



Air Pollution Control Board

San Diego County Air Pollution Control District

Governing Body

GREG COX
First District

DIANNE JACOB
Second District

PAM SLATER-PRICE
Third District

RON ROBERTS
Fourth District

BILL HORN
Fifth District

AGENDA ITEM

DATE: April 4, 2012

AP01

TO: Air Pollution Control Board

SUBJECT: NOTICED PUBLIC HEARING – ADOPTION OF PROPOSED NEW RULE 20.3.1 (PREVENTION OF SIGNIFICANT DETERIORATION – FEDERAL REQUIREMENTS) AND AMENDMENTS TO RULES 1401 (GENERAL PROVISIONS), 1410 (PERMIT REQUIRED), 60.1 (LIMITING POTENTIAL TO EMIT AT SMALL SOURCES), AND 60.2 (LIMITING POTENTIAL TO EMIT – SYNTHETIC MINOR SOURCES) (DISTRICT: All)

SUMMARY:

Overview

The U.S. Environmental Protection Agency recently added greenhouse gases to the list of regulated compounds under the Clean Air Act. As a result, major stationary sources such as power plants and other facilities with large industrial boilers, turbines, or stationary engines are required to obtain federal permits based on their greenhouse gas emissions. These federal requirements are reflected in the proposed new and amended local rules, which are requested for adoption by the Air Pollution Control Board.

Today's requested action to adopt and amend local rules incorporating federal permit requirements will enable the Air Pollution Control District to assume authority for issuing the federal permits in lieu of the Environmental Protection Agency. Local administration of these federal requirements is generally preferred by regulated businesses as the permits will generally be issued more quickly and any appeals of permit decisions will be considered locally and more quickly than at the federal level.

Specifically, proposed Rule 20.3.1 requires federal construction permits to build new or expanded major stationary sources of greenhouse gas emissions or other regulated compounds. Proposed amendments to Rule 1401 require federal operating permits to operate major stationary sources of greenhouse gas emissions. Proposed amendments to Rule 1410 clarify the procedures for obtaining a significant modification of a federal operating permit. Proposed amendments to Rules 60.1 and 60.2 establish procedures for non-major greenhouse gas-emitting facilities to avoid federal permitting requirements. Additional proposed amendments provide clarifications and corrections.

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Recommendation(s)

AIR POLLUTION CONTROL OFFICER

1. Find that the adoption of Rule 20.3.1 and amendments to Rules 1401, 1410, 60.1, and 60.2 is exempt from the provisions of the California Environmental Quality Act pursuant to California Code of Regulations, Title 14, Section 15268 as a ministerial action taken to implement prescribed federal regulations, and pursuant to California Code of Regulations Title 14, Section 15061(b)(3), since it can be seen with certainty that there is no possibility that the activity in question may have a significant adverse effect on the environment, and pursuant to California Code of Regulations, Title 14, Section 15308, as an action taken to assure the protection of the environment, where the regulatory process involves procedures for protection of the environment.
2. Adopt the Resolution entitled RESOLUTION ADOPTING NEW RULE 20.3.1 (PREVENTION OF SIGNIFICANT DETERIORATION - FEDERAL REQUIREMENTS) AND AMENDING RULES 1401 (GENERAL PROVISIONS), 1410 (PERMIT REQUIRED), 60.1 (LIMITING POTENTIAL TO EMIT AT SMALL SOURCES), AND 60.2 (LIMITING POTENTIAL TO EMIT–SYNTHETIC MINOR SOURCES) OF THE RULES AND REGULATIONS OF THE SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT. |

Fiscal Impact

Funds for this request are included in the Fiscal Year 2011-12 Operational Plan in the Air Pollution Control District. If approved, this request will result in costs and revenue of \$8,400 in Fiscal Year 2012-13 to provide outreach and inform the regulated community of the new requirements. The funding source is permit fee revenue in the Air Pollution Control District fund. There will be no change in net General Fund cost and no additional staff years.

Business Impact Statement

The Air Pollution Control District's proposed new and amended rules do not impose requirements beyond existing applicable federal requirements. If the proposal is not adopted by the Board, the requirements for affected businesses to obtain federal permits still apply and will be administered by the U.S. Environmental Protection Agency instead of the Air Pollution Control District.

Local administration of federal requirements is preferred by regulated businesses. Businesses can maintain a local point of reference for air pollution control

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requirements, simplifying communication. Additionally, the length of time to obtain a federal permit will generally be shorter if the program is implemented locally. Furthermore, any appeals of permit decisions will be considered locally and more quickly by the Air Pollution Control District Hearing Board rather than the federal Environmental Appeals Board in Washington, D.C.

