

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Draft Staff Report
Proposed Amended Rule 314 – Fees for Architectural Coatings

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ACRONYMS USED IN THIS REPORT

ACO	Averaging Compliance Option
AQER	Annual Quantity and Emissions Report
AQMP	Air Quality Management Plan
CEQA	California Environmental Quality Act
EPA	United States Environmental Protection Agency
MPC	Metallic Pigmented Coating
PAR	Proposed Amended Rule
SCAQMD	South Coast Air Quality Management District
SCE	Small Container Exemption
VOC	Volatile Organic Compound

EXECUTIVE SUMMARY

Rule 314 – Fees for Architectural Coatings, adopted by the Governing Board on June 6, 2008, sets fees for manufacturers of architectural coatings to recover the AQMD cost of regulating architectural coatings. Architectural coatings represent one of the largest VOC emission source categories regulated by the AQMD. When the rule was adopted, the manufacturers requested the ability to report numerous products on one line, also referred to as “grouping.” Staff experience, based on compliance reviews and audits of reports submitted, indicates that grouping of multiple products leads to lack of compliance verification.

Staff is proposing to remove the ability to use “grouping”, exempt small manufacturers, and clarify certain rule provisions.

The proposed amendments to Rule 314 will:

- Include private labelers in the Applicability section
- Add six definitions, amend two definitions, and delete one definition
- Remove the ability to group products
- Clarify the reporting requirements for multi-component coatings and coatings sold as concentrates
- Add a reporting requirement to indicate if a product was sold under the 4,000 foot exemption
- Require Big Box retailers to submit their annual reports to the District as well as the manufacturers
- Update the fee rate and remove the outdated phase-in rate
- Require manufacturers to pay the fee rate in effect for the year in which they are reporting and not the fee rate that was in effect when the sales and emissions actually occurred
- Clarify that once the distributors list has been submitted, only changes need to be submitted for subsequent years
- Amend the exemption for coatings containing less than 5g/L VOC of material and recycled coatings such that they are only exempt from the fees provided they submit their Annual Quantity and Emissions Report (AQER) by the time prescribed in subparagraph (i)(2)

- Exempt small manufacturers from fee requirements, provided they submit their AQER in the time prescribed in subparagraph (i)(2)
- Exempt coatings that are offered for sale in powder form, containing no polymer content, that are solely mixed with water prior to use from reporting requirements

BACKGROUND

Rule 314 affects about 200 architectural coatings manufacturers. Beginning in 2009 and each subsequent calendar year, Rule 314 requires architectural coatings manufacturers to report to SCAQMD the total annual quantity (in gallons) and emissions of each of their architectural products distributed or sold into or within the SCAQMD for use in the SCAQMD, during the previous calendar year. Fees are assessed on the manufacturers' reported annual quantity of architectural coatings as well as the cumulative VOC emissions from the reported annual quantity of coatings. Data collected from the manufacturers also provides AQMD with an annual emissions inventory that is used for planning purposes.

Rule 314 contains a fee exemption for architectural coatings containing 5 or less grams of VOC per liter of material and for sale of recycled coatings to further encourage the development, marketing, and use of lower-VOC and recycled coatings.

The following table summarizes the sales, emissions, and fees since rule implementation in 2009. The fee data includes fees collected during the fiscal year and not necessarily the fees that were generated by the sales and emissions for a particular reporting year. In the table below, there may be new companies that reported for previous years or paid penalties during a subsequent fiscal year. For example, a company brought into the system in 2011 that pays fees going back to 2008, all fees will show in the 2011 fiscal year.

