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Secretary for
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Air Resources Board

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Arnold Schwarzenegger
Governor

TO: Catherine Witherspoon,
Executive Officer

FROM: Peter Venturini
Hearing Officer

THROUGH: Tom Jennings,
Chief Counsel

DATE: December 13, 2006

SUBJECT: Findings and Decision - Public Hearing to Consider Approval of Monterey
District Rule 207 Pursuant to Health and Safety Code Section 42504 (d)

On November 3, 2006, I conducted a public hearing to consider approval of amendments to the Monterey Bay Unified Air Pollution Control Districts Rule 207 (Review of New and Modified Sources). The hearing was conducted pursuant to the Protect California Air Act of 2003 (SB 288).

Attached are my Findings and Decision. I found that the June 21, 2006, amendments to the Monterey Bay Unified Air Pollution Control District's Rule 207 are consistent with the requirements of Health and Safety Code Section 42504 (d), and I approved the amendments.

I have provided to staff the documents comprising the record of this hearing and assume staff will provide the district with a copy of my decision and will retain the hearing record.

Thank you for this opportunity to be of assistance.

Attachments: Findings and Decision

cc: Vicky Davis
Bob Fletcher
Mike Tollstrup
Kitty Howard
Chris Gallenstein

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website: <http://www.arb.ca.gov>.

California Environmental Protection Agency

1 STATE OF CALIFORNIA

2 CALIFORNIA
3 AIR RESOURCES BOARD

4 IN THE MATTER OF:

5 CALIFORNIA AIR RESOURCES BOARD)	
PUBLIC HEARING TO CONSIDER APPROVAL)	
OF AMENDMENTS TO THE MONTEREY BAY)	
6 UNIFIED AIR POLLUTION CONTROL DISTRICT'S)	FINDINGS AND DECISION
RULE 207, REVIEW OF NEW AND MODIFIED)	
7 SOURCES, PURSUANT TO THE PROTECT)	
CALIFORNIA AIR ACT OF 2003(HEALTH)	
8 AND SAFETY CODE SECTIONS 42500)	
THROUGH 42507))	
9 _____)	

10 On November 3, 2006, the California Air Resources Board (ARB) conducted a
11 public hearing to consider approval of amendments to Monterey Bay Unified Air
12 Pollution Control District's (District) Rule 207, Review of New and Modified
13 Sources. The hearing was held pursuant to the Protect California Air Act
14 (Act) of 2003 (Health and Safety Code Sections 42500 through 42507). The
15 hearing was conducted in the District's Board Room, 24580 Silver Cloud Court,
16 Monterey, California. The Hearing Officer was Peter Venturini, who was
17 appointed by the ARB Executive Officer to conduct this hearing. The Hearing
18 commenced at 9:00 a.m. and concluded at 9:53 a.m.

19
20
21 Testimony was provided by the parties (the District staff and ARB staff), and
22 by three members of the public. The hearing was transcribed by a court
23 reporter.
24
25

1 **Protect California Air Act of 2003**

2 The Act generally prohibits districts from making their New Source Review
3 Rules (NSR) less stringent than such rules that existed on December 30, 2002.
4 The Act is essentially a "no backsliding" statute that sets a district's NSR
5 rules, in existence on December 30, 2002, as the baseline against which any
6 changes to the rules will be measured.

7
8 The ARB has significant oversight responsibility with respect to the
9 implementation of the provisions of the Act. First, ARB must review changes
10 to district NSR rules to ensure they are equivalent to or more stringent than
11 those rules that existed on December 30, 2002, and ARB must adopt rules
12 necessary to establish equivalency if the district's NSR rules are not.
13 (HSC § 42504(a)) Second, the Act does allow districts to reduce the
14 stringency of their NSR rules under certain specific circumstances, if
15 specified criteria are met and the ARB approves the changes after a public
16 hearing. (HSC § 42504(d))

17
18 More specifically, the Act spells out four elements of district NSR rules
19 that cannot be changed if the changes would "exempt, relax, or reduce the
20 obligations of a stationary source" with respect to six specified
21 requirements. The four elements that cannot be changed are:

- 22 1. "The applicability determination for new source review."
- 23 2. "The definition of modification, major modification, routine
24 maintenance, or repair or replacement."

1 3. "The calculation methodology, thresholds or other procedures
2 of new source review".

