eastern Kern APCD

NOTICE OF VIOLATIONS
Eastern Kern APCD

| Source Name | Rule/Reg # / Violation | Violation Date | NOV Date |
|-------------|------------------------|-------------------------|----------|
| 09112024DA | Eland II Solar/Kadu | Rule 402 & Rule 419 | 09/10/24 |
| 09252024MS1 | Sams Auto Body & RV | Rule 410.4 Section VI.A | 09/25/24 |
| | | | |
| | | | |