



Legislation Text

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MEMORANDUM

TO: Lake County Air Quality Management District Board of Directors

FROM: Douglas Gearhart, APCO

DATE: June 11, 2019

SUBJECT: Discussion and Consideration of Cannabis Permitting and Fees

EXECUTIVE SUMMARY:

The Lake County Air Quality Management District (District) maintains an active and effective air quality management program to protect the health and welfare of the populace of the Lake County Air Basin. This is a shared mission with State and Federal agencies. The District has primary responsibility for stationary air pollution sources in conformance with all District regulations and State and Federal laws. As a designated Air Basin, the District participates in several Local, State and Federal programs by law.

With the legalization of cannabis in California, the Lake County Air Quality Management District staff has been assisting the County of Lake address environmental concerns related to odor impacts from cultivation activities. Currently the State of California does not define cannabis as an agricultural crop, and thus cultivation is not exempt from odor regulation.

Starting in the Fall of 2017, the County of Lake included the requirement for cannabis operations to obtain a District Authority to Construct permit as the best method to deal with the odor issues. The ordinance does not change or affect the District's authority to regulate the industry, however it does provide a clear statement that odor is an important issue.

In response to this Board's request, we are bringing this topic forward to have a more thorough discussion of the laws that affect our operations and permitting process as well as options for this Board to consider moving forward with this industry.

The District was created by mandate of the State of California and is the primary entity responsible for the control of air pollution from all sources per California Health and Safety Code (H&SC), other than emissions from motor vehicles. Odor is defined in H&SC Section 39013 as an air pollutant.

The District funding options are defined in H&SC 40701.5 and consist of Grants, Subvention from the State, Permit Fees, and Penalties. There are other sources, but these are minimal. The District does not have a surcharge or fee on motor vehicle registrations. Subvention is utilized to cover costs associated with compliance with and enforcement of State Regulations, as well as State reporting, limited air monitoring work, and other State mandates. Penalties are used to offset costs of the burn program, educational materials, small business assistance, and some complaint investigations. Permit fees pay for the program costs associated with regulating sources of air pollution and the industry that is regulated.

The District is required to have Rules and Regulations that are complaint with State law to achieve and maintain the State and Federal Ambient Air Quality Standards in all areas affected by emission sources. District Rule Section 605 requires the applicant to submit information sufficient to describe the nature and amount of emissions, location, design,... necessary to make the analysis required by this article. The emission information is required to be analyzed prior to issuance of a permit. Due to the former illegal status of cannabis, this information is not available. We have decided to utilize Rule Section 650, which allows for emissions evaluations by either hiring a consultant or by paying the costs of the District to do the evaluation. These costs are built into the total program costs to be funded by permit fees, rather than direct billing of each source. Direct billing would put the costs of evaluating the industry wide impacts / emissions on a few sources where it is most appropriate to spread the cost out to the industry as a whole. Additionally, direct billing would add costs related to time tracking, invoicing, accounting, etc... that can be minimized by utilizing the program costs approach.

Permit programs are defined in H&SC, which states that permits can only be issued for a specified period, but can be renewed (extended) upon annual review and payment of fees. Environmental conditions fluctuate more rapidly than land use conditions, so permits are more limited and require annual reviews. District Rule Section 601 states that an Authority to Construct permits shall be valid for a period of one (1) year from the date of issuance. Most of the currently permitted cultivation operations are utilizing temporary permits, and will be transitioned to regular Authority to Construct permits on Nov. 1, which is our standard permit renewal time. Because of this, few cultivators will pay renewal fees this year, as the permit fees were already paid. The few cultivators that needed standard permits will only pay pro-rated renewal fees.

In the coming years, air monitoring and staff costs will require permit revenue, or other revenue to cover the program costs. With our experience regulating and inspecting the geothermal industry for odor issues, we know how challenging regulating odor can be. Even with proper instruments, when conditions are right, it can take weeks to track down and identify the source of an odor complaint. This work includes field work, meteorological research, modeling, mapping, and equipment calibration and maintenance, all of which are expensive and time consuming. With cannabis, we have received odor complaints related to cultivation, and it does take time to investigate those

complaints. Currently we do not have monitoring equipment to help with these investigations. Fees will cover the costs to evaluate and purchase monitoring equipment.

In listening to the input from this Board, we have developed several options for this Board to consider:

- 1) The first is to direct staff to continue to permit cultivation activities and evaluate program costs and fees annually until the industry has stabilized.
- 2) The second is to direct staff to consider reduced permit fees for the cultivation industry and identify potential sources of funding to cover the costs of enforcement and source testing, or
- 3) Third to direct staff to put the permitting of cannabis cultivation on hold until such time as the State provides guidance, or the Board directs staff otherwise.

The last option would put odor complaints and investigations back on LCCDD staff or others. District staff would no longer respond to any cannabis cultivation related complaints or issues.

If the Board directs staff to follow Option 1, then District staff recommends reducing the highest fee category down from \$15,501.64 to \$6,459.01 for the coming year (subject to CPI adjustment on July 1), with all other categories being reduced or consolidated into fewer categories. The lowest fee would remain at \$258.36, with the fee structure split by cultivation canopy size. Small cultivation operations would be \$904.25, Medium cultivation permits would be \$2,066.08, and the large operations would be \$6,459.01.

If the Board directs staff to follow Option 2, then District staff is recommends temporarily reducing the fee range to \$258.38 for the small cultivation operations to \$2,066.88 for the large cultivation operations (subject to CPI adjustment on July 1) with the costs of enforcement of illegal operations, source testing and air monitoring, and evaluation of abatement technologies paid through other funds to be determined, such as the cannabis tax. Funding needs to cover the costs of evaluations, and could cover up to the whole cost of the permit fee as well.

As suggested, the Cultivation tax could be utilized to cover the program costs of the District, offsetting the permit fees charged to sources, or just covering the additional costs of program development over the next 5 years. Should the cannabis taxes or other funds not be received by the District, the full cost of the permitting program could then be billed.

District staff is recommending Option 1, as it is sustainable funding that would allow us to hire the staff we need, and perform the evaluations necessary for this industry. The process will be slower, as this fee level is anticipated to cover one staff person and a small amount extra starting in 2 years, as the industry growth stabilizes. Option 2 is also recommended, as long as funding is found to support the additional workload not covered by permit fees, and the District could revert to Option 1 should the cannabis tax dollars or other funding no longer be available.

RECOMMENDED ACTION:

- 1) That the Board of Directors determine what is in the best interest of the impacted community related to cultivation of cannabis and provide policy direction for staff to regulate or not regulate this industry and;
- 2) If the direction is to continue to regulate cannabis cultivation, provide a policy directive for staff to follow related to fees.

CC: Carol J. Huchingson, County Administrative Officer