

# San Joaquin Valley Unified Air Pollution Control District

## Policy for Determining “Commencement of Construction” Pursuant to rule 2050 Section 3.1

Approved by: \_\_\_\_\_ *Signed* \_\_\_\_\_ Date: 11/1/93

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**Purpose:** To describe what constitutes “commencement of construction” under an Authority to Construct (ATC) with regards to Rule 2050 Section 3.1.

**Background:**

Rule 2050 – “Cancellation of Application” subsection 4.1 states, “an Authority to Construct shall expire and the application shall be cancelled two years from the date of issuance unless the application has commenced construction”

Subsection 3.1 defines “commence” “as applied to construction” to mean “the owner or operator has all necessary pre-construction approvals or permits and either has:

3.1.1 Begun, or caused to begin, a continuous program of actual onsite construction of the source to be completed within a reasonable time;

To satisfy this requirement, the ATC holder must demonstrate that construction or installation of the equipment for which an ATC is required and which is authorized by the ATC has begun prior to the date the ATC expired and is progressing towards completion in the near future. Actual onsite construction includes site preparation and equipment fabrication or assembly. Also, the permittee must present a construction schedule showing ongoing activities to complete

construction. An onsite inspection by a District representative is the most appropriate means to confirm that construction of the permit unit is under way. If it can be determined that physical construction of the permit unit has commenced and is proceeding, the ATC does not expire and no renewal is necessary.

- “3.1.2 Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.”

To satisfy this requirement, the ATC holder must provide documentation (i.e., copies) of agreements with other parties for the construction or with other parties for the construction or installation of the authorized equipment at the location specified on the ATC. Such agreement (s) shall identify the timeframe for completion of work which must be in the near future. The agreement must also contain a penalty clause specifying the penalty the ATC holder is liable for should the contract be modified or canceled and / or the permittee must demonstrate financial losses that would be incurred should the completion of the project be delayed. Such losses may include funds already spent on the project. Such contract must be executed (signed) by both parties prior to the ATC expiration date.