

**AIR POLLUTION CONTROL DISTRICT
COUNTY OF SAN DIEGO**

DRAFT PROPOSED AMENDMENTS TO NEW SOURCE REVIEW RULES

RULE 20.1 – GENERAL PROVISIONS

RULE 20.2 – NON-MAJOR STATIONARY SOURCES

RULE 20.3 – MAJOR STATIONARY SOURCES & PSD STATIONARY SOURCES

RULE 20.4 – PORTABLE EMISSION UNITS

WORKSHOP REPORT

A workshop notice on the draft proposed amendments to the Air Pollution Control District's New Source Review (NSR) Rules 20.1, 20.2, 20.3 and 20.4 was mailed to all Permit and Registration Certificate holders in San Diego County. Notices were also mailed to all economic development corporations and chambers of commerce in San Diego County, the U.S. Environmental Protection Agency (EPA), the California Air Resources Board (ARB), and other interested parties.

The workshop was held on May 7, 2015, and was attended by 36 people, including representatives of local businesses, government agencies and other organizations. Verbal comments were received during the workshop. Written comments were received before and after the workshop. The comments and Air Pollution Control District (District) responses are provided below. Based on comments received, the District is proposing changes to the draft NSR rules considered at the workshop. A list of those changes is included as an attachment to this workshop report.

1. WORKSHOP COMMENT

The exemption in Rule 20.1, Subsection (b)(4), regarding emission units subject to District Rule 69, is being deleted. Is Rule 69 scheduled to be revised as well?

DISTRICT RESPONSE

The District has no plans to revise or delete Rule 69 at this time. Rule 69 was constructed to allow the single owner utility, operating all the large utility boiler power plants in San Diego County in the 1990's, to comply with an overall declining NOx emissions cap for the power plants. However, Rule 69 also prescribed Best Available Retrofit Control Technology emission limits for each power plant boiler for which ownership changed. In the early 2000's, ownership of all of the affected power plant boilers changed, and many of the previous utility boilers have since been removed and/or replaced. The Rule 69 boiler emission rate limits still apply to the remaining boilers. As the remaining power plant boilers regulated under Rule 69 are removed or replaced by new units subject to more stringent Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER) emission limits under the NSR regulations, and depending on available resources, the District may consider revising or deleting Rule 69.

2. WORKSHOP COMMENT

The District has expanded what it regulates with regard to Navy ships. Formerly, by policy, the District had not required permits or applied NSR requirements to shipboard maintenance painting operations conducted onboard ship by Navy forces. These have been on-going for many years. The District did require, and the Navy agreed to use, compliant paints and solvents. Now, the District is requiring permits for these operations conducted while the ship is docked, and considering them new and subject to NSR. This is creating a lot of turmoil for the Navy. The Navy is willing to put these onboard at-dock painting operations under District permit, but requesting that these not be considered new operations subject to NSR. While the Navy is concerned, specifically regarding this onboard ship painting matter, there may be other similar cases in the future where on-going operations that are exempted from permit by policy, rather than explicitly in Rule 11, are later required to obtain permits. The District should expand the exemption from NSR in Rule 20.1(b)(1), which applies to permit-exempt emission units that are required to obtain a permit due to a change in Rule 11, to include existing on-going operations that were not previously required to have a permit by District policy but are now required to have a permit due to a change in policy. The District may need to also consider the definition of “new” as it might apply to such cases.

DISTRICT RESPONSE

The District is not proposing to amend the exemption in Rule 20.1(b)(1) as requested by this comment. The suggested changes to Rule 20.1 would be a weakening of the current rule and as such are prohibited by State law (Cal. Health and Safety Code §42500 et. Seq. – SB 288). There has been some confusion concerning whether ships’ force operations are regulated by the District. All ships’ force operations, not just those mentioned in the comment, are considered part of the stationary source and require a District permit to operate, unless otherwise exempt by District Rule 11(d)(15). Ships’ force operations that do not meet the exemption in District Rule 11 can be included under existing marine coating permits or a new permit to operate may be granted for these operations. All ships’ force operations that require a permit and that have not been previously permitted will be evaluated as new emission units and will be subject to NSR, Toxic NSR, and all applicable prohibitory rules, such as Rule 67.18 (Marine Coating Operations).

See also response to Comment No. 34.

3. WORKSHOP COMMENT

The City of San Diego manages wastewater collection, treatment, disposal and water reclamation facilities that are not co-located but are connected by pipelines. How would these be treated under the proposed revised definition of “contiguous property” in Rule 20.1(c)?

DISTRICT RESPONSE

The District is now proposing to delete the definition of “contiguous property” from Rule 20.1 since it is already defined in District Rule 2. The initial draft revisions to the definition of “contiguous property” were intended to clarify existing APCD application of the definition and to clarify that sources connected solely by utility lines or pipelines are not considered to be a single stationary source. As such, the revised definition was not designed to change the way the facilities listed above are treated for purposes of stationary source determinations. For this reason, and to retain the internal consistency in the definitions in District rules, the District is proposing to delete this definition from Rule 20.1. The existing definition in Rule 2 is the same as the current definition in Rule 20.1. See also responses to Comment Nos. 32 and 33.

4. WORKSHOP COMMENT

Regarding the proposed revisions to the BACT definition in Rule 20.1(c), it looks like BACT could not be less stringent than if applied to an individual emission unit, but could be more stringent if BACT is evaluated and applied to more than one emission unit as a project. How does this relate to the BACT trigger levels? Would they be applied based on the emission increases for individual emission units or for a group of emission units?

DISTRICT RESPONSE

The District NSR rule BACT triggers would still be based on the emissions associated with individual emission units. Rules 20.2(d)(1)(v) and 20.3(d)(1)(vii) refer to the evaluation of BACT (or LAER) for projects consisting of multiple emission units required to be equipped with BACT (or LAER). In some cases, the District may determine that the feasibility, cost-effectiveness and emission control capability of emission controls applied to multiple emission units should be evaluated. While the District could do this previously, the revised BACT definition makes this authority explicit.

5. WORKSHOP COMMENT

Regarding the major stationary source or major modification definitions and emission thresholds in Rule 20.1(c), has the District changed or reduced any of those thresholds?

DISTRICT RESPONSE

The District has not proposed to lower any of the current major stationary source or major modification emission thresholds. The District is proposing to add definitions for “federal major stationary source” and “federal major modification” with higher VOC and NO_x emission thresholds of 100 tons per year for a federal major stationary source and 40 tons per year for a federal major modification. These definitions will also contain provisions for automatically lowering the emission thresholds to 50 tons per year and 25 tons per year, respectively, if the San

Diego Air Basin is formally designated by EPA as a serious or severe ozone nonattainment area at some time in the future. There is some chance this may occur based on recent ozone air quality levels.

The current Rule 20.1 major stationary source/major modification emission thresholds for VOC and NO_x remain at 50 tons per year and 25 tons per year. Those current thresholds cannot be increased as that would result in fewer projects being subject to existing, current rule requirements. State law prohibits any relaxation of current NSR requirements. The two proposed new definitions of federal major stationary source and federal major modification will be used to apply additional, *new* federal NSR requirements included in the rule revisions. These new requirements will then only apply to a few very large emission sources. The intent is to minimize the impact of these EPA-mandated requirements.

6. WORKSHOP COMMENT

Why was the definition of military tactical support equipment in current Rule 20.1(c)(36) deleted?

DISTRICT RESPONSE

A definition of military tactical support equipment is no longer needed in Rule 20.1. A definition of military tactical support equipment is already contained in District Rule 2 as the term is now used in several District rules. That definition is identical to the current definition in Rule 20.1 and applies for all District rules unless otherwise specified.

7. WORKSHOP COMMENT

The definition of “Contemporaneous Net Emissions Increase” is more extensive now. It is used in the definition of a major modification. How does this change how the rules apply? How does this apply when one does the 80 percent actual emissions to potential to emit test in the rules?

DISTRICT RESPONSE

The proposed revised definition of “Contemporaneous *Net* Emissions Increase” in Rule 20.1(c) is not being substantively changed from the current definition of “Contemporaneous Emissions Increase” in current Rule 20.1(c)(16). The proposed changes clarify, but do not change, the five-year contemporaneous emissions accounting period, and emphasize that both emission increases and emission decreases are accounted for within the contemporaneous period. Both under the current rules and the proposed revised rules, the contemporaneous emissions increase accounting is used to determine if a project constitutes a major modification, and under the proposed revised rules is used to determine if a project constitutes a *federal* major modification. The District is also proposing to allow an applicant for a modification at a federal major stationary source, as proposed in the revised rules, to use the EPA emissions increase test for purposes of applying the

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new rule requirements that are specific to federal major stationary sources and federal major modifications. This would be at the option of the applicant and would be in addition to the requirement to use the current emissions increase tests, under the current and proposed rules, that are used to determine the applicability and extent of rule requirements for all projects.

The 80 percent test in current Rule 20.1 is a federal requirement that has been in effect for many years and will continue to apply under the revised rules at facilities that are already major stationary sources that are modifying an emissions unit, and where the modification will result in an emissions increase. If past actual emissions are less than 80 percent of the unit's pre-modification allowable emissions (i.e., pre-project potential to emit (PTE)), the emissions increase is based on the proposed new allowable emissions (post-project potential to emit) after the modification minus past actual emissions. If past actual emissions are equal to or more than 80 percent of the unit's pre-modification allowable emissions, then the emissions increase is based on the proposed new allowable emissions minus the pre-modification allowable emissions (i.e., a post-project PTE minus pre-project PTE calculation). (Note: to meet EPA requirements, past actual emissions may need to be further adjusted under the revised rules if the modified unit is located at a *federal* major stationary source, as newly defined.)

Once the emissions increase is determined after applying this 80 percent test, the emissions increase is added into the contemporaneous (net) emissions increase accounting to determine if the modified emission unit will constitute either a major modification (*current and proposed revised rule*) or a federal major modification (*proposed revised rule*).

The emissions increase test under EPA's NSR Reform regulations for most modification projects at federal major stationary sources compares past actual emissions (over a ten-year look-back period and adjusted to current applicable federal requirements) to future expected actual emissions as projected by the applicant. The emissions increase can then be adjusted downward to take into consideration what activity level the emissions units being modified could have accommodated without the proposed modification.

State law (SB288) precludes the District from changing its NSR rules to apply this new EPA emissions increase test across the board in the District's NSR rules because ARB considers EPA's method to be less stringent than the District's current methodology. Nevertheless, the District is proposing to allow an applicant for a modification at a federal major stationary source, as proposed in the revised rules, to use the EPA emissions increase test for purposes of applying the new rule requirements that are specific to federal major stationary sources and federal major modifications. This would be at the option of the applicant and would be in addition to the requirement to use the current emissions increase tests, under the current and proposed rules, that are used to determine the applicability and extent of rule requirements for all projects.

8. WORKSHOP COMMENT

Does the 80 percent test apply to each air pollutant individually or, if a source is a major source for any one pollutant, does that 80 percent test apply for all air pollutants at that facility? Does this test only apply if the modification is at an existing major source?

DISTRICT RESPONSE

The 80 percent test in the current and proposed rules applies to each air pollutant individually. Also, the 80 percent test applies only in the case of a proposed modified emission unit at an existing major stationary source. The opening sentence of current Rule 20.1(d)(1) states, “The potential to emit of each air contaminant shall be calculated on an hourly, daily and yearly basis”. Thus, the 80 percent actual emissions to potential emissions test that follows in Rule 20.1(d)(1)(i)(C) applies on an air contaminant-specific basis. If a source is major for one air contaminant, for example VOC, then the 80 percent test would apply only to that one air contaminant. For air contaminants for which a facility is not a major stationary source, the 80 percent test would not apply and instead, for most cases, the emissions increase is based on a post-project potential to emit versus pre-project potential to emit comparison.