3 4. "Any definitions or requirements of the new source review
4 regulations."

5 (HSC § 42504 (b)(1))

6 The six specified requirements are:

7 1. "Any requirements to obtain new source review or other
8 permits to construct, prior to commencement of construction."

9 2. "Any requirement for best available control technology
10 (BACT)."

11 3. "Any requirement for air quality impact analysis."

12 4. "Any requirement for recordkeeping, monitoring and reporting
13 in a manner that would make recordkeeping, monitoring, or
14 reporting less representative, enforceable, or publicly
15 accessible."

16 5. "Any requirements for regulating any air pollutant covered by
17 the new source review rules and regulations."

18 6. "Any requirements for public participation, including a
19 public comment period, public notification, public hearing,
20 or other opportunities or forms of public participation,
21 prior to issuance of permits to construct."

22 (HSC § 42504 (b)(2))

23
24 The Act does allow districts to amend or modify their NSR rules under
25 specific circumstances and if specified criteria are met. First, the amended

1 or revised rule must do one of the following:

2 1. "Will replace an existing rule or regulation that caused a
3 risk to public health or safety from exposure to a toxic
4 material, a dangerous condition, or an infectious disease with
5 a rule or regulation that provides greater protection to
6 public health or safety."

7 2. "Will replace an existing rule or regulation that has been
8 found to be unworkable due to engineering or other technical
9 problems with a rule or regulation that is effective."

10 3. "Will allow an amendment to an existing rule or regulation
11 that otherwise will cause substantial hardship to a business,
12 industry, or category of sources, if all of the following
13 criteria are met:

14 (i) The amendment is narrowly tailored to relieve the
15 identified hardship.

16 (ii) The district provides equivalent reductions in
17 emissions of air contaminants to offset any increase in
18 emissions of air contaminants.

19 (iii) All reductions in emissions of air contaminants are
20 real, surplus, quantifiable, verifiable, enforceable, and
21 timely. For the purposes of this clause, reductions are
22 timely if they occur no more than three years prior to, and
23 no more than three years following, the occurrence of the
24 increase in emissions of air contaminants.

25

1 (iv) Information regarding the reductions in emissions of
2 air contaminants is available to the public."

3 4. "Is a temporary rule or regulation necessary to respond to an
4 emergency consisting of a sudden, unexpected occurrence and
5 demanding prompt action to prevent or mitigate loss of or
6 damage to life, health, property, or essential services and
7 the temporary rule or regulation does not extend beyond the
8 reasonably anticipated duration of the emergency."

9 5. "Will not, if the district is in attainment with all national
10 ambient air quality standards, impair or impede continued
11 maintenance of those standards or progress toward achieving
12 attainment of state ambient air quality standards."

13 (HSC § 42504(d)(1))

14 Further, the rule change must also meet the following requirements.

15 1. "The amended or revised rule or regulation will not exempt,
16 relax, or reduce the obligation of any stationary source under
17 the rules or regulations of the district, as those rules or
18 regulations existed on December 30, 2002, to obtain a permit
19 or to meet best available control technology requirements.
20 This paragraph only applies to a source that constituted a
21 major source under the rules or regulations of a district that
22 existed on December 30, 2002, and does not apply to any
23 individual best available control technology determination."

24 (HSC § 42504(d)(2))

25

1 2. "The amended or revised rule or regulation is otherwise
2 consistent with this division." (HSC § 42504(d)(3))

3 3. "The amended or revised rule or regulation is consistent with
4 any guidance approved by the state board regarding
5 environmental justice." (HSC § 42504(d)(4))

6 Finally the rule amendments allowed for under (HSC § 42504(d)), must be
7 approved at a public hearing of the district board and the district's
8 decision must be based upon substantial evidence in the hearing record. The
9 district rule amendments must also be submitted to and must be approved by
10 the ARB after a public hearing. The full text of the Act is contained in
11 Exhibit A, Appendix A.

