

MEMORANDUM OF UNDERSTANDING
County Agricultural Commissioners, and
South Coast Air Quality Management District
Regarding Methyl Bromide Agricultural Commodity
Fumigation Chamber Facilities

I. Recitals

A. Agency Authority

State law provides that the State Air Resources Board ("ARB") has authority to control air pollution from vehicles and that local Air Pollution Control Districts/Air Quality Management Districts ("Districts") have primary authority to control air pollution from nonvehicular sources. State law also provides that the Department of Pesticide Regulation ("DPR"), to the exclusion of other local regulation, is responsible for regulating any matter relating to the use of pesticides. County Agricultural Commissioners ("Commissioners") have authority to adopt supplemental regulations which govern the conduct of pest control operations including recordkeeping.

B. Use Of Methyl Bromide for Agricultural Commodity Fumigation

The pesticide methyl bromide sometimes is used in fumigation chamber facilities to kill pests in or on agricultural commodities. Such use of methyl bromide is regulated by DPR. However, when pesticide residues enter the ambient air from the fumigation chamber, the Districts have authority to regulate.

C. Permit Streamlining

In the past, both the Commissioners and the Districts have issued permits that regulate respectively the use and ambient air emissions of methyl bromide to persons who use methyl bromide to treat agricultural commodities in fumigation chamber facilities. To reduce the regulatory burden on businesses and assist them in complying with environmental quality laws in an expedited fashion without reducing protection of public health and safety and the environment, and to decrease the potential for conflict, overlap, and duplication between various environmental permits and authorities, the Legislature enacted the Environmental Permit Reform Act of 1993 (SB 1185 "the Act"; Stats. 1993, Ch. 419; Public Resources Code section 71000 et seq.), which encourages a consolidated, integrated permit process.

To implement this Act, and to decrease the potential for conflict, overlap, and duplication between the agencies, greater consultation, communication, cooperation, and coordination between the parties to this Memorandum of Understanding (MOU) is desirable.

II. Purpose and Scope of Agreement

- A. In implementing the Environmental Permit Reform Act of 1993, the parties to this MOU intend to minimize the potential for jurisdictional dispute between them and to ensure that methyl bromide that is used to treat agricultural commodities in fumigation chamber facilities is used in an environmentally protective manner without unnecessarily burdening business by consolidating the permit issuance process and integrating permit requirements into one document in accordance with the Act.
- B. This MOU encompasses the issuance, renewal, and amendment, or issuance of permits to owners/operators of fumigation chamber facilities described in Attachment A, who use methyl bromide to fumigate agricultural commodities in the chamber facilities, as well as permits to owners/operators of other such facilities within the State of California who have likewise requested the designation of a consolidated permit agency pursuant to Section 71021 of the Act. This MOU does not apply to operating permits issued to facilities subject to Title V of the Federal Clean Air Act (42 U.S.C. sections 7661 et seq).
- C. The parties to this MOU recognize the expertise of each of them and recognize the importance and necessity of communication, consultation, cooperation, and coordination among them. The parties recognize that permits concerning the use of methyl bromide to treat agricultural commodities in fumigation chambers either should be issued, with the necessary conditions to protect the public health and safety and the environment, or be denied, in an expeditious manner.
- D. It is the intent of the parties to work together to agree upon scientific criteria (including but not limited to models, monitoring, and endpoints) to develop permit conditions concerning pesticide residues relating to the use of methyl bromide in agricultural commodity fumigation chambers that may enter the ambient air. The parties agree that such conditions could be standardized and set forth in an implementation plan, which could supplement this MOU and be modified from time to time to incorporate new data or technology.

III. Terms Of Agreement

A. Role of Commissioners

The Commissioner shall engage in good faith communication, consultation, cooperation, and coordination with the parties as to the prevention and control of pesticide residues that may enter the ambient air as a result of the use of methyl bromide in agricultural commodity fumigation chamber facilities. Because the Commissioners have agreed that they will be the lead agency pursuant to Section 71020 of the Act for all matters relating to the above use of methyl bromide, the Commissioners shall be designated as the consolidated permit agency pursuant to Section 71020 of the Act. The Commissioner shall serve as the main point of contact with the permit applicant and shall manage the permit processing in accordance with the Act. The Commissioner shall also enforce the terms of the permit which pertain to the use of methyl bromide inside the fumigation chamber. Nothing in this agreement is intended to limit the legal authority of the commissioner.