Affected businesses will be required to pay the Air Pollution Control District's costs associated with issuing the federal permits, pursuant to existing Rule 40 (Permit and Other Fees). The costs and corresponding fees will be site-specific, depending on the complexity of the source and the applicable federal requirements. These fees will be in lieu of any application fees required by the U.S. Environmental Protection Agency.

Businesses will incur costs to prepare their applications for federal permits. These costs will be incurred regardless of today's proposed action.

Staff conducted substantial outreach to potentially affected facilities and industrial groups during development of the proposed new and amended rules. If the new and amended rules are adopted by the Board, staff will conduct additional outreach and issue an advisory to further notify and inform potentially affected sources.

Advisory Board Statement

At its meeting on February 8, 2012, with a quorum present, the Air Pollution Control District Advisory Committee supported the Air Pollution Control District's recommendations by a vote of 4 to 1.

BACKGROUND:

Greenhouse Gases

The term "greenhouse gases" (GHGs) refers to airborne compounds that have heat-trapping properties. Some GHGs are emitted through both natural processes and human activities, while others are emitted solely through human activities. In 2007, the U.S. Supreme Court ruled that GHGs fit within the definition of an "air pollutant" under the Clean Air Act (CAA). This set in motion a regulatory process leading to federal regulation of GHG emissions from new motor vehicles and large industrial operations.

GHGs are defined by the U.S. Environmental Protection Agency (EPA) as the following gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. Each gas has a different capacity for trapping heat. Therefore, the applicability of federal requirements is determined on a carbon dioxide-equivalent (CO₂e) basis, which is the sum of the mass of emissions of each gas adjusted for its potential to trap heat relative to carbon dioxide.

SUBJECT: NOTICED PUBLIC HEARING – ADOPTION OF PROPOSED NEW RULE 20.3.1 (PREVENTION OF SIGNIFICANT DETERIORATION – FEDERAL REQUIREMENTS) AND AMENDMENTS TO RULES 1401 (GENERAL PROVISIONS), 1410 (PERMIT REQUIRED), 60.1 (LIMITING POTENTIAL TO EMIT AT SMALL SOURCES), AND 60.2 (LIMITING POTENTIAL TO EMIT – SYNTHETIC MINOR SOURCES) (DISTRICT: ALL)

Increased Permitting Thresholds for Greenhouse Gas Emissions

The proposed action addresses two federal permitting programs under the CAA, namely construction permits pursuant to Prevention of Significant Deterioration (PSD) provisions, and operating permits pursuant to Title V (Permits). As specified in the CAA, PSD permits are required to construct new or modified major stationary sources with a potential to emit more than 100 or 250 tons per year of a regulated pollutant, depending on the source type. Additionally, Title V permits are required to operate existing major stationary sources with a potential to emit more than 100 tons per year of a regulated pollutant.

The 100-ton and 250-ton emission thresholds specified in the CAA were based on traditional pollutants such as oxides of nitrogen and particulate matter and were not designed to be applied to GHGs. Carbon dioxide (CO₂), the most common GHG, is emitted in significantly larger quantities than other regulated pollutants. Consequently, the 100-ton and 250-ton thresholds would be exceeded by countless small businesses and multi-family residences, requiring them to obtain federal permits based on CO₂ emissions from their appliances, such as water heaters. To avoid this scenario, EPA issued a GHG Tailoring Rule in 2010 that significantly increases ("tailors") the thresholds for applicability of CAA permitting requirements to GHG-emitting facilities.

Pursuant to the Tailoring Rule, only the largest GHG-emitting facilities with potential to emit 100,000 tons/year of GHGs (CO₂e) for a new source, or with potential to increase emissions of GHGs (CO₂e) by 75,000 tons at an existing source, are required to obtain federal permits. Affected sources in San Diego County are primarily large stationary sources of fuel combustion such as power plants, large-scale manufacturing facilities, and other facilities operating large industrial boilers, turbines, or stationary engines for power production and heating.

Federal Construction Permits – Proposed District Rule 20.3.1

EPA currently administers the PSD permitting program for major industrial construction projects in San Diego County but has requested the Air Pollution Control District (District) to assume this responsibility. EPA has made similar requests to air districts throughout California, therefore most California air districts have adopted or are in the process of adopting local rules to administer the PSD permitting requirements.

The District has extensive experience processing air permits and working with local facilities and therefore is well suited to the task of PSD permitting. The Board's adoption of proposed new Rule 20.3.1 (Prevention of Significant Deterioration - Federal Requirements) and subsequent EPA approval will transfer authority for PSD administration to the District.