The proposed revisions to Rule 20.1 contain a more explicit statement to this effect in the new opening sentence to Rule 20.1(d) – “The emission calculation provisions and requirements of this Section (d) shall be applied on an air contaminant-specific basis.”

9. WORKSHOP COMMENT

Can the 80 percent actual emissions to potential emissions test be applied on a project basis rather than to each individual emission unit for some future special projects? This might provide a facility with more flexibility for compliance with the rules.

DISTRICT RESPONSE

The 80 percent test in current District NSR Rule 20.1 cannot be revised to allow it to be applied on a project basis rather than on an emissions unit basis. The ARB would certainly determine that such a revision would constitute a relaxation of the NSR rule requirements. The 80 percent test in the current rule is used to determine the pre-project potential to emit of an emission unit located at an existing major stationary source. This pre-project potential to emit for the emission unit is then used in determining whether a modification to that unit results in an emissions increase. This then determines whether BACT applies to that unit and whether there is an air quality impact analysis required for the modified emission unit. BACT and air quality impact analysis requirements are core requirements of the NSR program, locally and under State law.

The current NSR rules (and the proposed revised rules) do consider the overall effects of a project in assessing air quality impacts, and in determining the amount of a contemporaneous net emissions increase. The latter is used to determine whether a major modification will occur and if emissions offsets and LAER technology is required.

10. WORKSHOP COMMENT

Regarding the NSR rules definition of portable emissions units, the definition is confusing and it seems the District determines what it wants to be portable and what it does not want to be portable. The District has developed policies and issued advisories that apply to portable emission units. These affect how portable units are regulated but these policies have not gone through a public review and comment process. These policies should be codified in the District's regulations so they can go through a public review process.

DISTRICT RESPONSE

The District disagrees with the suggestion that the District's policies be incorporated into the NSR rules. The Board-adopted rules apply generically to a wide variety of portable units. Incorporating such policies into the rules, which often are tailored to a specific category of portable units, would likely be counterproductive. Doing so would also complicate the process of obtaining rule approvals from ARB and EPA. Policies detailing specific local permitting procedures for specific types of equipment that are adopted into District rules and subsequently approved by EPA cannot be readily revised as circumstances change.

The District frequently issues policy documents and advisories to assist regulated entities with compliance. District policies often are tailored to specific industries or types of portable equipment but do not fundamentally change the underlying rule definitions. It is often necessary to develop policies dealing with unique circumstances. These documents may also be updated to provide additional examples or guidance, depending on changed circumstances. It would be impracticable and cumbersome to include these as part of the actual rule language since it would make the rules much longer, and it would require the District to obtain District Board, ARB and EPA approval prior to any changes in guidance, thus eliminating flexibility for regulated facilities.

The proposed revised Rule 20.1 definition of "portable emission unit" is not changing from the current Rule 20.1 definition, except that a phrase is added to make clear that portable emission units, for purposes of the NSR rules, are only those subject to the permit requirements of District Rule 10. The definition of "portable emission unit" in Rule 20.1 is nearly identical to that contained in ARB's portable equipment registration program regulation. ARB has a document on its website (http://www.arb.ca.gov/portable/perp/capcoa_document_3-12-14.pdf) which contains a California Air Pollution Control Officers Association (CAPCOA) summary of explanations and examples illustrating how air districts interpret and apply the portable equipment definition and registration program.

Other types of portable emission units that are not subject to Rule 10 permit requirements, in particular the many hundreds of portable units that are registered under District Rules 12 or 12.1 or under the California Air Resources Board Portable Equipment Registration Program (PERP), are not subject to the District's NSR rules, to the extent they are operated within the restrictions of those registration programs.

11. WORKSHOP COMMENT

The proposed revisions to the rules are very extensive and detailed. There has not been sufficient time to analyze the changes and to prepare comments.

DISTRICT RESPONSE

The District published and distributed the draft proposed rule revisions more than one month before the May 7, 2015, workshop and continued to accept comments on them following the workshop so those comments could be addressed in this workshop report. The District will consider, as appropriate, any additional comments received from affected facilities, members of the public, ARB and EPA before the revised rules are noticed for hearing before the Air Pollution Control Board, as well as any comments submitted prior to the hearing, as time permits.

12. WORKSHOP COMMENT

The Rule 20.1 definitions of "Contiguous Property" and "Stationary Source" use the phrase "*common ownership or common control*". Should it read, "*common ownership and common control*", as used by EPA?

DISTRICT RESPONSE

Changing the rule definitions to "*common ownership and common control*" or, equivalently, "*common ownership and entitlement to use*" would undercut the intent which is to prevent sources from attempting to avoid NSR requirements through contractual arrangements with third parties that, in effect, appear to reduce emissions attributable to the source without any real emission reduction at the source or which dilute responsibilities for compliance. Instead, the District is now proposing to delete both the definitions of "Contiguous Property" and "Stationary Source" from Rule 20.1, since both terms are already defined in District Rule 2. The Rule 2 definitions of "Contiguous Property" and "Stationary Source" are identical to the current definitions in Rule 20.1 and will apply to all District rules unless otherwise specified. Accordingly, these definitions are no longer needed in Rule 20.1.

The primary purpose of the initial draft amendments proposed by the District was to replace the existing Rule 20.1 wording "*common ownership or entitlement to use*" with the proposed new phrase "*common ownership or common control*" to bring it more in line with EPA's definition.

The EPA's definition uses the wording "...under the common control of the same person (or persons under common control)." No substantive change to the current District application of the phrases was intended.

13. WORKSHOP COMMENT

Under the proposed definition of "Stationary Source", is there a reason why the District added reference to the California Coastal Waters?

DISTRICT RESPONSE

The District is now proposing to delete the Rule 20.1 definition of "Stationary Source" in favor of the current definition in District Rule 2, as noted above in the response to Comment No. 12. The current Rule 20.1 definition of "Stationary Source" already requires that emission units located in California Coastal Waters be included as part of a stationary source. The proposed pre-workshop revision was to clarify that only those emission units in coastal waters that are under the same common ownership or common control as the stationary source will be included as part of the stationary source.

14. WORKSHOP COMMENT

The District does not define "common control." Is the term federally defined?

DISTRICT RESPONSE

There is not a federal definition of "common control" but it is the subject of several EPA determination letters explaining how EPA applies the term in specific cases under review. The District is no longer proposing to add this language to the definition. See also responses to Comment Nos. 32 and 33.

15. WORKSHOP COMMENT

Regarding the new requirement in Rule 20.1(d)(2)(iv) to adjust historic actual emissions, does that mean that if you had emissions in the past that did not include all current controls, you could not count all of those emissions? Would you determine emissions as if it was a new source?

DISTRICT RESPONSE

If new federal requirements apply, past actual emissions might be reduced, but the existing unit being modified would not be treated as a new unit. The proposed Rule 20.1(d)(2)(iv) adjustment would be to current federal requirements applicable to the unit as an existing emission unit. The historic emissions would not have to be adjusted to current BACT or LAER technology emission

levels that apply to new units, but would be adjusted to levels that reflect current federally enforceable requirements that apply to the emission unit under review, as an existing emission unit. The term “federally enforceable requirement” is defined in Rule 20.1(c) and can include, but is not limited to, District rule requirements that are in the San Diego portion of the EPA-approved State Implementation Plan (SIP), any applicable federal New Source Performance Standards (NSPS) or National Emission Standards for Hazardous Air Pollutants (NESHAPs) requirements, and any past Authority to Construct conditions issued pursuant to a SIP-approved NSR rule.

Current District NSR rules do not apply this adjustment when accounting for past actual emissions. It has been included in the proposed Rule 20.1 revisions because it is required by EPA regulations.

This adjustment will only apply to emission units located at federal major stationary sources, as newly defined in proposed Rule 20.1. The District is also proposing that this adjustment apply only to (federal) non-attainment air contaminants and their precursors (at this time, only VOC and NOx). Also, an exception in EPA regulations for certain electric steam generating units will be added to the proposed new Rule 20.1(d)(2)(iv).

16. WORKSHOP COMMENT

Would the emissions of permit-exempt equipment at a stationary source be based on potential to emit? Are those emissions included in the stationary source’s aggregate emissions?

DISTRICT RESPONSE

The emissions from permit-exempt emission units would be based on their actual emissions, not on their potential to emit. The potential to emit of such units will not have been previously established through a permit review, and would likely be unrepresentative of actual emissions from such units. The District has proposed language in revised Rule 20.1, Subsection (d)(1)(ii), that emissions from permit-exempt emission units would only be included in the stationary source aggregate potential to emit if those emissions would be determining as to whether the stationary source is a federal major stationary source. EPA has not yet agreed to this proposal.

EPA has stated that the Rule 20.1(d)(1)(ii) provisions for determining the aggregate potential to emit of a stationary source should not exclude permit-exempt equipment emissions. The District has not historically included those emissions because they can include a sizable number of very small emission sources and are difficult to quantify. Moreover, for most sources, they are not relevant in the application of the NSR rules. There is no need to account for emissions from permit-exempt emission units at large stationary sources with permitted emissions already over the federal major stationary source thresholds, nor for the many hundreds of smaller stationary sources with emissions well below federal major source thresholds. In both cases, the emissions from the permit-exempt units will not be a determining factor in whether the source is a federal major stationary source. There may be a few cases where the emissions from permitted

equipment puts a facility very close to the federal major stationary source threshold and where emissions from permit-exempt units, if included, would make a difference as to its federal major stationary source status.

17. WORKSHOP COMMENT

Is there opportunity to comment on the NSR rules proposal before EPA approves them?

DISTRICT RESPONSE

The District will consider, as appropriate, any additional comments received from affected facilities, members of the public, ARB and EPA prior to the revised rules being noticed for hearing before the Air Pollution Control Board, as well as any comments submitted prior to the hearing, as time permits. The proposed rules will be considered by the San Diego County Air Pollution Control Board in a public hearing noticed at least 30 days in advance. At some future date after the San Diego County Air Pollution Control Board (Board) approves the rules, they will be forwarded to ARB for approval, and then ARB will forward them to EPA. EPA will decide whether to fully approve, partially approve or disapprove the District's NSR rules. EPA will publish a *proposed* decision in the Federal Register, at which time comments can be provided to EPA. In the interim, the proposed changes to Rules 20.1, 20.2 and 20.3 will not go into effect until approved by the State ARB and federal EPA. Current Rules 20.1, 20.2 and 20.3, adopted in 1998, will continue to apply in the interim. The District is recommending that the proposed revisions to Rule 20.4, which are primarily to address local issues, become effective upon approval by the Board.

18. WORKSHOP COMMENT

Since the District's proposal would require that emission reduction credits be further adjusted when used as emission offsets for a new federal major source or a federal major modification, but would not require such an adjustment for offsets for non-federal major projects, will the District identify in its Banking Registry which credits are likely to be discounted and by how much?

DISTRICT RESPONSE

The District does not plan to evaluate all current credits and publish what their value would be in the small chance that they might be used for a project requiring this additional discounting.