Sales, Emissions and Fees by Year					
Year	Total Sales	Waterborne	Solvent Based	Emissions (tpd)	Fees Collected by Fiscal Year
2008	39,435,801	35,817,785	2,343,326	15.5	\$1,226,651
2009	34,166,695	31,338,195	1,606,233	12	\$1,445,715
2010	34,494,772	31,586,806	1,668,599	11.9	\$2,503,791
2011	38,084,334	34,656,353	2,019,224	12.7	\$2,808,927
2012*	35,105,489	32,239,536	1,589,770	10.6	\$2,104,360

***Year to date, not all manufacturers reported or paid at time the data was queried (June 6, 2013).**

When the rule was adopted, the intent was to strengthen the compliance review and to recover program costs of the architectural coatings program and provide an incentive for lower VOC formulations. The projected cost of the comprehensive program was approximately \$4.2 million, based on the 2004 sales volumes and emission estimates. The fees collected have been significantly below the projections due to the contraction in the architectural coatings market as a result of the recession and the reduction of emissions as a result of re-formulated coatings well below the compliance limits for most categories. While consumer awareness and demand for lower emitting products is one factor, staff believes the reduction in emissions is also in part due to design of the fee rate in Rule 314. The fees are bifurcated between sales-based and emissions-based, with an exemption from fees for coatings that contain less than 5 g/L material. This incentivizes manufacturers to formulate low-VOC coatings in order to reduce their fees. In some instances this resulted in manufacturers developing and marketing near-zero VOC coatings, now sold nationwide resulting in air quality benefits. This was the intent of the fee structure and staff is not proposing to raise the fees to meet the original projections. Staff has kept the cost of implementing the program down by not increasing resources as projected.

STAFF ASSESSMENT FOR THE PROPOSED AMENDMENTS

APPLICABILITY

For clarification, staff is proposing to include private labelers, who sell coating under their name but do not actually manufacture the coating, in the applicability section. Currently, Rule 314 applies only to manufacturers, the proposed amendment clarifies that it also applies to private labelers. If the product was toll manufactured, manufactured by a coatings manufacturer for another party, and sold by a private labeler, the private labeler whose name is on the label is ultimately responsible for reporting those sales. They can then arrange to have the toll manufacturer report those coatings, provided the coatings are reported and not double reported.

DEFINITIONS

Architectural Coatings

Staff is proposing to harmonize the definition of an Architectural Coating with the definition Rule 1113- Architectural Coatings (Rule 1113) amended in June 2011.

Architectural Coatings Manufacturer

Staff is proposing to amend the definition of an architectural coatings manufacturer, changing the name to Manufacturer and harmonizing the definition with Rule 1113.

Authorized Representative

Staff is proposing to add a definition for the Authorized Representative. This term is used in addition to the Responsible Party on the Form M, which is used to generate a SCAQMD manufacturers ID number. Subparagraph (d)(3) has been added to clarify the requirements for making changes to the Authorized Representative.

Concentrate

Staff is adding a definition for a coating sold as a concentrate that is diluted with water or an exempt compound. There has been confusion regarding how to report the VOC content and volume for coatings sold as concentrates with proposed revisions to section (e) to clarify requirements for reporting concentrates.

Multi-Component Coating

Staff is adding a definition for multi-component coatings as there has also been confusion regarding how to report their VOC content. Proposed revisions to section (e) contain additional guidance. The proposed definition is from existing Rule 1107 – Coating of Metal Parts and Products.

Product Line

The definition for a product line is being deleted as it is no longer necessary with the proposed elimination of grouping.

Private Labeler

Staff is adding a definition for a private labeler, since they are now being included in the proposed revisions to the Applicability section of the rule.

Recycled Coating

Staff is adding a definition for recycled coatings consistent with Rule 1113.

Stationary Structures

Staff is adding a definition for stationary structures for clarification as it is mentioned in the definition of an architectural coating. This definition is consistent with Rule 1113.

Toll Manufacturer

A toll manufacturer makes coatings that another entity sells. The rule referenced toll manufacturers and staff is adding a definition for clarification.

REQUIREMENT TO OBTAIN A MANUFACTURER IDENTIFICATION (ID) NUMBER

Staff is proposing to include language that the Responsible Party or Authorized Representative can be changed by submitting a new, signed Form M. The Form M is used initially when manufacturers apply for a manufacturer's ID number and to change either the Responsible Party or the Authorized Representative. The Authorized Representative is typically the person who compiles the data and submits the AQER. The authorized user for the online reporting program is also the Authorized Representative. Only one authorized user is allowed per facility in the program so as people leave an organization, it is common to change the Authorized Representative by submitted a new signed Form M. Access is not granted to the online reporting program until the District receives a signed Form M as the program contains confidential data,

especially sales volumes. There are no fees associated with changes to the Authorized Representative or the Responsible Party.

