


Agenda Date: March 21, 2019
Agenda Placement: Admin.
Estimated Time: N/A
Continued Item: No

Board Agenda Item

TO: Air Pollution Control District Board

FROM: Aeron Arlin Genet, Air Pollution Control Officer 

CONTACT: Kaitlin McNally, Compliance Manager (805-961-8855)

SUBJECT: Resolution for Delegating Authority to the Air Pollution Control Officer to Enter into and Extend Tolling Agreements

RECOMMENDATION:

Adopt the attached resolution delegating authority to the Air Pollution Control Officer to enter into and extend tolling agreements.

BACKGROUND:

In carrying out the District's mission, the District's Compliance Division issues Notices of Violation (NOVs) to individuals, companies, and organizations for violations of air pollution rules, regulations, laws, or District-issued permits. The District operates a Mutual Settlement Program¹ to collect monetary penalties associated with NOVs.

DISCUSSION:

From time to time, it is to the mutual benefit of the District and the NOV recipient to allow additional time to engage in settlement discussions and to potentially reach an agreement without resort to judicial intervention or litigation. The tolling agreement provides for the tolling of any applicable statutes of limitations or similar defenses, to provide for the retention of any legal or equitable actions or defenses that the District and the NOV recipient may have, and to provide

¹ The Mutual Settlement Program is further described in a District Compliance Program presentation to your Board from October 2017, see www.ourair.org/apcd/apcd-board-actions/#October-19-2017.

that no legal or equitable action may be initiated by or on behalf of the District and the NOV recipient against one another during the tolling period of the agreement.

Since your Board meets only seven times per year, staff is requesting that the Air Pollution Control Officer (Control Officer) be delegated the authority to enter into tolling agreements in order to ensure timely business needs can be met. This authority is only delegated within the parameters outlined in the attached resolution, namely: the District shall use a tolling agreement provided by District Counsel and substantially similar to the attached form which will be updated periodically; the Control Officer will work with District Counsel to tailor the tolling agreement to the individual facts and circumstances of each case; District Counsel shall review and execute each tolling agreement as to form; and the Control Officer shall provide an annual report to the Board on the tolling agreements entered into under this delegated authority.

ATTACHMENT:

- A. Resolution – Delegating Authority to the Air Pollution Control Officer to Enter Into and Extend Tolling Agreements
- B. Form Tolling Agreement

ATTACHMENT A

Resolution Delegating Authority to the Air Pollution Control Officer to Enter Into and Extend Tolling Agreements

March 21, 2019

Santa Barbara County Air Pollution Control District
Board of Directors

260 San Antonio Road, Suite A
Santa Barbara, California 93110

RESOLUTION OF THE BOARD OF DIRECTORS OF

THE SANTA BARBARA COUNTY

AIR POLLUTION CONTROL DISTRICT

IN THE MATTER OF DELEGATING
AUTHORITY TO THE AIR POLLUTION
CONTROL OFFICER TO ENTER INTO
AND EXTEND TOLLING AGREEMENTS

APCD RESOLUTION NO. _____

RECITALS

WHEREAS, in carrying out the District's mission, the District's Compliance Division issues Notices of Violation (NOVs) to individuals, companies, and organizations for violations of air pollution rules, regulations, laws, or District-issued permits; and

WHEREAS, the District operates a Mutual Settlement Program to collect monetary penalties associated with Notices of Violation; and

WHEREAS, it is to the mutual benefit of the District and the NOV recipient to allow additional time to engage in settlement discussions and to potentially reach an agreement without resort to judicial intervention or litigation; and

WHEREAS, the tolling agreement provides for the tolling of any applicable statutes of limitations or similar defenses, to provide for the retention of any legal or equitable actions or defenses that the District and the NOV recipient may have, and to provide that no legal or equitable action may be initiated by or on behalf of the District and the NOV recipient against one another during the tolling period of the agreement; and

WHEREAS, the intent is to ensure tolling agreements can be secured and District business is conducted in a timely manner; and

WHEREAS, the Board wishes to delegate authority to the Air Pollution Control Officer to enter into tolling agreements within specified parameters.