District Rule 20.1(d)(5)(v) is a proposed new requirement that emission reduction credits be adjusted to account for current federal requirements at the time they are used as emission offsets. This is a federal EPA requirement and must be included in the District's NSR rules in order for those rules to be approved by EPA. However, in order to minimize the potential impact of such adjustments, the District is proposing that this new requirement only apply to emission offsets

for new federal major sources and federal major modifications, as newly defined in the proposed NSR rules. Hence, emission offsets provided for new major stationary sources or major modifications that are not new federal major stationary sources or federal major modifications would not be affected by the EPA requirements.

Regarding the emission reduction credit Banking Registry, the credits in the Banking Registry can potentially be used to provide offsets for both new major stationary sources/major modifications under the current NSR rules and new federal major stationary sources/federal major modifications under the proposed revised rules. Banked credits are often transferred among brokers or potential future applicants. Only credits used for federal major sources/federal major modifications are required to be further adjusted to reflect current federal requirements. The District is expecting that this will occur very infrequently. Moreover, since federal requirements can change over time, the amount of discounting can change as well.

When a federal major project is proposed and will need emission offsets, the applicant or its consultants will have to research the origin of the emission reduction credits they are considering to determine what impact, if any, the additional discounting will have on the quantity (and cost) of the emission offset.

19. WORKSHOP COMMENT

Can emission reduction credits be created from photovoltaic (solar electric) panels on houses?

DISTRICT RESPONSE

Theoretically, someone could propose to create credits from the aggregation of numerous residential, commercial or institutional photovoltaic systems, or from a large utility-level project, develop methods for quantifying emission reductions, and propose methods for ensuring that the emission reductions from use of the systems would be permanent (a minimum 30 year project life may be required) and enforceable over that life. Doing so would present significant costs and technical and contractual challenges. To be useable as an emission offsets for a new major stationary source or a major modification, an emission reduction must be real, surplus (of State and federal requirements), enforceable, quantifiable, and permanent. While the use of photovoltaic panels on a home will result in less air pollution from centralized power generation, quantifying the emission reductions and ensuring that they are permanent and enforceable would likely be very difficult. Further, those credits would have to be created in accordance with a future District rule, tailored to the specific proposal and which would have to be approved by ARB and EPA.

20. WORKSHOP COMMENT

Do the adjustments to emission reduction credits required by proposed Rule 20.1(d)(5)(v) include State and local rules or only federal rules?

DISTRICT RESPONSE

Emission reductions required by State law or State and District rules, regulations or orders which are approved into the SIP, or adopted and submitted to EPA for approval in the SIP, would be considered federal requirements and, therefore, used in the Rule 20.1(d)(5)(v) adjustments. State and local District laws, regulations, rules or orders not approved into the SIP, and not submitted to be approved, would not be considered federal requirements.

Proposed Rule 20.1(d)(5)(v) requires that emission reduction credits be “*surplus of federal requirements*” at the time they are proposed to be used as emission offsets for a federal major project. Proposed Rule 20.1 contains a definition of “*surplus of federal requirements*”. Emission reductions required by State law or State and District rules, regulations or orders which are approved into the SIP, or adopted and submitted to EPA for approval in the SIP, would be considered federal requirements and, therefore, used in the Rule 20.1(d)(5)(v) adjustments. Any applicable federal emission standards would also be used in the adjustments.

21. WORKSHOP COMMENT

The Tables of Contents in Rules 20.2, 20.3 and 20.4 contain notes specifying that certain sections of the rules will not be submitted to federal EPA for inclusion in the SIP. Aren't all District rules included in the SIP? Is there a table identifying which District rules are in the SIP?

DISTRICT RESPONSE

Not all District rules are in the SIP. The District has a list of rules that have been approved or submitted to EPA for approval into the SIP, and can provide that information.

The District did not submit certain rules to EPA for inclusion in the SIP because those rules carry out State requirements that, to date, are not needed to meet federal requirements. In general, the rules not submitted contain more stringent air pollution control requirements and are sometimes technology-forcing. It can be very difficult to revise a rule that has been approved by EPA into the SIP if the District finds that some part of a technology-forcing rule requirement, and/or the application of the requirement to a subset of affected facilities, cannot be met and the rule must be revised.

22. WORKSHOP COMMENT

What is the closest Class I area?

DISTRICT RESPONSE

The closest Class I area is the Aqua Tibia Wilderness Area, located in San Diego County on the northern side of Palomar Mountain, east of Interstate 15.

23. WORKSHOP COMMENT

Landfills are unlike other permitted sources where actual emissions and potential emissions are known or well estimated. Actual permitted emissions from a landfill may not be fully realized until many years after the landfill has begun to operate. If the landfill is being modified, it is difficult to apply the 80 percent test when actual emissions associated with the existing permit for the landfill likely have not been fully realized and won't be until near the end of the landfill's waste disposal life. Moreover, estimates of potential future emissions from a landfill are necessarily somewhat uncertain since they depend on, among other things, the composition of the waste stream, which may substantially change over time. In California, the available information indicates that the amount of landfill gas generated per ton of waste received has declined significantly in the last twenty years – a trend that is likely to continue.

DISTRICT RESPONSE

The District will continue to evaluate how best to consider landfill expansion project emissions under the District's NSR rules. The evaluation approach may be specific to a given project and depend on factors such as whether an expansion is horizontal, vertical or both; whether landfill gas emission controls will be expanded also and on what schedule; and whether the expansion will result in an increase in the hourly, daily or annual emissions rates of any air contaminant.

The District is aware of the difficulties with applying NSR rules and procedures to municipal waste landfills when an operator proposes an expansion. The gases that result from decomposition of the waste develop over time as decomposition proceeds and as additional waste is deposited in a landfill. For virtually all other permitted sources, actual emissions commence as the emission unit begins operation, and occur when the unit operates and at a rate commensurate with utilization of the unit. By comparison, at a landfill, emissions increase gradually over many years and do not correlate with the waste deposition rate at any given time but rather the total amount of waste deposited over many years.

24. WORKSHOP COMMENT

If an existing gasoline station is shut down and removed, and a new gasoline station is built at the same location, is that treated as a new stationary source under the NSR rules? What if it is under new ownership?

DISTRICT RESPONSE

The proposed revisions to the NSR rules should not change how new, modified and replacement gasoline dispensing facilities are evaluated under the current rules.

For a simple change in ownership, NSR rules would not apply. If a change in ownership occurs at the same time that a new gasoline station is built, the District would treat the new gas station as a new stationary source and the NSR rules will apply. In the case where the ownership of an

existing gas station changes and subsequently the new owner shuts down and removes the existing station, then builds a new gas station at the same location, the District would treat the new gas station as a replacement source and the NSR rules will likely apply. In both cases, the new gas station would be subject to BACT under both the current and proposed revised NSR rules. However, compliance with current gasoline dispensing facility vapor recovery requirements contained in District Rules 61.3.1 and 61.4.1 would likely satisfy most BACT requirements of the NSR rules.

25. WORKSHOP COMMENT

It appears the District has exempted municipalities from emission offsets.

DISTRICT RESPONSE

That is incorrect. The District is proposing to delete the provisions of current Rule 20.3(d)(6). The District is also proposing to delete the Rule 20.1(c) definition of “Essential Public Services” as there would no longer be any references to that term in the proposed revised Rules 20.1-20.4.

There are provisions in the current NSR rules (Rule 20.3(d)(6)) which allows emissions offsets for an essential public service project, as defined in Rule 20.1(c), to be provided from emission reduction credits (ERCs) in a District Bank. However, that provision has not been exercised because first priority for use of District Bank ERCs, and any other unbanked emission reductions, has been to demonstrate compliance with the no-net-increase permit program provisions of the California Clean Air Act. Under that program, the District was able to revise its emission offset requirements in 1998 from applying to sources with emissions greater than 15 tons per year to instead apply only to sources greater than 50 tons per year. That removed a significant regulatory burden for many smaller emission sources. Since the emission reductions not banked by other persons will continue to be used by the District in its triennial demonstration to ARB in order to maintain the higher emission offset threshold, and not used to provide offsets for essential public services, the District is proposing to delete the provisions of current Rule 20.3(d)(6).

26. WORKSHOP COMMENT

In regards to the federal emission offset discounting requirement, are only the emission offsets needed for emissions above the federal offset threshold subject to the discounting?

DISTRICT RESPONSE

No. The adjustments to emission reductions and ERCs used as offsets required by EPA and contained in proposed Rule 20.1(d)(5)(v) apply to all of the emission offsets required for a new federal major stationary source or a federal major modification. For example, if a federal major modification at an existing federal major stationary source of VOC results in an emissions

increase of 65 tons of VOC per year, all of the required emission offsets (typically 65 tons per year multiplied by the required offset ratio of 1.2 to 1.0 or a total of 78 tons VOC per year of offsets) must be adjusted to be surplus of current federal requirements, not just the offsets for emissions above the federal major modification offset threshold of 40 tons per year.

27. WORKSHOP COMMENT

For Prevention of Significant Deterioration (PSD) program purposes, to determine whether you have a modification, you have to do an “actual emissions” to “potential emissions” comparison and not an “actual emissions” to “projected actual emissions” comparison as allowed by EPA regulations. Will the District be changing its emissions increase methodology for PSD projects? Once District Rule 20.3.1 is approved, which was adopted to meet current EPA PSD requirements, will PSD projects then be allowed to use EPA’s methodology?

DISTRICT RESPONSE

State law (SB288) precludes the District from changing its emissions increase calculation methodology in the New Source Review rules, which contain existing requirements for new PSD sources and PSD modifications. The PSD program requirements, both under EPA regulations and under program elements contained in the District’s current NSR rules, apply to only a very few, very large emission sources in San Diego County and not to the great majority of smaller permitted sources in the County. Those requirements were included in the NSR rules many years ago to meet previous EPA requirements. EPA has requested that the District not include PSD provisions in its NSR rules or, if the provisions must remain, they not be included in the portions of the rules that the District is requesting be approved into the SIP. ARB has stated that the District cannot rescind the PSD provisions in its NSR/PSD Rules 20.1-20.4 because it considers the current EPA version of those requirements to be less stringent. Accordingly, the PSD provisions in the current rules are being retained but will be excluded from the portion of the rules to be approved by EPA in the SIP.

The District does not currently have authority to implement the federal PSD program either by delegation from EPA or through an EPA approved rule and likely will not have such authority in the near future. To remedy this situation, the District adopted Rule 20.3.1 to implement the federal PSD program by reference to the appropriate EPA regulations and thereby, upon EPA approval, have an approved federal PSD program. An EPA-approved federal PSD program gives the District the permitting authority for federal PSD. However, Rule 20.3.1, which references EPA regulations as they exist on a specific date, is now significantly at variance with the current EPA PSD regulations both because EPA has changed its legal opinion regarding the precise statute to be referenced and because of court decisions that have revoked portions of EPA’s PSD program regarding greenhouse gases and PM_{2.5}. The court decisions need to be addressed through further EPA rulemaking. It should be noted that Rule 20.3.1 would have become effective only upon EPA approval and, therefore, is not in effect and has no bearing on any permit actions by the District.

The District has requested that EPA withdraw Rule 20.3.1 from consideration for EPA approval. The District does not currently have authority to issue federal PSD permits and may not have such authority for some time. Unfortunately, under current requirements, any new PSD stationary source and any PSD modification at an existing PSD stationary source must obtain a PSD permit from the federal EPA under EPA's current regulations. The project applicant must also obtain an Authority to Construct from the District. An Authority to Construct can only be approved if compliance is demonstrated with all District rules, including the NSR and PSD program elements in the District's current NSR/PSD Rules 20.1-20.4 (or revised Rules 20.1-20.4 once approved by EPA).