12
13 The ARB has also published two guidance documents regarding implementation of
14 the provisions of the ACT: 1, CALIFORNIA AIR RESOURCES BOARD GUIDANCE NEW
15 SOURCE REVIEW AND SENATE BILL 288, August 2004, as amended April 2006, and; 2
16 CALIFORNIA AIR RESOURCES BOARD GUIDANCE REVIEW PROCESS FOR IMPLEMENTING
17 SENATE BILL 288, April 2006. (Exhibit A, Appendix B and C)

18
19 **Changes to Monterey Bay Unified Air Pollution Control District's New Source**
20 **Review Rule (Rule 207) Requiring Review Under SB 288**

21 At its June 21, 2006, hearing the District board approved a number of changes
22 to the District's NSR rule, Rule 207 (Exhibit 1, Board Resolution 06-14,
23 pages 7 and 8). Several of the approved changes relaxed elements of the NSR
24 rule subjecting the changes to review under SB 288. The following specific
25 changes, subject to SB 288 review, were approved.

1 1. Sources with the potential to emit less than 10 tons per year
2 of any criteria pollutant were exempted from offsetting
3 requirements.

4 2. Sources with the potential to emit less than 10 tons per year
5 of any criteria pollutant were exempted from performing an air
6 quality increment analysis, and visibility, soils, and
7 vegetation analyses.

8 3. Sources not exceeding the federal major modification threshold
9 were exempted from the statewide compliance certification and
10 alternative siting requirements.

11 (Transcript, pages 8-10)

12
13 The District hearing was noticed on April 26, 2006, in one publication and on
14 April 28, 2006, in two other publications (Exhibit 1, pages 3-5). The
15 District submitted the rule revision to the ARB for approval on June 23,
16 2006, requesting that the ARB approve the rule revisions pursuant to Health
17 and Safety Code Section 42504 (d), and the District reiterated its request at
18 the public hearing. (Exhibit 1, page 1) (Transcript, page 6)

19
20 **District Evidence in Support of its Request**

21 The District submitted written evidence (Exhibit 1, "Rulemaking Record,
22 Monterey Bay Unified Air Pollution Control District, Rule 207, As Revised
23 June 21, 2006) and provided testimony in support of its request for approval
24 of amended Rule 207. HSC § 42504(d) allows a district to "...amend or revise a
25 rule or regulation if a district board, at the time the amendments or

1 revisions are adopted, makes its decision based upon substantial evidence in
2 the record, the amendments or revisions are submitted to and approved by the
3 state board after a public hearing, and each of the following conditions is
4 met:..." . There are four conditions under HSC § 42504(d) that must be
5 satisfied for approval of the rule changes. The District's evidence related
6 to each of these conditions is presented below.

7
8 **Condition 1: HSC § 42504(d)(1)**

9 This Section states that the rule change will accomplish one of the following
10 five items.

- 11 • One, it replaces a rule that allowed risk from exposure to a
12 toxic material with a more protective rule
13 (HSC § 42504(d)(1)(A)).
- 14 • Two, it replaces a technologically unworkable rule with one
15 that is effective (HSC § 42504(d)(1)(B)).
- 16 • Three, it replaces a rule that caused a substantial hardship
17 to business with an amended rule that is narrowly tailored to
18 relieve the hardship, and it requires the district to provide
19 suitable offsets for any resulting increases in emissions
20 (HSC § 42504(d)(1)(C)).
- 21 • Four, the change is temporary and necessary to respond to an
22 unexpected emergency (HSC § 42504(d)(1)(D)).
- 23 • Five, it is adopted in a district that attains all national
24 ambient air quality standards, and it will not impede
25 continued maintenance of those standards or impede progress

1 towards attaining State ambient air quality standards

2 (HSC § 42504(d)(1)(E)).

3
4 The District submitted the rule revision under HSC § 42504(d)(1)(E) because
5 the District is in attainment with all national ambient air quality standards
6 and it believes the rule changes will not impede the continued maintenance of
7 the national ambient air quality standards or progress toward achieving
8 attainment of state ambient air quality standards.

9
10 ***District Attainment Status***

11 The District submitted evidence showing its current attainment status with
12 respect to federal and state ambient air quality standards (Exhibit 1,
13 Appendix B, page 2 of the Appendix). The Table on page 2, "Current Attainment
14 Status of the North Central Coast Air Basin, February 2006", indicates that
15 the District is in attainment with all national ambient air quality
16 standards.

17
18 ***Continued Maintenance of National Standards or Progress Towards Meeting State***
19 ***Standards***

20 To demonstrate that the 10 tons per year exemption from offsets would not
21 impede maintenance of the national standards or progress toward meeting the
22 state ambient standards, the District provided information and testimony on
23 historical projects, the impact of potential known or likely projects, banked
24 emissions, emission inventory trends, and air quality trends.