B. Role of Districts

The District shall engage in good faith communication, consultation, cooperation, and coordination with the parties regarding the prevention and control of pesticide residue emissions that may enter the ambient air as a result of the use of methyl bromide in agricultural commodity fumigation chamber facilities. Toward this end, the District shall provide the Commissioner with such permit terms, conditions, emission limitations, and requirements as are necessary to ensure compliance with applicable provisions of state law and with all applicable rules, regulations, and orders of the District and the ARB respecting emissions of methyl bromide from fumigation facilities into the ambient air. The Commissioner shall incorporate these requirements into the consolidated permit. The District shall also enforce the terms of the permit which pertain to emissions of pesticide residues into the ambient air. If the District determines that the permit must be denied, the District shall provide the Commissioner and the applicant with a letter denying the permit and containing the reasons for the denial within the time period established in District regulations, or, if none exists, within the time period established either by state law, or by mutual agreement with the Commissioner. For purposes of triggering the requirements of the Permit Streamlining Act, codified at Government Code Section 65920 et seq., the time periods established by the Permit Streamlining Act shall control. Any permit denial must be appealed to the District's Hearing Board in a timely manner. Nothing in this agreement is intended to limit the legal authority of the District.

C. Role of ARB and DPR

ARB shall engage in good faith communication, consultation, cooperation, and coordination with the parties regarding the prevention and control of pesticide residues that may enter the ambient air as a result of the use of methyl bromide in agricultural commodity fumigation chamber facilities. ARB shall provide technical advice or assistance to the Districts in accordance with applicable operating protocols between the ARB and the California Air Pollution Control Officers Association (CAPCOA). DPR shall engage in good faith communication, consultation, cooperation, and coordination with the parties regarding the prevention and control of pesticide residues that may enter the ambient air as a result of the use of methyl bromide in agricultural commodity fumigation chamber facilities. DPR shall provide direction and technical advice or assistance to the Commissioners. DPR has prepared suggested permit conditions for methyl bromide commodity fumigation in chambers which establish a means of regulating the use of methyl bromide to avoid unacceptable human exposure.

IV. Consultation and Dispute Resolutions

This MOU is intended to facilitate communication, consultation, cooperation, and coordination among the parties with respect to the air quality impacts of pesticide residues that may result from the use of methyl bromide in agricultural commodity fumigation chamber facilities.

The parties agree that success in achieving the objectives of the MOU is critically dependent upon regular exchanges of scientific information and technical data, including data from ambient air monitoring for methyl bromide residues from commodity fumigation chambers, so that permit conditions will be based on scientific data. Toward this end, such regular exchanges shall occur and informal communication is encouraged at the staff level. The parties agree to meet and confer in good faith and in a timely manner in the event of a dispute between or among any of the parties regarding the terms of this MOU or the performance of any party pursuant to it.

V. Term of MOU

Recognizing that all situations cannot be foreseen, additional agreements or amendments to this MOU may be necessary in the future. However, this MOU

shall remain in effect until terminated by ARB, DPR, the Districts acting through CAPCOA, or the Commissioners acting through the County Agricultural Commissioners Association (CACA) by written notification to each of the other parties. It is the intent of the parties that termination shall not occur unless the terminating party has established that another of the parties has breached a material condition of the MOU and that the matter cannot be otherwise resolved. It is further agreed that the MOU shall be interpreted in accordance with the Act as in effect at the time of this agreement.


By:


South Coast Air Quality Management District


Dated: 11/4/96


County Agricultural Commissioners

Dated: 7/3/96

APPROVED AS TO FORM
 DATE 8-14-96
PETER M. GREENWALD
DISTRICT COUNSEL, SCAQMD

APPROVED AS TO FORM
DE WITT W. OLINTON, County Counsel

BY 
DEPUTY