AIR POLLUTION CONTROL DISTRICT
COUNTY OF SAN DIEGO

Air Pollution Control Board

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Air Pollution Control District

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September, 1998

WORKSHOP REPORT

EXCERPTS REGARDING THE REPEAL OF STATE OFFSETS NEW SOURCE REVIEW RULES 20.1, 20.2, 20.3 AND 20.4

On April 18, 1997 the District held a public workshop regarding proposed changes to the District's New Source Review Rules. Attached are comments and responses from the August, 1997 workshop report related to the proposed repeal of state offset requirements for volatile organic compounds (VOC) and oxides of nitrogen (NOx) emission increases. The 1997 proposal to repeal state VOC and NOx offset requirements was delayed while other necessary changes to the NSR rules went forward and were adopted in December, 1997. At the time, the District stated it's intent to proceed with the proposed repeal of state offset requirements in future changes to the NSR rules and that the repeal would be made in conjunction with the necessary findings required by state law (AB3319) and any environmental reviews required under the California Environmental Quality Act.

The District is recommending proceeding with the NSR rule changes to repeal state offsets and anticipates the Air Pollution Control Board will consider the proposed repeal at a public hearing on November 4, 1998.

The full text of the Workshop Report was distributed in 1997 to all workshop participants and interested parties. It is available from the District by calling Juanita Ogata at (619) 694-8851 or Luann Serbesku at (619) 495-5208. Questions concerning these excerpts or the full workshop report may be directed to Michael R. Lake at (619) 694-3313.

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NEW SOURCE REVIEW RULES (NSR)
20.1, 20.2, 20.3, 20.4, 20.9 AND 20.10

WORKSHOP REPORT

A workshop notice was mailed to all permit holders in San Diego County. Notices were also mailed to all Chambers of Commerce and all Economic Development Corporations, the U.S. Environmental Protection Agency (EPA), the California Air Resources Board (ARB), and other interested parties.

The workshop was held on April 18, 1997 and was attended by 41 people, including representatives of EPA and ARB. Written comments were also received. The workshop comments and District responses are as follows:

23. WORKSHOP COMMENT

Regarding the District's proposed deletion of state emission offset requirements from Rules 20.2, 20.3 and 20.4, is the District accepting comments at this time on whether the necessary findings can be made by the Board? The findings should be discussed in a public workshop with a public comment period. The rule changes should not be taken to the Board before the necessary findings are made. It would pre-determine the outcome of the findings. Also, sources and the District cannot operate under the rule changes until the findings are made and ARB has approved them.

DISTRICT RESPONSE

The District will not propose to delete state offset requirements for VOC and NOx emission increases in Phase I of the NSR rule changes. Deleting state VOC and NOx offset requirements will be evaluated in Phase II of the NSR rule changes which will occur in 1998. This is to ensure that all requirements of state law regarding the repeal of these offset requirements and California Environmental Quality Act (CEQA) will be satisfied. The District is proposing to proceed with deleting state offset requirements for PM_{10}, SOx and CO as part of the Phase I NSR changes.

The District will be preparing the documentation supporting the findings that the Board must make in order to remove the state offset requirements for VOC and NOx. That documentation will be available for review and comment prior to the Board's hearing on the associated Phase II changes to the NSR rules. The District will not recommend those changes to the Board if it cannot support the findings. This doesn't pre-determine the outcome. Rather it is a reflection of whether the necessary findings can be made appropriately.

Regarding the use of the rule changes prior to ARB approval, the District agrees that sources cannot be permanently relieved from VOC and NOx offset requirements until ARB has approved the corresponding change to the offset provisions of the District's NSR rules. However, the District may elect to approve projects that have not yet provided state VOC and NOx emission offsets conditional upon the owner/operator providing the required offsets within a specified time should ARB disapprove the change in the District's offset requirements.

49. WRITTEN COMMENT

Regarding Rule 20.3(d)(5) Emission Offsets: The APCD cited that with the signing of AB 3319 into law, revisions have been proposed in anticipation " if specified findings can be made and the State Air Resources Board (ARB) agrees". What "specified findings" are being considered? What is the anticipated likelihood and time frame for the ARB agreement?

DISTRICT RESPONSE

The specified findings are those identified in H&SC §40918.5 as enacted under AB 3319. The District will propose removing the state VOC and NOx offset requirements if all of the required findings can be met. If all of the required findings can be made, the likelihood of ARB approval is high. Because of potential CEQA issues associated with the proposed changes to the NSR rules, ARB consideration of the findings and Phase II NSR changes will likely not occur until some time in 1998.

58. WRITTEN COMMENT

As early as 1991, shortly after the passage of the federal Clean Air Act Amendments, it was generally recognized that the availability of offset credits would be a limiting factor to growth. Currently, the District's inventory of ERCs is too small to support projects of any magnitude. How does the District plan to address this shortage of offsets?