PSD construction permits must require installation of the "best available control technology" (BACT) for pollutants that exceed specified emission thresholds. BACT for GHG emissions is

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anticipated to involve equipment or operational designs that result in increased efficiency and therefore reduced fuel consumption and associated GHG emissions.

The applicability thresholds in the PSD permitting program are relatively high at 100,000 tons per year for GHG emissions (CO₂e) and 100 or 250 tons per year (depending on the source type) for non-GHG emissions. Therefore it is anticipated that one or two industrial construction projects per year, on average, will be required to obtain PSD construction permits. Some likely examples would include new power plants, large-scale manufacturing facilities, and other facilities that would propose large industrial boilers, turbines, or stationary engines for power production and heating.

If adopted by the Board, Rule 20.3.1 will be submitted through the California Air Resources Board (ARB) to EPA for approval and inclusion into the State Implementation Plan (SIP). The rule will take effect and be in force upon approval by EPA, as published in the Federal Register.

Federal Operating Permits – Proposed Amendments to District Rules 1401 and 1410

The District currently administers the Title V federal operating permit program for existing major stationary sources of non-GHG emissions such as oxides of nitrogen and volatile organic compounds. In fact, most California air districts administer a Title V federal permitting program (in lieu of EPA) in their respective region. The Title V permit application requirements and procedures for San Diego County are contained in existing District Rules 1401-1425 of Regulation XIV (Title V Operating Permits), which were initially adopted by the Board in 1994. A Title V operating permit does not impose any additional pollution control requirements. It identifies all federal requirements that apply to the source, including emissions limits and monitoring, record keeping, and reporting requirements.

To retain administrative authority of the Title V permitting program in San Diego County, the District is required to amend its Title V permitting rules to reflect the new requirements for GHG-emitting facilities. Accordingly, the proposed amendments to Rule 1401 (General Provisions) incorporate GHG-related definitions and applicability thresholds pursuant to federal requirements. If adopted by the Board, amended Rule 1401 will be submitted through ARB to EPA to replace existing Rule 1401 in the SIP. The amended rule will take effect and be in force upon approval by EPA, as published in the Federal Register. Within 12 months thereafter, existing sources that are newly subject to Title V permitting based on their GHG emissions will be required to apply for a Title V permit from the District. Additionally, future new sources exceeding the GHG applicability thresholds will be required to apply within 12 months of commencing operations. Title V permit renewals are required every five years.

Up to two dozen existing facilities not previously subject to Title V permits may be required to obtain such permits due solely to their GHG emissions (CO₂e) exceeding the 100,000 ton per year threshold. Affected sources include existing peaking power plants, large-scale

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manufacturing facilities, and other facilities operating large industrial boilers, turbines, or stationary engines for power production or heating. Additionally, sources that already hold Title V permits based on emissions of other regulated compounds will be required to include estimates of their GHG emissions in their next applications for Title V permit renewal.

Separate minor amendments to Rule 1410 (Permit Required) are also proposed. The amendments clarify the application requirements and procedures to significantly modify a federal operating permit. If adopted by the Board, the amended rule will be submitted through ARB to EPA for approval and inclusion into the SIP.

Opting Out of Federal Permitting – Proposed Amendments to District Rules 60.1 and 60.2

The applicability of federal permitting is based on a facility's "potential" emissions—assuming the facility continuously operates at maximum capacity—rather than its actual emissions. Consequently, a facility with actual emissions that are less than the applicability thresholds may be at risk of federal enforcement or citizen lawsuit to obtain a federal permit based on its potential emissions. To avoid this possibility, existing District Rule 60.1 (Limiting Potential to Emit at Small Sources) and Rule 60.2 (Limiting Potential to Emit – Synthetic Minor Sources) are voluntary rules that specify procedures to opt out of federal permitting requirements. The proposed amendments to these rules establish such procedures for GHG-emitting facilities.

Rule 60.1 is designed for sources with actual emissions below 50 percent of the applicability thresholds and specifies records and reports that must be maintained to be exempt from federal permitting. Rule 60.2 is designed for sources with actual emissions between 50 and 100 percent of the applicability thresholds and provides an exemption from federal permitting through enforceable permit conditions that limit potential emissions to less than the applicability thresholds. These rules and their proposed amendments were requested by local industry and were developed with concurrence from EPA.