1 With respect to historical projects, the District reviewed all projects
2 requiring offsets since April 21, 1993. Six specific projects were
3 identified. All of the projects had emissions greater than 10 tons per year.
4 Thus the Districts rule change to exempt from offsets projects with annual
5 emissions less than 10 tons per year would not have had any impact on these
6 historical projects. (Exhibit 1, Appendix B, page 3 of the Appendix)

7
8 The District identified two potential or likely future projects that would
9 emit less than 10 tons per year and thus not be required to obtain offsets
10 under the revised District rule. The potential emissions increase from these
11 two projects was estimated by the District to be 18.2 tons per year or 0.05
12 tons per day. (Exhibit 1, Appendix B, page 3 of the Appendix) (Transcript,
13 pages 14-15)

14
15 The District noted that it has included 0.2 tons/day of banked VOC and NOx
16 emissions in its 2004 Air Quality Management Plan emission inventory.
17 According to the District, these banked emissions more than accommodate the
18 potential 0.05 tons per day emissions increase of the identified potential
19 projects. (Exhibit 1, Appendix B, page 4 of the Appendix) (Transcript, pages
20 15,17)

21
22 The District further looked at emission trends for ozone precursors (VOC plus
23 NOx). Figure 1, page 5 of Appendix B in Exhibit 1, shows that between 1990
24 and 2020 emissions of ozone precursors are declining at an annual rate of
25 about 4 tons per day which is 80 times the potential likely known emissions
increase associated with the rule change. Further the District argues that

1 its emissions forecasts through 2020 show that the margin below the ozone
2 attainment inventory is about 125 and 57 tons per day respectively for the
3 one hour and 8 hour federal ozone standards. In testimony the District
4 indicated that even if a seasonal source operated at four times the current
5 daily offset emissions cap of 137 pounds per day, the impact on the future
6 emissions inventory would be very small. (Transcript, page 28)

7
8 The District also presented ozone air quality trends for both federal and
9 state ambient air quality standards. With respect to the federal 8 hour
10 standard, the District provided information to show that the design values
11 have been declining and by 2005 the design value was about 10% lower than the
12 standard. The District concluded that it is highly unlikely that the
13 potential emissions increases associated with the rule changes would have any
14 measurable impact on this 10% margin. (Exhibit 1, Appendix B, page 7 of the
15 Appendix)

16
17 Regarding the State 1 and 8 hour ozone standards the District provided
18 evidence showing that these ozone trends are decreasing at a rate of about 1
19 part per billion (ppb) per year. The District further indicates that the
20 minute magnitude of the potential emissions increase is not adequate to
21 impact the established rate of decline of the 1 hour or 8 hour ozone
22 standards or the future date when the standards will be met. (Exhibit 1,
23 Appendix B, pages 7-9 of the Appendix)

1 With respect to the impact of exempting sources with emissions less than 10
2 tons per year from offsets on federal and state PM10 standards, the District
3 provided the following evidence:

- 4 1. The District is not aware of any known or likely future
5 projects that would be subject to the exemption for offsets
6 for PM10.
- 7 2. The District's 2005 emission inventory shows that stationary
8 sources represent less than 5% of the total inventory for
9 PM10.
- 10 3. In order for the offset exemption for PM10 to cause the area
11 to fall into federal nonattainment, the overall emission
12 inventory for PM10 would have to double. This would require
13 more than 3700 new sources emitting less than 10 tons per year
14 of PM10. The District notes that there currently are less
15 than 1700 permitted sources in the air basin.
- 16 4. The District provided evidence showing that naturally
17 occurring sea salt, fugitive dust and smoke drive basin
18 exceedances of PM10. Nearly three fourths of all basin
19 exceedances occurred at coastal sites, and between 2001 and
20 2004 over 95 percent of those exceedances would not have
21 occurred without the sea salt burden. Further, the District
22 presented its 2005 PM10 emission inventory showing that
23 stationary source emissions represent less than 5 percent of
24 the total basin inventory.

