

DRAFT STAFF REPORT

Proposed Amendments to
Rule 2201 (New and Modified Stationary Source Review Rule)
Rule 2301 (Emission Reduction Credit Banking)
Rule 2520 (Federally Mandated Operating Permits)

April 15, 2019

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Rule 2201 (New and Modified Stationary Source Review Rule)
Rule 2301 (Emission Reduction Credit Banking)
Rule 2520 (Federally Mandated Operating Permits)**

April 15, 2019

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I. SUMMARY

A. Routine Replacement Emissions Unit / Federal Major Modification / Temporary Replacement Emissions Unit Definitions (District Rule 2201)

The District adopted amendments to District Rule 2201 on February 18, 2016, as a requirement for the District's reclassification from moderate to serious nonattainment for the 1997 and 2006 National Ambient Air Quality Standards (NAAQS, or standards) for particulate matter with an aerodynamic diameter of less than 2.5 microns (PM_{2.5}). In addition to the requirements for the reclassification, at that time the District took the opportunity to amend the rule to address a comment from EPA about the definition of "Routine Replacement". The amendments in February 2016, replaced the name "Routine Replacement" with "Replacement Emissions Unit" and removed the term "routine" from the definition in Section 3.35 of Rule 2201.

After the District's adoption of the February 18, 2016, amendments, the California Air Resources Board (ARB) reviewed the amendments further and commented that removing the term "routine" from the Routine Replacement definition that was replaced by Replacement Emissions Unit could potentially result in a relaxation of the District's NSR Rule that would not be allowed by California Health and Safety Code Sections 42500 through 42507 – *Protect California Air Act of 2003, Senate Bill 288 (SB 288)*. Therefore, ARB did not submit the rule to EPA for inclusion into the State Implementation Plan (SIP). In response to ARB's concern, the District is proposing to amend District Rule 2201, Section 3.35, by reintroducing the term "routine" and changing the name from "Replacement Emissions Unit" to "Routine Replacement Emissions Unit".

In addition, the District is proposing amendments to the definitions of Federal Major Modification and Temporary Replacement Emissions Unit in Rule 2201, Sections 3.18 and 3.41 respectively to clarify these requirements in response to comments received from EPA. The proposed amendments to Sections 3.18, 3.35, and 3.41 do not change the District's longstanding interpretation and implementation, are consistent with the current SIP-approved Rule 2201 (amended April 21, 2011), and satisfy both the original comment from EPA and the recent comments from EPA and ARB.

These proposed rule amendments, and the other minor changes discussed below, are considered supplemental to the amendments that were originally adopted by the District's Governing Board on February 18, 2016. As such, the Final Staff Report with appendices for the February 18, 2016, amendments is included as Appendix A of this staff report.

B. Enhancement of Public Notice Procedures (District Rules 2201, 2301, and 2520)

The District is proposing to amend District Rules 2201, 2301, and 2520 to enhance public notice procedures for District actions that trigger public notification requirements under existing provisions of these rules. The current rules each require the District to publish public notices for the required actions in a newspaper of general circulation.

For District Rules 2201, 2301, and 2520, the specific requirement for publication of notices in a newspaper is not currently mandated by state or federal law and was only previously mandated for notices required by District Rule 2520. For District Title V actions under District Rule 2520, the federal Clean Air Act (CAA) under 40 CFR Part 70 previously mandated that the required notices be published in a newspaper of general circulation. US EPA took action in the federal register¹ on October 18, 2016, to issue a final rule that requires electronic notification (e-notice) in place of newspaper publication for EPA actions and for actions performed by other permitting authorities implementing federal permitting rules for several federal programs, including public notices for New Source Review (NSR) and Title V permitting. The US EPA action also removed the mandatory newspaper notice requirement for permitting authorities with their own EPA-approved rules for Title V permitting and endorsed e-notice in lieu of newspaper notice for permitting actions by these agencies.

E-notice will increase opportunities for public participation by facilitating greater public access compared to newspaper notice. E-notice will also allow the District to enhance its public notice process by making available a higher quality of information in the form of more detailed notices and project related documents on the District's website. The assessment that e-notice will provide opportunities to improve the public notice process has also been supported by EPA and ARB. In issuing its e-notice rule, EPA indicated that e-notice will enable permitting authorities to communicate permitting and other actions to the public more

¹ Revisions to Public Notice Provisions in Clean Air Act Permitting Programs; Final Rule. 81 Federal Register 201, pp. 71613-71629 (2016 October 18). <https://www.gpo.gov/fdsys/pkg/FR-2016-10-18/pdf/2016-24911.pdf>

quickly and efficiently and will expand public access to permit-related documents. In June 2018, ARB issued an advisory to California air districts and other interested parties concerning air district New Source Review rules and electronic notice.² In its advisory, ARB determined that modernizing public notice requirements of local air district NSR rules to be consistent with federal rules does not violate the Protect California Air Act of 2003 (California Senate Bill 288) and further indicated that ARB believes that e-notice of projects subject to NSR requirements, performed consistent with federal rules and the ARB advisory “will result in a more widely served and better informed public and will increase the opportunity for meaningful public participation as intended by the Clean Air Act.” Therefore, based on EPA’s action to update the public notice requirements for Title V actions by requiring or allowing e-notice, the District is proposing to amend District Rule 2520 to enhance the public notice process by requiring e-notice, consistent with federal requirements.

With the proposed amendment to District Rule 2520, the District recognizes the opportunity to also enhance the public notice process for actions under District Rules 2201 and 2301 by creating a consistent noticing procedure for actions under the three rules as allowed under the newly adopted federal requirement. Therefore, the District is proposing to amend District Rules 2201 and 2301 to enhance the public notice process by requiring public notices be published electronically on the District’s website rather than in a newspaper.

These proposed amendments do not change the standards that trigger public notification requirements under District Rules 2201, 2301, and 2520.

C. PM2.5 Precursor Demonstration (District Rule 2201)

As part of the staff report for the February 18, 2016, amendments to Rule 2201, the District completed a PM2.5 precursor demonstration based on previous EPA guidance for addressing requirements for PM2.5 precursors pursuant to Subpart 4. This PM2.5 precursor demonstration that was performed by the District in accordance with previous EPA guidance demonstrated that reductions in ammonia emissions would not result in significant reductions in PM2.5 concentrations in the San Joaquin Valley. However, in August of 2016, EPA released their 2016 PM2.5 Implementation Rule³ which requires a specific type of air quality modeling to assess the significance of precursor pollutant emissions under Subpart 4. Therefore, to satisfy EPA’s latest requirements, the District has completed a new PM2.5 precursor modeling analysis that demonstrates that ammonia emissions are not a significant PM2.5 precursor in the San Joaquin Valley.

² California Air Resources Board (ARB) Advisory to California Air Districts and Other Interested Parties, Advisory 299: Air District New Source Review Rules Regarding Electronic Notice. (June 2018). <https://www.arb.ca.gov/enf/advs/advs299.pdf>

³ Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements; Final Rule; 81 Federal Register 164. pp. 58010-18162. (2016 August 24). <https://www.gpo.gov/fdsys/pkg/FR-2016-08-24/pdf/2016-18768.pdf>

II. DESCRIPTION OF CURRENT DISTRICT RULES

A. District Rule 2201 – New and Modified Stationary Source Review Rule

District Rule 2201 was adopted on September 19, 1991 and was last amended on February 18, 2016. The Rule provides a regulatory mechanism for allowing continued economic growth while minimizing the amount of emission increases due to this growth. District Rule 2201 applies to all new stationary sources and all modifications to existing stationary sources that are subject to District permit requirements. For smaller sources of emissions, there are certain permitting exemptions identified in District Rule 2201 and District Rule 2020 (Exemptions).

The District's NSR program is designed to meet both the state and federal NSR requirements for nonattainment areas and applies to new and modified stationary sources of NO_x, VOC, particulate matter with an aerodynamic diameter of less than 10 microns (PM₁₀), PM_{2.5}, SO_x, CO, and other pollutants subject to District permitting requirements pursuant to District Rule 2010 (Permits Required).

Key features of District Rule 2201 include:

- Best Available Control Technology (BACT): mandates emission controls to minimize emission increases above a de minimis value for each affected pollutant;
- Emission offsets: requires emissions above specified offset threshold levels to be mitigated with either concurrent reductions or past reductions which have been banked as emission reduction credits (ERC);
- Public notification: a 30 or 45 day notice period prior to issuance of an Authority to Construct (ATC) to garner comments on projects that result in emissions above specified levels; and
- Required elements for Authority to Construct, Permit to Operate, and administrative requirements for the processing of NSR applications.

As previously mentioned and as will be discussed in Section III of this staff report, the District is proposing to:

- Amend the definitions of Routine Replacement Emissions Unit, Federal Major Modification, and Temporary Replacement Emissions Unit,
- Amend the rule to enhance public notice procedures, and
- Submit a new PM_{2.5} precursor demonstration.

Since this rule contains definitions and public notice requirements that need to be modified, it is affected by the proposed amendments and is included in this rule-amending project.

B. District Rule 2301 – Emission Reduction Credit Banking

District Rule 2301 was adopted on September 19, 1991 and was last amended on January 19, 2012. The purpose of the rule is to:

- Provide a regulatory mechanism for sources to store ERCs for later use as offsets where allowed by District, state, and federal rules and regulations;
- Provide a regulatory mechanism for sources to transfer ERCs to other sources for use as offsets as allowed by District Rule 2201 (New and Modified Stationary Source Review Rule), or state and federal rules and regulations; and
- Define eligibility standards, quantitative procedures, and administrative practices to ensure that ERCs are real, permanent, quantifiable, surplus, and enforceable.

The current rule applies to all transactions involving the storage, transfer, or use of ERCs of affected pollutants and greenhouse gases (GHGs). Other provisions contained in the rule include eligibility requirements, ERC Certificate application procedures, registration of ERC Certificates, and administrative requirements.

As previously mentioned and as will be discussed in Section III of this staff report, the District is proposing to enhance public notice procedures. Since this rule contains public notice requirements that need to be modified, it is affected by the proposed amendments and is included in this rule-amending project.

C. District Rule 2520 – Federally Mandated Operating Permits

District Rule 2520 was adopted on June 15, 1995 and was last amended on June 21, 2001. The purpose of the rule is to provide for the following:

- An administrative mechanism for issuing operating permits for new and modified sources of air contaminants in accordance with requirements of 40 CFR Part 70;
- An administrative mechanism for issuing renewed operating permits for sources of air contaminants in accordance with requirements of 40 CFR Part 70;
- An administrative mechanism for revising, reopening, revoking, and terminating operating permits for sources of air contaminants in accordance with requirements of 40 CFR Part 70;
- An administrative mechanism for incorporating requirements authorized by preconstruction permits issued under District Rule 2201 (New and Modified Stationary Source Review) in a Part 70 permit as administrative amendments, provided that such permits meet procedural requirements substantially equivalent to the requirements of 40 CFR 70.7 and 70.8, and compliance requirements substantially equivalent to those contained in 40 CFR 70.6; and
- The applicable federal and local requirements to appear on a single permit.

As previously mentioned and as will be discussed in Section III of this staff report, the District is proposing to enhance public notice procedures. Since this rule contains public notice requirements that need to be modified, it is affected by the proposed amendments and is included in this rule-amending project.

III. DISCUSSION OF PROPOSED RULE AMENDMENTS

A. Routine Replacement Emissions Unit / Federal Major Modification / Temporary Replacement Emissions Unit (District Rule 2201)

1. Background

District Rule 2201 has long defined a Routine Replacement and contained requirements that are applicable only to routine replacement actions. The specific rule items that are applicable only to routine replacement actions include exemption from BACT requirements and an Application Shield for certain routine replacement actions.

With the February 18, 2016, amendments to District Rule 2201, the District took the opportunity to amend Section 3.35 of District Rule 2201 to remove the term “routine” from the definition and replace the name “Routine Replacement” with “Replacement Emissions Unit”. These changes were made in response to an EPA request to change the Routine Replacement definition because “Routine Replacement” has a different definition under the federal CAA. The changes were made solely in response to EPA’s request and did not result in any change to the District’s interpretation or implementation of the Routine Replacement provisions in Rule 2201.

After adoption of the February 18, 2016, amendments to District Rule 2201, ARB further reviewed the amended rule and raised a concern that removing the term “routine” could allow more units to be exempt from BACT requirements. This could cause a violation of SB 288 which mandates that districts’ NSR rules cannot be made less stringent, in a variety of specified areas, than the rules that existed on December 30, 2002. In light of this concern, ARB did not submit the adopted rule amendments to EPA for inclusion in the SIP.

While the District was working on supplemental rule amendments to address ARB concerns, EPA provided additional comments on the rule and requested the District further amend District Rule 2201 to clarify that “netting out” is not allowed when determining the applicability of Federal Major Modification requirements for VOC and NOx emissions in the Valley. Since

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the District is designated as an extreme nonattainment area for the 1997⁴ and 2008⁵ 8-hour ozone standards, the District has long interpreted and implemented the Federal Major Modification requirements for VOC and NO_x consistent with paragraphs 51.165(a)(1)(v)(F) and (a)(8) of the federal CAA and has only counted VOC and NO_x emissions increases, not decreases, in determining whether Federal Major Modification requirements are triggered, and therefore has not allowed “netting out” when determining the applicability of Federal Major Modification requirements for VOC and NO_x. Therefore, this proposed amendment is a clarification of the District’s longstanding practice that will not result in any changes regarding implementation.

Along with its comment about the definition for Federal Major Modification, EPA took the opportunity to also comment on the Rule 2201 definition for Temporary Replacement Emissions Unit (TREU) in Section 3.41 of the rule. EPA requested the District add language to the rule to ensure a TREU may only replace an existing emissions unit with a valid District Permit to Operate (PTO). While the existing definition in Section 3.41 of the District’s NSR Rule does not contain this specific requirement, the additional language requested by EPA is consistent with the District’s longstanding interpretation of requirements for a TREU and will not result in any changes regarding the implementation of these requirements.

2. Proposed Amendments to District Rule 2201

- *Sections 3.35, 3.35.1 and 3.35.5 – Replacement Emissions Unit Definition*

The District is proposing to amend District Rule 2201, Section 3.35 to rename “Replacement Emissions Unit” as “Routine Replacement Emissions Unit” and also to reintroduce the term “routine” within the definition of Routine Replacement Emissions Unit.

- *Sections 3.25.1.2 and 3.25.3.4 – Modification Definition*
- *Section 4.2.6 – BACT Exemption for Routine Replacement Emissions Units*
- *Sections 8.0, 8.1, and 8.1.1 – Application Shield*

The District is also proposing to amend applicable rule Sections to update the name to “Routine Replacement Emissions Unit”.

- *Section 3.18.1 – Federal Major Modification Definition*

To clarify the District’s longstanding interpretation and implementation of the

⁴ Designation of Areas for Air Quality Planning Purposes; California; San Joaquin Valley, South Coast Air Basin, Coachella Valley, and Sacramento Metro 8-Hour Ozone Nonattainment Areas; Reclassification. 75 Federal Register 86, pp. 24409-24421. (2010 May 5). (to be codified 40 CFR Part 81), <http://www.gpo.gov/fdsys/pkg/FR-2010-05-05/pdf/2010-9599.pdf>

⁵ Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards, 77 Federal Register 98, pp. 30088-30160. (2012 May 21). (to be codified 40 CFR Parts 50, 51, and 81) <http://www.gpo.gov/fdsys/pkg/FR-2012-05-21/pdf/2012-11618.pdf>

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applicability of Federal Major Modification requirements, the District is proposing to amend Section 3.18.1 of District Rule 2201 to include additional rule language. The proposed additional language ensures that “netting out” is not applied when determining the applicability of Federal Major Modification requirements for VOC and NOx emissions in the Valley.

- *Section 3.41 – TREU Definition*

The District is proposing to amend Section 3.41 of District Rule 2201 to include language consistent with the current definition for Routine Replacement Emissions Unit. The proposed additional language ensures that the existing unit being replaced must have a valid District PTO.

- *Section 4.2.5 – BACT Exemption for a TREU*
- *Section 4.6.5 – Offset Exemption for a TREU*

The District is also taking this opportunity to make minor typographical corrections to the rule.

While these amendments/clarifications are important for addressing ARB and EPA comments and ensuring consistent interpretation and implementation of District NSR rule requirements, the proposed amendments do not change the District’s interpretation or actual implementation of either the April 21, 2011, or February 18, 2016, versions of District Rule 2201 and as such are considered minor. See Section IV of this report for the proposed amended rule language.

B. Enhancement of Public Notice Procedures (District Rules 2201, 2301, and 2520)

1. Background

Consistent with longstanding federal CAA public participation requirements, District Rules 2201, 2301, and 2520 have long included requirements for public notification as a means to solicit public participation and comments on certain District actions. Pursuant to CAA requirements in 40 CFR Part 70 for federal operating permits, District Rule 2520 requires the District to publish notices issued under the rule in a newspaper of general circulation.

On October 18, 2016, US EPA took action in the Federal Register and issued a final rule⁶ which requires EPA and permitting authorities implementing the federal permitting rules to e-notice Title V permitting actions in lieu of requiring newspaper publications. Additionally, the Federal Register action says “*For permits issued by other permitting authorities—specifically, agencies that implement an approved program meeting the requirements of 40*

⁶ Revisions to Public Notice Provisions in Clean Air Act Permitting Programs; Final Rule. 81 Federal Register 201, pp. 71613-71629 (2016 October 18). <https://www.gpo.gov/fdsys/pkg/FR-2016-10-18/pdf/2016-24911.pdf>

CFR parts 51 or 70—we proposed that those permitting authorities would have the option to adopt either e-notice or retain the newspaper noticing method.” EPA’s action specifically affects the underlying public notification requirements of District Rule 2520.

District Rules 2201 and 2301 also currently contain requirements that notices issued under the rules be published in a newspaper of general circulation. The requirement for newspaper publication in these two rules is not mandated by federal or state law. As the newly adopted federal requirement allows for either newspaper or electronic noticing, the District is also using this action as an opportunity to enhance the public notification requirements outlined in District Rules 2201 and 2301 by requiring public notices be published electronically on the District’s website rather than in a newspaper.

2. Benefits of Electronic Notification (E-Notice)

While the CAA requires permitting authorities to offer the opportunity for public participation in the processing of air permits and other actions, it does not specify the best or preferred method for providing notice to the public. When the District was newly formed, newspaper advertisement was the most commonly accepted method for providing notice of permit actions to the public.

Over the years, however, the availability of and access to the Internet and other forms of electronic media have increased significantly. One effect of this development is that circulation of newspapers and other print media has declined, making printed newspaper notice less effective in providing widespread public notice of permit actions in many cases. Meanwhile, many permitting authorities, including the District, already electronically post permit notices on their agency websites. Such electronic notice mechanisms provide an effective, convenient and cost-efficient way to communicate permitting-related information to the majority of the public. EPA and ARB have both indicated that e-notice provides opportunities to improve the public notice process compared to newspaper notice. In issuing its e-notice rule, EPA indicated that e-notice will enable permitting authorities to communicate permitting and other actions to the public more quickly and efficiently and will expand public access to permit-related documents while being more cost-effective than newspaper notice. In ARB’s June 2018 advisory to California air districts concerning local air district NSR rules and electronic notice,⁷ ARB stated that e-notice of projects subject to NSR requirements, performed consistent with federal rules and the ARB advisory “*will result in a more widely served and better informed public and will increase the opportunity for meaningful public participation as intended by the Clean Air Act.*”

E-notice will allow the District to enhance the public notice process by making available a higher quality of information in the form of more detailed notices on the District’s website in both English and Spanish combined with project related documents (regulatory analyses,

⁷ California Air Resources Board (ARB) Advisory to California Air Districts and Other Interested Parties, Advisory 299: Air District New Source Review Rules Regarding Electronic Notice. (June 2018). <https://www.arb.ca.gov/enf/advs/advs299.pdf>

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draft permits, and other supporting documents) accessible on the same website for the entire duration of the comment period.

Public notices and project documents will be available 24 hours a day and 7 days a week for the entire duration of the public comment period allowing a greater opportunity for the public to access public notices and review project documents. Under the current newspaper notice method, the public has only a single day to be informed of District actions triggering public notice.

Newspaper notices require regular viewing of the government notices section of the newspaper in order to find notices relevant to the reader while e-notices are accessible 24 hours a day and 7 days a week for the entire duration of the public comment period. With the availability of e-notices on the District's website, the public may perform a search of the website for public notices that meet their criteria (e.g., a specific facility or region) and immediately obtain the supporting information related to the project; this leads to greater accessibility for District public notice projects.

Under the current newspaper notice method, when a member of the public is interested in receiving notice-related documents, the interested stakeholder needs to contact the District during regular business hours to obtain the associated documents for review. Under the new proposed e-notice, members of the public will be able to immediately obtain supporting documents related to the project. In addition, the District has developed an automated notification system allowing English and Spanish speakers to receive electronic notification. This automated notification system also allows a stakeholder to proactively request to be notified about permitting actions for a specific project, a specific facility, a specific region of the District, or all public notices for all projects in the District.

With this proactive approach to make public notices and related documents available electronically 24-hours a day and for the entire duration of the public comment period, the District is providing a more comprehensive notice package and is significantly improving the opportunity for the public to participate in District actions under District Rules 2201, 2301, and 2520. The proposed amendments will formalize the District's commitment to enhance and extend public outreach and participation through e-notice and electronic access.

3. Proposed Amendments to District Rules 2201, 2301, and 2520

a. District Rule 2201 – New and Modified Stationary Source Review Rule

Sections 5.5.1, 5.5.5, and 5.9.1.1 – Public Notification and Publication Actions

The District is proposing to amend Sections 5.5.1, 5.5.5, and 5.9.1.1 of Rule 2201 to improve and strengthen the District's public notice procedures by requiring e-notice in place of the requirement for newspaper publication of public notices.

Note that replacing newspaper notice with e-notice is a change to an administrative requirement and does not represent a change to the determination of applicability of public notice requirements under this rule. See Section IV of this report for the proposed amended rule language.

b. District Rule 2301 – Emission Reduction Credit Banking

Section 8.0 – Administrative Requirements

The District is proposing to amend Section 8.4 of District Rule 2301 to improve and strengthen the District’s public notice procedures by requiring e-notice in place of the requirement for newspaper publication of public notices.

Note that replacing newspaper notice with e-notice is a change to an administrative requirement and does not represent a change to the determination of applicability of public notice requirements under this rule. See Section IV of this report for the proposed amended rule language.

c. District Rule 2520 – Federally Mandated Operating Permits

Section 11.1.4.1 – Public Notification

Section 11.1.10 – Notification and Publication of Final Action

Section 11.3.1.1 – Public Notification

Section 11.3.5 – Notification and Publication of Final Action

As required in EPA’s final rule, the District is proposing to amend District Rule 2520, Sections 11.1.4, 11.1.10, 11.3.1.1, and 11.3.5 to replace the requirement for newspaper notice with e-notice for federal permitting actions.

With this approach to make notices and documents available electronically 24-hours a day and for the entire duration of the public comment period, the District is providing a more comprehensive notice package and is improving the public notice process by providing a greater opportunity for public participation in public notice actions under Rule 2520.

Note that replacing newspaper notice with e-notice is a change to an administrative requirement and does not represent a change to the determination of applicability of public notice requirements under these rules. See Section IV of this report for the proposed amended rule language.

C. Submittal of New PM2.5 Precursor Demonstration (District Rule 2201)

1. Background

EPA previously implemented PM2.5 requirements under the general nonattainment provisions Subpart 1. As a result of a court decision that required EPA to evaluate PM2.5 requirements under both Subpart 1 and the specific requirements for PM nonattainment areas of Subpart 4, the District is required to evaluate NOx, SOx, VOC, and ammonia (NH3) (the four PM2.5 precursor pollutants) under the presumption that each is a significant PM2.5 precursor pollutant. This differs from the previous requirements of Subpart 1 under which all precursors were presumed not to be significant precursors unless they were demonstrated to be so. With the presumption that all PM2.5 precursors are significant, all control requirements applicable to PM2.5 major sources must also apply to major sources of PM2.5 precursors, unless demonstrated otherwise. Subpart 4 allows the District to demonstrate that a presumed PM2.5 precursor pollutant is not a significant PM2.5 precursor in order for that pollutant not to be subject to PM2.5 control requirements.

On February 18, 2016, the District adopted amendments to its NSR rule and lowered the PM2.5 major source threshold from 100 tons per year to 70 tons per year consistent with federal CAA requirements for a PM2.5 serious nonattainment area. The District also completed a PM2.5 precursor demonstration as required under Subpart 4 and following EPA guidance at the time. The PM2.5 precursor demonstration performed by the District in accordance with previous EPA guidance demonstrated that reductions in ammonia emissions would not result in significant reductions in PM2.5 concentrations in the San Joaquin Valley.