PROPOSED REVISIONS - AQER

Grouping

Staff is proposing to remove the ability for manufacturers to group their products in their AQER. The idea behind grouping was to allow the manufacturer to group multiple products on one line item provided the coatings:

- Belong to the same coating category in Rule 1113 Table of Standards,
- Have the same vehicle technology (solvent or water),
- Are of the same resin type,
- Are recommended for the same use (either interior, exterior or dual use),
- Have the same form (either single - or multiple - component form),
- Do not exceed a coating (regulatory) VOC range of 25 grams per liter between the highest and lowest coating in the group.

Grouping has led to compliance verification challenges when coatings are encountered in the field. Staff cannot confirm if a particular product has been reported when the manufacturer groups their products. In addition, audits have shown that manufacturers also have difficulty ungrouping the products reported when requested to validate the values reported in the AQER. Based on its program implementation experience, staff concludes that grouping complicates the reporting process and compliance verification.

Multi-Component Coatings and Coatings Sold as Concentrates

Staff is including guidance on the reporting of multi-component coatings and coatings sold as concentrates. In compliance checks over the years, staff has found several instances where coatings appeared to have been sold over the VOC limit when they were actually one part of a two part system or a coating sold as a concentrate. For multi-component coatings, part one and part two should be reported as separate line items but the VOC should be reported as recommended for use by the manufacturer (e.g. mixed). For concentrates, the VOC should be reported at the minimal dilution recommended (e.g. the highest VOC possible) and the volume reported should also include the volume at the minimal dilution recommended. This is consistent with the approach used in Rule 1171- Solvent Cleaning Operations and the Annual Emissions Reporting Program.

Flags in the Online Reporting Program

Staff is also including clarification regarding the possible flags that are available in the program. Clause (e)(1)(I)(iv) Other (with Explanation) is not an available option in the online reporting program. That clause is being replaced by low solids, which is an option in the program. Staff is also adding an option for manufacturers to indicate if high-VOC stains and lacquers were sold

using the 4,000 feet exemption. Staff is also proposing to add flags to indicate a product is a multi-component product or a product sold as a concentrate.

Manufacturers with No Sales

Staff is also adding clarification regarding manufacturers who have no sales for the prior calendar year. They must either submit a letter on company letterhead, signed by the Responsible Party, stating they had no sales or indicate that in the online reporting program. For companies who do not intend to sell architectural coatings into or within the District in the future, they can indicate that in writing so they do not have to report “no sales” annually. That request must be done in writing.

Annual “Big Box” Reports

The January 9, 2009 amendment included a requirement for “big box” (e.g. The Home Depot, Lowe’s) retailers to report their sales within the SCAQMD back to the manufacturers. This requirement was adopted because the rule only applied to coating manufacturers who distribute or sell their manufactured coatings into or within the SCAQMD, and excludes “big box” retailers that ship coatings into the SCAQMD from warehouses located outside the SCAQMD. Over the years, staff investigations have shown that in some cases that the reports were not forwarded in a timely manner. Staff has also observed vastly different numbers reported on “big box” reports that represent the same sales year and manufacturer compared to that reported by the manufacturers. Staff needs the ability to track the reported big box sales independently and review for discrepancies. Therefore, staff is proposing to require “big box” retailers to submit their annual reports to the District as well as the manufacturers.

FEES

Staff is proposing to remove the outdated phased-in fee rate. Upon rule adoption, manufacturers requested the fees be phased in up to the maximum amount of approximately \$0.08 per gallon (depending on the VOC of the coating). The fees have been at the maximum fee rate since the 2010 calendar year and increase by the consumer price index (CPI) every year under Rule 320 - Automatic Adjustment Based on Consumer Price Index for Regulation III Fees.

To be consistent with other fee rules (e.g. Rule 301 – Permitting and Associated Fees), staff is adding clarification that the fee rates to be applied shall be the fee rate in effect for the year in which the sales and emissions are actually reported, and not the fee rate in effect for the year the emissions actually occurred. Other than for the 2008 and 2009 calendar years, this is currently being implemented.