As noted above, because of State law, the District cannot propose rule revisions that would allow the use of EPA's emissions increase calculation methodologies to apply current NSR/PSD rule requirements. However, the District is proposing to allow the use of the EPA emissions increase calculation methodologies, at the option of an applicant, for purposes of applying specific new NSR requirements applicable to federal major stationary sources and federal major modifications. This would be in addition to the use of the District's current emissions increase methodologies for purposes of applying all other requirements of the NSR rules.

28. WORKSHOP COMMENT

The District rules include fugitive emissions in determining if a stationary source is a PSD stationary source, where the federal PSD regulations do not include fugitive emissions except for a few categories of specific industries. Will the District revise its rules to be the same as the federal rules in regards to fugitive emissions?

DISTRICT RESPONSE

The District is proposing to include the EPA procedures with regards to fugitive emissions for purposes of determining whether a stationary source or project meets the new definitions of federal major stationary source and federal major modifications. Because the current NSR rules include fugitive emissions in all cases, State law (SB288) precludes the District from revising the current NSR/PSD rules to exclude fugitive emissions in the applicability determinations for PSD stationary source projects, (non-federal) major stationary source projects and non-major source projects.

29. WORKSHOP COMMENT

Does Rule 20.4 apply to all portable emission units?

DISTRICT RESPONSE

No. Many portable emission units are registered under the State Portable Equipment Registration Program (PERP) or under the District's registration rules. These units do not require permits and therefore are not subject to the District's current (nor proposed revised) NSR Rule 20.4, with a few limited exceptions. Also, the requirements of Rule 20.4 only apply to a new portable emissions unit requiring a District permit, to an existing permitted portable emission unit that is being modified (including permit modifications) where emissions will increase, or to a replacement portable emission unit that replaces an existing permitted portable unit. Existing, permitted portable emissions units that are not being modified or replaced are not subject to the NSR rules.

30. WORKSHOP COMMENT

Should the references in Rules 20.2, 20.3 and 20.4 to identical or like-kind replacements that, under Rule 11, do not require new or modified District permits be moved up to the Applicability sections of those rules?

DISTRICT RESPONSE

The District agrees and will make that change.

31. WORKSHOP COMMENT

Will the PSD provisions contained in Rules 20.1-20.4 go to the County Board of Supervisors for approval? With regard to the State law prohibiting NSR rule relaxations, could the District argue to ARB that since these PSD provisions were never approved by EPA, they should not be subject to the restrictions of SB288?

DISTRICT RESPONSE

Since the existing PSD provisions are in the current approved Rules 20.1-20.4 and have been applied by the District in the past, they are included in the revised rules that will go to the Air Pollution Control Board for consideration of approval. The current PSD provisions are a part of the District's NSR rules and became effective when they were approved by the Air Pollution Control Board many years ago. Their applicability was not contingent on EPA approval. The District has discussed with ARB whether some or all of the current PSD provisions can be removed from Rules 20.1-20.4. ARB responded that these existing provisions are part of the District's NSR program, have been applied by the District in the past and, under State law, must be retained regardless of whether they were ever approved by EPA.

32. WRITTEN COMMENT

The City of San Diego (City) has reviewed the District's proposed revisions to NSR Rules 20.1-20.4. The proposed rule amendments may have a detrimental effect on the City's ability to expand the Miramar Landfill's gas (LFG) collection and control system, which is necessary to comply with other federal, State and local regulations. The City has been attempting to permit additional LFG flares to enhance the LFG control capacity at the site. These proposed rules may present a significant obstacle to moving forward with the flare projects by increasing costs, delays and imposing additional requirements that will not improve air quality. Further, these proposed amendments threaten the viability of other future City projects at the Miramar Landfill. Such projects will handle the future solid waste streams of the City including separation, sorting and diversion, particularly as the Miramar Landfill reaches capacity. They will also threaten the viability of future City projects at the North City Water Reclamation Plant; such projects will address future reclaimed water and potable water needs of the City and are vitally important to the region.

The following comments (*itemized below following the initial District Response*) do not necessarily encompass all of the issues that may affect the City and its various departments, and the City reserves the right to submit further comments to the APCD prior to, or at, the adoption hearing for any proposed amendments to Rules 20.1, 20.2, 20.3 and 20.4.

DISTRICT RESPONSE

The current and proposed revised NSR Rules 20.1-20.4 do not threaten current and future Miramar Landfill projects that are designed to comply with applicable air contaminant emission control requirements, and which will not adversely impact air quality for surrounding communities. In large measure, the District's rules reflect State and federal law and ARB and EPA regulations.

The Miramar Landfill, and its associated operations, is one of the largest stationary sources of air contaminant emissions in San Diego County. The issues associated with the City's comments partially arise from the impacts of current and future landfill gas emission collection and control systems. These systems rely on landfill gas flares and internal combustion engines fueled by landfill gas and generating electricity. Even though the proper design and operation of these devices are key to compliance of the Miramar landfill with District and federal air contaminant emission control requirements, the City has contracted with separate companies to operate and maintain these systems. While compliance will likely result in additional costs to the City, that is true for many other affected businesses and organizations in San Diego County and has been repeatedly found to be an acceptable impact in order to achieve and protect cleaner air and public health. Municipal waste landfills are a unique type of air contaminant emission source and the District will continue to work with representatives of the City to advance essential public projects that comply with applicable District rules and State and federal law.

33. SPECIFIC CITY COMMENT

The City is concerned with the proposed definition of “achieved in practice” in draft Rule 20.1, Section (c)(1). Under the proposed definition, a technology or emission limit may be deemed “achieved in practice” after demonstrating continuous compliance for only a period of six months. For many sources, six months would be considered part of the startup of the equipment and not reflective of the ability to achieve compliance on a long-term basis. This is especially true of landfill gas sources (e.g., flares, engines, etc.) where gas impurities affect the equipment and emissions change over time. Even with required cleaning, repair and maintenance, the equipment cannot maintain the emission levels achieved during startup and initial testing. The City recommends that the District add to the proposed definition of “achieved in practice” that the “period of at least six months” must begin after the applicable startup period for the control technology has been completed and a second performance test (subsequent to the initial testing) has demonstrated compliance. In addition, it should be clarified that “achieved in practice” cannot be based on experimental equipment or first time technology until it has been demonstrated in at least three similar installations. Further, no definition for “reliable” or “demonstrated” is provided, so it is unclear what criteria control technology would have to meet before it is deemed reliable or when a technology/emission limit is demonstrated.

DISTRICT RESPONSE

The proposed definition of “achieved in practice” was based on the District’s current definition of “proven in field application” but reduced the demonstration period from at least one year to at least six months to conform to EPA guidance. The District recognizes that landfill gas emissions control has unique issues. The District has reconsidered its proposal and has decided not to rescind the current definition and use of the term “proven in field application” and not to add a definition of “achieved in practice”. In actual application, the District looks for technologies that have been applied on more than one project and typically that have gone through a compliance determination more than once. However, inserting rule language which would codify these practices would likely raise disapproval issues with ARB and EPA, and could be counterproductive in the future application of BACT requirements.

Further, if an applicant believes that the District is inappropriately applying BACT requirements, it may request meetings with District staff and management to resolve the matter and/or appeal the District’s decision to the Air Pollution Control District Hearing Board. Since BACT requirements for non-major sources were incorporated in the District’s NSR rules in 1994, the District has made many hundreds of BACT determinations and few, if any, have been appealed by applicants to the Hearing Board. The District has historically worked collaboratively with applicants interested in ensuring the compliance of their projects.

Finally, there is no air quality interest in requiring applicants to install air contaminant emission control equipment that will not perform at the level expected. However, where installed air pollution controls cannot perform to the level expected, District Rule 20.6 may provide further protections to an applicant. If despite all reasonable efforts the emission control levels assumed in the analysis required for the Authority to Construct cannot be achieved, under Rule 20.6 the

Air Pollution Control Officer may make a new determination that BACT (or LAER) is, in fact, being used, provided an air quality impact analysis demonstrates that the actual emissions from the source may not be expected to result in the violation of any national ambient air quality standard or air quality increment, nor interfere with the attainment or maintenance of any (national or State) ambient air quality standard.

34. SPECIFIC CITY COMMENT

Draft Rule 20.1, Subsection (c)(13)(i)(A), partially defines BACT as the “most stringent emission limitation or the most effective emission control device or control technique, or combination thereof, which has been achieved in practice and which is cost-effective for such class or category of emission unit, *as determined by the Air Pollution Control Officer.*” (emphasis on added). The City is concerned that the Air Pollution Control Officer will have broad discretion to determine what falls within the existing terms for “class” or “category” which are not defined in the rule. If class or category is defined broadly, for example as just “engine”, then BACT for a diesel engine could be defined as the lowest emitting engine which would be electric. Electric engines are not suitable for most activities at solid waste facilities, such as the Miramar Landfill, where mobility and power are critical. A broad definition by fuel type could result in “LFG sources” as being one category or class, which would limit the City’s options for LFG control or energy recovery. The City recommends that the District provide clarification for the terms for “class” or “category”, and support the use of narrow definitions that would encompass types of sources (e.g., engine, flare, turbine, etc.), fuel type (e.g., LFG, diesel, natural gas, etc.) capacity range and function. Emissions (and the ability to control them) vary significantly within these categories; therefore, BACT decisions should reflect this.

DISTRICT RESPONSE

The District will not propose to define “class” or “category” of emission units in the NSR rules. The NSR rules apply to many different types of air contaminant-emitting equipment, devices, processes and operations. Narrow definitions of these terms, as suggested by the commenter, would not be useful in the broad application of the rules. Nevertheless, the District has established BACT Guidance that includes BACT determinations for classes and categories of the most frequently permitted emission units. A review of this guidance, available on the District’s website, demonstrates that the District, when determining BACT for a category of emission unit such as an internal combustion engine, considers factors such as fuel type, size and type of use. This is also the case when the District evaluates BACT for landfill gas-fueled flares and engines.

As noted above, if an applicant believes the District is incorrectly applying its BACT requirements to a project, the applicant can ask for meetings with the District to resolve the matter and can appeal the District’s decision to the Air Pollution Control District Hearing Board.

In the example provided by the commenter, an electric motor might be considered briefly for certain applications seeking a permit for an internal combustion engine. In fact, some facilities have replaced their existing IC engines with electric motors in order to create marketable

emission reduction credits. However, if an electric motor will not satisfy the functional requirements for a project (e.g. portability, LFG emission control, etc.) or is not technically feasible, it would not be considered as BACT.

35. SPECIFIC CITY COMMENT

The City is also very concerned that the addition of "...as determined by the Air Pollution Control Officer..." within the BACT definition, in Rule 20.1(c)(13)(i)(A), gives the District the discretion to require lower-emitting alternatives, changes in fuels, and/or substitution of equipment without any defined criteria as to when/how such decisions can be made. Applicants are in a better position to determine whether a proposed alternative will be equivalent. Significant operational concerns will exist if the District may decide unilaterally that a certain alternative, even one transferred from another source category, is BACT for a proposed emission unit.