However, the February 18, 2016, amendments to the District's NSR rule were not approved by ARB and were therefore not forwarded for EPA approval. In August of 2016, EPA released their 2016 PM2.5 Implementation Rule; long-awaited regulations on implementing the PM2.5 standards in NSR rules. The EPA rule requires a specific type of air quality modeling to assess the significance of precursor pollutant emissions. As a result, the EPA has indicated that they would not be able to approve an NSR rule that does not address this new modeling requirement. Therefore, the District has completed a new PM2.5 precursor demonstration as part of this rule amendment project.

2. EPA's PM2.5 Precursor Demonstration Guidance

On November 17, 2016, EPA released the Draft "PM2.5 Precursor Demonstration Guidance"⁸, but as of the date of this report, EPA has not finalized the guidance. In the draft guidance, EPA outlined three optional approaches for demonstrating that a particular

⁸ PM2.5 Precursor Demonstration Guidance. EPA-454/P-16-001. (2016 November 17).
https://www.epa.gov/sites/production/files/2016-11/documents/transmittal_memo_and_draft_pm25_precursor_demo_guidance_11_17_16.pdf

precursor is not a significant PM_{2.5} precursor. These three precursor demonstrations are:

- a) Comprehensive precursor demonstration for an attainment plan;
- b) Major stationary source precursor demonstration for an attainment plan; and
- c) Nonattainment NSR (NNSR) precursor demonstration.

Pursuant to 40 CFR 51.1006(3)(i), an NNSR demonstration may be used to demonstrate that new major sources and major modifications of a particular precursor do not need to be controlled under the District's NNSR program. The NNSR precursor demonstration must evaluate the sensitivity of PM_{2.5} levels in the nonattainment area to increases in emissions for a particular precursor to determine whether the resulting air quality changes are significant.

The NNSR precursor demonstration differs from the other two demonstrations (comprehensive and major source precursor demonstrations), which are attainment plan tests. These two other precursor demonstrations examine air quality change that result from emissions reductions from existing sources. In contrast, an NNSR program manages major source growth (new major stationary sources and major modifications) in the nonattainment area by addressing increases of emissions. Thus, the PM_{2.5} Implementation Rule mandates that NNSR precursor demonstrations be based on an analysis involving potential increases of emissions.

Therefore, the NNSR demonstration is a sensitivity-based increase test used to demonstrate that a precursor pollutant is not a significant PM_{2.5} precursor and that control requirements for PM_{2.5} under NNSR permitting programs (e.g., District Rule 2201) do not apply to sources of that specific PM_{2.5} precursor pollutant.

3. District's New PM_{2.5} Precursor Demonstration

The District has selected to perform an NNSR precursor demonstration as the optional approach for demonstrating that a particular precursor is not a significant contributor to ambient PM_{2.5} levels that exceed the standard in a particular area (i.e., not a significant PM_{2.5} precursor) and to exempt new major stationary sources and major modifications of a particular precursor from the control requirements for PM_{2.5} in 40 CFR 51.165.

The District's demonstration evaluated the effect of emission increases from major stationary sources of a particular precursor at hypothetical new and existing locations within the Valley. This demonstration differs from the District's February 18, 2016, demonstration since this analysis models increases in the particular PM_{2.5} precursors where the previous precursor demonstration modeled the effect on PM_{2.5} concentrations from reductions of the PM_{2.5} precursor.

a. NO_x and SO_x Contribution to PM_{2.5} Concentrations

District Rule 2201 currently identifies NO_x and SO_x as PM_{2.5} precursor pollutants and identifies control requirements equal to or more stringent than control for PM_{2.5} and its precursors from 40 CFR 51.165. Since the current rule (both the April 21, 2011, and February 18, 2016, versions) includes control requirements for NO_x and SO_x emissions meeting or exceeding federal requirements for PM_{2.5} and its precursors, District Rule 2201 contains all the necessary requirements for NO_x and SO_x for the PM_{2.5} NAAQS under Subpart 4 of the CAA.

b. VOC Contribution to PM_{2.5} Concentrations

District Rule 2201 currently identifies control requirements for VOC that are more stringent than or equivalent to control requirements for VOC as a PM_{2.5} precursor. The level to which major and non-major sources of VOC are controlled with the District's current NSR rule (both the April 21, 2011, and February 18, 2016, versions) is extensive since the Valley is classified as an extreme nonattainment area for the 1997 and 2008 ozone standards and VOC is a precursor pollutant for ozone.

Specifically, current District Rule 2201 contains the following VOC control requirements:

- VOC BACT threshold of 2.0 lb/day which is equivalent to the District BACT threshold for PM_{2.5} and its precursors and is more stringent than federal Lowest Achievable Emission Rate (LAER), itself more stringent than federal BACT.
- VOC offset ratio of 1.5 to 1 which is more stringent than the District and federal offset ratio of 1.0 to 1 for PM_{2.5} and its precursors.
- VOC major source threshold of 20,000 lb/year (10 tons per year (TPY)) which is more stringent than the District and federal PM_{2.5} major source threshold of 140,000 lb/year (70 TPY) for PM_{2.5} serious nonattainment areas.
- VOC federal major modification threshold of 0 lb/year which is more stringent than the District and federal threshold of 80,000 lb/year (40 TPY) for PM_{2.5} precursors.

Since the current rule (both the April 21, 2011, and February 18, 2016, versions) includes control requirements for VOC emissions meeting or exceeding federal requirements for PM_{2.5} and its precursors (as demonstrated above), District Rule 2201 contains the necessary requirements for VOC as a PM_{2.5} precursor.

c. Ammonia Contribution to PM_{2.5} Concentrations

As discussed above, EPA's PM_{2.5} precursor demonstration guidance requires that modeling be conducted to determine if emissions of a precursor from new or future

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modifications to existing major sources would contribute significantly to PM_{2.5} concentrations in the Valley.

EPA recommends using the following thresholds for the NNSR PM_{2.5} precursor demonstration:

- 0.2 µg/m³ for the annual PM_{2.5} NAAQS, and
- 1.3 µg/m³ for the 24-hour PM_{2.5} NAAQS.

The fundamental approach for analyzing changes in emissions pursuant to the NNSR precursor demonstration involves the use of a photochemical model to project the air quality changes associated with various potential emissions increases from hypothetical new major stationary sources or major modifications. It is important to examine the area's sensitivity to emissions increases from potential source locations across the entire nonattainment area because a new source may locate in any part of the nonattainment area. Therefore, modeling for a number of hypothetical new sources, placed in various locations across the nonattainment area, is necessary. Enough locations must be included in the demonstration such that new sources are placed in a variety of chemical regimes to provide full coverage over the nonattainment area.

The location of existing major sources and the stack parameters of those sources are used to help design the NNSR modeling demonstration. The existing major source information is the starting point of the analysis, with additional hypothetical new sources (that may or may not resemble existing sources) placed in other parts of the area, as necessary.

In order to conduct the required modeling the following steps were followed:

- Step 1: identify emission sources for inclusion in future modeling scenarios;
- Step 2: identify appropriate source locations;
- Step 3: determine appropriate future source emissions;
- Step 4: update CMAQ model inputs;
- Step 5: post-process the CMAQ output; and
- Step 6: calculate the modeled impact from precursors.

All the above steps were used for estimating future model responses to changes in sources and emissions of ammonia. The Base or Baseline year modeling runs did not change from that used in the current SIP process. However, the future year's emissions inventory was developed independently and is not the same as that used in the SIP process.

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Each of the general precursor demonstration steps are discussed in detail below.

Step 1 - Identify Emission Sources

District staff reviewed the last 10 years (2008 through 2017 inclusive) of permitting records to identify all new and modified major sources that were given PTOs to determine if:

- Such new and modified major sources emitted a PM2.5 precursor pollutant (NOx, SOx, VOC, or ammonia), and if so:
 - Was it a new action or was it a modification?
 - What was source of emissions (boiler, steam generator, composting, etc.)?
 - What are the permitted limits of PM2.5 precursor pollutants?
 - What are the source parameters (stack, area, volume parameters)?
 - What is the location of the source:
 - Address
 - Sec/TWN/RNG
 - Latitude / Longitude

Step 2 - Identify Appropriate Source Locations

District staff geocoded the locations determined in Step 1 and masked out areas that are not reasonable for inclusion in the modeling scenario. To identify these appropriate source locations, District staff performed the following tasks:

- Geocoded data provided
- Masked-out areas that are not reasonable to include
 - This depended on facility and source types (for example placing a hypothetical dairy in an oil field was not reasonable)
- Based on Geocoded facilities/unit and areas masked out, determine:
 - Locations of similar sources
 - New locations where sources currently do not exist, but may be sensitive to increase in ammonia

Step 3 – Determine Future Source Emissions

District staff estimated future emissions for sources identified in Step 1. The future emissions from sources identified addressed the following:

- Current rules requirements that have not gone into effect
- Future rules that will be in place during the future year modeling period
- Future growth of any applicable source category
- Decrease in growth for a given source type
- Review of trend data from permitting activities or other sources

Step 4 – Update CMAQ Model Inputs

Per EPA guidance, the simplest modeling approach to calculate impacts for a NNSR precursor demonstration (brute force change to emissions) is to simulate two sets of conditions: one with all existing emissions and one that includes an increase in emissions of the precursor that could result from major source growth (new major stationary sources and major modifications). The difference between these simulations provides an estimate of the air quality change related to the increase in emissions from the precursor.

Some photochemical models have been instrumented with source apportionment, which tracks emissions from specific sources, source sectors, and/or source regions through chemical transformation, transport and deposition processes to estimate an impact to predicted air quality. Source apportionment has been used to differentiate the impact from single sources on model predicted ozone and PM_{2.5}.

The modeling for this precursor demonstration utilized CMAQ version 5.0.2, released by the U.S. EPA (<https://www.cmascenter.org/cmaq/>) in May 2014. The SAPRC07 mechanism was selected as the photochemical mechanism for the CMAQ simulations. The same configuration has been used for all simulations including the base, reference, and future years. CMAQ was compiled using the Intel FORTRAN compiler version 12.

Step 5 – Post-Process the CMAQ Output

CMAQ model performance was evaluated for PM_{2.5} mass, individual PM_{2.5} chemical species, as well as a number of gas-phase species based on observations from an extensive network of monitors in the SJV.

As recommended by U.S. EPA, a number of statistical metrics have been used to evaluate the model performance. These metrics include mean bias (MB), mean error (ME), mean fractional bias (MFB), mean fractional error (MFE), normalized mean bias (NMB), normalized mean error (NME), root mean square error (RMSE), and correlation coefficient (R²).

Step 6 – Calculate the Modeled Impact from Precursors

The modeled precursor impacts on PM_{2.5} concentrations can be calculated either as the absolute modeled concentration changes or as relative concentration changes, based on the percent modeled change in PM_{2.5} species, applied to ambient data.

Additionally, it is necessary to estimate source impacts throughout the area potentially impacted by major sources, not just at locations where monitors exist. Therefore, EPA recommends using absolute model outputs to calculate major source impacts for NNSR precursor demonstrations. However, there may be some cases where relative impacts for a NNSR precursor demonstration are appropriate.

Estimating the Annual PM2.5 Impact from Precursors – NNSR Demonstration

- The first step for estimating annual PM2.5 impacts from a precursor is to estimate the annual average PM2.5 at each receptor in the nonattainment area (if using a grid model, each grid cell is a receptor) for the baseline scenario.
- The second step is to calculate the annual average PM2.5 at each receptor for the sensitivity scenario.
- The third step is to calculate the difference between the sensitivity scenario annual average PM2.5 and baseline scenario annual average PM2.5 for each receptor.
- This difference yields the impact from the PM2.5 precursor.
- The impact is compared to the thresholds recommended by EPA

Estimating the Daily PM2.5 Impact from Precursors

- The first step for estimating 24-hour PM2.5 impacts from a precursor is to estimate the 24-hour average PM2.5 at each receptor in the nonattainment area (if using a grid model, each grid cell is a receptor) for the baseline scenario.
- The second step is to calculate the 24-hour average PM2.5 at each receptor for the sensitivity scenario.
- The third step is to calculate the difference between the sensitivity scenario 24-hour average PM2.5 and baseline scenario 24-hour average PM2.5 for each day for each receptor.
- This difference yields the impact from the PM2.5 precursor.
- The impact is compared to the thresholds recommended by EPA

4. PM2.5 Precursor Modeling Results

The District conducted the modeling in accordance to EPA's requirements of using the absolute model method to model comparison ammonia increase, only accounting for increases in ammonia emissions but not changes in other pollutants. However, the District does not believe that this method is an appropriate representation of how increases in ammonia will affect the formation of PM2.5 in the San Joaquin Valley in the near future. In fact, before 2025, the District is expecting to see its NOx inventory to drop by 50%. Therefore, to more accurately reflect how the significant reduction in NOx will affect the contribution of ammonia increases to PM2.5 concentrations in the San Joaquin Valley in the near future, the District also conducted an additional evaluation using a relative approach which derives overall PM2.5 concentrations considering changes in the concentrations of other pollutants.

The table below summarizes the resulting increases in PM2.5 concentrations in the San Joaquin Valley based on the CMAQ modeling, using the absolute analysis considering only increases in ammonia, and using the relative analysis considering both ammonia increases and the expected decreases in other pollutants.

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NAAQS	Maximum Modeled Change	Precursor Guidance Threshold	Is the Change significant?
Absolute Analysis			
24-Hour	0.79	1.3	No
Annual	0.032	0.2	No
Relative Analysis			
24-Hour	0.22	1.3	No
Annual	0.018	0.2	No

5. PM2.5 Precursor Demonstration Conclusion

As discussed above, NO_x is considered a significant PM_{2.5} precursor pollutant in the San Joaquin Valley. SO_x emissions have much smaller impact on PM_{2.5} concentrations in the San Joaquin Valley, but are also considered to be a significant PM_{2.5} precursor pollutant in the District's NSR Rule. In accordance with the requirements of Subpart 4, VOC is also presumed to be a significant PM_{2.5} precursor pollutant. As explained above and demonstrated through extensive modeling, ammonia is not considered a significant PM_{2.5} precursor pollutant because it does not contribute significantly to PM_{2.5} concentrations in the San Joaquin Valley based on EPA guidance threshold levels. Since ammonia is not a significant PM_{2.5} precursor, no additional control requirements are required in the District's NSR rule for ammonia as a PM_{2.5} precursor pollutant.

IV. PROPOSED RULE AMENDMENTS

The proposed amendments to District Rules 2201, 2301, and 2520 are outlined below.

A. District Rule 2201 (New and Modified Stationary Source Review Rule)

- Section 3.18.1: Revise the "Less-Than-Significant Emissions Increase Exclusion" paragraph to clarify the requirements for VOC and NO_x increases in extreme ozone nonattainment areas. The proposed amended paragraph reads as follows:

3.18.1 Less-Than-Significant Emissions Increase Exclusion: Except for VOC and NO_x, an emissions increase for the project, or a net emissions increase for the project (as determined pursuant to 40 CFR 51.165 (a)(2)(ii)(B) through (D), and (F)), that is not significant for a given regulated NSR pollutant, as defined in 40 CFR 51.165, is not a federal major modification for that pollutant. For VOC and NO_x, an emissions increase for the project (as determined pursuant to 40 CFR 51.165 (a)(2)(ii)(B) through (D), and (F)) that is not significant, as defined in 40 CFR 51.165, is not a federal major modification for that pollutant.

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- Sections 3.25.1.2 and 3.25.3.4: Revise each section to include the new name “Routine Replacement Emissions Unit” in place of the previous name “Replacement Emissions Unit”. The proposed amended sections read as follows:
 - 3.25.1.2 Any structural change or addition to an existing emissions unit which would necessitate a change in permit conditions. A Routine Replacement Emissions Unit shall not be considered to be a structural change.
 - 3.25.3.4 A Routine Replacement Emissions Unit where the replacement part is the same as the original emissions unit in all respects except for the serial number.
- Sections 3.35, 3.35.1, and 3.35.5: Revise the definition for Replacement Emissions Unit to include the term “routine” and rename the definition as “Routine Replacement Emissions Unit”. The proposed amended sections read as follows:
 - 3.35 Routine Replacement Emissions Unit: routine replacement in whole or in part of any article, machine, equipment, or other contrivance with a valid District Permit to Operate provided that all of the following conditions are met:
 - 3.35.1 There is no increase in permitted emissions from the replacement unit(s). For replacements at major sources, “no increase in permitted emissions” as used in this definition also means no significant emissions increase according to the applicability calculations of 40 CFR 51.165(a)(2)(ii)(C). For the purposes of this definition, a Routine Replacement Emissions Unit is an existing emissions unit.
 - 3.35.5 When the entire emissions unit is replaced as a routine replacement action, the emissions unit shall either have been addressed by a BARCT rule or shall be equipped with a control device capable of at least 85% emission control.
- Section 3.41: Amend the definition of Temporary Replacement Emissions Unit (TREU) to clarify that the existing emissions unit must have a valid District Permit to Operate. The proposed amended section reads as follows:
 - 3.41 Temporary Replacement Emissions Unit (TREU): an emissions unit which is at a Stationary Source for less than 180 days in any twelve month period and replaces an existing emissions unit with a valid District Permit to Operate which is shut down for maintenance or repair.

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- Sections 4.2.5 and 4.2.6: Clarify the Best Available Control Technology (BACT) exemption categories for TREU and Routine Replacement Emissions Unit. The proposed amended sections read as follows:
 - 4.2.5 A Temporary Replacement Emissions Units;
 - 4.2.6 A Routine Replacement Emissions Units; or
- Section 4.6.5: Clarify the Emission Offsets Exemptions category for TREU. The proposed amended section reads as follows:
 - 4.6.5 A Temporary Replacement Emissions Units;
- Sections 5.5.1, 5.5.5, 5.5.6, and 5.9.1.1: Revise each section to replace the requirement for newspaper publication of public notices with the requirement for electronic publication of public notices. The proposed amended sections read as follows:
 - 5.5.1 Within ten (10) calendar days following the preliminary decision the APCO shall electronically publish in at least one newspaper of general circulation in the District a notice on the District's website stating the preliminary decision, noting how pertinent information can be obtained, and inviting written public comment for a 30 day period following the date of publication.
 - 5.5.5 The APCO shall provide written notice of the final action to the applicant and the ARB, and shall electronically publish such notice on the District's website in a newspaper of general circulation, except that for an application not subject to Section 5.4, the APCO shall not be subject to this section. In such a case, the applicant shall receive notification as provided in Rule 2040 (Applications). For new Major Sources, Federal Major Modifications, and SB 288 Major Modifications, the APCO shall also transmit written notice of the final action to the EPA.
 - 5.5.6 No later than the time of notice of final action is published, the APCO shall make available for public inspection at ~~the District offices~~ and on the District's website a copy of the notice submitted for publication and all supporting documents.
 - 5.9.1.1 Public Notification: The APCO shall provide a written notice of the proposed permit and, upon request, copies of the APCO analysis to interested parties. Interested parties shall include affected states, ARB and persons who have requested in writing to be notified. The notice shall also be given by electronic publication the District's website ~~publication in a newspaper of general circulation in the District~~ and by any other means if necessary to

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assure adequate notice to the affected public. The public shall be given 30 days from the date of publication to submit written comments on the APCO's proposed action.

- Sections 8.0, 8.1, and 8.1.1: Revise each section to include the new name "Routine Replacement Emissions Unit" in place of the previous name "Replacement Emissions Unit". The proposed amended sections read as follows:

8.0 Application Shield for Routine Replacement Emissions Units and Temporary Replacement Emissions Units (TREUs)

8.1 For a Routine Replacement Emissions Unit₁ or a TREU₁ for which an Authority to Construct is required, the permitted source may continue to operate under an application shield, provided that all of the following conditions are met.

8.1.1 An application for the Routine Replacement Emissions Unit or TREU has been submitted within seven calendar days of completing the construction or installation of the replacement.

B. District Rule 2301 (Emission Reduction Credit Banking)

- Section 8.4: Revise this section to replace the requirement for newspaper publication of public notices with the requirement for electronic publication of public notices. The proposed amended section reads as follows:

8.4 Upon acceptance of a complete application, the APCO shall have 60 days to perform an initial assessment of the application. Upon completion of this initial assessment the District shall provide written notice of such to the applicant and shall also provide written notice of acceptance to ARB and EPA and electronically publish notice on the District's website~~in a newspaper of local and general circulation in the District~~. The notice shall specify the applicant and the quantity of emission reductions requested and a statement of the initial assessment.

Publication of the notice shall commence a 30 day public comment period during which the APCO shall accept written comments on the merits of the ERC Certificate application. Upon conclusion of this 30 day period, the APCO shall have 30 days to render a decision as to whether the APCO approves, conditionally approves, or denies the application. This decision shall be promptly supplied in writing to the applicant and published electronically on the District's website~~in a newspaper of local circulation~~.

The noticing requirements period shall be waived by the APCO if the emission reductions have already been subject to ARB, EPA and public comment. Noticing requirements shall not be waived for emissions reductions which were not formally banked and which occurred prior to January 1, 1988.

C. District Rule 2520 (Federally Mandated Operating Permits)

- Sections 11.1.4, 11.1.10, 11.1.11, 11.3.1.1, 11.3.5, and 11.3.6: Revise each section to replace the requirement for newspaper publication of public notices with the requirement for electronic publication of public notices. The proposed amended sections read as follows:

11.1.4.1 The APCO shall provide a written notice of the proposed permit and, upon request, copies of the District analysis to interested parties. Interested parties shall include affected states, ARB and persons who have requested in writing to be notified. The notice shall also be given by electronic publication on the District's website~~in a newspaper of general circulation in the District~~ and by any other means if necessary to assure adequate notice to the affected public. The public shall be given 30 days from the date of publication to submit written comments on the District's proposed action.

A copy of the District analysis and the proposed permit shall be made available at District offices for public review and comment during normal business hours and shall also be made available on the District's website. The District analysis shall include a statement that sets forth the legal and factual basis for the proposed permit conditions, including references to the applicable statutory and regulatory provisions.

11.1.10 Notification and Publication of Final Action

Written notification of the final decision shall be sent to the EPA, the ARB and any person and affected state that submitted comments during the public comment period. The APCO shall submit a copy of the model general permit or model general permit template as issued to the EPA and provide a copy to any person or agency requesting a copy. The APCO shall electronically publish such notice on the District's website~~in a newspaper of general circulation~~.

11.1.11 Public Inspection of Final Action Documents

No later than at the time that notice of final action is published, the APCO shall make available for public inspection at the District offices a copy of the notice ~~submitted for publication~~ and all supporting documents.

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Information submitted which contains trade secrets shall be handled in accordance with Rule 1030 (Confidential Information) of these Rules and Regulations, with section 6254.7 of the Government Code, and with relevant sections of the Administrative Code of the State of California. The contents of a permit issued under the requirements of this rule may not be considered a trade secret.

- 11.3.1.1 The APCO shall provide a written notice of the proposed permit and, upon request, copies of the District analysis to interested parties. Interested parties shall include affected states, ARB and persons who have requested in writing to be notified. The notice shall also be given by electronic publication on the District's website~~in a newspaper of general circulation in the District~~ and by any other means if necessary to assure adequate notice to the affected public. The public shall be given 30 days from the date of publication to submit written comments on the District proposed action.

11.3.5 Notification and Publication of Final Action

Written notification of the final decision shall be sent to the EPA, the ARB and any person and affected state that submitted comments during the public comment period. The APCO shall submit a copy of the permit as issued to the EPA and provide a copy to any person or agency requesting a copy. The APCO shall electronically publish such notice on the District's website~~in a newspaper of general circulation~~.

11.3.6 Public Inspection of Final Action Documents

No later than at the time that notice of final action is published, the APCO shall make available for public inspection at ~~the District offices~~ a copy of the notice ~~submitted for publication~~ and all supporting documents. Information submitted which contains trade secrets shall be handled in accordance with Rule 1030 (Confidential Information) of these Rules and Regulations, with section 6254.7 of the Government Code, and with relevant section of the Administrative Code of the State of California. The contents of a permit issued under the requirements of this rule may not be considered a trade secret.

V. SENATE BILL 288 – PROTECT CALIFORNIA AIR ACT OF 2003

California Health and Safety Code (CH&SC) Sections 42500 through 42507 (SB 288) mandates that a district’s NSR rules cannot be made less stringent, in a variety of specified areas, than the rules that existed on December 30, 2002. This legislation was crafted and signed into law specifically to prevent Districts from implementing any Federal NSR reforms that would have relaxed California’s stringent NSR requirements.

