

**Analysis of Proposed Amended New Source Review Rules for
Compliance with California Health & Safety Code §§ 42500 et seq. (Senate Bill 288)**

The California Health and Safety Code Section 42500 et seq. (Senate Bill (SB) 288) prohibits California air districts from changing their New Source Review (NSR) program requirements in ways that would make them less stringent than the rules that existed on December 30, 2002. For the San Diego County Air Pollution Control District's (District) NSR Rules 20.1, 20.2, 20.3 and 20.4, this would mean the version of the rules adopted November 4, 1998, effective December 17, 1998.

The District is proposing amendments to its NSR rules to fix two federal Environmental Protection Agency-identified deficiencies, add electronic public notification in addition to newspaper public notification, build in currently applicable federal requirements for different ozone non-attainment classifications, and preserve the allowance for interpollutant offsets on a case-by-case basis. These proposed amendments will not result in a less stringent emission offset or new source review program, and will not make the 1998 District NSR rule requirements less stringent, as follows:

- Fixing the two EPA-identified deficiencies will add additional recordkeeping and reporting for major sources that want to use an alternate federal emission increase calculation method, and add in a prohibition from issuing certain types of permits if EPA makes specific findings that is in the Federal Clean Air Act prior to the adoption of the 1998 NSR rules.
- Adding electronic public notification to the current newspaper public notifications expands the methods of the notification and does not change the requirement to perform the notification. See further discussion, below.
- Adding in the remaining federal ozone non-attainment classification applicability thresholds and requirements for federal major sources clarifies existing requirements under federal regulations. Further clarifying that these requirements are based on when an application is deemed complete does not affect the applicability thresholds and requirements for major sources and major modification that were in effect for the 1998 NSR rules.
- Preserving the ability of a source that triggers emission offset requirements to provide interpollutant offsets, now on a case-by-case basis, does not change the original offset requirements of prior rules, only potentially changes the amount of a substitute pollutant credits that are considered equivalent. For example, if a source is required to offset 10 tons of volatile organic compounds, they will still need to offset 10 tons of volatile organic compounds. If they choose to provide these offsets using oxides of nitrogen credits, the proposed amended Rule 20.3 would require a new analysis to determine the interpollutant offset ratio that is applicable now but this does not change the requirement to offset 10 tons of volatile organic compounds.

It can thus be seen that the proposed amended NSR Rules 20.1-20.4 are not less stringent than the prior 1998 NSR Rules 20.1-20.4.

SB 288 also prescribes four specific NSR rule elements that cannot be revised if the result would be to exempt, relax, or reduce the obligations of a stationary source. The four elements are:

- The sources to which the NSR rules apply.
- The definitions of "modification," "major modification," "routine maintenance," and "repair and replacement."
- The calculation methodology, thresholds or other procedures of new source review.
- The definitions and requirements of NSR regulations.

Health and Safety Code Section 42504(b) precludes an air district from revising the above four elements of its NSR rules if doing so would exempt, relax, or reduce the obligations of a source with regard to the following requirements:

- (1) Any requirement to get a permit prior to construction.
- (2) Any requirement to apply BACT or LAER.
- (3) Any requirement to perform an air quality impact analysis.
- (4) Any requirement for monitoring, recordkeeping, and reporting if these would be less representative, enforceable, or publicly accessible.
- (5) Any requirement for regulating any air pollutant covered by the NSR rules.
- (6) Any requirement for public participation prior to permit issuance.

Health and Safety Code Section 42504(c) allows amendments to the above requirements if they make the rules more stringent.

The proposed amendments to the District's NSR Rules 20.1-20.4 will not change requirements 1, 2, 3 or 5, above, and adds new recordkeeping and reporting requirements for certain modifications, so does not relax requirement 4, above.

Regarding the addition of electronic notification (requirement 6, above), the state Air Resources Board issued Advisory 299 in June 2018, stating that changing to electronic notifications is not a relaxation under SB288 so long the electronic notification is consistent with EPA's 2016 rulemaking allowing electronic notifications (81 Fed. Reg. 71613) and will be utilized for all projects that were required to be publicly noticed per the 1998 NSR rules. While the addition of electronic notification will comply with the 2016 EPA rulemaking, it is not replacing the current newspaper public notification, and is not changing the requirements to do a public notice. Therefore, this is not a relaxation of requirement 6.