DISTRICT RESPONSE

The proposed phrase "...as determined by the Air Pollution Control Officer..." was added to emphasize that the class or category of emission unit is determined by the District. Nevertheless, the phrase is somewhat redundant of the District's approval authority embedded in Rule 20 and will be withdrawn from the proposal. Under District Rule 20, the Air Pollution Control Officer cannot issue an Authority to Construct or Permit to Operate if an applicant does not show that the project under review can be expected to comply with the District's NSR rules. It is incumbent on the applicant to make that demonstration but the District must determine that the demonstration is correct and sufficient. In the matter of a BACT requirement in the current and proposed NSR rules, the District must make a determination that what the applicant has proposed as BACT meets the requirements of the NSR rules. In the particular example cited, the District must find that what is proposed by the applicant as BACT is the lowest emitting of any of the four subcategories of BACT specified in Rule 20.1(c)(13)(i)(A) through (D), and meets the other provisions of the BACT definition. It should be noted also that the paragraph (A) that is the subject of this City comment ends with the provision that the applicant can demonstrate that a particular emission limit, device, control technique or combination that has been achieved in practice for the same class or category of emission unit (e.g., LFG-fueled IC engine) is not technologically feasible for the applicant's specific project.

36. SPECIFIC CITY COMMENT

The City believes that the proposed BACT cost-effectiveness value for SO_x, contained in revised Rule 20.1(c)(20), is unreasonably high. The San Diego area is not a non-attainment area for SO_x and the City is unaware of any major issues with SO_x emissions in the region. The City understands that there is a concern with SO_x as a precursor to PM₁₀/PM_{2.5}; however, if this is the case, then the City recommends that the District instead use a BACT cost threshold of \$3.33/lb for SO_x, equivalent to that of PM₁₀.

DISTRICT RESPONSE

The District disagrees. The District arrived at the proposed cost-effectiveness threshold value (\$9.00/lb) for SO_x emission sources using two approaches. The cost-effectiveness values (\$5.00/lb – \$9.15/lb) used by the five other large California air districts (South Coast, San Joaquin, Bay Area, Sacramento and Ventura) were reviewed to determine if a correlation could be drawn between those values and background air quality for PM₁₀ and PM_{2.5} in those air districts. Little or no correlation was apparent. A similar analysis was done regarding each air district's emissions inventory – in particular, the type and distribution of SO_x emission sources. Again, no correlation was apparent. The District then chose the median of the cost-effectiveness values of those five air districts. This value was then divided by 1.5, the larger of the BACT cost-effectiveness multipliers used by the District, to arrive at the benchmark value of \$6.00/lb proposed in Rule 20.1.

The District would also note that, when SO_x, expressed as SO₂, is converted to PM₁₀ in the atmosphere, it is expected to be primarily in the form ammonium sulfate and ammonium bisulfate. One pound of SO₂, when converted to PM₁₀, results in approximately two pounds of PM₁₀ if in the form of ammonium sulfate and 1.75 pounds of PM₁₀ if in the form of ammonium bisulfate. As a consequence, one pound of SO₂ converted to PM₁₀ in the atmosphere has roughly twice the impact of one pound of directly emitted PM₁₀ on a mass basis. This further supports a higher cost-effectiveness benchmark for SO_x than PM₁₀.

37. SPECIFIC CITY COMMENT

Table 20.1-4 in draft Rule 20.1 proposed a BACT cost multiplier for sources with a potential to emit above and below 15 tons per year (tpy). However, no justification or rationale is provided for applying a cost multiplier, and no justification is provided for the multiplier chosen or why it increases significantly after 15 tpy. As long as the source remains a minor source, then there should be no difference in the multiplier applied. In particular, the 1.5 multiplier presents significant difficulties because individuals would be forced to accept any limit that is up to 50% more expensive than what is currently achieved. So unless the limit is greater than this amount, a particular technology or emission limit would still be considered cost-effective. Further, this could apply a more stringent standard than that used for some of the pollutants for which numeric BACT thresholds are provided and for which the District is in non-attainment. That is, the District is non-attainment for ozone; therefore, the BACT thresholds for NO_x and VOC are

the highest, which is expected. However, at a 1.5 multiplier, it is possible that the ultimate cost threshold for an attainment area pollutant could end up higher than \$6/lb, which seems disproportionate and unfair.

DISTRICT RESPONSE

Under State law (SB288), the District cannot lower these BACT cost multipliers from their current values.

The BACT Cost Multipliers specified in Rule 20.1, Table 20.1-4, are the current Rule 20.1 values which have been in effect since 1994. These values were arrived at through a collaborative process involving representatives from affected businesses, government agencies and other interested parties. The members representing businesses and agencies requested that the rule be more specific as to how cost-effectiveness values were to be determined. Prior to 1994, the NSR rules specified that the cost-effectiveness threshold for BACT determinations was that it not be “...*substantially greater than the cost (in terms of dollars per unit of contaminant controlled) of other control measures for the same air contaminant that are required to meet stationary source and motor vehicle emission standards...*” Prior to the 1994 NSR rule revisions, the District had used a 1.5 multiplier by policy to implement the “significantly greater” provision.

Accordingly, a specific multiplier of 1.5 was included in the adopted 1994 NSR rules. The 1994 NSR rules also included a lower BACT cost multiplier of 1.1 for smaller sources emitting less than 15 tons per year because this was also the threshold for triggering emission offsets under a new State law at the time. Prior to that date, the BACT threshold in the District’s NSR rules was 100 pounds per day (approximately 15 tons per year) but under the 1994 revisions, many smaller sources were now subject to BACT because of that same new State law. The 1.1 (vs 1.5) multiplier was an effort to reduce the economic impact of the new BACT requirements for these smaller sources.

38. SPECIFIC CITY COMMENT

The District is proposing to add a requirement of “common ownership or common control” to the definition of “contiguous property” in Rule 20.1(c)(19). The City does not necessarily object to the proposed definition of “contiguous property”; however, the City would appreciate clarification as to how the change affects the definition of “Stationary Source”. Specifically, the City would like confirmation that multiple emission units will not be deemed part of the same stationary source just because they sit on property that is under common ownership or control. Rather, as required by the “Stationary Source” definition, the property housing the units and the units themselves must be under common control to be considered part of the same (stationary) source.

DISTRICT RESPONSE

As noted in the response to Comment No. 12, the District is now proposing to delete the definitions of “Contiguous Property” and “Stationary Source” from Rule 20.1 in order to maintain internal consistency in the District rules. The definitions in Rule 2, which apply to all other District rules unless otherwise noted, are identical to the current definitions of these terms in Rule 20.1. The initial draft changes to these definitions in Rule 20.1 were intended to clarify District application of the definitions and to make the District terminology more closely match EPA terminology. As such, these draft rule amendments were not intended to result in any changes to the District application of the definition of “Stationary Source”. To be considered as one stationary source, multiple emission units must be under common ownership or entitlement to use and be located on the same or contiguous properties.

39. SPECIFIC CITY COMMENT

In the revised definition of “Stationary Source” in Rule 20.1(c)(77), the District has proposed replacing the phrase “entitlement to use” with “common control”. The City is concerned that “common control” will be interpreted too broadly and might subject the City to penalties for operations it has no practical ability to manage. The City urges the District to retain the phrase “entitlement to use” because it provides a clear, fair test while the proposed language would lead to confusion and conflict. Under the existing “ownership or entitlement to use” test, there is little room for interpretation. If an entity owns or has the right to operate a new emission unit, they are responsible for complying with regulations applicable to that unit. Under a “common control” test, however, it is entirely unclear how much “control” is enough to make a permittee responsible for emission units installed and operated by a wholly separate entity. If “common control” is used in proposed Rule 20.1(c)(77), the City recommends a very narrow and explicit definition for that term that clarifies under what conditions operations located on the same or contiguous properties would be considered under common control and thus part of the same stationary source. Co-location of one facility upon another facility’s property should not be a key determinant in the common control determination. Rather, the City suggests a common sense approach that focuses on the ability of one entity to exert real and demonstrative operational control over the other’s facilities, equipment, and management.

DISTRICT RESPONSE

The District now proposes to eliminate the definitions of “Contiguous Property” and “Stationary Source” from Rule 20.1 in order to maintain internal rule consistency. The existing definitions in Rule 2 will apply.

The District does not see a substantive difference between the phrase “entitlement to use” and “common control”. Rather, the District intended to make its definition more consistent with EPA terminology. “Entitlement to use” can also involve contractual relationships which allow one party to exert control over the operations of another (i.e., common control). If this was not the case, regulated entities could artificially divide a stationary source by simply hiring

contractors or establishing separate smaller companies to perform parts of an operation, and claiming no ability to “use” the other entities’ equipment. For this reason, multiple EPA determination letters establish criteria for assessing common control in making stationary source determinations. In fact, contrary to the suggestion of the comment, co-location of one facility upon another facility’s property leads to a presumption of common control for purposes of identifying a stationary source.

40. SPECIFIC CITY COMMENT

The APCD is proposing to eliminate the exclusion of PM₁₀ emissions from area-wide fugitive sources from the Air Quality Impact Analysis (AQIA), i.e., air dispersion modeling. These emissions generally include fugitive dust sources for which no direct measurement methods exist and air modeling can be very problematic. This change is defined as being required to satisfy an EPA requirement. The City is not aware of any federal requirement to model area-wide fugitive emissions, and in fact, most federal programs exempt fugitive emissions from regulations unless the sources are in one of the specified source categories. The City has no sources in the listed categories as defined under 40 Code of Federal Regulations, Section 51.165(a)(1)(iv)(C), and therefore is concerned about this more stringent regulation of fugitive emissions and how this can be required by federal/EPA requirements. Other major air districts in California (e.g., South Coast AQMD, Bay Area AQMD, San Joaquin Valley APCD, etc.) have rules that allow the regulation of fugitive emissions but none of them require air dispersion modeling of fugitive dust sources of PM₁₀ as part of their AQIA requirements. For example, when modeling requirements were triggered at the San Joaquin Valley APCD for a LFG engine project, the modeling only included stack emissions for particulate matter less than 10 microns (PM₁₀), excluding dust. This is despite the fact that the San Joaquin Valley APCD does have the regulatory authority to regulate fugitive emissions. Similar experiences have occurred in the South Coast AQMD and Bay Area AQMD for landfills in those jurisdictions. As such, it is not apparent to the City why the District would be obligated to require inclusion of area-wide fugitive sources, which would be a more stringent position than taken in other districts. Furthermore, the City does not believe that accurate emission estimates and modeling can be conducted for such sources, which would render any results of such an AQIA meaningless.

DISTRICT RESPONSE

The District is proposing to remove the exclusion of area fugitive emissions increases of PM₁₀ from the air quality impacts analysis requirements of Rules 20.2, 20.3 and 20.4 because the federal EPA has objected to that exclusion. In order to obtain EPA approval of the revised rules, the current explicit exclusion of fugitive PM₁₀ emissions from air quality impact analyses must be removed from the rules. EPA commented that, under its regulations, all PM₁₀ emissions including area fugitive emissions must be included in the air quality impacts analysis. EPA staff assured the District that other California air districts were doing so.

In the example cited in the comment, where a landfill gas-fueled engine was proposed in the Bay Area AQMD, only stack emissions for PM₁₀ were apparently included in the air quality impact analysis. This is not surprising since such a project would not be expected to result in an increase in area fugitive emissions of PM₁₀ and only emission increases are typically subject to AQIA requirements. Moreover, the Bay Area AQMD's thresholds for conducting an air quality impact analysis are different than those in this District's current NSR rules.

The District will continue to evaluate how other California air districts approach this matter and will develop procedures for the implementation of this change.

41. WRITTEN COMMENT

Thank you for the opportunity to provide comments regarding the proposed amendments to the NSR rules, specifically Rule 20.1. The City of San Diego's Public Utilities Department (PUD) supports the continuation of improving air quality and additional prevention measures that are practical, cost-effective and have scientific or engineering data documenting their effectiveness.