The state ARB has provided guidance on the implementation of SB 288 (California Air Resources Board Guidance, *New Source Review and Senate Bill 288* (August 2004, as amended April 2006)), and has concluded that there are four components of NSR that are affected by SB 288:

1. NSR applicability determinations;
2. The definitions of “modification”, “major modification”, “routine maintenance”, and “repair or maintenance”;
3. The calculation methodology, thresholds, or other procedures of new source review. ARB further interprets this to apply to baseline determinations, calculating emissions changes, offset amounts required, and major source and major modification thresholds; and
4. The definitions and requirements of NSR regulations, including, on a program-wide basis, the requirement to obtain offsets⁹.

Per the ARB guidance, each of these four components apply on an individual source basis (except for offsets, as seen in 4 above), as well as on a programmatic basis. The proposed amendments to District Rule 2201 do not include any changes that would make the District’s NSR rule less stringent than the rule that existed on December 30, 2002. Since the submittal of the New PM_{2.5} Precursor Demonstration does not result in any changes that would make the District’s NSR rule less stringent than the rule that existed on December 30, 2002, this item is not subject to SB 288 provisions.

Each of the proposed amendments to Rule 2201 are evaluated below to determine if there could be a relaxation of the NSR requirements for these four components.

- Routine Replacement Emissions Unit Definition
- Federal Major Modification Definition
- Temporary Replacement Emissions Unit (TREU) Definition
- Public Notification Procedure Enhancement

⁹ While the District believes that this final component is an overly broad legal interpretation of the legislation, and inconsistent with the development and intent of the legislation, we believe the District’s proposed amendments are complying with ARB’s interpretation on this issue. However, we will reserve our right to challenge ARB on this issue at a later date, or if ARB uses this interpretation to contravene any of the District’s proposed NSR amendments.

A. Proposed Amendment to Routine Replacement Emissions Unit Definition

As discussed in Section III.A above, the District is proposing to reintroduce the term “routine” within the definition of Routine Replacement Emissions Unit and to amend Section 3.35 of Rule 2201 to rename “Replacement Emissions Unit” as “Routine Replacement Emissions Unit”. These proposed amendments respond to a concern that removing the term “routine” from Section 3.35 could have allowed for a misinterpretation of the rule resulting in more units being exempt from BACT requirements. The following is an analysis of the SB 288 implications of the proposed amendments compared to the December 30, 2002, version of Rule 2201.

1. NSR applicability determinations are not relaxed:

Reintroducing the term “routine” results in eliminating a potential misinterpretation of this definition and ensures there is no change in the District’s longstanding application of Section 3.35 of the Rule. This proposed amendment does not relax any NSR applicability determinations.

2. The definitions of “modification”, “major modification”, “routine maintenance”, and “repair or maintenance” are not relaxed:

Reintroducing the term “routine” results in eliminating a potential misinterpretation of this definition and ensures there is no change in the District’s longstanding application of Section 3.35 of the Rule. This proposed amendment does not change the District’s longstanding interpretation or implementation of the definitions of “modification”, “major modification”, “routine maintenance”, and “repair or maintenance” and does not relax any NSR requirements.

3. The calculation methodology, thresholds, or other procedures of new source review are not relaxed:

Reintroducing the term “routine” results in eliminating a potential misinterpretation of this definition and ensures there is no change in the District’s longstanding application of Section 3.35 of the Rule. This proposed amendment does not change any calculation methodology, thresholds, or any other procedures of NSR (namely BACT, offsets, and public notice).

An analysis of the BACT, offsets, and public notification requirements of Rule 2201 is provided below:

a. Requirements for BACT are not relaxed:

Rule 2201, Section 4.1 requires BACT for any increase over 2.0 lb/day and for any SB 288 Major Modification or Federal Major Modification. Section 4.2.6 allows a

Routine Replacement Emissions Unit to be exempt from BACT requirements. Reintroducing the term “routine” results in eliminating a potential misinterpretation of this definition and ensures there is no change in the District’s longstanding application of Section 3.35 of the Rule. Therefore, this proposed amendment does not change or relax any requirements for BACT.

b. Requirements for offsets are not relaxed:

Rule 2201, Section 4.5 requires emission offsets to mitigate new or increased emissions above specific thresholds and any emission increase for stationary sources which already exceed the offset thresholds. Reintroducing the term “routine” results in eliminating a potential misinterpretation of this definition and ensures there is no change in the District’s longstanding application of Section 3.35 of the Rule. Therefore, this proposed amendment does not change or relax any requirements for offsets.

c. Requirements for public notice are not relaxed:

Public Noticing is required for significant new or modified sources of emissions. Rule 2201, Section 5.4 lists the five thresholds which, if exceeded, will trigger a public notification. Reintroducing the term “routine” results in eliminating a potential misinterpretation of this definition and ensures there is no change in the District’s longstanding application of Section 3.35 of the Rule. Therefore, this proposed amendment does not change or relax any public notification requirements.

4. The definitions and requirements of NSR regulations, including, on a program-wide basis, the requirement to obtain offsets, are not relaxed:

Reintroducing the term “routine” results in eliminating a potential misinterpretation of this definition and ensures there is no change in the District’s longstanding application of Section 3.35 of the Rule. Therefore, this proposed amendment does not relax any definitions or requirements (namely BACT, offsets, and public notice) of the District’s NSR Rule or the requirement to obtain offsets on a project specific or program wide basis.

Based on the discussion above, this proposed change does not relax any NSR requirements and does not result in a relaxation under SB 288.

B. Proposed Amendment to Federal Major Modification Definition

As discussed in Section III.A above, the District is proposing to amend Section 3.18.1 of Rule 2201 to include additional rule language in Section 3.18.1 to clarify the District’s longstanding interpretation of the applicability of Federal Major Modification requirements for VOC and NOx emissions in extreme ozone nonattainment areas. The additional rule language is consistent with provisions in 40 CFR 51.165 that prohibit “netting out” of Federal

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Major Modification requirements for VOC and NOx emissions increases in an extreme ozone nonattainment area. The following is an analysis of the SB 288 implications of the proposed amendments compared to the December 30, 2002, version of Rule 2201.

1. NSR applicability determinations are not relaxed:

Including additional rule language in Section 3.18.1 to clarify the District's longstanding interpretation of the applicability of Federal Major Modification requirements for VOC and NOx emissions in extreme ozone nonattainment areas does not change the District's determination of the applicability of Federal Major Modification requirements. Therefore, this proposed amendment does not relax any NSR applicability determinations.

2. The definitions of "modification", "Major Modification", "routine maintenance", and "repair or maintenance" are not relaxed:

Including additional rule language in Section 3.18.1 to clarify the District's longstanding interpretation of the applicability of Federal Major Modification requirements for VOC and NOx emissions in extreme ozone nonattainment areas does not change the District's longstanding interpretation or implementation of the definitions of "modification", "major modification", "routine maintenance", and "repair or maintenance" and does not relax any NSR requirements.

3. The calculation methodology, thresholds, or other procedures of new source review are not relaxed:

Including additional rule language in Section 3.18.1 to clarify the District's longstanding interpretation of the applicability of Federal Major Modification requirements for VOC and NOx emissions in extreme ozone nonattainment areas does not change any calculation methodology, thresholds, or any other procedures of NSR (namely BACT, offsets, and public notice).

An analysis of the BACT, offsets, and public notification requirements of Rule 2201 is provided below:

a. Requirements for BACT are not relaxed:

Rule 2201, Section 4.1 requires BACT for any increase over 2.0 lb/day and for any SB 288 Major Modification or Federal Major Modification. Including additional rule language in Section 3.18.1 to clarify the District's longstanding interpretation of the applicability of Federal Major Modification requirements for VOC and NOx emissions in extreme ozone nonattainment areas does not change or relax any requirements for BACT.

b. Requirements for offsets are not relaxed:

Rule 2201, Section 4.5 requires emission offsets to mitigate new or increased emissions above specific thresholds and any emission increase for stationary sources which already exceed the offset thresholds. Including additional rule language in Section 3.18.1 to clarify the District's longstanding interpretation of the applicability of Federal Major Modification requirements for VOC and NOx emissions in extreme ozone nonattainment areas does not change or relax any requirements for offsets.

c. Requirements for public notice are not relaxed:

Public Noticing is required for significant new or modified sources of emissions. Rule 2201, Section 5.4.1 requires public notice for New Major Sources, Federal Major Modifications, and SB 288 Major Modifications. Including additional rule language in Section 3.18.1 to clarify the District's longstanding interpretation of the applicability of Federal Major Modification requirements for VOC and NOx emissions in extreme ozone nonattainment areas does not change or relax any public notification requirements.

4. The definitions and requirements of NSR regulations, including, on a program-wide basis, the requirement to obtain offsets, are not relaxed:

Including additional rule language in Section 3.18.1 to clarify the District's longstanding interpretation of the applicability of Federal Major Modification requirements for VOC and NOx emissions in extreme ozone nonattainment areas does not relax any definitions and requirements (namely BACT, offsets, and public notice) of the District's NSR Rule or the requirement to obtain offsets on a project specific or program wide basis.

Based on the discussion above, this proposed change does not relax any NSR requirements and does not result in a relaxation under SB 288.

C. Proposed Amendment to Temporary Replacement Emissions Unit (TREU) Definition

As discussed in Section III.A above, the District is proposing to amend Section 3.41 of Rule 2201 to clarify that the existing unit being replaced by a Temporary Replacement Emissions Unit (TREU) must have a valid District Permit to Operate (PTO). The following is an analysis of the SB 288 implications of the proposed amendments compared to the December 30, 2002, version of Rule 2201.

1. NSR applicability determinations are not relaxed:

Specifying the existing unit must have a valid District PTO results in eliminating a potential misinterpretation of this definition by only allowing a TREU to replace an existing unit with a valid PTO. This proposed amendment does not result in any change in the District's longstanding application of Section 3.41 of the Rule and does not relax any NSR applicability determinations.

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2. The definitions of “modification”, “major modification”, “routine maintenance”, and “repair or maintenance” are not relaxed:

Specifying the existing unit must have a valid District PTO results in eliminating a potential misinterpretation of this definition by only allowing a TREU to replace an existing unit with a valid PTO. This proposed amendment does not result in any change in the definitions of “modification”, “major modification”, “routine maintenance”, or “repair or maintenance” and does not relax any NSR requirements.

3. The calculation methodology, thresholds, or other procedures of new source review are not relaxed:

Specifying the existing unit must have a valid District PTO results in eliminating a potential misinterpretation of this definition by only allowing a TREU to replace an existing unit with a valid PTO and does not change any calculation methodology, thresholds, or any other procedures of NSR (namely BACT, offsets, and public notice).

An analysis of the BACT, offsets, and public notification requirements of Rule 2201 is provided below:

a. Requirements for BACT are not relaxed:

Rule 2201, Section 4.1 requires BACT for any increase over 2.0 lb/day and for any SB 288 Major Modification or Federal Major Modification. Section 4.2.5 allows a TREU to be exempt from BACT requirements. Specifying the existing unit must have a valid District PTO results in eliminating a potential misinterpretation of this definition and does not change or relax any requirements for BACT.

b. Requirements for offsets are not relaxed:

Rule 2201, Section 4.5 requires emission offsets to mitigate new or increased emissions above specific thresholds and any emission increase for stationary sources which already exceed the offset thresholds. Specifying the existing unit must have a valid District PTO results in eliminating a potential misinterpretation of this definition and does not change or relax any requirements for offsets.

c. Requirements for public notice are not relaxed:

Public Noticing is required for significant new or modified sources of emissions. Rule 2201, Section 5.4.1 requires public notice for New Major Sources, Federal Major Modifications, and SB 288 Major Modifications. Specifying the existing unit must have a valid District PTO results in eliminating a potential misinterpretation of this definition and does not change or relax any public notification requirements.

4. The definitions and requirements of NSR regulations, including, on a program-wide basis, the requirement to obtain offsets, are not relaxed:

Specifying the existing unit must have a valid District PTO results in eliminating a potential misinterpretation of this definition and does not relax any definitions or requirements (namely BACT, offsets, and public notice) of the District's NSR Rule or the requirement to obtain offsets on a project specific or program wide basis.

Based on the discussion above, this proposed change does not relax any NSR requirements and does not result in a relaxation under SB 288.

D. Proposed Amendment to Enhance Public Notification Procedure

As discussed in Section III.B above, the District is proposing to amend Rule 2201 to enhance the public notification procedures by requiring e-notice for permitting actions that trigger public notification per existing requirements in the rule. This proposed amendment improves and strengthens the District's public notice process by providing anytime access, through the District's website, to bilingual public notices and associated project documents. Providing notices and project documents electronically results in an increased opportunity for the public to participate in District NSR actions that trigger public notice per existing requirements in Rule 2201.

In ARB's June 2018 advisory to California air districts and other interested parties concerning air district New Source Review rules and electronic notice,¹⁰ ARB determined that modernizing public notice requirements of local air district NSR rules to be consistent with federal rules does not violate SB 288 (the Protect California Air Act of 2003) and further indicated that ARB believes that e-notice of projects subject to NSR requirements, performed consistent with federal rules and the ARB advisory "*will result in a more widely served and better informed public and will increase the opportunity for meaningful public participation as intended by the Clean Air Act.*" The proposed amendment to enhance the public notice procedures of District 2201 by requiring e-notice in place of newspaper notice is consistent with federal rules and the ARB advisory and, therefore, complies with the requirements of SB 288.

The following is an analysis of the SB 288 implications of the proposed amendments compared to the December 30, 2002, version of Rule 2201.

1. NSR applicability determinations are not relaxed:

Enhancing the public notice process by requiring e-notice is a change to an administrative requirement for projects that already trigger public notice per existing provisions in Rule

¹⁰ California Air Resources Board (ARB) Advisory to California Air Districts and Other Interested Parties, Advisory 299: Air District New Source Review Rules Regarding Electronic Notice. (June 2018). <https://www.arb.ca.gov/enf/advs/advs299.pdf>

2201 and is not a change to the determination of the applicability of public notice requirements. Therefore, the proposed amendment does not change or relax any NSR requirement (namely BACT, offsets, and public notice).

2. The definitions of “modification”, “major modification”, “routine maintenance”, and “repair or maintenance” are not relaxed:

Enhancing the public notice process by requiring e-notice is a change to an administrative requirement for projects that already trigger public notice per existing provisions in Rule 2201. The proposed amendment does not change the definitions of “modification”, “major modification”, “routine maintenance”, and “repair or maintenance” and does not relax any NSR requirements.

3. The calculation methodology, thresholds, or other procedures of new source review are not relaxed:

Enhancing the public notice process by requiring e-notice is a change to an administrative requirement for projects that already trigger public notice per existing provisions in Rule 2201 and is not a change to the determination of the applicability of public notice requirements. Therefore, the proposed amendment does not change or relax any calculation methodology, any thresholds, or any other procedures of NSR (namely BACT, offsets, and public notice).

An analysis of the BACT, offsets, and public notification requirements of Rule 2201 is provided below:

a. Requirements for BACT are not relaxed:

Rule 2201, Section 4.1 requires BACT for any increase in emissions over 2.0 lb/day and for any SB 288 Major Modification or Federal Major Modification. Enhancing the public notice process by requiring e-notice is a change to an administrative requirement for projects that already trigger public notice per existing provisions in Rule 2201 and does not change or relax any requirements for BACT.

b. Requirements for offsets are not relaxed:

Rule 2201, Section 4.5 requires emission offsets to mitigate new or increased emissions above specific thresholds and any emission increase for stationary sources which already exceed the offset thresholds. Enhancing the public notice process by requiring e-notice is a change to an administrative requirement for projects that already trigger public notice per existing provisions in Rule 2201. This proposed change does not affect any calculation methodology or threshold for offsets. Therefore, this proposed amendment does not change or relax any requirements for offsets.

c. Requirements for public notice are not relaxed:

Public Noticing is required for significant new or modified sources of emissions. Rule 2201, Section 5.4 lists the five thresholds, which, if exceeded, will trigger a public notification. Enhancing the public notice process by requiring e-notice is a change to an administrative requirement for projects that already trigger public notice per existing provisions in Rule 2201.

As discussed in Section III.B above, the use of e-notice results in greater access to notices and project documents for public review which increases the public's opportunity to comment on District NSR actions. The proposed amendment strengthens the District's NSR public notice process as a result of the increased opportunity for the public to participate in District NSR permitting actions that trigger public notice per existing provisions in Rule 2201. Therefore, this proposed amendment does not relax any requirements for public notice.

4. The definitions and requirements of NSR regulations, including, on a program-wide basis, the requirement to obtain offsets, are not relaxed:

Enhancing the public notice process by requiring e-notice is a change to an administrative requirement for projects that already trigger public notice per existing provisions in Rule 2201. This proposed amendment does not relax any definitions or requirements (namely BACT, offsets, and public notice) of the District's NSR Rule or the requirement to obtain offsets on a project specific or program wide basis.

Based on the discussion above, this proposed change does not relax any NSR requirements and does not result in a relaxation under SB 288.

VI. RULE DEVELOPMENT PROCESS

This rule development process is principally focused on enhancing the effectiveness of public notice requirements in District Rules 2201, 2301, and 2520 by replacing the requirement for newspaper publication with a requirement for e-notice of public notices. In addition to the e-notice amendments, the District is proposing minor changes to District Rule 2201 in response to comments from ARB and EPA. The minor changes are considered supplemental to the District Rule 2201 amendments that were adopted by the District's Governing Board on February 18, 2016.

The February 18, 2016, amendments were adopted by the District's Governing Board to address the District's reclassification from moderate to serious nonattainment for the 1997 and 2006 PM2.5 standards. After the amendments were adopted, ARB further commented that the changes to the definition for Routine Replacement in Section 3.35 of District Rule 2201 potentially violated SB 288 and ARB therefore did not forward the amended Rule to

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EPA for inclusion in the SIP. To meet the requirement to submit an approvable rule to EPA, the District is proposing to amend District Rule 2201 to satisfy comments from ARB.

As previously discussed, with ARB not approving the February 18, 2016, amendments to District Rule 2201, EPA took the opportunity to provide additional comments to the District. Thus, the District is proposing minor changes to language in District Rule 2201 for the purpose of clarifying the District's longstanding interpretation and implementation of definitions for Federal Major Modification and Temporary Replacement Emissions Unit (TREU). These amendments to address comments from ARB and EPA on District Rule 2201 are considered minor and do not change the District's longstanding interpretation or implementation of any of the rule requirements.

In addition to the above specific amendments to District Rules 2201, 2301, and 2520, the District is taking this opportunity to submit the amended District Rule 2201 and this staff report as plan revision for the 1997 and 2006 PM_{2.5} NAAQS. The amended District Rule 2201 satisfies federal NNSR requirements for each standard and includes the necessary regulatory elements for approval. Therefore, the District is submitting this staff report as a revision to the SIP.

A. Public Workshop

District staff hosted a public workshop on July 26, 2016, and the District received no comments on the proposed amendments to the rules. District staff will host a second public workshop on April 15, 2019, and are soliciting written comments from the public, affected sources, ARB, and EPA by April 26, 2019. Any comments received during the public comment period will be evaluated and incorporated into the rules as appropriate.

After the public comment period, the district will publish another staff report and draft rules. These will be published at least thirty days prior to adoption by our Governing Board which is scheduled for June 20, 2019. Upon adoption, District Rules 2201, 2301, and 2520 will be forwarded to ARB which will forward the rules to EPA for inclusion in the SIP.

B. Public Hearing

In accordance with CH&SC Section 40725, the proposed amendments to District Rules 2201, 2301, and 2520 and the draft staff report will be publicly noticed and made available at least thirty days prior to the June 20, 2019, Governing Board public hearing to consider adoption of the proposed rule amendments. The public is invited to provide comments to District staff at any time up to, and during, the Governing Board public hearing. Upon adoption, District Rules 2201, 2301, and 2520 will be forwarded to the state ARB which will forward the rule to EPA for inclusion in the SIP.

VII. ANALYSES

A. Cost Effectiveness and Socioeconomic Analyses

Pursuant to CH&SC Section 40920.6(a), the District is required to analyze the cost effectiveness of new rules or rule amendments that implement Best Available Retrofit Control Technology (BARCT). The proposed amendments do not add BARCT requirements and therefore are not subject to the cost effectiveness analysis mandate.

Additionally, CH&SC Section 40728.5(a) requires the District to analyze the socioeconomic impacts of any proposed rule amendment that significantly affects air quality or strengthens an emission limitation. The proposed amendments have neither effect; therefore, the proposed amendments are not subject to the socioeconomic analysis mandate.

B. Environmental Impact Analysis

The purpose of this rule-amendment project is to address comments from the California ARB and US EPA on the District's February 18, 2016 amendments to District Rule 2201, which were adopted by the District's Governing Board to address the federal NNSR requirements for PM_{2.5} under Subpart 4 of the CAA, and to enhance District public notice procedures by requiring electronic notice for District actions that trigger public notification requirements in place of the newspaper notice requirements for District Rules 2201, 2301, and 2520. The proposed amendments to District Rule 2201 to address comments from ARB and EPA include clarifications to the name and definition for Routine Replacement Emissions Units, the definition for Federal Major Modification, and the definition for Temporary Replacement Emissions Unit (TREU).

Pursuant to Section 15061 of the Guidelines for Implementation of the California Environmental Quality Act (CEQA), District staff will investigate the likely environmental impacts of the proposed amendments to District Rules 2201, 2301, and 2520. Draft amendments are based on federal and state requirements and do not change the District's longstanding interpretation or implementation of current rule language. District staff will conduct an investigation further in the rule development process and recommend appropriate action to the District Governing Board.

C. Rule Consistency Analysis

Pursuant to CH&SC Section 40727.2(g), a rule consistency analysis of the draft rules is required if the draft rules strengthen emission limits or impose more stringent monitoring, reporting, or recordkeeping requirements. The draft rules do not strengthen emission limits or impose more stringent monitoring, reporting, or recordkeeping requirements; therefore, a rule consistency analysis is not required.

APPENDIX A

**Final Staff Report with Appendices for 2/18/2016 Amendments to Rule 2201
For Proposed Amendment to Rule 2201**

April 15, 2019

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FINAL STAFF REPORT

Proposed Amendments to Rule 2201 (New and Modified Stationary Source Review Rule)

February 18, 2016

Prepared by: Robert Gilles, Air Quality Engineer

Reviewed by: Errol Villegas, Permit Services Manager
Arnaud Marjollet, Director of Permit Services
Dave Warner, Deputy Air Pollution Control Officer

I. SUMMARY

The San Joaquin Valley Air Pollution Control District (District) is proposing to amend District Rule 2201 (New and Modified Stationary Source Review (NSR) Rule) to address the District's reclassification from Moderate to Serious nonattainment for the 1997 and 2006 National Ambient Air Quality Standards (NAAQS, or standards) for particulate matter with an aerodynamic diameter of less than 2.5 microns (PM_{2.5}).

To comply with federal requirements for serious nonattainment areas, the District is proposing to amend District Rule 2201 to lower the PM_{2.5} Major Source Emission Threshold from 100 tons per year to 70 tons per year. In addition, the District will address Clean Air Act Section 189(e) precursor requirements for major stationary sources of PM_{2.5}.

Further, the District is proposing to amend District Rule 2201 to clarify in the definition of PM_{2.5} that PM_{2.5} includes the condensable portion of particulate pollution.

In addition, the District is taking this opportunity to add certain types of Temporary Replacement Emissions Units (TREUs) to the application shield provisions of District Rule 2201, Section 8.

Also, the reference to the offset threshold for carbon monoxide (CO) – nonattainment areas in Section 4.5.3, Table 4-1 will be removed, as there are no nonattainment areas in the Valley.

II. DESCRIPTION OF RULE 2201 (NEW AND MODIFIED STATIONARY SOURCE REVIEW RULE)

The District's NSR Rule provides a regulatory mechanism for allowing continued economic growth while minimizing the amount of emission increases due to this growth. District Rule 2201 applies to all new stationary sources and all modifications to existing stationary sources that are subject to District permit requirements. For smaller sources of emissions, there are certain permitting exemptions identified in District Rule 2201 and District Rule 2020 (Exemptions).

The District's NSR program is designed to meet both the state and federal NSR requirements for nonattainment areas and applies to new and modified stationary sources that emit nitrogen oxides (NOx), volatile organic compounds (VOC), particulate matter with an aerodynamic diameter of less than 10 microns (PM10), PM2.5, sulfur oxides (SOx), CO, and other pollutants subject to District permitting requirements pursuant to District Rule 2010 (Permits Required).

Key features of Rule 2201 include:

- Best Available Control Technology (BACT): mandates emission controls to minimize emission increases above de minimis values;
- Emission offsets: requires emissions above specified offset threshold levels to be mitigated with either concurrent reductions or past reductions which have been banked as emission reduction credits (ERC);
- Public notification: a 30 or 45 day notice period prior to issuance of an Authority to Construct (ATC) to garner comments on projects that result in emissions above specified levels;
- Required elements for Authority to Construct, Permit to Operate and administrative requirements for the processing of NSR applications.