DISTRICT RESPONSE

The District has been working for changes in state law to reduce the need for state offsets. That effort resulted in AB3319 which provides this and other air districts the opportunity to demonstrate that state emission offsets are not needed. In addition, the District successfully broke new regulatory ground with EPA several years ago by being reclassified from a severe to a serious ozone nonattainment area. That change raised the major source threshold from 25 to 50 tpy of VOC or NOx. This reduced the number of major sources subject to federal offset requirements. Also, the District adopted interpollutant offset provisions in its NSR rules, and intends to pursue agreement for rule provisions that would allow interbasin offsets. For those projects for which offsets will still be required, the District has worked with sources to identify and approve offsets. Nevertheless, some large projects that result in significant emission increases may face significant effort and costs in order to secure adequate emission offsets. Emission offset requirements may continue to be a problem for large new projects.

70. WRITTEN COMMENT

EHC (Environmental Health Coalition) is very concerned about the proposal to delete state offset requirements for VOC, NO_X and PM10, especially when federal standards for those pollutants are in the process of being made more strict due to public health concerns. Also the process by which the District proposes to remove these requirements is severely flawed.

1. **It is inappropriate for the District to consider removing state offsets for ozone precursors absent the findings required by state law.**

   The California Health and Safety Code (§40918.5(a)(1)) provides that a District can only elect to eliminate the no-net-increase permitting program from its attainment plan upon a finding by the governing board that the program "is not necessary to achieve and maintain the state ambient air quality standards by the earliest practicable date." The board cannot make this finding until after

reviewing estimates of the growth in emissions resulting from the elimination of the program, and adopting or having scheduled for adoption all feasible measures to attain state air quality standards.

In this case, the District is preparing to eliminate the program prior to the Board making any finding that the program's elimination is appropriate. EHC understands the District's desire to eliminate the program in an efficient manner. However, once the offsets have been eliminated from the rule, even if the change will not take effect until the findings are made, the Board of Supervisors will be predisposed to make these findings. To do otherwise would make compliance with the rule more expensive for local businesses, which the Board is not likely to do. To thus make the findings a foré gone conclusion is unacceptable.

Additionally, at the April 18, 1997 workshop, the public was not allowed to comment upon whether the findings could be made, and no information supporting the findings has yet been released to the public. As such, it is unclear whether the findings themselves will ever be subject to the public scrutiny inherent in the workshop process, or whether the public will be shut out of the findings process until the issue is presented before the Board of Supervisors. There is a great deal of technical information which must be reviewed and debated as part of making the findings. We would therefore request that this information be compiled in summary format and presented to the public in a workshop prior to the issue being brought before the Board.

Furthermore, it is not health protective for the APCD to be eliminating the offset programs for substances for which the District is still out of compliance with state and/or federal standards. The APCD's role is to protect public health. As you are well aware, the U.S. EPA is currently considering tightening both the PM and ozone standards because much more has been learned about the deleterious health impacts of these pollutants even at levels below current standards. Thus, to walk away from the state offsets for these pollutants is highly irresponsible.

2. **Pursuant to the California Environmental Quality Act (CEQA), the District must consider the environment effects of the elimination of both the offset requirements for ozone precursors and PM10 prior to taking action on the proposed rule changes.**

   Please include EHC on the Interested Parties list for the CEQA review of the environmental effects of the proposed changes to this rule.

   Elimination of the offset requirements for ozone precursors and PM10 could have substantial effects on the public health and the environment of this air basin. As part of the CEQA process, the District must quantify the increase in emissions that will occur as a result of these changes. How many tons per year of VOC's, NOx and PM will no longer be required as offsets when new projects are proposed? What are the projected health impacts associated with potential delays in reaching attainment? Will the proposal result in health impacts such as those mentioned above as possibly resulting (from) the modifications to the RAQS? What cumulative effects will occur with the elimination of the offset requirements, deletion of control strategies from the RAQS, proposed amendments to Rule 50, etc.?

   Furthermore, the CEQA analysis must occur prior to the Board voting on the proposed rule changes. It cannot be postponed until the Board is presented with the question of whether to adopt the findings. CEQA requires that environmental documents not operate to merely confirm decisions which have already been made (as it seems the findings analysis will). Rather, the CEQA analysis must occur "as early as feasible in the planning process to enable environmental considerations to influence [the project outcome]." Cal. Admin. Code, Title 14, Section 15004.

DISTRICT RESPONSE

As noted in the comment, H&SC §40918.5 specifies that a district can only elect to eliminate its no-net-increase permitting program from its state attainment plan upon a finding by the governing board that the program "is not necessary to achieve and maintain the state ambient air quality standards by the earliest practicable date". The board cannot make this finding until after reviewing estimates of the growth in emissions resulting from the elimination of the program, and adopting or having scheduled for adoption all feasible measures to attain the state air quality standards. The ARB must concur with these findings.

Because emission offsets in San Diego County have been extremely difficult and expensive for businesses to provide to satisfy the state no-net-increase program, and because a significant number of offsets that were provided resulted in no air quality improvement (i.e., non reactive compounds), and because businesses elsewhere in other California nonattainment areas have not been effectively required to provide state offsets as they have been required to provide in San Diego County, the District elected to begin the process of repealing its no-net-increase program as allowed by H&SC §40918.5.