1 For these reasons the District believes that the 10 ton per year offset
2 exemption will not impair or impede maintenance of the federal PM10 standards
3 or impede progress toward attainment of the state standard. (Exhibit 1,
4 Appendix B, pages 9-12 of the Appendix) (Transcript, page 16)

5
6 The District also provided evidence in support of its position that the 10
7 ton per year offset exemption will not impact maintenance of federal CO and
8 SO2 standards or impede progress to achieve the state CO and SO2 standards.
9 Currently, ambient CO and SO2 levels do not exceed applicable State and
10 federal ambient standards. Specifically, the District provided evidence
11 showing that ambient CO and SO2 levels have been well below the applicable
12 standards and it would take thousands of new sources to have an effect on
13 continued attainment of these standards. For example, ambient data presented
14 indicate that ambient levels of CO and SO2 have been at around 25% of their
15 respective standards. Further, the District provided evidence showing that by
16 2010 the CO and SO2 emission inventories will be less than half the level of
17 the 1990 inventory for these pollutants. (Exhibit 1, Appendix B, pages 12-18
18 of the Appendix)(Transcript, pages 16-17)

19
20 The District also changed its NSR rule to exempt sources with emissions of
21 less than 10 tons per year from requirements to perform a visibility, soils
22 and vegetation analysis and an air quality analysis. To support its position
23 that there would be no impact by exempting small sources from these analyses,
24 the district argued that a large emission source that conducted such analyses
25 did not demonstrate any adverse impact. The emissions associated with the

1 project were 200 tons per year NOx, 30 tons per year SOx, 150 tons per year
2 VOC, 230 tons per year PM10, and 1360 tons per year CO. Thus the District
3 argued that if the analyses for such a large source did not show any adverse
4 impact, then a similar analysis for a 10 ton per year source would likewise
5 not show any significant impacts. The District further indicated that it
6 would take the following number of small sources to accumulate the emissions
7 of the large project: NOx-20, SOx-3, VOC-15, CO-135, and PM10-123. The
8 District believes it highly unlikely that these numbers of small sources
9 would be sited in the District. Therefore, exempting small sources from these
10 analyses would not have any significant impact.

11 (Exhibit 1, Appendix B, pages 18-20 of the Appendix)

12
13 Finally, the District relaxed its NSR rule by eliminating the requirements
14 for statewide compliance certification and alternative siting analysis for
15 sources not exceeding the federal major modification thresholds. The District
16 believes this exemption will not impact maintenance of or progress toward
17 attaining Federal and State ambient standards for the following reasons.

- 18 1. There are eight sources in the District that are considered
19 Major Federal Sources. All of these are Title V sources and
20 under their Title V permits these sources must certify
21 compliance on an annual basis. Also, these sources are not
22 associated with any other major source in the District. Only
23 one source in the last 10 years was required to make the
24 statewide compliance certification and no excess emissions
25 were discovered.

1 2. Statewide compliance certification is an administrative
2 requirement and does not result in any increase or decrease in
3 emissions.

4 3. Other provisions of the District's rules address alternative
5 siting requirements. District Best Available Control
6 Technology (BACT) requirements require review of alternate
7 production processes and controls. District Rule 1000
8 specifies requirements for the review of toxic air
9 contaminants. Therefore the District believes this
10 alternative siting analysis is not necessary for sources that
11 are not Federal Major Modifications.

12 (Exhibit 1, Appendix B, page 21 of the Appendix)

13
14 For the above reasons the District believes it has met the requirements of
15 HSC § 42504(d)(1). Specifically that the changes made to its NSR rule, "Will
16 not, if the district is in attainment with all national ambient air quality
17 standards, impair or impede continued maintenance of those standards or
18 progress toward achieving attainment of state ambient air quality standards."

19
20 **Condition 2: HSC § 42504(d)(2)**

21 This Section states that the amended rule will not exempt, relax, or reduce
22 the obligation of any stationary source to obtain a permit or to apply BACT.

23
24 The District stated that the BACT requirements of its NSR rule were not
25 changed. Further, the District stated that no revisions were made to its

1 Rule 200 (Permits Required) or the permit exemption list in Rule 201 (Source
2 Not Requiring Permits). Therefore the District believes that the revisions
3 to Rule 207 are consistent with HSC § 42504(d)(2).
4 (Exhibit 1, Appendix C, pages 22, 23 of the Appendix) (Transcript, page 12)

5
6 **Condition 3: HSC § 42504(d)(3)**

7 This Section requires that the rule revisions are consistent with Division 26
8 of the California Health and Safety Code.