III. BACKGROUND AND DISCUSSION OF PROPOSED RULE AMENDMENTS

A. Major Source and Federal Major Modification Thresholds

Major Source and Federal Major Modification are for federal nonattainment new source review (NSR), which is applicable to pollutants for which the District is classified as nonattainment of the corresponding NAAQS.

The federal NSR permitting program relies on emissions thresholds to determine when requirements apply to new stationary sources and to modifications of existing stationary sources. If a new or modified facility will emit target air pollutants in amounts greater than the major source emission threshold, the facility is considered a major

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source. If emissions increases of target air pollutants from a new facility or modified facility are greater than the federal major modification significance threshold, the increase is considered significant and the project will be a major modification pursuant to 40 CFR Part 51.165.

Sources in a serious nonattainment area are defined as major sources for nonattainment NSR provisions if they have a potential to emit 70 or more tons per year of PM_{2.5}. An increase in PM_{2.5} emissions is considered significant if it exceeds 20,000 pounds per year of direct PM_{2.5} emissions or if the increase exceeds 80,000 pounds per year of a significant precursor pollutant.

Currently, District Rule 2201 has a PM_{2.5} major source threshold of 200,000 pounds per year (100 tons per year), and this proposed amendment will lower this threshold to 140,000 pounds per year (70 tons per year) due to the District's classification as a Serious nonattainment area for PM_{2.5}. District Rule 2201 also lists NO_x and SO_x as significant precursors to PM_{2.5}. The current rule lists a federal major modification threshold of zero pounds per year for NO_x, as it is also a significant precursor to ozone, and 80,000 pounds per year for SO_x. As these thresholds meet requirements for serious PM_{2.5} nonattainment areas, they will not be changed, as detailed further below.

B. PM_{2.5} Precursors

Ambient PM_{2.5} is comprised of many different constituents, and as a result, there are multiple precursor pollutants, such as NO_x, SO_x, VOC and ammonia, that may lead to PM_{2.5} formation. Pursuant to the federal Clean Air Act (CAA) Section 189(e), control requirements applicable to major sources of PM_{2.5} must also apply to major sources of PM_{2.5} precursors, except where such sources do not contribute significantly to PM_{2.5} levels that exceed the standard in the area. As required by Subpart 4 of the CAA, all precursors are presumed to be significant, unless demonstrated they are not. An evaluation of the four PM_{2.5} precursor pollutants is below.

1. NO_x and SO_x Contribution to PM_{2.5} Concentrations

District Rule 2201 currently lists NO_x and SO_x as significant precursors to PM_{2.5} with a federal major modification threshold of 80,000 pounds per year, and no changes for these pollutants are proposed.

2. Ammonia Contribution to PM_{2.5} Concentrations

In the Valley, there is extensive scientific research and technical analysis demonstrating that ammonia reductions do not contribute significantly to PM_{2.5}

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attainment. As detailed in Chapter 4 of the *2012 PM_{2.5} Plan*¹ and Chapter 2 of the 2015 Plan for the 1997 PM_{2.5} Standard (*2015 PM_{2.5} Plan*)², ammonium nitrate is the predominant secondary PM_{2.5} species, and is formed from nitric acid and ammonia. The plans go on to demonstrate that there is a relative abundance of ammonia compared to nitric acid, and that nitric acid (i.e. NO_x) is the limiting factor in forming ammonium nitrate.

Due to this extensive body of science that clearly shows that reducing NO_x emissions is very effective in reducing PM_{2.5} values, while reducing ammonia emissions is not effective, ammonia reductions have not historically been considered a significant precursor to PM_{2.5} formation in the Valley.

a. Major Source Contribution

There are only a few major stationary sources of ammonia emissions in the Valley, and the ammonia major stationary sources contribute only a small portion of the total ammonia inventory from all sources in the Valley (including stationary and mobile sources). Ammonia major sources include power plants with Selective Catalytic Reduction (SCR) systems, which rely on the use of ammonia as a reagent for the control system, and a few agricultural operations (one large dairy and 4 large poultry operations). The following table compares the major source ammonia emissions from the District's 2014 emissions inventory to the total inventory of ammonia emissions within the San Joaquin Valley³.

Major Source Emission Contribution			
Pollutant	Total Inventory (tons/day)	Major Source Inventory (tons/day)	Major Source Contribution
Ammonia	334.2	2.32	0.69%

As shown in the preceding table, ammonia emissions from ammonia major sources are just 0.69% of the total ammonia inventory in the Valley. As such, existing major stationary sources of ammonia emissions do not contribute significantly to PM_{2.5} levels that exceed the 1997 and 2006 NAAQS in the San Joaquin Valley.

b. Minimizing Growth in Stationary Source Ammonia Emissions

As the existing major sources of ammonia represent a very small fraction of the Valley's total ammonia inventory, any future growth in major source ammonia emissions will also be a small part of the overall growth in the inventory. As

¹ http://www.valleyair.org/Air_Quality_Plans/PM25Plan2012/CompletedPlanbookmarked.pdf

² http://www.valleyair.org/Air_Quality_Plans/docs/PM25-2015/2015-PM2.5-Plan_Bookmarked.pdf

³ CEPAM San Joaquin Valley 2015 MSM PM_{2.5} SIP Planning Inventory v.1.01

shown in Appendix B of the *2015 PM_{2.5} Plan*, the expected growth in ammonia emissions from all sources in the Valley from 2014 to 2020 is 21.8 tons per day. As the major sources of ammonia comprise 0.69% of the total inventory, their contribution to the growth would only be 0.15 tons per day by 2020, an insignificant portion of the projected inventory of over 350 tons per day in 2020.

Additionally, Rule 2201 does provide for the regulation of ammonia through the District's BACT requirements. Any new and modified ammonia sources in the Valley require BACT if increases in daily emissions exceed 2 pounds. District BACT is at least as stringent as federal Lowest Achievable Emission Rate (LAER), which is more stringent than federal BACT. Under federal NSR, ammonia as a precursor would not be regulated unless the increase was at least 40 tons per year. Therefore, District Rule 2201 currently controls ammonia growth at levels far below the federal NSR threshold. As such, new and modified major stationary sources of ammonia emissions will not contribute significantly to PM_{2.5} levels that exceed the 1997 and 2006 NAAQS in the San Joaquin Valley.

c. Sensitivity Analysis of Ammonia Contribution to PM_{2.5} Concentration

A sensitivity analysis was conducted as part of the *2012 PM_{2.5} Plan* to evaluate the effectiveness of reducing PM_{2.5} precursors, including ammonia, compared to reducing direct PM_{2.5} emissions. As the District's major sources of ammonia are spread throughout the Valley, the valley-wide modeling sensitivity analysis conducted for the *2012 PM_{2.5} Plan* is appropriate. Of the PM_{2.5} monitoring sites in the Valley, the Bakersfield-California site has the highest PM_{2.5} design value, and will be the last site to reach attainment of the PM_{2.5} NAAQS: as this is the worst site, it will be used as the basis of this analysis.

As detailed in Appendix G of the *2012 PM_{2.5} Plan*, reductions in ammonia emissions achieve insignificant reductions in the 2019 PM_{2.5} design values:

- A 1 ton per day reduction in the Valley's total direct PM_{2.5} emissions reduces the Bakersfield-California PM_{2.5} design value by 0.34 µg/m³
- A 1 ton per day reduction in the Valley's total NO_x emissions reduces the Bakersfield-California PM_{2.5} design value by 0.08 µg/m³
- A 1 ton per day reduction in the Valley's total ammonia emissions reduces the Bakersfield-California PM_{2.5} design value by a mere 0.008 µg/m³

Relative to the other pollutants, ammonia emission reductions at the Bakersfield-California site are only 2.3% as effective as directly emitted PM_{2.5} emission reductions, and only 10% as effective as NO_x emission reductions. It

would take an unreasonable tonnage of ammonia reductions to reduce a significant amount of PM_{2.5} mass. If all ammonia emissions from all major ammonia sources in the Valley were completely eliminated (2.32 tons per day), this would only reduce the PM_{2.5} design value by 0.019 µg/m³.

While the District believes this Valley-wide sensitivity analysis is the appropriate approach, some may argue for an analysis of the effects of reducing PM_{2.5} and precursor emissions in the areas with the highest monitored PM_{2.5} levels, historically the Bakersfield-California site. Therefore, a similar sensitivity analysis was focused on the effect that localized reductions would have on the Bakersfield-California site. The following were the findings of that analysis:

- A 1 ton per day reduction in Kern County's total direct PM_{2.5} emissions reduces the Bakersfield-California PM_{2.5} design value by 1 µg/m³
- A 1 ton per day reduction in Kern County's total NO_x emissions reduces the Bakersfield-California PM_{2.5} design value by 0.12 µg/m³
- A 1 ton per day reduction in Kern County's total ammonia emissions reduces the Bakersfield-California PM_{2.5} design value by only 0.02 µg/m³

Only six of the seventeen ammonia major sources in the Valley are located in Kern County, representing 0.775 tons per day of emissions. If the ammonia emissions from these six sources were completely eliminated, the PM_{2.5} design value would decrease by only 0.0155 µg/m³, even less than the reduction of 0.019 µg/m³ achieved by completely eliminating all major ammonia source emissions in the entire Valley.

Thus, controlling major source ammonia emissions in the San Joaquin Valley does not significantly contribute to attainment of the 1997 and 2006 PM_{2.5} NAAQS.

As demonstrated above, ammonia emissions from major sources do not contribute significantly to PM_{2.5} nonattainment in the SJV. Therefore, ammonia need not be addressed as a precursor to PM_{2.5} in the District's NSR program.

3. VOC Contribution to PM_{2.5} Concentrations

In the Valley, there is extensive scientific research and technical analysis demonstrating that VOC reductions do not contribute to PM_{2.5} attainment. In both the *2012 PM_{2.5} Plan* and the *2015 PM_{2.5} Plan*, the District discusses the importance of NO_x controls and demonstrates that NO_x controls are the most effective approach to reduce PM_{2.5} nitrate concentrations in the Valley. Modeling

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also shows that once NO_x controls are taken into consideration, VOC emissions reductions produce essentially no benefit in reducing PM_{2.5} concentrations.

As such, the Valley's VOC emissions do not need to be reduced to address EPA's PM_{2.5} standard. In 80 FR 1826, January 13, 2015, EPA concurs with the conclusion that VOC emissions do not contribute significantly to the formation of PM_{2.5} as stated in their proposed approval of the District's 2012 PM_{2.5} plan to address the 2006 PM_{2.5} standard: "*Based on a review of the information provided by the District and other information available to EPA, we propose to determine that at this time VOC emissions do not contribute significantly to ambient PM_{2.5} levels...*"⁴

The role of VOCs in the Valley's PM_{2.5} concentrations is discussed in detail in Chapter 4 and Appendix F (Modeling Protocol) of the *2012 PM_{2.5} Plan*, and is summarized here.

For the *2012 PM_{2.5} Plan*, the effectiveness of reducing PM_{2.5} precursors, including VOCs, was compared to reducing direct PM_{2.5} emissions and was quantified using inter-pollutant equivalency ratios⁵. Sensitivity analysis was performed for 10% reductions of primary PM_{2.5} as well as for each precursor separately. The results of the modeling runs are plotted on isopleth diagrams (also referred to as carrying capacity diagrams). These carrying capacity diagrams show the level of emissions that the atmosphere can "carry" and still demonstrate attainment. The carrying capacity diagrams presented in Chapter 4 of the *2012 PM_{2.5} Plan* (Figures 4-15 through 4-24)⁶ show that NO_x and directly-emitted PM_{2.5} are the most effective precursors to reduce to improve 24-hour PM_{2.5} design values, while additional VOC reductions do not correspond to improvements in PM_{2.5} design values.

This modeling showed that once NO_x controls are taken into consideration, VOC emission reductions produce essentially no benefit. In fact, in some instances, VOC emissions reductions may actually lead to an increase in PM_{2.5} nitrate formation. Nitrogen-containing molecules such as PAN can act as temporary sinks for NO₂. When VOCs are controlled, the reduced availability of certain radicals which are generated from VOCs reduces the amount of NO₂ that is sequestered, thereby increasing the availability of NO₂ and enhancing ammonium nitrate formation⁷.

⁴ *Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; California; San Joaquin Valley Moderate Area Plan and Reclassification as Serious Nonattainment for the 2006 PM_{2.5} NAAQS; Proposed Rule, 80 Federal Register 8. Pp. 1816-1846. (p. 1826) (2015, January 13).*

⁵ *2012 PM_{2.5} Plan* Appendix F (Modeling Protocol), p 127. <http://www.valleyair.org/Workshops/postings/2012/12-20-12PM25/FinalVersion/16%20Appendix%20F%20Modeling%20Protocol.pdf>

⁶ *2012 PM_{2.5} Plan* Chapter 4, p 4-31 through 4-40. <http://www.valleyair.org/Workshops/postings/2012/12-20-12PM25/FinalVersion/04%20Chapter%204%20Sci%20Foundation%20and%20Modeling.pdf>

⁷ Meng, Z., Dabdub, D., and Seinfeld, J.H., 1997, Chemical Coupling Between Atmospheric Ozone and Particulate

Although VOC is not a significant contributor to PM_{2.5} in the Valley, Rule 2201 provides for the regulation of VOC as a precursor to ozone. The level to which major sources of VOC are controlled in the District's NSR rule is extensive, since the Valley is classified as an extreme nonattainment area for ozone. VOC sources in the Valley are major sources at 10 TPY, have an emission offset threshold of 10 TPY, have a distance offset ratio of 1.5 to 1, require BACT if daily emissions exceed 2 pounds, require public notification if emission increases exceed either 100 lb/day for new sources or 20,000 lb/year for modified sources, and have a significance threshold of zero for federal major modifications. Therefore, VOC as an ozone precursor is controlled through the District's NSR rule at levels much lower than if they would be controlled as a PM_{2.5} precursor.

As demonstrated above, VOC emissions from major sources do not contribute significantly to PM_{2.5} nonattainment in the SJV. Therefore, VOC need not be addressed as a precursor to PM_{2.5} in the District's NSR program.

C. PM_{2.5} Definition Pertaining to Condensable Particulates

PM_{2.5} is comprised of both filterable and condensable particulate matter. Filterable PM_{2.5} is either a solid or liquid and is generally stable in the atmosphere, while condensable PM_{2.5} is a vapor or gas at stack temperature, but at ambient conditions, the matter condenses to liquid or solid.

In EPA's Clean Air Fine Particulate Implementation Rule (72 FR 20586, April 25, 2007) and Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}) rule (73 FR 28321, May 16, 2008), EPA explicitly included condensable matter in their PM_{2.5} definition for purposes of federal NSR applicability, citing the Consolidated Emissions Reporting rule (67 FR 39602, June 10, 2002), where it was first included for PM_{2.5}.

The District has historically included condensable particulate emissions in its definition of total particulate emissions, well ahead of federal and other states' efforts to address this issue, and PM_{2.5} condensable emissions are treated as a part of total PM_{2.5} emissions under the District's rules and are not excluded for the purposes of triggering any federal new source review requirements. Rule 2201 currently defines PM_{2.5} as "*particulate matter with an aerodynamic diameter smaller than or equal to a nominal 2.5 microns,*" and Rule 1020 (Definitions) defines Particulate Matter as "*any material except uncombined water, which exists in a finely divided form as a liquid or solid at standard conditions.*" Since condensable particulate matter is, by definition, matter which condenses to a particulate form at ambient conditions, the District sees no way to read its regulations other than to conclude that PM_{2.5} includes condensable PM_{2.5}.

Matter, Science, 277, 116-119.

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This has included establishing permit requirements for various emissions sources that include condensable particulates as part of total particulate emissions limitations and associated emissions testing requiring that condensable particulates be measured (including utilizing an EPA-approved modified test method ahead of EPA's official test method, Method 202)⁸.

While the District is currently following federal regulations by accounting for the PM2.5 and PM10 condensable portions in its permitting process, the District will revise the definition for PM2.5 in Rule 2201 to clarify that condensable particulates are included.

D. Application Shield for Temporary Replacement Emissions Units

NOTE: The federal EPA provided late verbal comments on the appropriateness of the District's Application Shield provisions and the definition of "Routine Replacement". The District's responses to these comments are contained in Appendix A of this staff report, and changes have been made to the rule as a result of EPA's comments. These changes are also captured in Appendix A, but are not detailed below. The changes are consistent with District interpretation and implementation of the rule and with existing federal law, and are therefore not significant.

District Rule 2201 contains an application shield for routine replacements, as defined in the Rule (Section 3.35), to allow them to be installed without first applying for an Authority to Construct (ATC), provided the application is submitted to the District within 7 calendar days of completing the installation of the replacement and the source operates with no increased emissions or throughput and complies with other applicable requirements detailed in the Rule as discussed further below. A routine replacement is a permanent replacement of an existing emissions unit, so the application shield provides no benefit to situations where a unit is brought in to temporarily replace the main unit while the main unit is repaired. The result of this incongruity is that a temporary replacement faces tougher regulatory hurdles than a permanent replacement before installation. The District believes that temporary replacements should also benefit from this application shield and, if certain precautions are taken, no impact on air quality will result.

Currently, when a unit must be shut down for repair or maintenance and the source wants to use a Temporary Replacement Emissions Unit (TREU) in place of the shutdown unit, they must first obtain an ATC before the TREU can be installed and utilized. It has been a longstanding frustration for sources in the Valley that these temporary operations that really need this shield are precluded from using it. While the District expedites issuance of TREU ATCs (with a commitment to issue the ATC within 7 days of the receipt of the complete application for a TREU), this doesn't allow the source to install a TREU as quickly as they can have it delivered to the site, as could a

⁸ <http://www.epa.gov/ttn/emc/methods/method202.html>

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routine replacement. Because facilities are quite often relying on these temporary replacements to restart their business or operation, any delay can be devastating. To alleviate this frustration while still ensuring the requirements of District Rule 2201 are met and no negative impact on air quality is created, this proposed amendment would allow certain TREUs to enjoy the application shield of Section 8.

The table below captures the current application shield requirements for routine replacements and demonstrates that the proposed TREU application shield requirements are equivalent. For both types, there is no increase in emissions allowed compared to the replaced unit and there must not be a change in function. The application shield for TREUs is also limited by Section 8 to those with the same limitations on design capacity and Best Available Retrofit Control Technology (BARCT) applicability. In addition, TREUs utilizing this application shield cannot, due to their temporary nature, constitute a Reconstructed Source.

Routine Replacements and TREUs eligible for application shield	
Routine Replacements	TREUs
No increase in potential to emit - (3.35.1)	No increase in potential to emit - (3.41.1, 8.1.3.2)
Allowed increase in design capacity up to 10% with no increase in potential to emit or throughput - (3.35.2)	Allowed increase in design capacity up to 10% with no increase in potential to emit or throughput - (8.1.3.1, 8.1.3.2)
Replacement performs same function - (3.35.3)	Replacement performs same function - (3.41, 8.1.3.3)
Replacement will not constitute a Reconstructed Source (3.34) or Reconstruction (40 CFR 60.15) – (3.35.4)	As a temporary replacement, the original emissions unit will be put back into service; therefore the TREU is not a Reconstructed Source or Reconstruction – (3.41.3)
If entire unit replaced, replacement is addressed by BARCT rule or equipped with control device capable of 85% control – (3.35.5)	Temporary replacement must be addressed by BARCT rule or equipped with control device capable of 85% control – (8.1.3.4)

Please note that the District is taking this opportunity to also clarify Section 8.1.1 to make it consistent with rule intent and District past practice. Since this section provides a pre-construction application shield, the application is due within seven calendar days of completing the construction or installation of the replacement unit.

E. CO Nonattainment Area Offset Threshold

Prior to 1998, some areas of the Valley were not in attainment for the Federal CO NAAQS, while the rest of the Valley was in attainment. As a result of this situation, early versions of Rule 2201 listed two different offset thresholds for CO emissions: 30,000 pounds per year for nonattainment areas and 200,000 pounds per year for attainment areas. Since 1998, all areas of the District have been classified as

attainment for the CO NAAQS⁹. Therefore, for the past 17 years the nonattainment area offset threshold for CO has no meaning or applicability. For this reason, the District is proposing to remove the CO offset threshold for nonattainment areas. Although no CO attainment problems are anticipated due to the significantly cleaner mobile source fleet in California, and similar reductions from stationary sources, if the District is found to be in nonattainment for CO in the future, the District will be required to adopt appropriate NSR revisions in a timely manner.

F. PM2.5 Annual Offset Equivalency Tracking

The District uses several innovative NSR program provisions, such as more certainty and flexibility in the use of Emission Reduction Credits (ERCs) and enhanced offsetting requirements, which were designed to make the permitting process less burdensome and more certain and transparent for both affected industry and the District while still maintaining compliance with federal NSR requirements. As part of an agreement between the EPA and the District to allow this rule flexibility, the District is tracking the ERCs collected under its NSR program and must make an annual demonstration that these ERCs are equivalent to both the amount of surplus ERCs, and the total amount of ERCs, to those which would be collected under a federal NSR offsetting program.

Section 7 of Rule 2201 specifies the tracking and reporting actions involved with the annual equivalency demonstration and steps to be taken to correct any ERC shortfalls. This section also details the required actions to be taken if an ERC shortfall occurred. Rule 2201 has a self-implementing offset shortfall remedy procedure which entails following the federal offsetting requirements directly, until the shortfall is eliminated. The system is designed to be invisible to permittees unless equivalency cannot be demonstrated and the indicated remedies must be implemented.

As currently written, Rule 2201, Section 7, is pollutant neutral. It requires the appropriate tracking and demonstrations for all pollutants for which federal offsetting requirements are triggered. Therefore, Section 7 fully addresses the use of PM2.5 offsets and requires the appropriate tracking and annual demonstration without any change in rule language. To date, there have been no new major sources of PM2.5 and only one federal major modification project that required the use of PM2.5 offsets in the San Joaquin Valley.

G. Proposed Rule Amendments

NOTE: The federal EPA provided late verbal comments on the appropriateness of the District's Application Shield provisions and the definition of "Routine Replacement". The District's responses to these comments are contained in Appendix A of this staff report, and changes have been made to the rule as a

⁹ EPA designated the Valley as attainment for the CO NAAQS on 3/31/1998, effective 6/1/1998 (73 Fed. Reg. 66759-66775).

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result of EPA’s comments. These changes are also captured in Appendix A, but are not detailed below. The changes are consistent with District interpretation and implementation of the rule and with existing federal law, and are therefore not significant.

The proposed amendments in Draft Rule 2201 are outlined below:

- Section 3.24: Revise the Major Source Emission Threshold for PM2.5 in Table 3-3 to lower it from 200,000 lb/year to 140,000 lb/year. The proposed amended table reads as follows:

POLLUTANT	THRESHOLD (POUNDS PER YEAR)
VOC	20,000
NOx	20,000
CO	200,000
PM2.5	140,000 200,000
PM10	140,000
SOx	140,000

- Section 3.28: Expand the definition of PM2.5 to clarify that the condensable portion of particle pollution is included in PM2.5. In response to EPA comments as discussed in Appendix A, the District is revising the proposed definition of PM2.5 and the amended PM2.5 definition reads as follows:

3.28 PM2.5: particulate matter with an aerodynamic diameter smaller than or equal to a nominal 2.5 microns, including gaseous emissions which condense to form particulate matter at ambient temperatures.

- Section 4.5.3: Remove the reference to CO (nonattainment areas) in Table 4-1 as there are no nonattainment areas in the Valley, and remove the phrase (attainment areas) from the CO (attainment areas) line. The proposed amended table reads as follows:

POLLUTANT	SSPE2 (POUNDS / YEAR)
VOC	20,000
NOx	20,000
CO (non-attainment areas)	30,000
CO (attainment areas)	200,000
SOx	54,750
PM10	29,200

- Section 7.1.1: In response to EPA comments as discussed in Appendix A, include the words “increase” and “and modified” to the existing section to clarify some of the federally required offsets that must be tracked pursuant to 40 CFR

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51.165, and Title I part D of the Clean Air Act (CAA). The proposed amended section reads as follows:

7.1.1 The quantity of offsets that would have been required for new major sources and federal major modifications in the District had the federal new source review requirements, codified in 40 CFR 51.165, and Title I part D of the Clean Air Act (CAA), been applied to these sources. These requirements include offsetting the full emissions increase from new and modified major sources, using actual emissions baselines when required under 40 CFR 51.165, and providing offsets necessary to meet the CAA offset ratio requirements and provide a net air quality benefit.