The first step was to conduct a preliminary analysis of the emissions increases from stationary sources that would be subject to state offsets ($\geq$ 15 tpy VOC or NOx) but not trigger federal offsets (<50 tpy VOC or NOx) and that would likely result if the program were repealed. Based on three years of data (1993 - 1995) from new and modified stationary sources, about 25 tpy of VOC and 31 tpy of NOx would result. However, data for this same time period also shows that these projected increases are more than mitigated by emission reductions associated with shutdown (retired) equipment for which no air quality credit has been claimed. Average emission reductions of about 165 tpy of VOC and 55 tpy of NOx would result. These emission reductions had not been banked for use as offsets because they are typically from the shutdown of individually small sources, making the costs of creating bankable and tradable credits prohibitive. It was also noted that the majority of emission reductions from new and modified businesses resulted from requiring BACT be utilized.

Based on this, it appeared the District could clearly show that state emission offsets were not necessary to achieve and maintain the state ambient air quality standards by the earliest practicable date and therefore the no-net-increase program could be repealed. Since the NSR rules were to be reviewed at a workshop to discuss proposed revisions to address EPA-noted deficiencies, the District decided to propose repealing the state emission offset program and request public comments at this same workshop (April 18, 1997).

The District is now preparing the necessary documents to support the CEQA analysis that will be required for the proposed repeal of the no-net-increase program for VOC and NOx emission increases, now scheduled to be considered in Phase II of the NSR changes. Separately, as part of Phase I of the NSR rule changes, the District is proposing to delete emission offset requirements for PM_{10}, SOx and CO. Appropriate CEQA review and documents are being prepared regarding these Phase I changes. The CEQA documents for Phase I and for Phase II will be made available for public review and comment prior to the corresponding public hearings with the Air Pollution Control Board where the proposed repeal of the no-net-increase program will be considered. Since the analyses required to comply with H&SC §40918.5 and to comply with CEQA are very similar, this process will provide an opportunity for public review and comment prior to the public hearing at which the Air Pollution Control Board will consider repealing the District's no-net-increase program.

It should be noted that nearly all emission offsets that have been provided to date resulted from shutdown (retired permits) equipment or from reductions in emissions of an organic compound which was designated a non-VOC by EPA after the emission reduction credits were created. Emission reduction credits created by over-controlling existing stationary source emission units have been few

and are difficult to identify because of the extensive nature of the emission reductions already required or committed to in state or federal air quality attainment plans. Since the equipment shut-downs were business driven and would have occurred whether or not there was a no-net-increase program, all the no-net-increase program effectively did was require new and modified businesses to go through the onerous and costly process of identifying and procuring (at significant cost) emission reductions that had already occurred or which were for reductions in non-VOC's. Thus, there was no resulting air quality benefit.

It is also noted that if the District's no-net-increase program is repealed and significant unmitigated emissions growth results, H&SC Section 40918.6 requires this matter be revisited every three years when the District submits its triennial update for ARB consideration. If ARB believes such growth is preventing the District from achieving and maintaining the state ambient air quality standards by the earliest practicable date, ARB can require the District to again adopt and implement a no-net-increase program.

The San Diego County Air Pollution Control District is committed to adopting the emission reduction measures the federal EPA believes are necessary for nonattainment areas to meet the new federal ozone and $PM_{2.5}$ standards. The District believes it is highly unlikely EPA will require lower emission offset thresholds as a strategy to attain the new ozone standard. However, if a lower offset threshold is determined to be necessary, the District is committed to adopting such lower threshold. In addition, EPA has stated that emission reduction costs of $10,000 per ton is the high end of the range of reasonable cost to impose on sources to meet the new ozone standard. Currently, emission sources in San Diego county are paying in excess of $10,000 per ton for ozone precursor offsets. The District does not believe it is appropriate to continue to require emission sources to provide state emission offsets at a significantly lower emission increase threshold and at a cost in excess of $10,000 per ton simply because EPA has adopted a more stringent standard for ozone, especially when such offsets are very difficult to locate, provide virtually no air quality benefit, are not being similarly required in other nonattainment areas in California, and may not be required by EPA for their own revised standard.

Concerning $PM_{2.5}$, EPA has stated that the scientific and technical information on $PM_{2.5}$ needs to be updated and, based on this updated information, EPA will determine whether it is appropriate to revise the standards in order to protect public health. EPA has also stated there are scientific uncertainties associated with the health and environmental effects of PM and the means of reducing them. Until this matter is resolved, the District does not believe it is appropriate to continue to require new and expanding businesses to provide state emission offsets for particulate matter simply because EPA has adopted a more stringent standard for $PM_{2.5}$. Moreover, requiring offsets for PM10 will not necessarily ensure an air quality benefit for $PM_{2.5}$ since a source of PM10 emission reductions may not be a source of $PM_{2.5}$.

H&SC Section 40918.5 recognizes the problems new and modified businesses are having meeting state emission offset requirements and allows an air district to elect to repeal its no-net-increase program if specified findings can be made. Rather than finding "creative" ways to satisfy the state no-net-increase program requirements without actually requiring new and expanding businesses to provide emission offsets as is being done in other nonattainment areas, the District is proposing to repeal its program if it can make the required findings and ARB concurs.

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