APCD RESOLUTION IN THE MATTER OF DELEGATING AUTHORITY
TO THE AIR POLLUTION CONTROL OFFICER TO ENTER INTO AND
EXTEND TOLLING AGREEMENTS

NOW, THEREFORE, IT IS HEREBY RESOLVED, as follows:

1. That the Board hereby delegates authority to the Air Pollution Control Officer to enter into and extend tolling agreements.
2. The District shall use a tolling agreement provided by District Counsel and substantially similar to the attached form which will be updated periodically by District Counsel.
3. The District shall work with District Counsel to tailor each agreement to the particular facts and circumstances of each case.
4. District Counsel shall review and execute each tolling agreement as to form.
5. The Control Officer shall provide an annual report to the Board on the tolling agreements entered into under this delegated authority.

PASSED, APPROVED AND ADOPTED by the Air Pollution Control District Board of the Santa Barbara County, State of California, this ____ day of _____, _____, by the following vote:

Ayes:

Noes:

Abstain:

Absent:

SANTA BARBARA COUNTY
AIR POLLUTION CONTROL DISTRICT

ATTEST:

AERON ARLIN GENET
Clerk of the Board

By _____
Chair

By _____
Deputy

Date _____

APPROVED AS TO FORM:

MICHAEL C. GHIZZONI
Santa Barbara County Counsel

By Rachel SanMulle
Deputy

ATTACHMENT B

Form Tolling Agreement

March 21, 2019

Santa Barbara County Air Pollution Control District
Board of Directors

260 San Antonio Road, Suite A
Santa Barbara, California 93110

TOLLING AGREEMENT

This TOLLING AGREEMENT ("AGREEMENT") is made by and between of the County of Santa Barbara Air Pollution Control District ("DISTRICT") and [Non-District Party] ("XXXX"). The DISTRICT and XXXX are referred herein separately as "Party" and collectively as "Parties".

I. FACTUAL RECITALS

WHEREAS, [Non-District Party] is [describe XXXX].

WHEREAS, On [DATE], the District issued Notices of Violation No. XXXX to XXXX alleging that [description of violation].

WHEREAS, [factual/legal background].

WHEREAS, it is to the mutual benefit of the Parties to allow additional time to engage in settlement discussions and to potentially reach an agreement without resort to judicial intervention or litigation.

WHEREAS, the District's Board of Directors delegated authority to the Air Pollution Control Officer to enter into such tolling agreements in Resolution _____ adopted on [DATE].

WHEREAS, the Parties desire to provide for the tolling of any applicable statutes of limitations or similar defenses, to provide for the retention of any legal or equitable actions or defenses that the Parties may have, and to provide that no legal or equitable action may be initiated by or on behalf of the Parties against one another during the Tolling Period of this Agreement.

THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

II. TOLLING AGREEMENT

1. Effective Date. This Agreement shall be effective as of [DATE].
2. Tolling Period. The Tolling Period of this Agreement shall be from the Effective Date of this Agreement until and including DATE [one to four years after Effective Date]. The Tolling Period may be extended by written agreement of the Parties.
3. Tolling of Claims. The Parties agree that the running of any and all applicable statutes of limitations and any other statute, law, rule, or principle of equity of similar effect, and any other time-related defenses or limitations on actions, including, but not limited to, the time limitations for filing any and all pleadings, petitions, charges, or papers to prosecute, commence litigation, bring suit, or institute proceedings on any and all claims that may apply (collectively the Time Defenses), shall be tolled and suspended during the Tolling Period. The time included in the Tolling Period shall be excluded from computing any statute of limitations

**Tolling Agreement, Santa Barbara County APCD and [Non-District Party]
Reference No. NOV/Mutual Settlement ####s**

for any and all claims or determining the applicability or validity of any Time Defenses.