- Section 8: Allow certain Temporary Replacement Emissions Units to utilize the temporary application shield provided for in Section 8. The proposed amended sections reads as follows:

8.0 Application Shield for Routine Replacement and Temporary Replacement Emissions Unit (TREU)

8.1 For a Routine Replacement or a TREU for which an Authority to Construct is required, the permitted source may continue to operate under an application shield, provided that all of the following conditions are met.

8.1.1 An application for the Routine Replacement or TREU has been submitted within seven calendar days of completing the construction or installation of the routine or temporary replacement.

8.1.2 The source operates in compliance with all applicable requirements of the federal, state, and District rules and regulations.

8.1.3 For a TREU, all of the following conditions must be met:

8.1.3.1 The TREU results in no increase in design capacity, unless a replacement unit of the same or lower design capacity is not available, in which case the replacement can result in a design capacity increase of up to 10%.

8.1.3.2 The TREU results in no change to the permitted throughput or emissions due to a change in the design capacity as part of the replacement.

8.1.3.3 The TREU performs the same function as the equipment being replaced.

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- 8.1.3.4 The TREU either is addressed by a BARCT rule or is equipped with a control device capable of at least 85% emission control.
- 8.2 When the application has been deemed complete by the APCO, the application shield shall be made effective retroactive from the date of application submittal until the application is either approved or denied.
- 8.2.1 The application shield is not applicable if the District's final action is delayed due to the failure of the applicant to submit timely information requested by the District. The source must also submit additional information for any requirements that become applicable after a complete application is submitted, but before a PTO is issued.
- 8.3 The application shield does not exempt the operator from any applicable requirements.
- 8.4 The application shield applies only to an applications for a Routine Replacements, and TREUs meeting the requirements of 8.1.3.1 through 8.1.3.4, and does not authorize any increases to the permitted throughput or emissions due to a change in design capacity as part of a Routine Replacement or a TREU.
- 8.5 For a TREU that is removed from the Stationary Source within seven calendar days of completing the installation of the TREU, the application requirements of Section 8.1.1 shall not apply, provided the permittee submits, within seven calendar days of completing the installation of the TREU, a report to the District demonstrating compliance with the requirements of Section 8.

IV. PROTECT CALIFORNIA AIR ACT OF 2003 - SENATE BILL 288

California Health and Safety Code sections 42500 through 42507 (SB 288) mandates that a district's New Source Review (NSR) rules cannot be made less stringent, in a variety of specified areas, than the rules that existed on December 30, 2002. This legislation was crafted and signed into law specifically to prevent Districts from implementing any Federal NSR reforms that would have relaxed California's stringent NSR requirements.

The state Air Resources Board (ARB) has provided guidance on the implementation of SB 288 (California Air Resources Board Guidance, *New Source Review and Senate Bill 288* (August 2004, as amended April 2006)), and has concluded that there are four components of NSR that are affected by SB 288:

1. NSR applicability determinations;

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2. The definitions of “modification”, “major modification”, “routine maintenance”, and “repair or maintenance”;
3. The calculation methodology, thresholds, or other procedures of new source review. ARB further interprets this to apply to baseline determinations, calculating emissions changes, offset amounts required, and major source and major modification thresholds; and
4. The definitions and requirements of NSR regulations, including, on a program-wide basis, the requirement to obtain offsets¹⁰.

Per the ARB Guidance, each of these four components apply on an individual source basis (except for offsets, as discussed in 4. above), as well as on a programmatic basis. The proposed amendments to District Rule 2201 do not include any changes to the applicability of the District’s NSR requirements (except for lowering the PM2.5 Major Source threshold). Each of the proposed amendments to Rule 2201 will be evaluated below to determine if there could be a relaxation of the NSR requirements for these four components.

A. Changing the Major Source Definition

District Rule 2201, Section 3.24 is being amended to revise the PM2.5 major source emission threshold from 200,000 pounds per year (100 tons per year) to 140,000 pounds per year (70 tons per year) as a result of reclassification to serious nonattainment for the 1997 and 2006 PM2.5 standards.

The following is an analysis of the SB 288 implications of this proposed change:

1. NSR applicability determinations are not relaxed:

Changing the Major Source definition to lower the PM2.5 major source threshold will result in more major sources of PM2.5 emissions compared to the current threshold. This proposed change will result in a more stringent requirement and will not relax the applicability of any NSR requirements.

2. The definitions of “modification”, “major modification”, “routine maintenance”, and “repair or maintenance” are not relaxed:

Changing the Major Source definition will not change the definitions of “modification”, “major modification”, “routine maintenance”, or “repair or maintenance”. Therefore, this proposed change will not relax the definitions of

¹⁰ While the District believes that this final component is an overly broad legal interpretation of the legislation, and inconsistent with the development and intent of the legislation, we believe the District’s proposed amendments are complying with ARB’s interpretation on this issue. However, we will reserve our right to challenge ARB on this issue at a later date, or if ARB uses this interpretation to contravene any of the District’s proposed NSR amendments.

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“modification”, “major modification”, “routine maintenance”, or “repair or maintenance”.

3. The calculation methodology, thresholds, or other procedures of new source review are not relaxed:

The proposed change to the Major Source definition is to lower the PM_{2.5} Major Source threshold, which will result in more major sources of PM_{2.5} emissions and will more frequently trigger the various NSR requirements related to PM_{2.5} major sources, resulting in a more stringent rule without relaxation of any requirements.

An analysis of the BACT, offsets, and public notification requirements of Rule 2201 is provided below:

- a. Requirements for BACT are not relaxed:

Rule 2201, Section 4.1 requires BACT for any increase over 2.0 lb/day and for any SB 288 Major Modification or Federal Major Modification.

Lowering the PM_{2.5} major source threshold will not relax these BACT thresholds.

- b. Requirements for offsets are not relaxed:

Rule 2201, Section 4.5 requires emission offsets to mitigate new or increased emissions above specific thresholds and any emission increase for stationary sources which already exceed the offset thresholds.

Lowering the PM_{2.5} major source threshold will not relax any offset thresholds or any calculation methods for determining offset requirements. PM_{2.5} offsets will now be required for new sources at 70 tons per year rather than 100 tons per year due to the new Major Source threshold.

- c. Requirements for public notice are not relaxed:

Public Noticing is required for significant new or modified sources of emissions. Rule 2201, Section 5.4 lists the five thresholds which, if exceeded, will trigger a public notification.

Lowering the PM_{2.5} major source threshold will not relax any public notice thresholds. In fact, with more major sources of PM_{2.5} emissions, more projects may be subject to public notification requirements by virtue of more projects being Federal Major Modifications.

4. The definitions and requirements of NSR regulations, including, on a program-wide

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basis, the requirement to obtain offsets, are not relaxed:

The proposed change to the Major Source definition lowers the PM2.5 Major Source threshold, which will strengthen NSR requirements. This proposed change will not relax the requirement to obtain offsets, on a project specific or program wide basis. Instead, the rule revisions will require additional offsets as more PM2.5 major sources will now have to provide offsets. Therefore, this proposed change is not a relaxation of any definition or requirements of NSR regulations or the requirement to obtain offsets.

This proposed change will result in the strengthening of certain NSR requirements since the proposed 70 tons per year PM2.5 Major Source threshold is more stringent than the current 100 tons per year threshold. This proposed change will not relax any NSR requirements and will not be a relaxation under SB 288.

B. Clarifying the PM2.5 Definition

District Rule 2201, Section 3.28 was originally being amended to include the definition of Particulate Matter from District Rule 1020 to address CAA requirements for PM2.5 and clarify that PM2.5 includes the condensable portion of particle pollution. However, based on EPA comments, the District has revised the proposed definition to make it consistent with EPA's published definition of PM2.5. Since this proposed amendment is to make it consistent with EPA's published definition of PM2.5 and clarify that PM2.5 includes the condensable portion of particle pollution, this proposed change will not relax any existing NSR requirements and will not be a relaxation under SB 288.

C. Clarifying Offset Tracking System requirements

District Rule 2201, Section 7.1.1 is being amended to, address EPA comments and clarify some of the federally required offsets that must be tracked pursuant to 40 CFR 51.165. The District currently implements the Offset Tracking System exactly as EPA has specified in their comments and the proposed amendments simply clarify those requirements. Therefore, this proposed change will not relax any existing NSR requirements and will not be a relaxation under SB 288.

D. Adding Application Shield for Temporary Replacement Emissions Units

The proposed amendments to District Rule 2201, Section 8 are to allow certain types of Temporary Replacement Emission Units (TREUs), as discussed previously, to utilize the application shield that Section 8 offers to Routine Replacements.

The following is an analysis of the SB 288 implications of this proposed change:

1. NSR applicability determinations are not relaxed:

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Including certain TREUs in the Section 8 application shield is not a relaxation to an NSR applicability determination. TREUs will continue to be subject to all the same NSR requirements to which TREUs are currently subject. As noted above, the proposed application shield addresses the nonsensical situation that allowed a permanent replacement to proceed without an application while requiring TREUs, often required to address emergency breakdowns or malfunction situations, to obtain a permit before installation. Also note that, for a source to take advantage of the application shield in Section 8, a TREU must meet all the same requirements as a Routine Replacement.

2. The definitions of “modification”, “major modification”, “routine maintenance”, and “repair or maintenance” are not relaxed:

The proposed changes to Section 8 will not change the definitions of “modification”, “major modification”, “routine maintenance”, or “repair or maintenance”. Therefore, this proposed change will not relax the definitions of “modification”, “major modification”, “routine maintenance”, or “repair or maintenance”.

3. The calculation methodology, thresholds, or other procedures of new source review are not relaxed:

The sole purpose of the application shield is to allow a source to voluntarily complete the installation of a Routine Replacement, or certain TREUs, without first submitting the required Authority to Construct (ATC) permit application. The application shield does not relieve the source from complying with all other applicable requirements of the District’s NSR program.

For those TREUs removed within 7 days of installation, the required submission of the report demonstrating compliance with the requirements of Section 8 serves as the functional equivalent to an Authority to Construct, while removing unnecessary paperwork from the process. Permittees violating any of the application shield requirements of Section 8 lose the application shield and will be subject to enforcement action and full compliance with NSR requirements of Rule 2201. Therefore, the proposed changes to Section 8 will not relax any NSR requirements.

An analysis of the BACT, offsets, and public notification requirements of Rule 2201 is provided below:

1. Requirements for BACT are not relaxed:

Rule 2201, Section 4.1 requires BACT for any increase over 2.0 lb/day and for any SB 288 Major Modification or Federal Major Modification.

TREUs are currently exempt from BACT per Section 4.2.5, and the proposed changes to Section 8 will not change the existing exemption.

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2. Requirements for offsets are not relaxed:

Rule 2201, Section 4.5 requires emission offsets to mitigate new or increased emissions above specific thresholds and any emission increase for stationary sources which already exceed the offset thresholds.

TREUs are currently exempt from offsets per Section 4.6.5, and the proposed changes to Section 8 will not change the existing exemption.

3. Requirements for public notice are not relaxed:

Public Noticing is required for significant new or modified sources of emissions. Rule 2201, Section 5.4 lists the five thresholds over which a project will trigger a public notification if exceeded.

As a TREU cannot operate at the same time as, and cannot result in greater emissions than the unit being replaced, like a Routine Replacement, a TREU does not trigger the public notification requirements of Rule 2201. Since the requirements for a TREU will not be changed with this proposed rulemaking action, there will be no relaxation to the public notification requirements as a result of this proposed change.

4. The definitions and requirements of NSR regulations, including, on a program-wide basis, the requirement to obtain offsets, are not relaxed:

This proposed change will not affect the requirement to obtain offsets since TREUs are exempt from offsets. Therefore, this proposed change is not a relaxation of any definition or requirements of NSR regulations or the requirement to obtain offsets on a project specific or program wide basis.

As outlined above, this proposed change will only serve to include in the Section 8 application shield a TREU that would meet all the same requirements as a Routine Replacement. A TREU that qualifies for the application shield will be subject to all applicable NSR requirements that a TREU is currently subject to; therefore, this proposed change will not relax any NSR requirements and will not be a relaxation under SB 288.

E. Removing the CO Nonattainment Area Offset Threshold

As discussed previously, all areas of the Valley were classified as attainment for the CO ambient air quality standard in 1998. Therefore, the CO nonattainment area offset threshold in Rule 2201 has not been relevant for the past 17 years. The proposed amendments to District Rule 2201, Section 4.5.3 (Table 4-1) consist of removing the offset threshold for CO in nonattainment areas, and specifying that the existing offset threshold for CO in attainment areas applies throughout the Valley.

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The following is an analysis of the SB 288 implications of this proposed change:

1. NSR applicability determinations are not relaxed:

Removing the CO (nonattainment areas) offset threshold will result in no changes to the offset requirements because there are no CO nonattainment areas in the Valley, and therefore, no offset requirements have been or will be triggered in the San Joaquin Valley for CO nonattainment areas. Also note that the entire Valley was designated as attainment for CO in 1998, well before the SB 288 NSR Rule comparison date of December 30, 2002. Therefore, removing the CO (nonattainment areas) offset threshold will not relax any applicable requirements of the District's NSR program.

2. The definitions of "modification", "major modification", "routine maintenance", and "repair or maintenance" are not relaxed:

Removing the CO (nonattainment areas) offset threshold will not change the definitions of "modification", "major modification", "routine maintenance", or "repair or maintenance". Therefore, this proposed change will not relax the definitions of "modification", "major modification", "routine maintenance", or "repair or maintenance".

3. The calculation methodology, thresholds, or other procedures of new source review are not relaxed. An analysis of the BACT, offsets, and public notification requirements of Rule 2201 is provided below:

a. Requirements for BACT are not relaxed:

Rule 2201, Section 4.1 requires BACT for any increase over 2.0 lb/day and for any SB 288 Major Modification or Federal Major Modification.

This change is to remove an existing, irrelevant offset threshold. It will not change the existing BACT thresholds or requirements.

b. Requirements for offsets are not relaxed:

Rule 2201, Section 4.5 requires emission offsets to mitigate new or increased emissions above specific thresholds and any emission increase for stationary sources which already exceed the offset thresholds.

Removing the CO (nonattainment areas) offset threshold will result in no changes to the offset requirements because there are no CO nonattainment areas in the Valley, and therefore, no offset requirements have been or will be triggered in the San Joaquin Valley for CO nonattainment areas. Also note that

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the entire Valley was designated as attainment for CO in 1998, well before the SB 288 NSR Rule comparison date of December 30, 2002. Therefore, removing the CO (nonattainment areas) offset threshold will not relax any applicable offset requirements of the District's NSR program.

c. Requirements for public notice are not relaxed:

Public Noticing is required for significant new or modified sources of emissions. Rule 2201, Section 5.4 lists the five thresholds over which a project will trigger a public notification if exceeded.

Public notification requirements are triggered at various thresholds. For instance, public notification is required when an existing source proposes a modification that increases their allowed emissions from below to above an offset threshold or when a new source proposes emissions above an offset threshold. Removing the CO (nonattainment areas) offset threshold will result in no changes to the public noticing requirements because there are no CO nonattainment areas in the Valley, and therefore, no public noticing requirements have been or will be triggered in the San Joaquin Valley for CO nonattainment areas. Also note that the entire Valley was designated as attainment for CO in 1998, well before the SB 288 NSR Rule comparison date of December 30, 2002. Therefore, removing the CO (nonattainment areas) offset threshold will not relax any applicable public noticing requirements of the District's NSR program.

4. The definitions and requirements of NSR regulations, including, on a program-wide basis, the requirement to obtain offsets, are not relaxed:

Removing the CO (nonattainment areas) offset threshold will result in no changes to the offset requirements because there are no CO nonattainment areas in the Valley, and therefore, no offset requirements have been or will be triggered in the San Joaquin Valley for CO nonattainment areas. Also note that the entire Valley was designated as attainment for CO in 1998, well before the SB 288 NSR Rule comparison date of December 30, 2002. Therefore, removing the CO (nonattainment areas) offset threshold will not relax any applicable project specific or program wide offset requirements of the District's NSR program.

Since this proposed amendment is to remove an irrelevant provision that cannot apply to any source, this proposed action will not relax existing NSR requirements and will not be a relaxation under SB 288.

V. RULE DEVELOPMENT PROCESS

EPA's Final Rule requires states to submit an approvable NSR program for the PM2.5

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standard within 12 months after reclassification as serious nonattainment. Thus, for this requirement, EPA mandates that our NSR program needs to be submitted to EPA for inclusion into the SIP before May 7, 2016 (80 FR 18528).

A. Public Workshop

District staff hosted a public workshop on November 10, 2015 and the draft proposed amendments to the rule were presented at the public workshop in the form of a power point presentation. The focus of the public workshop was to present the proposed amendments to the rule and to solicit public feedback. At the public workshop, District staff presented the objectives of the rule-amending project, explained the District's rule development process for this project, solicited feedback from affected stakeholders, and informed all interested parties of the comment period and project milestones. The public workshop was held via video teleconferencing in all three District offices and was also live-streamed using the webcast.

The Draft Staff Report and Draft Rule were made available on the District's website prior to the public workshop, and a three week comment period followed the public workshop. Comments received during the public workshop or during the three week comment period that followed the public workshop are addressed in Appendix A of this staff report. None of the comments resulted in significant changes to the proposed rule. As such, it was also determined that there is no need to hold a future workshop.

B. Public Hearing

In accordance with California Health and Safety Code (CH&SC) Section 40725, the proposed amendments to Rule 2201 and the final draft staff report were publicly noticed and made available prior to the January 21, 2016 Governing Board public hearing to consider adoption of the proposed rule amendments. The public was invited to provide comments to District Governing Board members during the public hearing. At the public hearing the Governing Board approved the revised rule, but postponed the final adoption of the rule to provide opportunity for public comment until the next regularly scheduled Governing Board public hearing meeting, on February 18, 2016.

Because changes were made to the rule as a result of EPA's comments, the public is again invited to provide comments to the District Governing Board at the public hearing on February 18, 2016. Upon adoption, Rule 2201 will be forwarded to ARB which will forward to EPA for inclusion into the SIP.

VI. COST EFFECTIVENESS AND SOCIOECONOMIC IMPACT ANALYSIS

Pursuant to CH&SC Section 40920.6(a), the District is required to analyze the cost effectiveness of new rules or rule amendments that implement Best Available Retrofit

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February 18, 2016

Control Technology (BARCT). The proposed amendments do not add BARCT requirements and therefore are not subject to the cost effectiveness analysis mandate.

Additionally, CH&SC Section 40728.5 (a) requires the District to analyze the socioeconomic impacts of any proposed rule amendment that significantly affects air quality or strengthens an emission limitation. The draft amendments will have neither effect; therefore, the draft amendments are not subject to the socioeconomic analysis mandate

VII. RULE CONSISTENCY ANALYSIS

Pursuant to CH&SC Section 40727.2(g) a rule consistency analysis of the proposed rule is required if the proposed rule strengthens emission limits or imposes more stringent monitoring, reporting, or recordkeeping requirements. The proposed rule does not strengthen emission limits or impose more stringent monitoring, reporting, or recordkeeping requirements; therefore, a rule consistency analysis is not required.

VIII. ENVIRONMENTAL ASSESSMENT

The purpose of this rule-amending project is to add the federal PM_{2.5} new source review requirements under subpart 4 of the CAA. The proposed amendments include expanding the PM_{2.5} definition to clarify that PM_{2.5} includes condensable particulate pollution, addressing PM_{2.5} precursor pollutant applicability, and revising the PM_{2.5} major source emission threshold from 100 TPY to 70 TPY. Further, the proposed amendments include removing the CO (nonattainment area) offset threshold, clarifying offset tracking system requirements, and including certain categories of Temporary Replacement Emissions Units (TREUs) to the application shield provisions of the Rule.

According to the California Environmental Quality Act (CEQA) statutes and pursuant to Section 15061 of the CEQA Guidelines, the District investigated the possible environmental impacts of the amendments to Rule 2201. Based on the District's investigation and lack of evidence to the contrary, the District has concluded that the rule amendments will not have any significant adverse effects on the environment. As such, the rule amendments are exempt per the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment (CEQA Guidelines §15061 (b)(3)). Therefore pursuant to Section 15062 of the CEQA Guidelines, Staff will file a Notice of Exemption upon Governing Board approval of amendments to Rule 2201.

APPENDIX A

**Summary of Significant Comments and Responses
For Amendments to Rule 2201**

February 18, 2016

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SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT

SUMMARY OF SIGNIFICANT COMMENTS RULE 2201 (NEW AND MODIFIED STATIONARY SOURCE REVIEW RULE)

The San Joaquin Valley Unified Air Pollution Control District (District) held a public workshop to present, discuss, and hear comments on the draft amendments to Rule 4905 and draft staff report on October 16, 2014. Summaries of significant comments received since the public workshop are summarized below.

EPA REGION IX COMMENTS:

COMMENT: EPA believes that the proposed definition of PM_{2.5} is problematic because it suggests that only materials that are a liquid or solid at standard conditions AND are less than 2.5 microns while in this state, are included in the definition. Instead all of the gaseous emissions that condense at ambient conditions are included.

EPA's proposed changes are as follows:

- 3.28 PM_{2.5}: particulate matter, ~~including any material except uncombined water, which exists in a finely divided form as a liquid or solid at standard conditions,~~ with an aerodynamic diameter smaller than or equal to a nominal 2.5 microns, including gaseous emissions which condense to form particulate matter at ambient temperatures.

RESPONSE: The District has incorporated EPA's comment, so as to make the PM_{2.5} definition consistent with EPA's published definition of PM_{2.5}. It should be noted that this change has no impact on applicability of PM_{2.5} requirements nor does it impact the methods used to measure PM_{2.5} for the purposes of demonstrating compliance with Rule 2201 requirements: gaseous emissions that condense to form particulate matter at ambient temperatures were already included in the District's proposed definition, as they are, at those conditions, no longer gaseous and become "a liquid or solid".

Revised rule language will read as follows:

- 3.28 PM_{2.5}: particulate matter with an aerodynamic diameter smaller than or equal to a nominal 2.5 microns, including gaseous emissions which condense to form particulate matter at ambient temperatures.

COMMENT: EPA proposed new language to Section 7.1.1 of the rule, to clarify some of the federally required offsets that must be tracked pursuant to 40 CFR 51.165, and Title I part D of the Clean Air Act (CAA).

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EPA's proposed changes are as follows:

- 7.1.1 The quantity of offsets that would have been required for new major sources and federal major modifications in the District had the federal new source review requirements, codified in 40 CFR 51.165, and Title I part D of the Clean Air Act (CAA), been applied to these sources. These requirements include offsetting the full emissions increase from new and modified major sources, using actual emissions baselines when required under 40 CFR 51.165, offsets required for Highly-Utilized, Fully-Offset and Clean Emission Units, and providing offsets necessary to meet the CAA offset ratio requirements and provide a net air quality benefit.

RESPONSE: The District currently implements the Offset Tracking System exactly as EPA has specified in their comments. We believe the addition of the words “increase” and “and modified” are appropriate clarifications. However, we believe that adding the phrase “offsets required for Highly Utilized, Fully Offset and Clean Emissions Units” is unnecessary and redundant with the sentence in which EPA asks that it be inserted. Specifically, the requirement that the District demonstrate equivalency with federal offsetting requirements and 40 CFR 51.165 already fully addresses EPA's intent that the District include in all such demonstrations any situations in which the Highly Utilized, Fully Offset and Clean Emissions Units provisions were utilize. In other words, Section 7.1 already includes all applicable requirements under 40 CFR 51.165 as validated with EPA's approval of the rule on 9/17/2014¹.

Revised rule language will read as follows:

- 7.1.1 The quantity of offsets that would have been required for new major sources and federal major modifications in the District had the federal new source review requirements, codified in 40 CFR 51.165, and Title I part D of the Clean Air Act (CAA), been applied to these sources. These requirements include offsetting the full emissions increase from new and modified major sources, using actual emissions baselines when required under 40 CFR 51.165, and providing offsets necessary to meet the CAA offset ratio requirements and provide a net air quality benefit.

COMMENT: EPA believes that Section 8.0 of Rule 2201 is not consistent with 40 CFR 51.160(b) of the Clean Air Act, as they believe that the District would not have the opportunity to deny a Routine Replacement or a TREU (as the proposed rule amendments include) if the source utilized the Application Shield allowed under Section 8.0 and the change resulted in a violation of the Act or a NAAQS.

¹ <https://www.gpo.gov/fdsys/pkg/FR-2014-09-17/pdf/2014-22019.pdf>

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Additionally, EPA has compared the proposed amendments to Section 8.0 of Rule 2201 to proposed amendments submitted by Clark County, Nevada for their local New Source Review Rule that included a “notice and go” provision, which would have allowed a source to notify the agency of a proposed action, and then to implement it after a stated timeframe, with no action required by the agency. EPA further references comments made several years ago regarding the Clark County proposal. EPA provided the following excerpt from EPA’s comments to Clark County:

The triggering of a new applicable requirement should always require review by (the permitting authority) to assure all necessary terms and conditions are included to ensure compliance.