The PUD operates and maintains the San Diego water distribution and sewerage system by providing an essential public service that ensures the quality, reliability, and sustainability of water, wastewater, and recycled water services for the benefit of the ratepayers and citizens. We serve 2.4 million residents within the City and 15 municipalities over a 450 square mile area. We have approximately 150 permits to operate issued by the District for facilities and equipment within the Department.

Please note the following concerns regarding the subject rule:

- a. **Contiguous Property** (NSR Rule 20.1, Section (c)(19)) – the definition of "contiguous property" allows for extreme interpretations that could view that all PUD facilities are connected by a process line or stationary materials-handling equipment. The definition, as written, does not take into account the inherent nature of a water distribution system and a wastewater conveyance system because, in essence, pipelines and facilities are interconnected throughout a 450 square mile area and under common ownership and control. A clear delineation or exemption needs to be written into this definition for municipalities that operate extensive water and wastewater conveyance systems.
- b. **Metro Biosolids Center (MBC)** – The PUD operates this solids handling facility at Convoy Street and I-52; it dewateres and disposes of approximately 100 tons of dewatered biosolids on a daily basis. MBC is located adjacent to the Miramar Landfill; the PUD has no control over the operation of the landfill because the facilities are funded by different sources and managed by entirely different departments. MBC has extremely low emissions but is mandated to comply with the

Federal Title V program due to the contiguous property definition. It is fiscally imprudent to use tax payers dollars for Title V participation at MBC because the site does not trigger any major source emissions thresholds and compliance does not result in any emissions reduction at the site. For these reasons, we propose the District re-evaluate their interpretation of "contiguous property."

- c. **North City Water Reclamation Plant (NCWRP)** – The PUD operates this water reclamation plant that reclaims approximately 15 million gallons per day of wastewater. It is located at I-805 and Miramar Road. We are in receipt of written documentation from District engineering staff that they view the Miramar Landfill, the NCWRP and the privatized energy provider, Fortistar (located adjacent to MBC) as one facility. This interpretation of "contiguous property" is not only impractical but also flawed because Fortistar is not owned or controlled by the City of San Diego. The interpretation could significantly impact Pure Water San Diego which is a 20 year program to provide a safe, reliable and drought-proof local drinking water supply for San Diego. NCWRP is a critical site in the initial phase of this program that will eventually account for one third of San Diego's future water supply.

In brief, the Public Utilities Department urges the District to re-evaluate their interpretation of "contiguous property" with respect to water distribution and sewerage systems because it does not take into account the inherent nature of the connectivity of these systems that provide an essential public service to millions of residents and businesses.

DISTRICT RESPONSE

The District is now proposing not to revise the definition of “contiguous property” but instead is proposing to delete this definition entirely from Rule 20.1, since it is already defined in District Rule 2. The existing definition in Rule 2 is the same as the current definition in Rule 20.1. The proposed revisions to the definition of “contiguous property” were intended to clarify, consistent with existing APCD application of the definition, that otherwise unrelated sources connected solely by serving utilities’ electrical, water, or sewer lines are not considered to be a single stationary source. The revised definition was not designed to change the way the City of San Diego PUD facilities are treated for purposes of stationary source determinations.

Individual stationary source determinations will continue to be made on a case-by-case basis consistent with District rule definitions, EPA guidance and determinations, and relevant legal authority. As noted in Response to Comment 32, to be considered as one stationary source, multiple emission units must be under common ownership or entitlement to use and be located on the same or contiguous properties. As such, emission units under different ownership may be considered a single stationary source in some circumstances.

Aggregation of sources for purposes of Title V is done in accordance with Regulation XIV, which contains a separate definition of “contiguous property,” which the District is not proposing to change. The City may apply under Regulation XIV to have the District reevaluate its determinations regarding the MBC and Title V.

42. WRITTEN COMMENT

We at the Navy thank you for the opportunity to comment on potential changes to the District’s NSR rules. As addressed during the public workshop on May 7, 2015, the Navy seeks an amendment to Rule 20.1 with regards to shipboard emission units and activities performed by uniformed personnel. Specifically, the Navy seeks to add the following exemption to Rule 20.1(b):

"(7) Existing emission units and routine operational and maintenance activities performed by uniformed personnel onboard naval vessels, including routine maintenance painting performed by uniformed personnel."

Additionally, the Navy seeks the following exemption to Rule 20.1(b):

"(8) Any emission unit for which a permit is required solely due to a change in district permitting policy, provided the unit was operated in San Diego County at any time prior to December 17, 1997"

The definition of "new emission unit" would comport with the ordinary definition of a new source – the construction or modification of an emission unit – and not merely a new policy to permit. This suggested language takes into account that Navy sailors have been performing routine operations and maintenance on ships in San Diego County for decades and therefore the associated emissions should not be considered a new source.

As you may be aware, the Navy is currently negotiating a permit for shipboard marine coating operations at Naval Base San Diego (NBSD). This draft permit is the first attempt to permit the marine coatings applied by active duty, uniformed sailors on operational naval vessels. Our active duty sailors are engaged in touch-up maintenance that is incidental to their daily duties when or if painting might be necessary. This is separate and distinct from any marine coatings that are applied when a vessel is out of operational status and subject to a maintenance overhaul. That work is performed by civilian contractors and is already subject to a permit. The civilian contractors are professional painters who are contracted by the Navy to perform larger-scale maintenance functions. By contrast, our active duty personnel have other primary duties that are unrelated to professional painting. Those sailors perform smaller-scale maintenance only when required between professional overhauls.

The Navy is not seeking an exemption from the permit itself. Instead, the Navy is seeking an exemption from NSR application to emissions that have historically existed in the air basin and undertaken by sailors onboard ships in support of the Navy's national defense missions. NSR

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should not apply to routine maintenance activities such as marine coating performed by uniformed personnel as such activities have been ongoing for decades. Rule 20.1 should be amended accordingly as this is not a new source of emissions for San Diego. San Diego has been host to Navy vessels since NBSD was established in 1922 and such maintenance activities aboard naval vessels have been routinely conducted in San Diego since that time. NBSD has expanded and contracted several times during its history but has been within its current footprint for many decades. Applying NSR to an existing source is incongruous with the context of NSR rules which address increase of air pollutants due to new construction or modification. Here, there is no new construction and no modification; this is an existing source. The only new circumstance is the request for a permit on a source of emissions that has existed in its current form for decades.

The requested amendments to Rule 20.1 are not a relaxation or reduction that would result in increased air pollution. Exempting existing and routine maintenance ships' force marine coating from NSR does not undermine air quality in San Diego and does not violate the Protect California Air Act of 2003 (CA Health and Safety Code Section 4255-42507). The goal of that statute is to not further undermine air quality and not to impede the State's ability to adopt its own permitting program. An exemption for long-standing routine operational and maintenance activities by ships' force does not undermine those goals. Again, the context of the statute emphasizes new construction, significant modification and the permitting of increased emissions. The underlying message is that the district is constrained from authorizing an increase in air pollution that could undermine the current air quality. The estimated emissions provide for no significant impact to current air quality. Not only does the permit now under negotiation represent no net increase in air emissions over the status quo, but total volume that would be regulated by the draft permit is less than the threshold for PSD modification (less than 40 tons) and less than the threshold for major source modification (less than 25 tons). There is no increase in emissions being considered.

The Navy is committed to ensuring compliance with air quality rules and regulations. It is important to the Navy to work collaboratively with the District to develop an approach to regulation that preserves our ability to meet our operational requirements, comply with the law, and improve the air quality in San Diego.

DISTRICT RESPONSE

The changes proposed by the comment would be prohibited by State law (SB 288), codified at California Health and Safety Code Section 42500 et. seq. The Act provides that, "No air quality management district or air pollution control district may amend or revise its new source review rules or regulations to be less stringent than those that existed on December 30, 2002." Cal. Health and Safety Code Sec. 42504(a). Simply put, the revisions suggested by the comment would render the District's rules less stringent because ships' force painting would be exempted from NSR, and sources which the District sought to bring into the permit system would be exempt unless they were previously listed specifically in Rule 11.

The District is not only regulating the Navy's ships' force painting, but also all other similar sources which do not fall under the exemption from permitting at Rule 11(d)(15). The operation described by the comment required a permit since the time at which its emissions exceeded those thresholds in Rule 11. The fact that the District may have been unaware that those thresholds were exceeded and were of a significant magnitude at some point in the past is immaterial to whether a permit was required. At the point at which the thresholds were exceeded, the operation was required to be permitted. This is the same for any source which is no longer exempt under the terms of Rule 11.

The proposed potential to emit from the operation referred to in this comment is greater than 17 tons per year of VOC. Other ships' force painting operations in San Diego County are also likely to be of a significant magnitude. As such, the District must require permits for these sources, and the requirements of NSR ensure that the emissions from those sources are adequately controlled to ensure that District progress towards attainment is not hindered.

See also the District's response to Comment No. 2.

43. WRITTEN COMMENT

Under the proposed definition of "Contemporaneous Net Emission Increase" in Rule 20.1, creditable emission reductions must occur within a five-year period that includes the year a new permit unit will begin operation and the four years prior to that year. The actual emission calculations in Rule 20.1(d)(ii) links the baseline emission calculations for existing units to the actual emissions during the five years prior to submitting a permit application (for example, a permit application to replace existing units with new units). NRG requests that the District clarify in the revised regulation that the baseline emissions for existing units and the corresponding creditable emission reductions for the shutdown of this equipment remains linked to the actual emissions occurring during the five years prior to submitting a permit application for a given project. In other words, these baseline emissions/creditable emission reductions would remain unchanged even if two or three years passed between submitting a permit application for an equipment replacement project (that would include emission reductions for the shutdown of existing equipment) and when the new unit(s) are constructed and begin operation. We also request that the District clarify that this regulatory change does not apply to permitting projects for which the District has already issued a Final Determination of Compliance (FDOC) and/or an Authority to Construct (ATC).

DISTRICT RESPONSE

The contemporaneous period being specified in the proposed rule definition is being clarified but not changed from the current Rule 20.1 definition. The contemporaneous period is the calendar year in which the proposed new, modified, relocated or replacement emissions unit is expected to commence operation and the four years preceding that calendar year. The proposed revisions to the definition of "Contemporaneous Net Emissions Increase" in Rule 20.1(c)(18) were in response to EPA objections to the current Rule 20.1 definition. EPA's NSR regulation at 40

CFR 51.165 (a)(1)(vi)(A)(2) requires that, in order to be used to reduce a contemporaneous net emissions increase total, an emissions decrease must be contemporaneous with the emissions increase under review (i.e., must occur within the contemporaneous period) and be otherwise creditable.

This is a different five-year period than the review period used to determine actual emissions of an existing emission unit. For purposes of determining actual emissions in order to quantify the pre-project potential to emit of an existing emissions unit, the review period is the five years preceding the date of receipt of the application to modify, relocate or replace the emission unit, as specified in Rule 20.1(d)(2)(i). For purposes of determining actual emissions in order to quantify an actual emissions reduction from an existing emissions unit, the review period is, again, the five years preceding the date of receipt of the application to create the emission reduction, as specified in Rule 20.1(d)(2)(ii).