9
10 The District indicated that the only requirements of Division 26 directly
11 pertaining to the rule changes are requirements for a "no net increase"
12 program for new and modified stationary sources. The source threshold under
13 this program for the District is 25 tons per year. The District's 10 ton per
14 year offset exemption is below the 25 ton per year threshold in state law.
15 Therefore, the District believes amended Rule 207 is consistent with
16 HSC § 42504(d)(3). (Exhibit 1, Appendix D, pages 24, 25 of the Appendix)
17 (Transcript, pages 12, 13)

18
19 **Condition 4: HSC § 42504(d)(4)**

20 This Section requires the amended rule to be consistent with ARB guidance on
21 environmental justice. To support its view that the amended NSR rule is
22 consistent with ARB guidance on environmental justice, the District provided
23 the following evidence:

- 24 1. The District outlined the key considerations associated with ARB
25 environmental justice guidance and committed to adhere to these

1 policies. Further the District stated it "...will work with the ARB
2 and stakeholders to address, as appropriate, community concerns
3 about air pollution emissions, exposures, and health risks, ..."
4 (Exhibit 1, Appendix E, page 18-84)

5 2. The District referred to its Toxic Air Contaminants program that
6 ensures there is no significant impact from toxic air contaminants.

7 3. The District's California Environmental Quality Act Guidelines
8 (CEQA) which address relevant environmental justice issues.

9 For the above reasons, the District believes the changes to its NSR rule do
10 not remove or relax any District program regarding Environmental Justice and
11 are consistent with ARB guidance on Environmental Justice. Therefore the
12 District believes it has complied with HSC § 42504(d)(4).

13 (Exhibit 1, Appendix E, pages 26-30 of the Appendix, and page 18-87)

14 (Transcript page 13)

15
16 **ARB Staff Position Regarding District Request for Approval of Amendments to**
17 **Rule 207**

18 While the Act allows districts to amend their NSR rules under certain
19 circumstances, such amendments require ARB approval following a public
20 hearing. The ARB staff prepared a staff report that provides the staff's
21 assessment of whether the evidence provided by the District demonstrated that
22 the District's rule amendments meet the appropriate provisions of the Act.

23 The staff report was released on October 23, 2006.

24 (Exhibit A - "Staff Report: Public Hearing to Consider Approval of Amendments
25 to the Monterey Bay Unified Air Pollution Control District's New Source

1 Review Rule (Rule 207), Release Date: October 23, 2006") The ARB also issued
2 a public notice for this hearing on October 4, 2006.

3
4 Because the District amended it's rule following a public hearing and has
5 requested ARB approval of the amendments, the ARB staff agreed with the
6 districts request that its rule amendments be processed under HSC § 42504(d).
7 (Exhibit A, page 5).

8
9 The ARB staff's position, regarding the evidence submitted by the District in
10 support of its view that all the criteria of HSC § 42504(d) have been met, is
11 summarized below.

12
13 **Condition 1: HSC § 42504(d)(1)**

14 ARB staff concurred with the District that with respect to HSC § 42504(d)(1)
15 that the provisions of HSC § 42504(d)(1)(E) apply. (Exhibit A, page 8,9)

16
17 The ARB staff reviewed the information presented by the District with respect
18 to the offset exemption, air quality impact analysis, statewide compliance
19 certification, and alternative siting analysis. (Exhibit A, page 9-12) Based
20 on its review of this information, ARB staff concluded the following:

21 "Pursuant to section 42504 d)(1), ARB staff determined that the District
22 provided sufficient evidence to support the proposed changes will not impair
23 or impede continued maintenance of federal ambient air quality standards or
24 progress towards achieving attainment of state ambient air quality
25 standards". (Transcript, page 22).

1 In its report, ARB staff (Exhibit A, page 12) further notes that "... the
2 District's evidence, when considered as a whole, sufficiently supports the
3 finding that the new thresholds for offsets and air quality impact analyses
4 as well as the exemption for the statewide compliance certification and
5 alternative siting analysis, will not impair or impede continued maintenance
6 of federal ambient air quality standards or progress toward achieving
7 attainment of state ambient air quality standards. Overall, the analysis of
8 the inventory and of air quality trends provides compelling evidence to
9 support the basic argument".