- (a) This Agreement constitutes a valid and effective written agreement to toll pursuant to Section 360.5 of the California Code of Civil Procedure.
 - (b) Upon the expiration of the Tolling Period of this Agreement, the Parties shall retain any and all legal or equitable remedies and defenses they may have or may believe they have arising from or related to the claims.
 - (c) During the Tolling Period of this Agreement, the Parties shall not initiate any legal or equitable action which in any way relates to or arises from the claims.
 - (d) The Parties agree that each shall not plead, assert, or otherwise raise any Statutes of Limitation applicable to the claims, to the extent such is tolled by this Agreement, as a bar to or other limitation on any claims.
4. Withdrawal from the Agreement. Either Party may, upon written notice to the other Party, sent by certified mail, return receipt requested, and properly addressed to the other Party, elect to withdraw from this Agreement. Such withdrawal may occur irrespective of the consent of the other Party. The Tolling Period shall terminate ninety (90) days following receipt of the notice of withdrawal.
5. No Admissions. Nothing in this Agreement is intended as, shall constitute, or be used as evidence of an admission by any Party of any wrongdoing, liability, or fault, a waiver of any right or defense, an estoppel, or an admission as to any matter of law or fact, either as among the Parties or with respect to any person or entity not a Party to this Agreement. The Parties agree further that this Agreement will not be admissible for any purpose other than to rebut a defense based on the passage of time or delay or to defend against any claim, action, or other proceeding that may be brought, instituted or taken by one of the Parties against the other in breach of this Agreement
6. Time Is of the Essence. Time is of the essence for each term and condition of this AGREEMENT.
7. Governing Law. This AGREEMENT shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California. Any litigation regarding this AGREEMENT or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.
8. Authorization to Enter into AGREEMENT. Each of the individuals signing this Agreement represents and warrants their full power and authority to bind the party identified above their name. Each Party executing this AGREEMENT represents and warrants that it has been duly authorized to enter into this AGREEMENT, and has full and complete authority to do so. Each Party expressly waives any defense to this AGREEMENT based on any lack of authority to enter into and be bound by the terms of this AGREEMENT.

**Tolling Agreement, Santa Barbara County APCD and [Non-District Party]
Reference No. NOV/Mutual Settlement ####s**

9. Advice of Counsel. Each of the Parties, by the execution of this AGREEMENT, represents that it has reviewed each term of this AGREEMENT with its legal counsel, or has had the opportunity to do so, and further agrees that it shall not deny the validity of the AGREEMENT on the grounds that it did not have advice of counsel.
10. Knowing, Free, Voluntary Execution. The Parties represent that they have carefully read this AGREEMENT, know its contents, and freely and voluntarily signed it.
11. Entire Agreement. This AGREEMENT contains the entire agreement between the Parties with respect to its subject matter, and no statement, promise, or inducement made by any of the Parties that is not contained in this AGREEMENT shall be valid or binding, and this Agreement shall not be enlarged, modified, or altered except in writing signed by the Parties.
12. Counterparts. This AGREEMENT may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.
13. Acceptance of Facsimile or Electronic Signatures. The Parties agree that this Agreement will be considered signed when the signature of a Party is delivered by facsimile or e-mail transmission. Such facsimile or e-mail signature will be treated in all respects as having the same effect as an original signature.
14. Applicability. This Agreement applies only between the Parties, and shall not inure to the benefit of any other person, entity, or claim. However this shall be binding upon and insure to the benefit of all Parties successors and assigns.
15. Recitals. The Recitals hereto form a material part of this Agreement, are true and correct, and are incorporated herein by this reference and made a part hereof.
16. No Waiver of Default. Any waiver of default under this AGREEMENT must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this AGREEMENT. No delay or omission in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver. A consent to or approval of any act shall not be deemed to waive or render unnecessary consent to or approval of any other or subsequent act.
17. Severability. If any provision of this Agreement is determined to be unenforceable for any reason, it shall be adjusted rather than voided, if possible, in order to achieve the intent of the Parties. In any event, the remaining provisions shall be deemed valid and enforceable to the maximum extent possible.
18. Attorney Fees. Each party shall bear its own attorney fees and other costs in connection with this matter and this AGREEMENT.
19. Notices. Any notice, request, demand, consent, approval or other communication required or permitted hereunder or by law shall be deemed given or made only if in writing and intended,

**Tolling Agreement, Santa Barbara County APCD and [Non-District Party]
Reference No. NOV/Mutual Settlement ####s**

addressed as follows, or to such other address as may, from time to time, be designated by written notice to the other Parties:

To [Non-District Party]:

XXXXXXX
XXXXXXX
XXXXXXX

To District: Aeron Arlin Genet
 Air Pollution Control Officer
 Santa Barbara County Air Pollution Control District
 260 North San Antonio Road, Suite A
 Santa Barbara, CA 93110

IN WITNESS THEREOF, the Parties hereto each have executed this Agreement to be effective as of the date listed in Paragraph 1 above.

SANTA BARBARA COUNTY AIR
POLLUTION CONTROL DISTRICT

By _____
Aeron Arlin Genet
Air Pollution Control Officer

Date _____

APPROVED AS TO FORM:

MICHAEL C. GHIZZONI
COUNTY COUNSEL

By _____
Deputy County Counsel

[Non-District Party]

By _____
Signature

Print Name

Title

Date _____

APPROVED AS TO FORM:
Counsel to [Non-District Party]

By _____
Signature

Print Name

Title