Our second concern is one of enforcement. It is not clear what would happen and what the enforcement liability would be for a source if they began construction after the seven day period

Ultimately, to be approvable under 40 CFR part 51, the program must contain “legally enforceable procedures that enable the State or local agency to determine whether the construction or modification of [the source/project] will result in (1) A violation of applicable portions of the control strategy; or (2) Interference with attainment or maintenance of a [NAAQS]...” The program must also enable the permitting agency to “prevent construction” when it determines that either of these will occur. 40 CFR 51.160(b)

RESPONSE: First, it’s important to point out that Section 8.0 of Rule 2201 has been in the rule for over a decade and has been repeatedly approved by EPA into the State Implementation Plan during that timeframe, most recently in 2014. The proposed amendments are only adding an allowance for Temporary Replacement Emission Units to use the longstanding application shield that has historically only applied to non-temporary routine replacements. We are not creating a new application shield section; we are only expanding the existing section that applies to permanent replacements so that it equally applies to temporary replacements. There should be no question about the appropriateness of the original SIP-approved language.

Second, the regulation cited by EPA, 40 CFR 51.160(b), requires that an agency have the “*means...to prevent...construction or modification if – (1) it will result in a violation of applicable portions of the (SIP) control strategy; or (2) it will interfere with the attainment or maintenance of a national standard.*”

EPA expressed the belief that a pre-construction permit must be issued to comply with this section, and in general, the District does require pre-construction permits before allowing installation of emitting equipment. However, in this limited case of allowing replacement equipment with no increase in emissions and no increase in capacity, the District’s analysis concludes that, if the requirements of Section 8 of

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the rule are complied with, taking advantage of the 7-day application shield cannot result in violation of the SIP or interference with attainment or maintenance of any standard. Therefore, the proposed rule itself contains the appropriate conditional language to prevent such construction or modification.

Next, the rule requires permit applications or other information to be filed with the District within 7 days of construction that fully justifies the permittee's use of the application shield to replace equipment. If such information is not provided, or is does not justify the use of the application shield, the District will take appropriate enforcement action. The permitting action is delayed, but not avoided. In the one special case in which a temporary replacement is removed prior to the 7-day permit application deadline, all appropriate information must be submitted within the same 7-day timeline, and compliance with the section 8 application shield requirements will be determined by the District.

So, these requirements are "legally enforceable" and do allow the District to determine, in advance (through the conditions of approval that are contained in the rule), whether the construction or modification will result in violations of control strategies or interfere with attainment or maintenance of a NAAQS. We have determined, in advance, that such projects will NOT result in violations of control strategies or interfere with attainment or maintenance of a NAAQS. And it is illegal for construction to proceed if those enforceable requirements are not met, so this "prevents construction" of any proposal that doesn't meet those requirements.

In fact, enforcement would be handled exactly as any other violation of the CAA. If a permittee improperly claims the application shield, the District would treat it as construction without a required permit, and would take enforcement action accordingly. Any use of the application shield is fully examined via the District's review of the subsequent permit application (or report, if a temporary replacement has already been removed prior to the application deadline). This assures that any violations are uncovered and that any appropriate enforcement ensues.

The San Joaquin Valley Air District recognizes the realities of the business world that sometimes require very quick action to avoid economic catastrophes. This section applies only to a specific subset of those urgent business scenarios in a way that provides important relief from lengthy permitting timelines, without allowing an increase in emissions or a change a facility's capacity, but without avoiding a full permit review and compliance analysis. Given that this effort at common sense governance cannot result in increases in emissions or any sidestepping of clean air requirements, we believe EPA should approve of the addition of Temporary Replacement Emission Units to this longstanding, SIP-approved, application shield that has historically only applied to non-temporary routine replacements.

COMMENT: EPA submitted additional verbal comments in early January 2016, specifically that the Routine Replacement Application Shield of Section 8 was not

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permissible for NO_x and VOC permitting actions, because the Valley's "extreme" nonattainment designation prevents it from using the "netting" provisions in federal NSR calculations for increases in emissions.

RESPONSE: First, the District fully recognizes that extreme nonattainment areas for ozone cannot use the netting provisions of the Clean Air Act to determine whether projects are major modifications for ozone precursors. However, replacements are recognized by the federal Clean Air Act and EPA implementing regulations published in title 40, part 51 of the Code of Federal Regulations as "existing units". In other words, EPA regulations treat a replacement as a modification of the unit being replaced. Therefore, there is no netting used in any District calculations related to Section 8, as it applies only to replacements.

In fact, no replacement project that takes advantage of the Section 8 application shield can possibly be a major project. Section 8 projects are limited to those that do not increase emissions or capacity, and because modifications to existing units use the "actual-to-future-projected-actual" emissions increase calculation methodology, the emissions increase calculated will always be zero. Therefore, such projects can never be major projects.

COMMENT: EPA also expressed concern during subsequent verbal conversations that "routine replacements" that are exactly the same as the unit being replaced (except for serial number) cannot be exempted from the definition of "modification", as is currently the case in section 3.35 of District Rule 2201. EPA commented that the "WEPCO" court case forbid such an exemption. EPA extends this same concern to the application shield of Section 8, specifically, that the shield should not be available to major modifications. Finally, EPA recommends, due to potential conflicts with EPA definitions of "Routine Replacements," that we change our rule's term from "Routine Replacement" to "Replacement Emissions Unit."

RESPONSE: Addressing the final issue first, the change in definition title from "Routine Replacement" to "Replacement Emissions Unit" does not impact the rule's applicability or requirements in any way, and so the District has proposed to implement EPA's suggestion, and changed the term appropriately throughout the rule.

The District believes that the current definition addresses all concerns of the WEPCO case, most notably that the replacements cannot increase emissions or capacity (and secondarily, that the replacement cannot constitute a "reconstructed source", among other requirements). However, as noted in the response above, we agree that federal requirements do not allow major modifications to take advantage of the modification exemption of section 3.35 and the application shield of section 8. Therefore, we have agreed to EPA's request to codify these federal requirements by adding rule language to specifically prohibit federal major modifications from being exempted from the definition of "modification" and from using the replacement

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unit application shield. The newly proposed language is underlined in the following sections:

3.35 ~~Routine~~-Replacement Emissions Unit: ~~routine~~ replacement in whole or in part of any article, machine, equipment, or other contrivance with a valid District Permit to Operate provided that all of the following conditions are met:

3.35.1 There is no increase in permitted emissions from the replacement unit(s). For replacements at major sources, “no increase in permitted emissions” as used in this definition also means no significant emissions increase according to the applicability calculations of 40 CFR 51.165(a)(2)(ii)(C). For the purposes of this definition, a Replacement Emissions Unit is an existing emissions unit.

8.5 For replacements at major sources, the application shield applies only to Replacement Emissions Units that result in no significant emissions increase according to the applicability calculations of 40 CFR 51.165(a)(2)(ii)(C), “Actual-to-projected actual applicability test for projects that only involve existing emissions units”. For the purposes of this section, a Replacement Emissions Unit is an existing emissions unit. A copy of the emission calculations used to determine that the Replacement Emissions Unit did not result in a significant emissions increase must be included with the application required by Section 8.1.1.

These changes were reviewed with EPA, and EPA expressed no remaining concerns.

ARB COMMENTS:

No comments were received from ARB.

PUBLIC COMMENTS:

Comments were received from the following:

Manufacturers Council of the Central Valley (MCCV)
California Construction & Industrial Materials Association (CalCIMA)

COMMENT: The Draft Report includes several pages discussing PM2.5 precursors showing certain pollutants as not being significant PM2.5 precursors. Upon review, we did not see the information in this analysis reflected in the language used in the draft Rule.

To avoid misinterpretations, please consider adding clarification on this point, for example, adding the word “significant” before the word “precursors” in line three of Section 3.4 of the Rule. (MCCV)

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RESPONSE: The term “significant” as it is used in the staff report is not an official Clean Air Act term. Rather, it is merely a convenient shorthand way to reference the importance of the contribution of the precursor to the nonattainment status in the District. In addition, it would not be appropriate to add the term “significant” to the rule language because while a pollutant may not be a significant contributor to one ambient air quality standard it may be significant for another air quality standard, as explained in the staff report. Therefore, the rule proposed for adoption by District staff does not incorporate the proposed changes.

COMMENT: While the association had no comments on the proposed amendments to Rule 2201, they did propose changes to existing sections (3.25 “Modification” and 3.35 “Routine Replacement”) “to facilitate positive changes to facilities without longer review times.” Their proposed changes are as follows:

- 3.25.3.4 Routine replacement of a whole or partial emissions unit where the replacement part does not result in a net emissions increase. is the same as the original emissions unit in all respects except for the serial number.
- 3.35.2 There is no increase in design capacity, unless an old part is no longer available, or the replacement results in a reduction of greenhouse gases, in which case the replacement can result in a design capacity increase of up to 10%. No change to the permitted throughput or emissions is authorized due to a change in design capacity as part of routine replacement. Such changes shall require application for permit modification. (CalCIMA)

RESPONSE: Proposed revisions in the above comment would constitute a potential relaxation of the rule and therefore may be illegal under SB 288, the “Protect California Air Act of 2003”. In addition, greenhouse gas control requirements are not included in Rule 2201, the District’s criteria pollutant New Source Review rule. In fact, the District’s longstanding policy is to avoid allowing or encouraging situations that would trade greenhouse gas emissions reductions for potential criteria pollutant increases. Such situations have the potential to create local criteria or toxic pollutant hotspots, and may exacerbate the difficult attainment challenges faced in the San Joaquin Valley. Therefore, the rule proposed for adoption by District staff does not incorporate the proposed changes.

APPENDIX B

Draft Rule 2201

April 15, 2019

SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT

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RULE 2201 NEW AND MODIFIED STATIONARY SOURCE REVIEW RULE (Adopted September 19, 1991; Amended March 11, 1992; Amended October 29, 1992; Amended December 17, 1992; Amended October 21, 1993; Amended June 15, 1995; Amended August 20, 1998; Amended June 21, 2001, but not effective until August 20, 2001; Amended April 25, 2002; Amended December 19, 2002; Amended April 20, 2005; Amended December 15, 2005; Amended September 21, 2006; Amended December 18, 2008, but not in effect until June 10, 2010; Amended April 21, 2011; Amended February 18, 2016; Amended [date of adoption])

1.0 Purpose

The purpose of this rule is to provide for the following:

- 1.1 The review of new and modified Stationary Sources of air pollution and to provide mechanisms including emission trade-offs by which Authorities to Construct such sources may be granted, without interfering with the attainment or maintenance of Ambient Air Quality Standards; and
- 1.2 No net increase in emissions above specified thresholds from new and modified Stationary Sources of all nonattainment pollutants and their precursors.

2.0 Applicability

This rule shall apply to all new stationary sources and all modifications to existing stationary sources which are subject to the District permit requirements and after construction emit or may emit one or more affected pollutant. The requirements of this rule in effect on the date the application is determined to be complete by the Air Pollution Control Officer (APCO) shall apply to such application.

3.0 Definitions

- 3.1 Actual Emissions: emissions having occurred from a source, based on source test or monitoring data, actual fuel consumption, and process data. If source test or monitoring data is not available, other appropriate, APCO-approved, emission factors may be used.
- 3.2 Actual Emissions Reduction (AER): the decrease of actual emissions, compared to the Baseline Period, from an emissions unit and selected for use as emission offsets or ERC banking. AER shall meet the following criteria:
 - 3.2.1 Shall be real, enforceable, quantifiable, surplus, and permanent.
 - 3.2.2 To be considered surplus, AER shall be in excess, at the time the application for an Emission Reduction Credit or an Authority to Construct authorizing such reductions is deemed complete, of any emissions reduction which:

- 3.2.2.1 Is required or encumbered by any laws, rules, regulations, agreements, orders, or
- 3.2.2.2 Is attributed to a control measure noticed for workshop, or proposed or contained in a State Implementation Plan, or
- 3.2.2.3 Is proposed in the APCO's adopted air quality plan pursuant to the California Clean Air Act.
- 3.2.3 Emissions reductions attributed to a proposed control measure, which are excluded pursuant to Section 3.2.2.2 and 3.2.2.3 may be re-eligible as AER if the control measures identified in the District Air Quality Plan or State Implementation Plan (SIP), are determined not to be necessary for attainment or maintenance of Ambient Air Quality Standards and the APCO and United States Environmental Protection Agency (EPA) have approved amendments to the plan or SIP to reflect this determination.
- 3.3 Administrative Change: a change to an existing permit that:
 - 3.3.1 Corrects typographical errors; or
 - 3.3.2 Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source; or
 - 3.3.3 Changes the components of emissions monitoring equipment or other components, which have no effect on the quantity of emissions from an emissions unit, or
 - 3.3.4 Allows for the change of ownership or operational control of a source where the APCO determines that no other change is necessary.
- 3.4 Affected Pollutants: those pollutants for which an Ambient Air Quality Standard has been established by the EPA or by the California Air Resources Board, (ARB), and the precursors to such pollutants, and those pollutants regulated by the EPA under the Federal Clean Air Act or by the ARB under the Health and Safety Code including, but not limited to, VOC, NO_x, SO_x, PM_{2.5}, PM₁₀, CO, and those pollutants which the EPA, after due process, or the ARB or the APCO, after public hearing, determine may have a significant adverse effect on the environment, the public health, or the public welfare.
- 3.5 Agricultural Source: equipment or operations that emit air contaminants and that are used in the production of crops or the raising of fowl or animals.
- 3.6 Air Quality Improvement Deduction: a 10 percent discount factor applied to Actual Emission Reductions (AER) before the AER is eligible for banking.

- 3.7 Ambient Air Quality Standards: include State and National Ambient Air Quality Standards. (In the inclusion of this rule in the State Implementation Plan, all references in this rule to Ambient Air Quality Standards shall be interpreted as National Ambient Air Quality Standards.)
- 3.8 Baseline Emissions (BE): for a given pollutant, shall be equal to the sum of:
- 3.8.1 The pre-project Potential to Emit for:
- 3.8.1.1 Any emissions unit located at a non-Major Source,
- 3.8.1.2 Any Highly-Utilized Emissions Unit, located at a Major Source, provided that if the unit has a Specific Limiting Condition (SLC), all units combined under the SLC have an average combined annual Actual Emissions during the two consecutive years immediately prior to filing of an application for an Authority to Construct equal to or greater than 80% of the units' pre-project SLC limit,
- 3.8.1.3 Any Fully-Offset Emissions Unit, located at a Major Source, provided that if the unit has a SLC, all units under the SLC also qualify as Fully Offset Emissions Units, or
- 3.8.1.4 Any Clean Emissions Unit, located at a Major Source, provided that if the unit has a SLC, all units under the SLC also qualify as Clean Emissions Units.
- 3.8.2 The Historic Actual Emissions (HAE) for emissions units not specified in Section 3.8.1.
- 3.9 Baseline Period: a period of time equal to either
- 3.9.1 the two consecutive years of operation immediately prior to the submission date of the Complete Application; or
- 3.9.2 at least two consecutive years within the five years immediately prior to the submission date of the Complete Application if determined by the APCO as more representative of normal source operation; or
- 3.9.3 a shorter period of at least one year if the emissions unit has not been in operation for two years and this represents the full operational history of the emissions unit, including any replacement units; or
- 3.9.4 zero years if an emissions unit has been in operation for less than one year (only for use when calculating AER).

- 3.10 Best Available Control Technology (BACT): is the most stringent emission limitation or control technique of the following:
- 3.10.1 Achieved in practice for such category and class of source;
 - 3.10.2 Contained in any State Implementation Plan approved by the Environmental Protection Agency for such category and class of source. A specific limitation or control technique shall not apply if the owner of the proposed emissions unit demonstrates to the satisfaction of the APCO that such a limitation or control technique is not presently achievable; or
 - 3.10.3 Contained in an applicable federal New Source Performance Standard; or
 - 3.10.4 Any other emission limitation or control technique, including process and equipment changes of basic or control equipment, found by the APCO to be cost effective and technologically feasible for such class or category of sources or for a specific source.
- 3.11 Biomass-fired power facility: a facility generating electrical power and fueled exclusively on biomass fuels consisting of at least 90% of one or more of the following constituents: alfalfa, barley, bean straw, corn, oats, wheat, orchard and vineyard pruning, and forest residues. Grape stems, grape pumice, almond and walnut shells, construction wood waste, urban wood waste, and lawn trimmings are not considered biomass fuels.
- 3.12 Cargo Carriers: trains dedicated to a specific Stationary Source and vessel dockside activities as defined in 45 Federal Register 52696 (August 7, 1980) for vessels dedicated to a specific Stationary Source. Motor vehicles, as defined by the Vehicle Code of the State of California, are not considered Cargo Carriers.
- 3.13 Clean Emissions Unit: for a given pollutant, an emissions unit that meets one of the following criteria:
- 3.13.1 The unit is equipped with an emissions control technology with a minimum control efficiency of at least 95% (or at least 85% for lean-burn, internal combustion engines); or
 - 3.13.2 The unit is equipped with emission control technology that meets the requirements for achieved-in-practice BACT as accepted by the APCO during the five years immediately prior to the submission of the complete application.
- 3.14 Complete Application: an application for an Emission Reduction Credit or an Authority to Construct for a new or modified emissions unit which has been evaluated and found to include all information necessary to determine compliance with applicable rules and requirements.

-
- 3.15 Contiguous or Adjacent Property: a property consisting of two or more parcels of land with a common point or boundary, or separated solely by a public roadway or other public right-of-way.
- 3.16 Daily Emissions Limitation (DEL): one or more permit conditions which restrict a unit's maximum daily emissions, to a level at or below the emissions associated with the maximum design capacity. A daily emissions limitation must be:
- 3.16.1 Contained in the latest Authority to Construct and contained in or enforceable by the latest Permit to Operate for the emissions unit; and
- 3.16.2 Enforceable, in a practical manner, on a daily basis.
- 3.17 Emissions Unit: an identifiable operation or piece of process equipment such as a source operation which emits, may emit, or results in the emissions of any affected pollutant directly or as fugitive emissions.
- 3.18 Federal Major Modification: same as “Major Modification” as defined in 40 CFR 51.165 and part D of Title I of the CAA. SB 288 Major Modifications are not federal major modifications if they meet the criteria of one of the following exclusions:
- 3.18.1 Less-Than-Significant Emissions Increase Exclusion: Except for VOC and NO_x, an emissions increase for the project, or a net emissions increase for the project (as determined pursuant to 40 CFR 51.165 (a)(2)(ii)(B) through (D), and (F)), that is not significant for a given regulated NSR pollutant, as defined in 40 CFR 51.165, is not a federal major modification for that pollutant. For VOC and NO_x, an emissions increase for the project (as determined pursuant to 40 CFR 51.165 (a)(2)(ii)(B) through (D), and (F)) that is not significant, as defined in 40 CFR 51.165, is not a federal major modification for that pollutant.
- 3.18.1.1 To determine the post-project projected actual emissions from existing units, the provisions of 40 CFR 51.165 (a)(1)(xxviii) shall be used.
- 3.18.1.2 To determine the pre-project baseline actual emissions, the provisions of 40 CFR 51.165 (a)(1)(xxxv)(A) through (D) shall be used.
- 3.18.1.3 If the project is determined not to be a federal major modification pursuant to the provisions of 40 CFR 51.165 (a)(2)(ii)(B), but there is a reasonable possibility that the project may result in a significant emissions increase, the owner or operator shall comply with all of the provisions of 40 CFR 51.165 (a)(6) and (a)(7).

3.18.1.4 Emissions increases calculated pursuant to this section are significant if they exceed the significance thresholds specified in Table 3-1 of this rule.

Table 3-1, Significance Thresholds

POLLUTANT	THRESHOLD (POUNDS PER YEAR)
VOC	0
NO _x	0
PM _{2.5}	20,000 of direct PM _{2.5} emissions or
	80,000 of sulfur dioxide emissions or
	80,000 of nitrogen oxide emissions
PM ₁₀	30,000
SO _x	80,000

3.18.2 Plantwide Applicability Limit (PAL) Exclusion: An SB 288 major modification that does not cause facility-wide emissions to exceed a pre-established PAL, as defined in 40 CFR 51.165 (f)(2)(v), for the respective pollutant, is not a federal major modification for that pollutant. PAL exclusions shall not be allowed for either NO_x or VOC pollutants.

3.18.2.1 For the purposes of this exclusion, a PAL must be established by a permitting action prior to the SB 288 major modification permitting action.

3.18.2.2 All PALs shall be established according to the provisions of 40 CFR 51.165 (f)(1) through (15).

3.18.2.3 All PALs shall comply with the requirements under 40 CFR 51.165 (f)(1) through (15) to either maintain, renew or retire the PAL.

3.19 Fugitive Emissions: emissions that could not reasonably pass through a vent, chimney, stack, or other functionally equivalent opening. Emissions that are not vented through a stack but can reasonably be captured and vented through a stack are not considered Fugitive. Fugitive emissions shall be included in all calculations, except as provided for in Section 3.24 and as allowed in the applicable 40 CFR Part 51.165.

3.20 Fully Offset Emissions Unit: for a given pollutant, an emissions unit for which

3.20.1 Offsets have been provided for the unit's full potential to emit; or

3.20.2 Offsets have been provided for the entire stationary source's potential to emit in excess of the offset trigger level; or

- 3.20.3 Offsets have previously been provided for the stationary source’s NSR balance as calculated pursuant to the NSR rule in effect at the time of the offset action, and the emissions unit was installed after the County baseline date as indicated below:

Table 3-2, County Baseline Dates

COUNTY	BASELINE DATE
San Joaquin County	May 29, 1979
Stanislaus County	June 19, 1979
Merced, Madera, or Kings County	May 21, 1979
Fresno County Oil Fields	September 20, 1983
Fresno County all other sources	January 1, 1977
Tulare County	June 26, 1979
Kern County Heavy Oil Production	September 12, 1979
	June 22, 1987 for heavy oil production operations with negative cumulative net emissions change as of June 22, 1987
Kern County all other sources	December 28, 1976

- 3.21 Heavy Oil: crude oil having an American Petroleum Institute gravity of 20 degrees or less as determined by test method ASTM 287-82.
- 3.22 Highly Utilized Emissions Unit: for a given pollutant, an emissions unit for which the average annual Actual Emissions during the two consecutive years immediately prior to filing of an application for an Authority to Construct were equal to or greater than 80% of the unit’s pre-project Potential to Emit. The unit must have been in operation for at least two years and, during that entire period, the unit must have complied with all applicable emission limits and performance standards.
- 3.23 Historical Actual Emissions (HAE): Actual Emissions occurring during the Baseline Period, after discounting for:
- 3.23.1 Any emissions reductions required or encumbered by any laws, rules, regulations, agreements, orders, or permits; and
 - 3.23.2 Any emissions reductions attributed to a control measure noticed for workshop, or proposed or contained in a State Implementation Plan, and
 - 3.23.3 Any emissions reductions proposed in the District air quality plan for attaining the annual reductions required by the California Clean Air Act, and

- 3.23.4 Any Actual Emissions in excess of those required or encumbered by any laws, rules, regulations, orders, or permits. For units covered by a Specific Limiting Condition (SLC), the total overall HAE for all units covered by SLC must be discounted for any emissions in excess of that allowed by the SLC.
- 3.24 Major Source: for each pollutant, a Stationary Source with post-project emissions or a post-project Stationary Source Potential to Emit (SSPE2), equal to or exceeding one or more of the following threshold values.
 - 3.24.1 For determining major source status, fugitives shall only be included for calculating the air pollutant post-project emissions or SSPE2 if the source is included in the list of source categories identified in the major source definition in 40 CFR Part 70.2, or when determining if a stationary source is a major air toxics source as defined in Rule 2520.

Table 3-3, Major Source Emission Thresholds

POLLUTANT	THRESHOLD (POUNDS PER YEAR)
VOC	20,000
NOx	20,000
CO	200,000
PM2.5	140,000
PM10	140,000
SOx	140,000

- 3.24.2 For the purpose of determining major source status, the SSPE2 shall not include the quantity of emission reduction credits (ERC) which have been banked since September 19, 1991 for Actual Emissions Reductions that have occurred at the source, and which have not been used on-site. This ERC quantity includes all ERC held as certificates and all emission reduction credits that have been sold or transferred.
- 3.25 Modification:
 - 3.25.1 An action including at least one of the following items:
 - 3.25.1.1 Any change in hours of operation, production rate, or method of operation of an existing emissions unit, which would necessitate a change in permit conditions.
 - 3.25.1.2 Any structural change or addition to an existing emissions unit which would necessitate a change in permit conditions. A Routine Replacement Emissions Unit shall not be considered to be a structural change.