The removal of the phased in fee rate will result in an increase of fees for those manufacturer who have never reported under Rule 314 or who have to revise 2008 or 2009 reports. The following shows the increase for those years:

Year	Current Sales Fee	Proposed Sales Fee	Current Emission Fee	Proposed Emission Fee
2008	\$0.018	\$0.039	\$128.47	\$260.54
2009	\$0.029	\$0.039	\$193.23	\$260.54

After January 1, 2014 and January 1, 2015, manufacturers will no longer be required to submit the data from 2008 or 2009, respectively, due to the 5-year record retention requirement in the rule. This increase in cost will only be temporary and affect the few small manufacturers who are currently not complying with Rule 314.

DISTRIBUTORS LIST

Rule 314 requires manufacturers to submit distributor(s) lists on an annual basis. These lists are the same year after year for the majority of manufacturers. To reduce the reporting burden, staff is proposing to add clarification that once the initial list has been submitted; manufacturers' only need to submit changes to the list in subsequent years.

EXEMPTIONS

Staff is proposing to amend the exemptions for recycled coatings and coatings that contain less than 5 g/L material such that they are only exempt from the fees if the manufacturer submits the reports by the deadline specified in subparagraph (i)(2):

If both the fee payments and the Annual Quantity and Emissions Report for the previous calendar year are not received by May 30, they shall be considered late; and a surcharge for late payment shall be imposed for fees past due as set forth in paragraph (i)(3). Architectural coatings manufacturers subject to paragraph (d)(2) on or after July 1 of the reporting year shall have an additional 6 months, or any additional time approved by the Executive Officer, to submit the fee payments and the Annual Quantity and Emissions Report for the acquired architectural coatings manufacturer. **For the purpose of this paragraph, the fee payments and the Annual Quantity and Emissions Report shall be considered to be timely received by the District if it is postmarked on or before May 30. If May 30 falls on a Saturday, Sunday, or a state holiday, the fee payments and Annual Quantity and Emissions Report may be postmarked on the next business day following the Saturday, Sunday, or the state holiday with the same effect as if they had been postmarked on May 30.**

Manufacturers who are entirely exempt from the fees tend to neglect the reporting process and it takes considerable staff time to get them into the system. They will still be exempt for the fees provided the report is submitted on time.

Staff is also proposing to exempt small manufacturers from the fees provided they report by the deadline specified in subparagraph (i)(2). There are a considerable number of manufacturers who sell only a very small quantity of coating into or within the District, and they have insignificant emissions contribution. The following is the breakdown of the small versus large manufacturers for 2011 year data reported as of 2012. Staff is not using the 2012 year data since not all manufacturers have submitted their AQERs. For the evaluation below, staff used the fees that a manufacturer would have paid if they reported on time, during the current fiscal year, and may not necessarily reflect the fees that were actually paid.

Unaudited Rule 314 Data Based on the 2011 Calendar Year Sales

Total Fees for Quantity and Emissions that Occurred in 2011: \$2,160,053 (does not include late fees or CPI adjustment)

Total Number of Manufacturers Reporting: 204

	Cumulative Fees	Percent of total
Top 5 Companies	\$1,203,408.71	56%
Top 10 Companies	\$1,618,732.74	75%
Top 20 Companies	\$1,848,884.33	86%
Top 30 Companies	\$1,940,562.90	90%
Bottom 30 Companies	\$810.60	0.04%
Bottom 20 Companies	\$194.00	0.009%
Bottom 10 Companies	\$49.40	0.002%
Bottom 5 Companies	\$5.66	0.0003%

Companies sold <100gallons	
Number of Manufacturers	16
Cumulative Fees	\$110.17
Percent of Total	0.005%
Highest Fee	\$36.97
Companies sold <500 gallons	
Number of Manufacturers	38
Cumulative Fees	\$1,152.73
Percent of Total	0.053%

Highest Fee	\$229.13
Companies sold <1,000 gallons	
Number of Manufacturers	48
Cumulative Fees	\$1,664.90
Percent of Total	0.077%
Highest Fee	\$236.51

Staff is proposing to exempt manufacturers who sell less than 500 gallons a year.