In the case of a replacement of an existing emission unit with a new emission unit, Rule 20.1(d)(3)(iv) specifies that the emissions increase from a replacement unit is calculated as the replacement emission unit's post-project potential to emit minus the existing emission unit's pre-project potential to emit. The pre-project potential to emit of the existing emission unit being replaced is determined from *either* the unit's permitted emissions, if located at a non-major stationary source; *or*, if located at a major stationary source, the pre-project potential to emit is based on the unit's actual emissions, as specified in Rule 20.1(d)(2)(i), during the most representative two years within the five year period preceding receipt of the application to replace the unit. Once the emissions increase is determined, then that increase is included in the five-year contemporaneous net emissions increase period specified in Rule 20.1(c)(18).

44. WRITTEN COMMENT

Rule 20.3(d)(5), emission offsets for federal major stationary sources and federal major modifications – Under the proposed change to Rule 20.3(d)(5), for new federal major stationary sources and federal major modifications, the amount of ERCs must be adjusted to current federal regulatory requirements at the time of use. We request that the District clarify what is meant by “surplus of federal requirements at the time such emissions reductions and ERCs are used as offsets.” Specifically, NRG requests that the District identify the types of federal regulatory actions (i.e., federal new source performance standards, federal maximum achievable control technology standards, etc.) that must be reviewed as part of the ERC surplus analysis. We also request that the District clarify that this regulatory change does not apply to permitting projects for which the District has already issued a FDOC and/or ATC.

DISTRICT RESPONSE

A new definition of “Surplus of Federal Requirements” is proposed in Rule 20.1(c)(79). The definition specifically includes measures in the San Diego portion of the SIP; measures adopted by the Board and submitted for approval into the SIP; standards and requirements promulgated under Sections 111 (NSPS) or 112 (NESHAPs) of the Clean Air Act; standards or requirements

of the Acid Rain Program under Title IV of the Clean Air Act or regulations promulgated thereunder; District or State laws, rules, regulations or orders that carry out stationary source emission reduction measures contained in the SIP, the Clean Air Act or federal law; terms or conditions of an Authority to Construct imposed pursuant to 40 CFR Parts 60, 61, 63, 52.21 or 51, Subpart I; and, emission reductions already approved as ERCs or otherwise committed for air quality purposes, including as emission offsets. (Note: the preceding list is an abridged version of the proposed rule definition.)

The proposed revisions to District NSR Rules 20.1 – 20.3 do not affect the standing of any Final Determination of Compliance or Authority to Construct issued under current Rule 20.1. This is provided for in Rule 20.1, Subsection (e)(1). Moreover, the District will be recommending to the Air Pollution Control Board that the proposed revisions to Rules 20.1, 20.2 and 20.3 only become effective upon approval by EPA into the San Diego portion of the SIP.

45. WRITTEN COMMENT

Rule 20.3(d)(2)(ii), AQIA must include both directly emitted PM₁₀/PM_{2.5} and PM₁₀/PM_{2.5} that will condense after discharge to the atmosphere – Under this proposed change to Rule 20.3, permitting projects will be required to include the modeling of condensable PM₁₀/PM_{2.5} impacts as part of the air quality impact analysis prepared for a new project. Since the proposed new requirement in Rule 20.3(d)(2)(ii) to model condensable PM₁₀/PM_{2.5} impacts appears to be linked to a May 20, 2014, EPA guidance regarding PM_{2.5} modeling for projects that trigger PSD permitting, NRG requests that the District revise the regulation to make it clear that this new modeling requirement is applicable only to new federal major stationary sources and federal major modifications. In addition, because the EPA PM_{2.5} modeling guidance is often times too general to be useful, we request that as part of this regulatory change the District prepare a detailed modeling guidance showing the acceptable approaches that can be followed when performing a condensable PM₁₀/PM_{2.5} modeling analysis. We also request that the District clarify that this regulatory change does not apply to permitting projects for which the District has already issued a FDOC and/or ATC.

DISTRICT RESPONSE

The District does not consider proposed new Subsection (d)(2)(ii) of Rule 20.3 to be a new requirement. Rule 20.3(d)(2)(ii) is a proposed new provision required by EPA (see 40 CFR 51.165(a)(1)(xxxviii)(D)) that replaces current Rule 20.3(d)(2)(i), (ii), and (iii) wording that specifies, “If a PM₁₀ AQIA is required, the AQIA shall include both directly emitted PM₁₀ and PM₁₀ which would be formed by precursor air contaminants prior to discharge to the atmosphere.” The District has already been using emissions increases that include the condensable fractions of PM₁₀ and PM_{2.5} emissions in AQIA for some time. The District’s test method for determining compliance with permit conditions that specify PM₁₀ or PM_{2.5} emission rates include the condensable fractions in the test results and has done so for many years.

As noted above, Rule 20.1(e)(1) – Continuity of Existing Permits, provides that conditions of any Authority to Construct (an FDOC has the same standing as an Authority to Construct) or Permit to Operate issued prior to the rule adoption date shall remain valid and enforceable for the life of the Authority to Construct or Permit to Operate, unless specifically modified by the District. Moreover, the changes to Rule 20.3 will not become effective until approved by EPA into the SIP.

46. WRITTEN COMMENT

Rule 20.3(e)(3), requirement for a Class I visibility analysis for federal major stationary sources and federal major modifications – This proposed rule change requires the analysis of Class I visibility impacts for new stationary sources and federal major modifications. Because these types of visibility impact analyses can oftentimes be difficult to perform, we request that the District include an exemption from this analysis based on the distance from a proposed project to the nearest Class I area. An example of such an exemption from Class I visibility impact analyses is included in SCAQMD Rule 1303(b)(5)(C). We also request that the District clarify that this regulatory change does not apply to permitting projects for which the District has already issued a FDOC and/or ATC.

DISTRICT RESPONSE

Since screening procedures and EPA guidance can evolve over time, the District does not believe it is appropriate to codify a screening procedure in its NSR rules. A screening procedure for sources located more than 50 kilometers from a Class I area is found in the report “**Federal Land Managers’ Air Quality Related Values Work Group (FLAG), Phase I Report—Revised (2010)**”, Natural Resource Report NPS/NRPC/NRR—2010/232, provided by EPA Region 9. The procedure calculates a ratio of the aggregate annual emissions (based on 24-hour maximum allowable emissions) of SO₂, NO_x, PM₁₀ and H₂SO₄, in tons per year (Q), divided by the distance (D), in kilometers, from the Class I area. If the (Q/D) ratio is equal to or less than 10, the project is not expected to impair visibility in the Class I area and no additional visibility analysis is required. If more than 10, additional visibility impact analysis is required – approaches are discussed in the same “FLAG 2010” report.

Given the federal major source and federal major modification emission thresholds proposed in the revisions to Rule 20.1, the District expects few projects will trigger this new federal requirement for a Class I Area visibility impairment analysis.

The Class I Area visibility impairment analysis requirement contained in new Subsection (e)(5) of revised Rule 20.3 will not apply to projects for which an Authority to Construct or Final Determination of Compliance has already been issued (see Rule 20.1(e)(1)) unless the project is modified by the applicant, or the ATC or FDOC is modified by the District, subsequent to revised Rule 20.3 becoming effective. The revisions to Rule 20.3, including the new visibility impairment analysis requirement in proposed Rule 20.3(e)(3), will not become effective until Rule 20.3 is approved by EPA into the SIP.

47. WRITTEN COMMENT

The City of San Diego (City) attended the May 7, 2015, San Diego County Air Pollution Control District (APCD) "Workshop for Discussion of Proposed Amendments to New Source Review Rules 20.1, 20.2, 20.3, and 20.4." The City submitted written comments prior to the workshop and has the following additional comments for the District's consideration.

The City has reviewed the draft rules in the context of their potential impacts on those facilities owned and operated by the City's Environmental Services Department (ESD) and upon ESD's operations, including those at the Miramar Landfill. The City's comments focus on those amendments that will have the greatest impact on the City's ability to provide cost-effective waste management services to its residents. At the present, the proposed rule amendments may have a detrimental effect on the City's ability to expand the Miramar Landfill's landfill gas (LFG) collection and control system, which is necessary to comply with other federal, State, and local regulations for LFG emission control. The City has been attempting to permit additional LFG flares to enhance the LFG control capacity at the site. These proposed rules may present a significant obstacle to moving forward with the flare project by increasing costs, delays, and imposing additional requirements that will not improve air quality.

Further, these proposed amendments threaten the viability of other future City projects at the Miramar Landfill. Such projects will handle the future solid waste streams of the City including separation, sorting, and diversion, particularly as the Miramar Landfill reaches capacity. They also threaten the viability of future City projects at the North City Water Reclamation Plant. Such projects will address future reclaimed water and potable water needs of the City and are vitally important to the region.

The below comments do not necessarily encompass all of the issues that may affect the City and its various departments, and the City reserves the right to submit further comments to the District prior to or at the adoption hearing for any proposed amendments to Rules 20.1, 20.2, 20.3, and 20.4. The City's comments are identified by rule number, and then section number within each rule.

DRAFT RULE 20.1

- Section (a) – Applicability: Please add the following language to the end of the paragraph: "Identical and like-kind replacements as specified in Rule 11, and subject to the limitations contained in Rule 11, shall not be considered subject to the requirements of Rules 20.1, 20.2, 20.3 and 20.4 applicable to a replacement emission unit." Due to nature of operations at the City landfills, equipment is periodically replaced. In many cases, these are like-kind replacements. This rule clarification would help establish that these replacements would not be subject to NSR requirements.

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- Section (c) – Definitions: As defined, "Project" could include open applications for entirely unrelated operations. Please modify this definition to clarify that a project only includes open applications that are related by being part of the same process, construction timeframe, planning document, or funding mechanism. At any given time, a landfill may have a number of applications pending for unrelated processes. These open applications should not be considered part of one project and should not trigger additional requirements unless they are otherwise connected.
- Section (d)(1)(i)(C): Please clarify that the “Calculation of Pre-Project Potential to Emit for Modified Emission Units Located at Major Stationary Sources” applies only to the pollutant(s) for which the facility is major. As currently written, this provision may apply to all pollutants whether or not they are pollutants for which the facility is major. For example, a typical landfill may be major for VOCs and may operate many NOx sources, such as tub grinders, generators, etc., that need to be replaced or modified from time to time. The procedures in Section (d)(1)(i)(C) would result in an overestimated emission increase if the unit's actual emissions are much lower than its potential to emit. This would make sense for the pollutant(s) for which the facility is major, but seems overly conservative (and inconsistent with Rule 20.2) for pollutants for which the facility is non-major.
- Section (d)(2)(i)(A): Please add to the end of the paragraph: "..., unless the applicant can demonstrate, to the satisfaction of the APCO, that another time period would be more representative of the facility's actual emissions."
- Section (d)(3)(iii): Please add "Identical and like-kind replacements as specified in Rule 11, and subject to the limitations contained in Rule 11 are excluded."

DRAFT RULES 20.2, 20.3 AND 20.4

Many of the Definitions and General Provisions of Rule 20.1 are used in draft Rules 20.2, 20.3, and 20.4. The City has the same comments as above on the Definitions and General Provisions that are carried over from Rule 20.1.

- Rules 20.2, 20.3 and 20.4: Please move the Identical and like-kind replacements exclusion to the “Applicability” section.
- Rules 20.2(d)(1) and 20.3(d)(1): Please clarify the intended effect of adding "and project" to the sentence "The Air Pollution Control Officer shall deny an Authority to Construct or modified Permit to Operate for any emission unit and project subject to this rule...". Does this change indicate that BACT applicability will be evaluated based on the project's potential to emit instead of the individual emission unit's potential to emit? If so, this change could make BACT applicable to very low emitting operations that may be part of the same overall project. Please explain the basis for this requirement in the context of the permit program, which is based on permitting individual emission units or processes. The change also seems to indicate that the District will deny an Authority to

Construct and a Permit to Operate for an entire project where only one unit does not meet the listed requirements. Is that the intention?