Exemption for Biogenic Sources

"Biogenic" CO₂ emissions refers to CO₂ emitted from natural biological processes, such as that emitted during decomposition of organic material (originating from plants, animals or micro-organisms). EPA is conducting a detailed examination of biogenic CO₂ emissions from industrial sources such as landfills, wastewater treatment facilities, and biomass power plants to determine whether these sources add additional CO₂ to the atmosphere or instead are "carbon neutral" and therefore their CO₂ emissions should be exempt from federal permitting. While EPA's examination is underway, CO₂ emissions resulting from the combustion or decomposition of biologically-based material will be excluded when determining whether sources exceed the PSD and Title V applicability thresholds. The exclusion of biogenic CO₂ emissions is scheduled to expire on July 21, 2014, absent further EPA rulemaking.

Implementation with Existing Budgeted Positions

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If adopted by the Board, the new and amended District rules will be implemented with the existing budget. Beginning in Fiscal Year 2013-14, implementation of the new and amended rules is expected to require up to three additional staff years. These positions will be funded by permit fee revenue, which will increase following adoption of the new and amended rules as additional sources are required to obtain federal permits from the District.

Environmental Statement

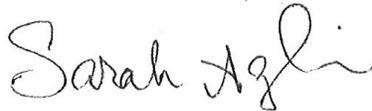
The California Environmental Quality Act (CEQA) requires environmental review for certain actions. The District conducted a preliminary review of whether CEQA applies to the adoption of new Rule 20.3.1 and amendments to Rules 1401, 1410, 60.1, and 60.2. Adoption of the new and amended rules will implement existing applicable federal permitting requirements currently being administered by the EPA and will not result in new or the relaxation of existing air pollution control requirements. Therefore, the rulemaking is exempt from the provisions of CEQA pursuant to California Code of Regulations, Title 14, Section 15268 as a ministerial action taken to implement prescribed federal regulations, and pursuant to Section 15061(b)(3) since it can be seen with certainty that there is no possibility that the activity in question may have a significant adverse effect on the environment, and pursuant to Section 15308 as an action taken to assure the protection of the environment, where the regulatory process involves procedures for protection of the environment. Pursuant to Section 15062, a Notice of Exemption will be prepared and filed upon adoption of the proposed new and amended rules.

Linkage to the County of San Diego Strategic Plan

Today's proposed action supports the Environment Strategic Initiative in the County of San Diego's 2011-2016 Strategic Plan with objectives to protect air quality and reduce environmental risk through partnerships as well as regulation. Local adoption and enforcement of federal permitting requirements facilitates implementation and increases efficiency of air resources management through intergovernmental collaboration.

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Respectfully submitted,



SARAH E. AGHASSI
Deputy Chief Administrative Officer



ROBERT J. KARD
Air Pollution Control Officer

ATTACHMENTS

Attachment A – RESOLUTION ADOPTING NEW RULE 20.3.1 (PREVENTION OF SIGNIFICANT DETERIORATION - FEDERAL REQUIREMENTS) AND AMENDING RULES 1401 (GENERAL PROVISIONS), 1410 (PERMIT REQUIRED), 60.1 (LIMITING POTENTIAL TO EMIT AT SMALL SOURCES), AND 60.2 (LIMITING POTENTIAL TO EMIT– SYNTHETIC MINOR SOURCES) OF THE RULES AND REGULATIONS OF THE SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT

- Attachment B – Workshop Report
- Attachment C – Rule 1401 Change Copy
- Attachment D – Rule 1410 Change Copy
- Attachment E – Rule 60.1 Change Copy
- Attachment F – Rule 60.2 Change Copy

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AGENDA ITEM INFORMATION SHEET |

REQUIRES FOUR VOTES: Yes No

WRITTEN DISCLOSURE PER COUNTY CHARTER SECTION 1000.1 REQUIRED

 Yes No

PREVIOUS RELEVANT BOARD ACTIONS:

August 13, 2003 (APCB #2), Amended Rules 1401, 1410, 1415, 1418, 1421, 1425, 60.1 and 60.2; May 23, 2001 (APCB #1), Amended Rules 1401, 1410, 1415; May 23, 2001 (APCB #2), Adopted new Rule 60.1; April 30, 1997 (APCB #2), Adopted new Rule 60.2; March 7, 1995 (APCB #4), Amending Regulation XIV - Title V Operating Permits; January 18, 1994 (APCB #2), Adopted new Regulation XIV - Title V Operating Permits.

BOARD POLICIES APPLICABLE:

N/A

BOARD POLICY STATEMENTS:

N/A

MANDATORY COMPLIANCE:

N/A

ORACLE AWARD NUMBER(S) AND CONTRACT AND/OR REQUISITION NUMBER(S):

N/A

ORIGINATING DEPARTMENT: Air Pollution Control District

OTHER CONCURRENCE(S): N/A

CONTACT PERSON(S):

ROBERT J. KARD

Name

ROBERT REIDER

Name

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