- 3.25.1.3 An increase in emissions from an emissions unit caused by a modification of the Stationary Source when the emissions unit is not subject to a daily emissions limitation.
- 3.25.1.4 Addition of any new emissions unit which is subject to District permitting requirements.
- 3.25.1.5 A change in a permit term or condition proposed by an applicant to obtain an exemption from an applicable requirement to which the source would otherwise be subject.
- 3.25.2 A reconstructed Stationary Source shall be treated as a new Stationary Source and not as a modification.
- 3.25.3 Unless previously limited by a permit condition, the following shall not be considered a modification:
 - 3.25.3.1 A change in ownership of an existing emissions unit with valid Permit to Operate provided that the APCO determines that all applicable offset provisions required by the Permit to Operate will be met;
 - 3.25.3.2 A change in ownership of an entire existing Stationary Source with a valid Permit to Operate;
 - 3.25.3.3 A change which consists solely of a transfer of location of an emissions unit within a Stationary Source; or
 - 3.25.3.4 A Routine Replacement Emissions Unit where the replacement part is the same as the original emissions unit in all respects except for the serial number.
- 3.26 Offsets: emission reductions recognized by the APCO in the form of Emission Reduction Credits that are issued in accordance with the provisions of Rule 2301 (Emission Reduction Credit Banking), or other Actual Emissions Reductions that may be used to mitigate an emission increase as part of the same Stationary Source Project in accordance with the provisions of this rule.
- 3.27 Potential to Emit: the maximum capacity of an emissions unit to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including pollution control equipment and restrictions in hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is incorporated into the applicable permit as an enforceable permit condition.

- 3.28 PM2.5: particulate matter with an aerodynamic diameter smaller than or equal to a nominal 2.5 microns, including gaseous emissions which condense to form particulate matter at ambient temperatures.
- 3.29 PM10: particulate matter with an aerodynamic diameter smaller than or equal to a nominal ten microns, as defined in District Rule 1020, Definitions.
- 3.30 Pre-baseline ERCs: Emission Reduction Credits that were banked prior to the baseline year for a given District-adopted and EPA-approved Attainment Plan.
- 3.31 Precursor: a directly emitted air contaminant that, when released into the atmosphere, forms or causes to be formed or contributes to the formation of a secondary air contaminant for which an Ambient Air Quality Standard has been adopted, or whose presence in the atmosphere will contribute to the violation of one or more Ambient Air Quality Standards. The following precursor-secondary air contaminant relationships shall be used for the purposes of this rule:

Table 3-4, Precursors

PRECURSOR	SECONDARY AIR CONTAMINANT
Volatile Organic Compounds	<ul style="list-style-type: none"> a. Photochemical oxidants (Ozone) b. The organic fraction of PM10
Nitrogen Oxides	<ul style="list-style-type: none"> a. Nitrogen dioxide b. The nitrate fraction of PM2.5 c. The nitrate fraction of PM10 d. Photochemical oxidants (Ozone)
Sulfur Oxides	<ul style="list-style-type: none"> a. Sulfur dioxide b. Sulfates c. The sulfate fraction of PM2.5 d. The sulfate fraction of PM10

- 3.32 Quarter: for a non-Seasonal Source, this is defined as a calendar quarter. For a Seasonal Source, a quarter is defined as the entire operating season.
- 3.33 Reasonable Further Progress: as defined by the federal Clean Air Act, Section 182(c)(2)(b).
- 3.34 Reconstructed Source: any Stationary Source undergoing reconstruction where the fixed capital cost of the new components exceeds 50% of the fixed capital cost of a comparable, entirely new Stationary Source. Fixed capital cost is the capital needed to provide depreciable components. Reconstructed Source cost shall include only the cost of all emission-producing equipment and associated integral activities at the

stationary source. A reconstructed Stationary Source shall be considered a new Stationary Source and not as a modification of an existing Stationary Source.

- 3.35 Routine Replacement Emissions Unit: routine replacement in whole or in part of any article, machine, equipment, or other contrivance with a valid District Permit to Operate provided that all of the following conditions are met:
- 3.35.1 There is no increase in permitted emissions from the replacement unit(s). For replacements at major sources, “no increase in permitted emissions” as used in this definition also means no significant emissions increase according to the applicability calculations of 40 CFR 51.165(a)(2)(ii)(C). For the purposes of this definition, a Routine Replacement Emissions Unit is an existing emissions unit.
 - 3.35.2 There is no increase in design capacity, unless an old part is no longer available in which case the replacement can result in a design capacity increase of up to 10%. No change to the permitted throughput or emission limits is authorized due to a change in design capacity as part of a replacement. Such changes shall require application for permit modification.
 - 3.35.2.1 Permitted throughputs are throughput limits upon which emission calculations are, or could be, based.
 - 3.35.2.2 If there are no throughput limiting conditions, permitted throughput shall be a throughput rate which affects emissions.
 - 3.35.3 The replacement equipment performs the same function as the equipment being replaced.
 - 3.35.4 The replacement does not constitute a Reconstructed Source (as defined by this rule) or Reconstruction (as defined by any applicable New Source Performance Standard). Reconstructed Source cost shall include only the cost of all emission-producing equipment and associated integral activities at the stationary source.
 - 3.35.5 When the entire emissions unit is replaced as a routine replacement action, the emissions unit shall either have been addressed by a BARCT rule or shall be equipped with a control device capable of at least 85% emission control.
- 3.36 SB 288 Major Modification: as defined in 40 CFR Part 51.165 (as in effect on December 19, 2002) and part D of Title I of the CAA (as in effect on December 19, 2002). For the purposes of this definition, the SB 288 major modification thresholds for existing major sources are listed as follows:

Table 3-5, SB 288 Major Modification Thresholds

POLLUTANT	THRESHOLD (POUNDS PER YEAR)
VOC	50,000
NO _x	50,000
PM ₁₀	30,000
SO _x	80,000

- 3.37 Seasonal Source: any Stationary Source with more than 90% of its annual emissions occurring within a consecutive 120-day period.
- 3.38 Specific Limiting Condition (SLC): permit terms or conditions, which can be enforced in a practical manner, contained in Authorities to Construct and Permits to Operate and established pursuant to New Source Review provisions that restrict the total overall permitted emissions from two or more emissions units.
- 3.39 Stationary Source: any building, structure, facility, or installation which emits or may emit any affected pollutant directly or as a fugitive emission. Building, structure, facility or installation includes all pollutant emitting activities including emissions units which:
 - 3.39.1 Are under the same or common ownership or operation, or which are owned or operated by entities which are under common control; and
 - 3.39.2 Belong to the same industrial grouping either by virtue of falling within the same two-digit standard industrial classification code or by virtue of being part of a common industrial process, manufacturing process, or connected process involving a common raw material; and
 - 3.39.3 Are located on one or more contiguous or adjacent properties; or
 - 3.39.4 Are located on one or more properties wholly within either the Western Kern County Oil Fields or the Central Kern County Oil Fields or Fresno County Oil Fields and are used for the production of light oil, heavy oil or gas. Notwithstanding the provisions of this definition, light oil production, heavy oil production, and gas production shall constitute separate Stationary Sources.
- 3.40 Stationary Source Project: a single permitting action involving the modification, addition or shutdown of one or more emissions units. If any increase in emissions from a new or modified emissions unit is permitted based on emission reductions from one or more emissions units included in the stationary source project, the following condition must also be met:

- 3.40.1 The modification or shutdown resulting in the necessary emission reductions shall occur not later than the date of initial operation of the new or modified emissions unit. If the new or modified emissions unit is, in whole or in part, a replacement for an existing emissions unit at the same stationary source, the APCO may allow a maximum of 90 days as a start up period for simultaneous operation of the existing emissions unit and the unit being replaced.
- 3.41 Temporary Replacement Emissions Unit (TREU): an emissions unit which is at a Stationary Source for less than 180 days in any twelve month period and replaces an existing emissions unit, with a valid District Permit to Operate, which is shut down for maintenance or repair.
 - 3.41.1 The Potential to Emit from a TREU must not exceed the Potential to Emit from the existing emissions unit.
 - 3.41.2 If a TREU is used to replace a TREU, the combined time at the Stationary Source for the two TREU shall not exceed a total of 180 days in any twelve-month period.
 - 3.41.3 An emissions unit not removed from the Stationary Source within 180 days is not a TREU.
- 4.0 Source Requirements
 - 4.1 Best Available Control Technology (BACT): BACT requirements shall be triggered on a pollutant-by-pollutant basis and on an emissions unit-by-emissions unit basis. Unless exempted pursuant to Section 4.2, BACT shall be required for the following actions:
 - 4.1.1 Any new emissions unit or relocation from one Stationary Source to another of an existing emissions unit with a Potential to Emit exceeding 2.0 pounds in any one day;
 - 4.1.2 Modifications to an existing emissions unit with a valid Permit to Operate resulting in an Adjusted Increase in Permitted Emissions (AIPE) exceeding 2.0 pounds in any one day;
 - 4.1.3 Any new or modified emissions unit, in a stationary source project, which results in an SB 288 Major Modification or a Federal Major Modification, as defined in this rule.
 - 4.2 BACT Exemptions: BACT shall not be required for the following:
 - 4.2.1 CO emissions from a new or modified emissions unit at a Stationary Source with a post project Stationary Source Potential to Emit (SSPE2) of less than

200,000 pounds CO per year;

4.2.2 Cargo Carriers;

4.2.3 For existing facilities, the installation or modification of an emission control technique performed solely for the purpose of compliance with the requirements of District, State or Federal air pollution control laws, regulations, or orders, as approved by the APCO, shall be exempt from Best Available Control Technology for all air pollutants, provided all of the following conditions are met:

4.2.3.1 There shall be no increase in the physical or operational design of the existing facility, except for those changes to the design needed for the installation or modification of the emission control technique itself;

4.2.3.2 There shall be no increase in the permitted rating or permitted operating schedule of the permitted unit;

4.2.3.3 There shall be no increase in emissions from the stationary source that will cause or contribute to any violation of a National Ambient Air Quality Standard, Prevention of Significant Deterioration increment, or Air Quality Related Value in Class I areas; and

4.2.3.4 The project shall not result in an increase in permitted emissions or potential to emit of more than 25 tons per year of NO_x, or 25 tons per year of VOC, or 15 tons per year of SO_x, or 15 tons per year of PM-10, or 50 tons per year of CO.

4.2.3.5 The project shall not constitute a federal major modification.

4.2.4 New emissions unit or modification of an existing emissions unit for voluntary reduction in emissions, for the sole purpose of generating emission reduction credits. This exemption applies only to the pollutant for which emission reduction credits are obtained. BACT may be required for other affected pollutants;

4.2.5 A Temporary Replacement Emissions Units;

4.2.6 A Routine Replacement Emissions Units; or

4.2.7 Transfer of location of emissions units within the same stationary source.

4.3 Adjusted Increase in Permitted Emissions (AIPE) Calculations: Adjusted Increase in Permitted Emissions shall be calculated as

$$\text{AIPE} = \text{PE2} - \text{HAPE}$$

Where:

AIPE = Adjusted Increase in Permitted Emissions, pounds per day

PE2 = the emissions units post project Potential to Emit, pounds per day

HAPE = the emissions unit's Historically Adjusted Potential to Emit, pounds per day

- 4.4 Historically Adjusted Potential to Emit (HAPE) Calculations: Historically Adjusted Potential to Emit shall be calculated as

$$\text{HAPE} = \text{PE1} \times (\text{EF2} / \text{EF1})$$

Where:

PE1 = The emissions unit's Potential to Emit prior to modification or relocation

EF2 = The emissions unit's permitted emission factor for the pollutant after modification or relocation. If EF2 is greater than EF1 then EF2/EF1 shall be set to 1.

EF1 = The emissions unit's permitted emission factor for the pollutant before the modification or relocation

- 4.5 Emission Offset Requirements:

4.5.1 If emission offset requirements are triggered pursuant to Section 4.5.3, emission offsets shall be provided for net emissions increases resulting from a project. Offset quantities shall be calculated pursuant to Section 4.7.

4.5.2 For Stationary Sources with a quarterly Potential to Emit which remain constant throughout the year, the amount shall be calculated in pounds per year. For Stationary Sources with quarterly Potential to Emit that is not constant throughout the year, and for Seasonal Sources the amount shall be calculated in pounds per quarter.

4.5.3 Offset requirements shall be triggered on a pollutant-by-pollutant basis. Unless exempted pursuant to Section 4.6, offsets shall be required if the post-project Stationary Source Potential to Emit (SSPE2) equals or exceeds the following offset threshold levels:

Table 4-1, Emissions Offset Threshold Levels

POLLUTANT	SSPE2 (POUNDS /YEAR)
VOC	20,000
NO _x	20,000
CO	200,000
SO _x	54,750
PM ₁₀	29,200

- 4.5.4 Offsets shall be required for PM_{2.5} and PM_{2.5} precursor emission

increases for such increases that constitute new major sources or federal major modifications.

- 4.6 Emission Offset Exemptions: Emission offsets shall not be required for the following:
- 4.6.1 Increases in carbon monoxide in attainment areas if the applicant demonstrates to the satisfaction of the APCO, that the Ambient Air Quality Standards are not violated in the areas to be affected, and such emissions will be consistent with Reasonable Further Progress, and will not cause or contribute to a violation of Ambient Air Quality Standards;
 - 4.6.2 Emergency equipment that is used exclusively as emergency standby equipment for electric power generation or any other emergency equipment as approved by the APCO that does not operate more than 200 hours per year for non-emergency purposes and is not used pursuant to voluntary arrangements with a power supplier to curtail power. Equipment exempted by this section shall maintain a written record of hours of operation and shall have permit conditions limiting non-emergency operation;
 - 4.6.3 Portable equipment which is registered as such in accordance with the provisions of Rule 2280 (Portable Equipment Registration) or the Statewide Portable Equipment Registration Program (California Code of Regulation Title 13, Article 5, Sections 2450-2465), or equipment registered in accordance with the provisions of Rule 2250 (Permit-Exempt Equipment Registration).
 - 4.6.4 On-site soil or groundwater decontamination performed by, under the jurisdiction of, or pursuant to the requirements of an authorized health officer, agricultural commissioner, fire protection officer, or other authorized government officers, provided emissions do not exceed 4,000 pounds per year of any affected pollutant from all emissions units associated with decontamination project;
 - 4.6.5 A Temporary Replacement Emissions Units.
 - 4.6.6 A transfer of location of an entire Stationary Source within the District, under the same owner and provided:
 - 4.6.6.1 The Potential to Emit of any affected pollutant will not be greater at the new location than at the previous location when all emissions units are operated at the same permitted conditions; and
 - 4.6.6.2 BACT is applied to all emissions units with a Potential to Emit exceeding 2.0 pounds per day; and

- 4.6.6.3 The transferred Stationary Source is not added to an existing Stationary Source.
- 4.6.7 A transfer of location of an emissions unit from one Stationary Source to another within the District, under the same owner and provided:
 - 4.6.7.1 The Potential to Emit of any affected pollutant will not be greater at the new location than at the previous location when all emissions units are operated at the same permitted conditions, and
 - 4.6.7.2 The offsets that would be otherwise required for the unit at the new location have been provided for the emissions unit previously.
- 4.6.8 For existing facilities, the installation or modification of an emission control technique performed solely for the purpose of compliance with the requirements of District, State or Federal air pollution control laws, regulations, or orders, as approved by the APCO, shall be exempt from offset requirements for all air pollutants provided all of the following conditions are met:
 - 4.6.8.1 There shall be no increase in the physical or operational design of the existing facility, except for those changes to the design needed for the installation or modification of the emission control technique itself;
 - 4.6.8.2 There shall be no increase in the permitted rating or permitted operating schedule of the permitted unit;
 - 4.6.8.3 There shall be no increase in emissions from the stationary source that will cause or contribute to any violation of a National Ambient Air Quality Standard, Prevention of Significant Deterioration increment, or Air Quality Related Value in Class I areas; and
 - 4.6.8.4 The project shall not result in an increase in permitted emissions or potential to emit of more than 25 tons per year of NO_x, or 25 tons per year of VOC, or 15 tons per year of SO_x, or 15 tons per year of PM-10, or 50 tons per year of CO.
- 4.6.9 Agricultural Sources, for criteria pollutants for that source if emissions reductions from that source would not meet the criteria for real, permanent, quantifiable, and enforceable emission reductions.
 - 4.6.9.1 In no case shall the offset exemption in Section 4.6.9 apply to an agricultural source that is also a major stationary source for the

pollutant for which the offset exemption is sought.

- 4.7 Emission Offset Quantity Calculations:
 - 4.7.1 For pollutants with a pre-project Stationary Source Potential to Emit (SSPE1) greater than the emission offset threshold levels, emission offsets shall be provided for:
 - 4.7.1.1 All increases in Stationary Source emissions, calculated as the sum of differences between the post-project Potential to Emit (PE2) and the Baseline Emissions (BE) of all new and modified emissions units, plus
 - 4.7.1.2 All increases in Cargo Carrier emissions.
 - 4.7.2 For pollutants with a pre-project Stationary Source Potential to Emit (SSPE1) less than or equal to the offset threshold levels, emission offsets shall be provided for:
 - 4.7.2.1 All increases in Stationary Source emissions above the offset trigger levels, calculated as the difference between the SSPE2 and the offset trigger level, plus
 - 4.7.2.2 All increases in Cargo Carrier emissions.
 - 4.7.3 The quantity of offsets calculated pursuant to Sections 4.7.1 and 4.7.2 shall be multiplied by the appropriate Distance Offset Ratio to determine the final quantity of offsets required.
 - 4.7.4 PM10 Emissions: In determining the quantity of required PM10 offsets, the Total Suspended Particulate Matter (TSP) emissions for which full offsets have been previously provided shall not be recalculated as PM10.
- 4.8 Distance Offset Ratio: For offset calculations, the distance offset ratio shall be as shown below:
 - 4.8.1 For NO_x and VOC offsets for new major sources and federal major modifications, the distance offset ratio shall be 1.5;
 - 4.8.2 For PM_{2.5} and PM_{2.5} precursor offsets for new major sources and federal major modifications, the offset ratio shall be 1.0;
 - 4.8.3 The requirements of Section 4.8.1 shall not apply if the District demonstrates to the satisfaction of the federal Environmental Protection Agency that all major sources of NO_x and VOC in the District are equipped

with federal BACT, as defined in CAA Section 169(3). After EPA approval of such a demonstration, the standard distance offset ratios listed in Table 4-2 shall apply for new major sources and federal major modifications, except that where the original location of the offsets is at the same stationary source as the new or modified emissions unit, the distance offset ratio shall be 1.2.

- 4.8.4 For all other projects not specified above, the standard distance offset ratio shall be as shown in Table 4-2:

Table 4-2, Standard Distance Offset Ratio

ORIGINAL LOCATION OF EMISSION OFFSETS	OFFSET RATIO
at the same Stationary Source as the new or modified emissions unit	1.0
within 15 miles of the new or modified emissions unit's Stationary Source	1.2 for Non-Major Sources 1.3 for Major Sources
15 miles or more from the new or modified emissions unit's Stationary Source	1.5

- 4.9 Pre-project Stationary Source Potential to Emit (SSPE1) shall be calculated as the sum of the following:
- 4.9.1 The Potential to Emit from all units with valid Authorities to Construct (ATC) or Permits to Operate (PTO) at the Stationary Source.
- 4.9.1.1 For a unit with both a valid ATC and a PTO or a unit with multiple valid ATC, use the ATC or PTO with the highest potential emissions.
- 4.9.1.2 For units subject to an SLC, the Potential to Emit shall be based on the overall Potential to Emit limit for all units covered by the SLC and not the sum of the individual Potential to Emit of each emissions unit.
- 4.9.2 The quantity of emission reduction credits (ERC) which have been banked since September 19, 1991 for Actual Emissions Reductions that have occurred at the source, and which have not been used on-site. This quantity includes all ERC held as certificates and all emission reduction credits that have been sold or transferred. Reductions shall be added to the SSPE1 as positive values.
- 4.10 Post-project Stationary Source Potential to Emit (SSPE2) shall be calculated, on a pollutant-by-pollutant basis, as the sum of the following:

- 4.10.1 The Potential to Emit from all units with valid Authorities to Construct or Permits to Operate at the Stationary Source, except for emissions units proposed to be shut down as part of a Stationary Source Project.
 - 4.10.1.1 The Potential to Emit of the post-project Authority to Construct will be used for new or modified units, provided that the ATC will include new conditions canceling the existing ATC or PTO for those units, otherwise use the ATC or PTO with the highest potential emissions.
 - 4.10.1.2 For units subject to an SLC, the Potential to Emit shall be based on the overall Potential to Emit limit for all units covered by the SLC and not the sum of the individual Potential to Emit of each emissions unit.
- 4.10.2 The quantity of emission reduction credits (ERC) which have been banked since September 19, 1991 for Actual Emissions Reductions that have occurred at the source, and which have not been used on-site. This quantity includes all ERC held as certificates and all emission reduction credits that have been sold or transferred. Reductions shall be added to the SSPE2 as positive values.
- 4.11 Calculations involving PM10 emissions
 - 4.11.1 For existing Stationary Sources for which particulate matter emissions have been calculated as Total Suspended Particulate (TSP), the PM10 emissions shall be recalculated from TSP values using PM10 emission factors or speciation data.
 - 4.11.2 In the absence of PM10 emissions factors or speciation data, assume 50% of the total suspended particulates is PM10.
 - 4.11.3 If the applicant has previously provided full offsets for total suspended particulate matter emissions, those total suspended particulate matter emissions need not be recalculated as PM10, for the purpose of determining the quantity of offsets.
- 4.12 Actual Emissions Reductions (AER) Calculations: Actual Emissions Reductions shall be calculated, on a pollutant-by-pollutant basis, as follows:

$$\text{AER} = \text{HAE} - \text{PE2}$$

Where:

HAE = Historic Actual Emissions

PE2 = Post-project Potential to Emit

- 4.12.1 Prior to banking, AER shall be discounted by 10 percent (10%) for Air Quality Improvement Deduction, and shall comply with all applicable provisions of Rule 2301 (Emission Reduction Credit Banking).
- 4.13 Additional Offset Requirements: Offsets obtained subject to this rule shall comply with the following provisions:
 - 4.13.1 Major Source shutdowns or permanent curtailments in production or operating hours of a Major Source may not be used as offsets for emissions from a Major Source, a Federal Major Modification, or an SB 288 Major Modification, unless the ERC, or the emissions from which the ERC are derived, has been included in an EPA-approved attainment plan.
 - 4.13.2 Offsets from another district may be used only if the source of the offsets is within 50 miles of the proposed emissions increases and the APCO has reviewed the permit conditions issued by the district in which the proposed offsets are obtained and certifies that such offsets meet the requirements of this rule and CH&SC Section 40709.6.
 - 4.13.3 Interpollutant offsets:
 - 4.13.3.1 Interpollutant offsets may be approved by the APCO on a case-by-case basis, provided that the applicant demonstrates to the satisfaction of the APCO, that the emission increases from the new or modified source will not cause or contribute to a violation of an Ambient Air Quality Standard. In such cases, the APCO shall, based on an air quality analysis, impose offset ratios equal to or greater than the requirements of this rule.
 - 4.13.3.1.1 In no case shall exempt compounds or the other compounds excluded from the definition of VOC be used as offsets for VOC.
 - 4.13.3.1.2 Interpollutant offsets between PM₁₀ and PM₁₀ precursors may be allowed.
 - 4.13.3.1.3 PM₁₀ emissions shall not be allowed to offset NO_x or reactive organic compound emissions in ozone nonattainment areas, nor be allowed to offset SO₂ emissions in sulfate nonattainment areas.
 - 4.13.3.1.4 Interpollutant offsets between NO_x and VOC may be allowed.
 - 4.13.3.2 Interpollutant offsets between PM_{2.5} and PM_{2.5} precursors are allowed at specific ratios as established by US EPA, or as

approved into the State Implementation Plan by the US EPA.