10
11 With respect to the offset exemption, ARB staff believe that it is extremely
12 unlikely that the significant number of new sources, using this new offset
13 exemption, would ever be permitted in the District. (Transcript, page 23) ARB
14 staff concurs with the District's analysis regarding the effect of the offset
15 exemption on federal and state air quality standards.

16
17 With respect to the exemption from the impact analysis ARB staff again
18 concurred with the District's analysis and concluded that sources covered
19 under this exemption would show no significant impacts. (Exhibit A, page
20 10,11) (Transcript, page 24)

21
22 Regarding the exemption from the Statewide Compliance Certification, the ARB
23 staff reviewed the District's evidence and also consulted with permitting
24 staff of other districts. The ARB staff indicate that what they learned was
25 that district experience has been that this requirement "... rarely impedes an

1 application for an authority to construct. One reason for this is that,
2 typically, most facilities can pass the test of being in compliance or being
3 on a schedule for compliance." (Exhibit A, page 11) (Transcript, page 24)
4 ARB staff also found that the District's evidence supports the District's
5 findings regarding this exemption. (Exhibit A, page 11)

6
7 Finally, with respect to the exemption for alternative site analysis, ARB
8 staff believes that there are sufficient equivalent requirements in existing
9 law that require sources to perform this analysis. These requirements
10 include District BACT requirements, District Rule 1000 (toxic air
11 contaminants), and the California Environmental Quality Act. (Exhibit A,
12 page 12) (Transcript, pages 24,25)

13
14 **Condition 2: HSC § 42504(d)(2)**

15 The ARB staff determined that the District provided sufficient evidence to
16 support that the amended rule will not exempt, relax, or reduce the
17 obligation of any stationary source to obtain a permit or to apply BACT. ARB
18 staff reviewed the District's rule and found that the permit and BACT
19 requirements were not affected by the amendments to Rule 207. (Exhibit A,
20 page 12) (Transcript, page 25)

21
22 **Condition 3: HSC § 42504(d)(3)**

23 ARB staff concurs with the District's finding that the amended rule is
24 consistent with Division 26 or the Health and Safety Code. Specifically, ARB
25 staff cite the "no net increase" requirements of state law and notes that the

1 District's new 10 ton per year offset threshold is more stringent than
2 required in state law. Further ARB staff found that the District rule was
3 adopted in compliance with rule making procedures in state law and also found
4 that the rule amendments do not affect District compliance with other
5 substantive and procedural requirements of the Health and Safety Code.
6 (Exhibit A, pages 12, 13) (Transcript, pages 25, 26)

7
8 **Condition 4: HSC § 42504(d)(4)**

9 The ARB staff reviewed the District's evidence in support of the District's
10 finding that the amended rule is consistent with ARB environmental justice
11 guidance. ARB staff in its report and through its testimony believes that
12 the District's commitment to ARB's approved guidance documents, the
13 District's CEQA guidelines, current District rules and the District's
14 enforcement program collectively provide adequate support for the District's
15 finding. (Exhibit A, page 13) (Transcript, pages 26, 27)

16
17 Overall, the ARB staff concluded that the District provided the evidence
18 required by HSC § 42504(d) and recommended that "... the Hearing Officer
19 approve the June 21, 2006 amendments to the Monterey Bay Unified Air
20 Pollution Control District's Rule 207, 'Review of New or Modified Sources'."
21 (Exhibit A, page 13) (Transcript, page 27)

1 **Public Testimony**

2 The following individuals provided oral testimony at the hearing:

- 3 1. Rhonda Motil, Monterey County Vintners and Growers
4 Association;
5 2. Al Schroeder, Blackstone Winery, and,
6 3. Butch Lindley, Member Monterey Bay Unified Air Pollution
7 Control District Board of Directors.

8

9 These three individuals provided brief oral testimony in support of the
10 District's amendments to Rule 207. (Transcript, pages 30 - 32) There was no
11 public testimony in opposition to the District's request.

12

13 **Items in Dispute**

14 There were no items in dispute between the District and ARB staff or in the
15 public testimony.

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1 **FINDINGS**

2 After careful consideration of the entire record, including all the exhibits,
3 the testimony of District and ARB staff, and public testimony, I make the
4 following findings.