Staff would like to clarify that coatings which are sold as a dry mix and solely mixed with water, including Stucco, are exempt from the reporting requirements in Rule 314. This exemption does not include polymer containing powder coatings. There is a large volume of these architectural coatings, and although they fall under Rule 1113, there is no value in having these cementitious dry coatings reported. They would fall under the flat coating category, and the high volume of zero-VOC coatings would skew the architectural coatings data.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The SCAQMD staff has reviewed the proposed amendments to Rule 314 pursuant to CEQA Guidelines §15002(k) - Three Step Process, and has determined that the proposal is statutorily exempt from CEQA pursuant to CEQA Guidelines §15273 - Rates, Tolls, Fares and Charges, because the proposed project establishes fees for architectural coatings manufacturers who distribute or sell their manufactured architectural coatings into or within the SCAQMD area of jurisdiction for use in the SCAQMD area of jurisdiction for the purpose of recovering the program costs for establishing and implementing Rule 1113 – Architectural Coatings.

COST EFFECTIVENESS

The proposed amendments will result in a minor increase in fees to manufacturers who failed to report their 2008 or 2009 fees. This increase in cost will only be temporary and affect the few small manufacturers who are in violation of Rule 314 reporting requirements and not currently in the system. After January 1, 2014 and January 1, 2015, manufacturers will no longer be required to submit the data back to 2008 or 2009 respectively as there is a 5-year record retention policy.

LEGISLATIVE AUTHORITY

The California Legislature created the SCAQMD in 1977 (The Lewis Presley Air Quality Management Act, Health and Safety Code Section 40400 et seq.) as the agency responsible for developing and enforcing air pollution controls and regulations in the Basin. By statute, the SCAQMD is required to adopt an AQMP demonstrating compliance with all state and federal

ambient air quality standards for the Basin [California Health and Safety Code Section 40440(a)]. Furthermore, the SCAQMD must adopt rules and regulations that carry out the AQMP [California Health and Safety Code Section 40440(a)].

AQMP AND LEGAL MANDATES

The California Health and Safety Code requires the SCAQMD to adopt an AQMP to meet state and federal ambient air quality standards in the South Coast Air Basin. In addition, the California Health and Safety Code requires the SCAQMD to adopt rules and regulations that carry out the objectives of the AQMP.

DRAFT FINDINGS UNDER CALIFORNIA HEALTH AND SAFETY CODE

Health and Safety Code Section 40727 requires that prior to adopting, amending or repealing a rule or regulation, the SCAQMD Governing Board shall make findings of necessity, authority, clarity, consistency, non-duplication, and reference based on relevant information presented at the hearing. The draft findings are as follows:

Necessity - The SCAQMD Governing Board has determined that a need exists to amend Rule 314 – Fees for Architectural Coatings to clarify rule language, remove the grouping provision, and exempt small manufacturers from the fees.

Authority - The SCAQMD Governing Board obtains its authority to adopt, amend, or repeal rules and regulations from Health and Safety Code Sections 39002, 40000, 40001, 40440, 40702, and 41508.

Clarity - The SCAQMD Governing Board has determined that the proposed amendments to Rule 314 – Fees for Architectural Coatings, are written and displayed so that the meaning can be easily understood by persons directly affected by them.

Consistency - The SCAQMD Governing Board has determined that PAR 314 – Fees for Architectural Coatings, is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, federal or state regulations.

Non-Duplication - The SCAQMD Governing Board has determined that the proposed amendments to Rule 314 – Fees for Architectural Coatings do not impose the same requirement as any existing state or federal regulation, and the proposed amendments are necessary and proper to execute the powers and duties granted to, and imposed upon, the SCAQMD.

Reference - In adopting these amendments, the SCAQMD Governing Board references the following statutes which the SCAQMD hereby implements, interprets or makes specific: Health and Safety Code Sections 40001 (rules to achieve ambient air quality standards), 40440(a) (rules to carry out the Air Quality Management Plan), and 40440(c) (cost-effectiveness), 40522.5 (fees

on areawide sources of emissions), 40725 through 40728 and Federal Clean Air Act Sections 171 et seq., 181 et seq., and 116.