DISTRICT RESPONSE

The Miramar Landfill, and its associated operations, is one of the largest stationary sources of air contaminant emissions in San Diego County. The issues associated with the City's comments partially arise from the impacts of current and future landfill gas emission collection and control systems. These systems rely on landfill gas flares and internal combustion engines fueled by landfill gas and generating electricity. Even though the proper design and operation of these devices are keys to the compliance of the Miramar Landfill with District and federal air contaminant emission control requirements, the City has contracted with separate companies to operate and maintain these systems and in the past persuaded the District to treat them as separate sources.

The current and proposed revised NSR Rules 20.1-20.4 do not threaten current and future Miramar Landfill projects that are designed to comply with applicable air contaminant emission control requirements, and which will not adversely impact air quality for surrounding communities. In large measure, the District's rules reflect State and federal law and ARB and EPA regulations. While compliance with current District rules will likely result in costs to the City, that is true for many other affected businesses and organizations in San Diego County and has been repeatedly found to be an acceptable impact in order to achieve and protect cleaner air and public health. The District recognizes that municipal waste landfills are a unique type of air contaminant emission source and will continue to work with representatives of the City to advance essential public projects that comply with applicable District rules and State and federal law.

The following responds to the City of San Diego's specific comments:

DRAFT RULE 20.1

- *Section (a), Applicability: Please add the following language to the end of the paragraph: "Identical and like-kind replacements as specified in Rule 11, and subject to the limitations contained in Rule 11, shall not be considered subject to the requirements of Rules 20.1, 20.2, 20.3 and 20.4 applicable to a replacement emission unit."*

The District agrees and will implement the suggested change. See also the response to Workshop Comment No. 30.

- *Section (c), Definitions: As defined, "Project" could include open applications for entirely unrelated operations. Please modify this definition to clarify that a project only includes open applications that are related by being part of the same process, construction timeframe, planning document, or funding mechanism.*

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The District will not make the suggested change to the Rule 20.1(c) definition of the term “Project”. The current Rule 20.1 definition of project has been in place for many years. The change proposed by the City would almost certainly be viewed by ARB as a rule relaxation and contrary to State law. Projects are evaluated under the current and proposed NSR rules for several reasons, including: to ensure that the aggregated emission increases will not cause adverse air quality impacts; to include the aggregated emission increases in the contemporaneous net emissions increase tally for major stationary sources; and, under the proposed revised rules, to determine whether the emissions of the same air contaminant from multiple emission units could be controlled more effectively by a common emission control device. The first case is appropriate to protect air quality and public health even if equipment/operations emitting the same air contaminant are physically separated, are not operationally related, or do not commence operations at the same time. Aggregating emission increases (and certain qualified decreases) occurring at the same stationary source within the contemporaneous period (five years in the case of the District’s current and revised regulations) is required by federal EPA regulations. As to the application of air contaminant emission control technology to multiple emission units under District permit review as part of a project, this would only be required if the evaluation concludes that the control of multiple emission units is technologically feasible, lowest emitting and cost-effective. The District is unlikely to reach such a conclusion in the case of unrelated emission units that are located some distance apart, are operationally independent and emitting different air contaminants.

- *Section (d)(1)(i)(C): Please clarify that the “Calculation of Pre-Project Potential to Emit for Modified Emission Units Located at Major Stationary Sources” applies only to the pollutant(s) for which the facility is major.*

The District does not believe this change is needed. Section (a) – Applicability, of Rule 20.1, will include proposed new language stating, “Except as specified herein, the provisions and requirements of this rule shall be applied on an air contaminant – specific basis.” Also, the proposed revised Rule 20.1, Section (d) – Emission Calculations, already includes new introductory language stating, “The emission calculation provisions and requirements of this Section (d) shall be applied on an air contaminant-specific basis.” These proposed Rule 20.1 revisions should be sufficient to ensure that Rule 20.1(d)(1)(i)(C) is applied on an air contaminant-specific basis.

- *Section (d)(2)(i)(A): Please add to the end of the paragraph: “..., unless the applicant can demonstrate, to the satisfaction of the APCO, that another time period would be more representative of the facility's actual emissions.”*

The District disagrees with the change requested by this comment. This change would likely be considered a relaxation of existing NSR rule requirements and contrary to state law. Proposed Rule 20.1(d)(2)(i)(A) refers to cases where actual emissions are used to determine the pre-project potential to emit of an emissions unit and derives from an existing provision in current Rule 20.1. Specifically, current Rule 20.1(d)(2)(i)(B)

provides (in the case of an existing unit with no permit conditions that limit emissions) that, “The Air Pollution Control Officer may base the pre-project potential to emit on the highest level of emissions occurring during a one-year period within the five-year period preceding the receipt date of the application...”. This provision was relocated to proposed revised Rule 20.1(d)(2)(i)(A) and modified slightly to refer to “...the highest level of hourly, daily and yearly emissions, respectively, occurring during a twenty-four consecutive month period representative of normal operations within the five-year period preceding the receipt date of the application.” The City’s requested addition to (d)(2)(i)(A) appears to suggest using actual emissions data for a unit from more than five years prior to the date of application. The District’s NSR rules have used the five-year look back period for determining past actual emissions for many years. Considering emission levels from more than five years prior to filing an application would likely only be chosen by an applicant if those older emission levels were higher, thus giving a lower calculated emissions increase for the modification to the unit. This would be unrepresentative of the proposed modification’s impact on current air quality and, again, would be considered a rule relaxation prohibited by State law.

- *Section (d)(3)(iii): Please add "Identical and like-kind replacements as specified in Rule 11, and subject to the limitations contained in Rule 11 are excluded."*

The District does not believe this change is needed. The District has already proposed similar new language in Rule 20.1, Section (c), for the definition of “Replacement Emission Unit”. Also, the District will add the Rule 11 replacement unit exclusion to Sections (a) – Applicability of Rules 20.1, 20.2, 20.3 and 20.4.

DRAFT RULES 20.2, 20.3 AND 20.4

- *Rules 20.2, 20.3 and 20.4: Please move the Identical and like-kind replacements exclusion to the “Applicability” section.*

The District agrees and will make this change. See also Workshop Comment No. 30.

- *Rules 20.2(d)(1) and 20.3(d)(1): Please clarify the intended effect of adding "and project" to the sentence "The Air Pollution Control Officer shall deny an Authority to Construct or modified Permit to Operate for any emission unit and project subject to this rule...". Does this change indicate that BACT applicability will be evaluated based on the project's potential to emit instead of the individual emission unit's potential to emit? If so, this change could make BACT applicable to very low emitting operations that may be part of the same overall project. Please explain the basis for this requirement in the context of the permit program, which is based on permitting individual emission units or processes. The change also seems to indicate that APCD will deny an Authority to Construct and a Permit to Operate for an entire project where only one unit does not meet the listed requirements. Is that the intention?*

The intent of adding “and project” to the opening sentences of Rule 20.2(d)(1) and 20.3(d)(1) is to refer to the BACT-for-projects provisions of Rule 20.2(d)(1)(v) and the BACT/LAER-for-projects provisions of Rule 20.3(d)(1)(vi). BACT applicability will continue to be based on each emission unit’s potential to emit and emission increases, not on a project’s potential to emit. The proposed new Subsection (d)(1)(v) of Rule 20.2 applies where a project “...consists of multiple...emission units required by this Subsection (d)(1) to be equipped with BACT...” This language was used to make clear that the project BACT provision would only apply to units in the project already required to comply with BACT. BACT would not be extended to other units in the project that would not individually trigger BACT. Similar language is used in Rule 20.3(d)(1)(vii), the proposed new BACT/LAER-for-projects provision.

The project BACT (and BACT/LAER) provisions were added to make explicit that in cases where multiple similar emission units with similar discharge characteristics are being permitted concurrently, the District has the authority to evaluate whether emission control technologies can be applied effectively to multiple units. Neither the evaluation, nor application of a common/shared control technology, would necessarily change the structure of the permitting. Units could still receive separate permits, each containing provisions applicable to the shared control technology.

As to the denial of an entire project if one emission unit cannot meet the rule requirements, it is not clear whether such a situation would arise. If the District determines that an individual unit can meet unit-specific BACT but it is not technologically feasible or not lowest emitting to include the unit in a common emission control technology being considered as part of project-BACT, then the evaluation and permitting can certainly reflect this. However, if an individual unit cannot comply with unit-specific BACT, the permit for that unit would be denied. An applicant can certainly propose a revision to the project that does not include the non-complying emission unit.

48. WRITTEN COMMENT

Calpine's affiliate, Otay Mesa Energy Center LLC, operates an approximately 619-megawatt ("MW") natural gas-fired combined cycle power plant known as Otay Mesa Energy Center ("OMEC"), which constitutes a major stationary source within the District. Calpine is concerned that, in responding to EPA's reported comments on the District's existing rules by eliminating a paragraph from the calculation methodologies for major stationary sources, the proposed revisions to Rule 20.1 would cause many minor changes to existing emissions units to trigger the requirements of prevention of significant deterioration (PSD) and New Source Review (NSR) in circumstances where the change would not trigger PSD or NSR under either the District's existing rules or the corresponding federal PSD and nonattainment NSR regulations.

Workshop Report
Proposed Amendments to NSR Rules 20.1-20.4

Because the current version of District Rule 20.1 predates the Protect California Air Act of 2003, otherwise known as "Senate Bill (SB) 288", we would strongly encourage the District to retain this paragraph and respond to EPA's comments by instead adding a federal "backstop" provision to Rule 20.1, which would prevent major stationary sources from relying upon the calculation method authorized by this paragraph where the change would constitute a "major modification" under the federal regulations. Another California air district has recently adopted a similar federal backstop provision in response to EPA comments that the applicability tests and calculation procedures reflected by that district's existing rules could allow federal major modifications to escape PSD/NSR review. Importantly, the addition of such a federal backstop is fully consonant with the requirements of SB 288, as it would in no way represent a relaxation of the calculation methods or applicability procedures that existed in the District's NSR program as of December 30, 2002, but would in fact increase the stringency of the existing NSR program.

DISTRICT RESPONSE

The District agrees with the request to reinstate the existing last paragraph of Rule 20.1(d)(1)(i)(C), with a backstop provision to address EPA's concerns. That paragraph was deleted at EPA's request as there is no similar provision in EPA's regulations. The deletion of this paragraph will be withdrawn. Instead, the District will propose the following revisions to the paragraph, which will become paragraphs (3) and (4) under Subsection (d)(1)(i)(C):

(3) Notwithstanding paragraphs (1) and (2) above, if an Authority to Construct has previously been issued for an emission unit pursuant to New Source Review rules for the District, and the previous emission increases that resulted from that emission unit were offset in accordance with the New Source Review rules in effect at that time, the emission unit's pre-project potential to emit shall be as calculated pursuant to Subsection (d)(1)(i)(A) and (B).

(4) The provisions of paragraph (3) above shall not apply to a modified emission unit which constitutes a federal major modification for an air contaminant, or its precursors, for which the San Diego Air Basin is designated as nonattainment of a national ambient air quality standard. In such case, the pre-project potential to emit of the modified emission unit shall equal the unit's actual emissions.

MRL:jlm
10/07/15