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6 1. The District held a duly noticed public hearing and based its decision
7 upon substantial evidence in the record. The District submitted its
8 revised Rule 207 to the ARB and requested it be approved pursuant to
9 HSC § 42504(d).

10
11 2. The District rule amendments were appropriately considered under
12 HSC § 42504(d)(1)(E).

13
14 3. The ARB conducted a duly noticed public hearing.

15
16 4. The ARB staff evaluated the Districts evidence and concluded that the
17 District provided the evidence required by HSC § 42504(d) and recommended
18 approval of the June 21, 2006, amendments to the Districts Rule 207.

19
20 5. The District's evidence, in combination with the ARB staff's evaluation
21 and concurrence, provides sufficient support that the amendments to Rule
22 207 meet the requirements of HSC § 42504(d)(1)(E). Specifically, the
23 District is in attainment of all national ambient air quality standards.
24 Further, the Rule amendments will not impair or impede continued
25 maintenance of all national ambient air quality standards or progress

1 toward achieving attainment of state ambient air quality standards.

2
3 I concur with the District's and ARB staff's findings that it is highly
4 unlikely that sufficient numbers of sources, using the new 10 ton per year
5 offset threshold, would ever be cited to significantly impact the
6 declining emission and air quality trends in the District. The current
7 banked emissions of 0.2 tons per day of ozone precursors included in its
8 2004 Air Quality Management Plan emission inventory, more than accommodate
9 the potential emissions increase associated with potential new projects.

10
11 With respect to the exemption from impact analyses, much larger sources
12 have conducted such analyses and have not shown significant impacts.
13 Therefore it is reasonable to conclude that if analyses done for large
14 sources has shown no significant impacts, then much smaller sources would
15 likewise show no significant impacts if required to conduct such analyses.

16
17 Regarding the exemption from statewide compliance certification, this
18 requirement rarely prevents issuance of Authorities to Construct because
19 facilities can either demonstrate compliance or demonstrate that they are
20 on a schedule of compliance. Further, the statewide compliance
21 certification is an administrative requirement and does not result in any
22 increase or decrease in emissions.

23
24 Finally, with respect to the exemption for alternative site analysis,
25 there are sufficient equivalent requirements within the District's

1 programs and in state law that address such analysis.

2
3 6. The District's evidence, in combination with the ARB staff's evaluation
4 and concurrence, provides sufficient support that the amendments to Rule
5 207 meet the requirements of HSC § 42504(d)(2). Specifically, the rule
6 amendments will not exempt, relax, or reduce the obligation of any
7 stationary source to obtain a permit or to meet best available control
8 technology requirements.

9
10 The District did not change those portions of Rule 207 that address permit
11 applicability and the application of best available control technology.

12
13 7. The District's evidence, in combination with the ARB staff's evaluation
14 and concurrence, provides sufficient support that the amendments to Rule
15 207 meet the requirements of HSC § 42504(d)(3). Specifically, the Rule
16 amendments are consistent with Division 26 of the Health and Safety Code.

17
18 The District's 10 ton per year offset exemption is more stringent than the
19 25 ton per year "no net increase" provision in state law. Further, the
20 Rule was amended consistent with the rule-making procedures in state law.

21
22 8. The District's evidence, in combination with the ARB staff's evaluation
23 and concurrence, provides sufficient support that the amendments to Rule
24 207 meet the requirements of HSC § 42504(d)(4). Specifically, the amended
25 Rule 207 is consistent with any guidance approved by the state board

1 regarding environmental justice.

2
3 The District demonstrated its commitment to work with ARB staff and
4 stakeholders to address community concerns about air emissions and health
5 risks. The amendments to Rule 207 did not weaken provisions of the
6 District's air toxics rules. Taken together, the amended Rule 207 is
7 consistent with ARB approved guidance regarding environmental justice.

8
9 9. Three individuals provided public testimony supporting approval of the
10 amendments to Rule 207. There was no public testimony in opposition to
11 the amendments.

12
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14 **DECISION**

15
16 1. The June 21, 2006, amendments to the Monterey Bay Unified Air Pollution
17 Control District's Rule 207 meet the requirements of HSC § 42504(d) and
18 are approved.

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21 Dated: December 13, 2006.

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23 _____
24 Peter Venturini
25 Hearing Officer