- 4.13.4 Actual Emissions Reductions (AER) used as offsets must have occurred during the same calendar quarter as the emissions increases being offset except as allowed pursuant to Sections 4.13.6 through 4.13.9.
- 4.13.5 AER used as offsets for a Seasonal Source must have occurred during the same time period as the proposed source will operate except as allowed pursuant to Sections 4.13.6 through 4.13.9.
- 4.13.6 AER used as offsets for a biomass-fired power facility may have occurred during any quarter.
- 4.13.7 AER for PM that occurred from October through March, inclusive, may be used to offset increases in PM during any period of the year.
- 4.13.8 AER for NO_x and VOC that occurred from April through November may be used to offset increases in NO_x and VOC during any period of the year.
- 4.13.9 AER for CO that occurred from November through February may be used to offset increases in CO during any period of the year.
- 4.13.10 AER used as offsets for new and modified Major Sources must be obtained from an area:
 - 4.13.10.1 That has a nonattainment classification that is equal to or higher than the area in which the new or modified Major Source is located, and
 - 4.13.10.2 Where emissions contribute to a violation of a national Ambient Air Quality Standard in the area in which the new or modified Major Source is located.
- 4.13.11 Offsets required as a condition of an Authority to Construct or a Permit to Operate shall commence not later than the date of initial operation of the new or modified emissions unit.
 - 4.13.11.1 If the new or modified emissions unit is, in whole or in part, a replacement for an existing emissions unit at the same stationary source, the APCO may allow a maximum of 90 days as a start-up period for simultaneous operation of the existing emissions unit and the unit being replaced.
- 4.13.12 Nothing in this rule shall be construed as requiring ERC used as NSR offsets to be discounted at time of use, except for the additional offsets as

required by Sections 4.8, 4.13.3, and as described in Section 7.0.

4.14 Ambient Air Quality Standards:

4.14.1 Emissions from a new or modified Stationary Source shall not cause or make worse the violation of an Ambient Air Quality Standard. In making this determination, the APCO shall take into account the increases in minor and secondary source emissions as well as the mitigation of emissions through offsets obtained pursuant to this rule. Modeling used for the purposes of this rule shall be consistent with the requirements contained in the most recent edition of EPA's "Guideline on Air Quality Models" unless the APCO finds such model is inappropriate for use. After making such a finding, the APCO may designate an alternative model only after allowing for public comments and only with the concurrence of the ARB or the EPA.

4.14.1.1 At the discretion of the APCO, a new or modified source which is not subject to the public noticing requirements of Section 5.4 shall be exempted from the requirements of Section 4.14.1.

4.15 Additional Requirements for new Major Sources and Federal Major Modifications

4.15.1 Alternative siting: For those sources for which an analysis of alternative sites, sizes, and production processes is required under Section 173 of the Federal Clean Air Act, the applicant shall prepare an analysis functionally equivalent to the requirements of Division 13, Section 21000 et. seq. of the Public Resources Code.

4.15.2 Compliance by Other Owned, Operated, or Controlled Source: The owner of a proposed new Major Source or federal major modification shall demonstrate to the satisfaction of the APCO that all major Stationary Sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in California which are subject to emission limitations are in compliance or on a schedule for compliance with all applicable emission limitations and standards.

5.0 Administrative Requirements

The administrative requirements of Sections 5.1 through 5.7, inclusive, shall be applied to all applications for a new or modified emissions unit except for power plants proposed to be constructed in the District and for which a Notice of Intention (NOI) or Application for Certification (AFC) has been accepted by the California Energy Commission. For such power plants, the administrative requirements of Section 5.8 shall apply.

- 5.1 Complete Application: The APCO shall determine whether the application is complete not later than 30 days after receipt of the application, or after such longer time as both the applicant and the APCO may agree.
 - 5.1.1 If the APCO determines that the application is not complete, the applicant shall be notified in writing of the decision specifying the information required. Upon receipt of any resubmittal of the application, a new 30-day period to determine completeness shall begin.
 - 5.1.2 Completeness of an application or resubmitted application shall be evaluated on the basis of the information requirements set forth in the District Rules and Regulations as they exist on the date on which the application or resubmitted application is received.
 - 5.1.3 Upon determination that the application is complete, the APCO shall notify the applicant in writing.
 - 5.1.4 The APCO may, during the processing of the application, request an applicant to clarify, amplify, correct, or otherwise supplement the information submitted in the application.
- 5.2 Preliminary Decision: Following acceptance of an application as complete, the APCO shall perform the evaluations required to determine compliance with this rule and make a preliminary written decision as to whether an Authority to Construct should be approved, conditionally approved, or disapproved.
 - 5.2.1 The APCO shall deny any Authority to Construct if the APCO finds that the subject of the application would not comply with the standards set forth in this rule or any other District rule.
 - 5.2.2 The decision shall be supported by a succinct, written analysis.
- 5.3 Final Action: Within 180 days after acceptance of an application as complete, or within 180 days after the lead agency has approved the project under the California Environmental Quality Act, whichever occurs later, the APCO shall take final action on the application after considering all written comments.
- 5.4 Public Notification and Publication Requirements: The APCO shall provide public notification and publication for the following types of applications:
 - 5.4.1 New Major Sources, Federal Major Modifications, and SB 288 Major Modifications.
 - 5.4.2 Applications which include a new emissions unit with a Potential to Emit greater than 100 pounds during any one day for any one affected pollutant;

- 5.4.3 Modifications that increase the Stationary Source Potential to Emit (SSPE1) from a level below the emissions offset threshold level to a level exceeding the emissions offset threshold level for one or more pollutants;
 - 5.4.4 New Stationary Sources with post-project Stationary Source Potential to Emit (SSPE2) exceeding the emissions offset threshold level for one or more pollutants;
 - 5.4.5 Any permitting action resulting in a Stationary Source Project Increase in Permitted Emissions (SSIPE) exceeding 20,000 pounds per year for any one pollutant.
- 5.5 Public Notification and Publication Actions: For the types of applications listed in Section 5.4, the APCO shall perform the following actions:
- 5.5.1 Within ten (10) calendar days following the preliminary decision the APCO shall electronically publish ~~in at least one newspaper of general circulation in the District~~ a notice on the District's website stating the preliminary decision, noting how pertinent information can be obtained, and inviting written public comment for a 30 day period following the date of publication.
 - 5.5.2 No later than the date of publication, the APCO shall transmit to the applicant its preliminary written decision, the analysis, and a copy of the notice submitted for publication.
 - 5.5.3 No later than the date of publication, the APCO shall transmit to the ARB and to any person who requests such information, its preliminary written decision, the analysis, and a copy of the notice submitted for publication. For new Major Sources, Federal Major Modifications, and SB 288 Major Modifications, the APCO shall also transmit the preliminary written decision and supporting documents to the EPA.
 - 5.5.4 No later than the time the notice of the preliminary decision is published, the APCO shall make available for public inspection at the District office the information submitted by the applicant and the analysis.
 - 5.5.5 The APCO shall provide written notice of the final action to the applicant, and the ARB, and shall electronically publish such notice on the District's website ~~in a newspaper of general circulation~~, except that for an application not subject to Section 5.4, the APCO shall not be subject to this section. In such a case, the applicant shall receive notification as provided in Rule 2040 (Applications). For new Major Sources, Federal Major Modifications, and SB 288 Major Modifications, the APCO shall also transmit written notice of the final action to the EPA.

5.5.6 No later than the time of notice of final action is published, the APCO shall make available for public inspection at ~~the~~ District offices and on the District's website a copy of the notice submitted for publication and all supporting documents.

5.6 Authority to Construct (ATC) - General Conditions

5.6.1 An ATC shall not be issued unless the new or modified source complies with the provisions of this rule and all other applicable District Rules and Regulations.

5.6.2 An ATC shall require that the new or modified source be built according to the specifications and plans contained in the application.

5.6.3 An ATC shall include all those conditions which the APCO deems necessary to assure construction and operation in the manner assumed in making the analysis to determine compliance with this rule.

5.6.4 An ATC shall include all those conditions relating to the satisfaction of the offset requirements of this rule.

5.6.5 An ATC issued for an emissions unit that relies on reduction in emissions from other units included in the Stationary Source Project, must include a condition that requires initiating and completing construction on those units that provide the reduction prior to commencing operation of the unit with increase in emissions.

5.6.5.1 If the new or modified emissions unit is, in whole or in part, a replacement for an existing emissions unit at the same stationary source, the APCO may allow a maximum of 90 days as a start-up period for simultaneous operation of the existing emissions unit and the unit being replaced.

5.7 Permit to Operate (PTO) - General Conditions

5.7.1 A PTO shall require that the new source or modification be operated in the manner assumed in making the analysis to determine compliance with this rule and as conditioned in the Authority to Construct.

5.7.2 A PTO shall include daily emissions limitations and other enforceable conditions which reflect applicable emission limits including the offset requirements.

5.7.3 The APCO shall determine if the applicant has complied with all the conditions in the ATC. The APCO may allow conditions which have not been met at the time the PTO is issued to be incorporated into the Permit to

Operate, provided that compliance with that condition is demonstrated by a specified date.

5.7.4 Any source which provides offsets shall be subject to enforceable permit conditions containing specific operational and emissions limitations, which ensure that the emissions reductions will be provided in accordance with the provisions of this rule and shall continue for the reasonably expected life of the proposed source. Where the source of offsets is not subject to a permit, a written contract shall be required between the applicant and the owner of such source, which contract, by its terms, shall be enforceable by the APCO. The permit and contract shall be submitted to the ARB to be forwarded to the EPA as part of the State Implementation Plan. A violation of the emission limitation provisions of any such contract shall be chargeable to the applicant.

5.7.5 Offsets required as a condition of an ATC or a PTO shall commence not later than the date of initial operation of the new or modified source,

5.7.5.1 If a new or modified Stationary Source is, in whole or in part, a replacement for an existing Stationary Source on the same or contiguous property the APCO may allow a maximum of 90 days as a start-up period for simultaneous operation of the existing Stationary Source and the new or replacement source.

5.8 Power plants which will be licensed by the California Energy Commission: The administrative requirements of this section shall be applied to all power plants proposed to be constructed in the District and for which a Notice of Intention (NOI) or Application for Certification (AFC) has been accepted by the California Energy Commission. The APCO may apply for reimbursement of all costs incurred, including lost fees, in order to comply with the provisions of this section.

5.8.1 Intent to Participate and Preliminary Report: Within 14 days of receipt of a NOI, the APCO shall notify the ARB and the California Energy Commission of the APCO's intent to participate in the NOI proceeding. If the APCO chooses to participate in the NOI proceeding, the APCO shall prepare and submit a report to the ARB and the California Energy Commission prior to the conclusion of the nonadjudicatory hearings specified in Section 25509.5 of the Public Resources Code. The report shall include at least:

5.8.1.1 A preliminary specific definition of BACT for the proposed facility.

5.8.1.2 A preliminary discussion of whether there is substantial likelihood that the requirements of this rule and all other District rules can be

satisfied by the proposed facility.

- 5.8.1.3 A preliminary list of conditions which the proposed facility must meet in order to comply with this rule or any other applicable District rules. The preliminary determinations contained in the report shall be as specific as possible within the constraints of the information contained in the NOI.
- 5.8.2 Equivalency of Application for Certification to Application for Authority to Construct: The APCO shall consider an Application for Certification (AFC) to be equivalent to an application for an Authority to Construct, and subject, as such, to all definitions and requirements of this rule.
- 5.8.3 Upon receipt of an AFC for a power plant, the APCO shall conduct a Determination of Compliance review. This review shall determine whether an AFC is complete, and within 20 calendar days of receipt of the AFC, the APCO shall so inform the California Energy Commission and the applicant in writing.
 - 5.8.3.1 If the APCO determines that the application is not complete, the information required shall be specified, and the AFC shall be returned to the applicant for resubmittal. Upon receipt of any resubmittal of the application, a new 20 day period to determine completeness shall begin.
 - 5.8.3.2 Completeness of an application or resubmitted application shall be evaluated on the basis of the information requirements set forth in District Rules and Regulations as they exist on the date on which the application or resubmitted application is received.
- 5.8.4 The APCO may request from the applicant any information necessary for the completion of the Determination of Compliance review. If the APCO is unable to obtain the information, the APCO may petition the presiding Commissioner of the California Energy Commission for an order directing the applicant to supply such information.
- 5.8.5 Within 180 days of accepting an AFC as complete, the APCO shall make a preliminary written decision as to whether a Determination of Compliance Certification should be approved, conditionally approved, or disapproved. The APCO shall deny any Determination of Compliance Certification if the APCO finds that the subject of the application would not comply with the standards set forth in this rule or any other District rule. The decision shall be supported by a succinct, written analysis.
- 5.8.6 Notification and Publication actions shall be conducted according to the

requirements of Section 5.5.

5.8.7 Within 240 days after acceptance of an application as complete, the APCO, after considering all written comments, shall take final action on the application, which action shall consist of the following:

5.8.7.1 The APCO, if all requirements of this rule are met, shall issue and submit to the California Energy Commission a Determination of Compliance, or advise the Commission that a Determination of Compliance cannot be issued.

5.8.7.2 Public inspection of final action documents shall be provided for in accordance with Section 5.5.6

5.8.8 Equivalency of Determination of Compliance to Authority to Construct: A Determination of Compliance shall confer the same rights and privileges as an Authority to Construct provided that the California Energy Commission approves the Application for Certification and the certificate granted by the Commission includes all conditions of the Determination of Compliance.

5.8.9 The APCO shall issue a Permit to Operate to any applicant receiving a certificate from the California Energy Commission pursuant to this rule provided that the construction or modification is in compliance with all conditions of the certificate and of the Determination of Compliance, and provided that the Permit to Operate includes the conditions prescribed in Section 5.7.

5.9 Enhanced Administrative Requirements

Application for a certificate of conformity with the procedural requirements of 40 CFR Part 70 shall be subject to the following enhanced administrative requirements in addition to any other applicable administrative requirements of Section 5.0:

5.9.1 New Sources and Significant Permit Modifications

5.9.1.1 Public Notification: The APCO shall provide a written notice of the proposed permit and, upon request, copies of the APCO analysis to interested parties. Interested parties shall include affected states, ARB and persons who have requested in writing to be notified. The notice shall also be given by electronic publication on the District's website~~publication in a newspaper of general circulation in the District~~ and by any other means if necessary to assure adequate notice to the affected public. The public shall be given 30 days from the date of publication to submit written comments on the APCO's proposed action.

- 5.9.1.2 The notice shall provide the following information:
 - 5.9.1.2.1 The identification of the source, the name and address of the permit holder, the activities and emissions change involved in the permit action;
 - 5.9.1.2.2 The name and address of the APCO, the name and telephone number of District staff to contact for additional information;
 - 5.9.1.2.3 The availability, upon request, of a statement that sets forth the legal and factual basis for the proposed permit conditions;
 - 5.9.1.2.4 The location where the public may inspect the Complete Application, the APCO's analysis, the proposed permit, and all relevant supporting materials;
 - 5.9.1.2.5 A statement that the public may submit written comments regarding the proposed decision within at least 30 days from the date of publication and a brief description of commenting procedures, and
 - 5.9.1.2.6 A statement that members of the public may request the APCO or his designee to preside over a public hearing for the purpose of receiving oral public comment, if a hearing has not already been scheduled. The APCO shall provide notice of any public hearing scheduled to address the proposed decision at least 30 days prior to such hearing;
- 5.9.1.3 The APCO shall provide written response to persons or agencies that submitted written comments which are postmarked by the close of the public notice and comment period. All written comments and responses to such comments shall be kept on file at the District office and made available upon request.
- 5.9.1.4 A copy of the Complete Application, the APCO's analysis and the proposed permit shall be made available at District offices for public review and comment during normal business hours. The APCO's analysis shall include a statement that sets forth the legal and factual basis for the proposed permit conditions, including references to the applicable statutory and regulatory provisions.

- 5.9.1.5 The APCO shall provide written notice to the EPA of the proposed decision along with copies of the proposed permit, the APCO's analysis, the public notice submitted for publication, and all necessary supporting information.
- 5.9.1.6 If the EPA does not object pursuant to Section 5.9.1.9, the APCO shall issue the final permit.
- 5.9.1.7 If the EPA does not object in writing to the APCO's preliminary decision during the EPA's 45 day review period, any person may petition the EPA within 60 days after the expiration of the EPA's 45 day review period. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period, unless the petitioner demonstrates to the EPA that it was impracticable to raise such objections within such period, or unless grounds for such objections arose after such period. Petitions shall be based on the compliance of the permit provisions with applicable requirements.
- 5.9.1.8 Within 180 days after acceptance of an application as complete, or within 180 days after the lead agency has approved the project under the California Environmental Quality Act, whichever occurs later, the APCO shall take final action on the application after considering all written comments.
- 5.9.1.9 The APCO shall not issue a permit if the EPA objects to its issuance in writing within 45 days of receipt of the APCO's notice of preliminary decision on the proposed permit.
 - 5.9.1.9.1 Any EPA objection shall include a statement of the EPA's reasons for objection and a description of the terms and conditions that the permit must include to respond to the objections. The EPA shall provide the permit applicant a copy of the objection.
 - 5.9.1.9.2 If the APCO fails, within 90 days after the date of EPA's objection, or within 180 days from the date the application was deemed complete plus any extension allowed by the state law, whichever is sooner, to revise and submit a proposed permit in response to the objection, the APCO shall not issue a certification on conformity to Title V.
 - 5.9.1.9.3 If the EPA objects to the permit as a result of a public petition, the APCO shall not issue the permit until

EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the APCO has issued a permit prior to receipt of an EPA objection, the EPA will modify, terminate, or revoke such permit, and shall do so consistent with procedures in Section 70.7(g)(4) or (5)(i) and (ii) of the 40 CFR regulations, and the APCO may thereafter reissue only a revised permit that satisfies EPA objection.

5.9.1.9.4 EPA objection shall be limited to compliance with applicable requirements and the requirements of 40 CFR Part 70.

5.9.2 Minor Permit Modifications

5.9.2.1 Within 5 working days after the receipt of a Complete Application for a minor permit modification, the APCO shall provide notification of the proposed permit modification to the EPA, affected states, and interested parties pursuant to Section 5.9.1.1.

5.9.2.2 The APCO shall not issue a final permit modification until after a 45-day period review of the proposed permit modification by EPA or until EPA has notified the APCO that EPA will not object to issuance of the permit modification, whichever is first.

5.9.2.3 Within 90 days after APCO's receipt of an application for a minor permit modification or 15 days after the end of the EPA's 45-day review, whichever is later, the APCO shall do one of the following:

5.9.2.3.1 Issue the permit as proposed;

5.9.2.3.2 Deny the permit modification application;

5.9.2.3.3 Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed pursuant to the administrative requirements for significant permit modifications; or

5.9.2.3.4 Revise the draft permit modification and transmit the new proposed permit modification to EPA and the affected states.

6.0 Certification of Conformity

A new or modified source subject to the requirements of Rule 2520 may choose to apply for a certificate of conformity with the procedural requirements of 40 CFR Part 70. A certification of conformity will allow changes authorized by the Authority to Construct to be incorporated into the Part 70 permit as administrative permit amendments.

6.1 The APCO will issue a written certificate of conformity with the procedural requirements of 40 CFR 70.7 and 70.8, and with the compliance requirements of 40 CFR 70.6(8)(c), if the following conditions are met:

6.1.1 The Authority to Construct is issued in conformance with the Enhanced Administrative Requirements of this rule;

6.1.2 The content of the Authority to Construct issued by the APCO complies with the requirements set forth in Section 9.0 of District Rule 2520 (Federally Mandated Operating Permits);

6.1.3 An application for a certificate of conformity with the requirements of 40 CFR Part 70 is submitted with the application for Authority to Construct. The content of application for the certificate of conformity must comply with the requirements of Sections 7.1 of District Rule 2520 (Federally Mandated Operating Permits);

6.1.4 The Authority to Construct contains a statement of conformity with the requirements of Title V and 40 CFR Part 70;

6.1.5 EPA has not objected to the issuance of the Authority to Construct, or EPA's objections have been resolved to the satisfaction of EPA administrator; and

6.1.6 The Part 70 operating permit being issued will contain the federally enforceable requirements contained in the Authority to Construct.

6.2 The certificate of conformity with the procedural requirements of 40 CFR Part 70 is valid as long as the Authority to Construct with which it was issued is valid.

6.3 Modifications to an Authority to Construct for which a certificate of conformity has been issued are subject to the administrative requirements of Section 11.0 of District Rule 2520 that apply to permit modifications and changes, as well as the requirements of all District Rules that apply to modifications of Authorities to Construct.

7.0 Annual Offset Equivalency Demonstration and Pre-baseline ERC Cap Tracking System

7.1 Offset Tracking System

The APCO shall implement a system for tracking the following for each permitting action:

- 7.1.1 The quantity of offsets that would have been required for new major sources and federal major modifications in the District had the federal new source review requirements, codified in 40 CFR 51.165, and Title I part D of the Clean Air Act (CAA), been applied to these sources. These requirements include offsetting the full emissions increase from new and modified major sources, using actual emissions baselines when required under 40 CFR 51.165, and providing offsets necessary to meet the CAA offset ratio requirements and provide a net air quality benefit.
- 7.1.2 The quantity of offsets actually required for all new and modified sources in the District pursuant to the requirements of this rule, and, for the purposes of the Pre-baseline ERC Cap Tracking System outlined in any District-adopted and EPA-approved attainment plan.
- 7.1.3 The surplus value of creditable emission reductions used as offsets by stationary sources.
 - 7.1.3.1 The surplus value shall be determined at the time of ATC issuance for the sources using the emission reductions to satisfy offset requirements of this rule.
 - 7.1.3.2 The determination of surplus value shall specify all requirements that apply to the offsets being reviewed, the methodology used to calculate the impact of these requirements, and all calculations performed in arriving at the final surplus value.
- 7.1.4 For purposes of the requirements of Section 7.0, surplus value shall be defined as the quantity of actual emission reductions achieved by a source in excess of the following requirements:
 - 7.1.4.1 Any emission reduction required by a stand-alone federal requirement or regulation, including, but not limited to, Acid Rain, New Source Performance Standard, Reasonably Available Control Technology, and Maximum Achievable Control Technology, whether or not the requirements are part of the State Implementation Plan (SIP) or a local attainment plan.
 - 7.1.4.2 Any emission reduction relied upon by a permitting authority for attainment purposes, such as through an attainment plan, including emission reductions relied upon for Reasonable Further Progress calculations.
 - 7.1.4.3 Any emission reduction achieved by shutting down an existing

source or curtailing production or operating hours below baseline levels whose original emission is not included in the District's emission inventory.

7.1.4.4 Any emission reduction based on a source-specific or source category-specific SIP provision used to comply with CAA requirements.

7.1.4.5 Any emission reduction required by a condition of a permit issued to comply with CAA New Source Review requirements, except that any emission reduction required by a permit condition, which was placed on a permit solely to assure compliance with a state or local requirement, which is not on its own federally enforceable, shall not be included in this class.

7.1.4.6 Any emission reduction based on a source-specific emission limitation resulting from an EPA enforcement case.

7.1.5 For purposes of the requirements of Section 7.0, creditable shall be defined as emission reductions are real, surplus, quantifiable, enforceable and permanent. The creditability of a given emission reduction may be subject to review by the EPA.

7.2 Annual Demonstration Report

The APCO shall annually prepare a report with the following demonstrations to be provided to the public, the ARB and the EPA in accordance with the dates specified in Section 7.3. The District shall also make available to the public, the ARB and the EPA the data used to prepare the demonstrations.

7.2.1 Demonstration on Equivalency of Offset Requirements

7.2.1.1 The report shall include a comparison of the annual quantity of federal offsets that would have been required (as tracked pursuant to Section 7.1.1) to the annual quantity of offsets actually required under this rule, including any excess offsets required from previous reporting years (as tracked pursuant to Section 7.1.2).

7.2.1.2 The report shall also describe any additional emission reductions retired to address a shortfall in required offsets as specified in Section 7.4.1.1. Such description shall, at a minimum, specify the emission reductions used and the surplus value of those reductions. The surplus value of these reductions may also be used in demonstrating equivalency under Section 7.2.2

7.2.2 Demonstration on Creditability of Emission Reductions

7.2.2.1 The report shall include a comparison of the annual quantity of federal offsets that would have been required (as tracked pursuant to Section 7.1.1) to the surplus value of creditable emission reductions used as offsets during the year (as tracked pursuant to Section 7.1.3).

7.2.2.2 For purposes of the demonstration described in Section 7.2.2, the comparison may also include the surplus value of additional creditable emission reductions that have not been used as offsets and have been banked or have been generated as a result of permitting actions. The surplus value of these reductions may also be used to remedy any shortfall as specified under Section 7.4.1.1.

7.2.2.2.1 The surplus value of these additional credits shall be determined as of the date of the issuance of the Authority to Construct utilizing such reductions in demonstration described in this subsection.

7.2.2.2.2 Any such additional emission reductions used in this demonstration shall be permanently retired and shall not be used to meet any offset or netting requirements and shall not be used in future demonstrations required by Section 7.0.

7.2.2.2.3 Additional emission reductions described in Section 7.2.2.2 shall only be included in the comparison to the extent the annual quantity of federal offsets that would have been required (as tracked pursuant to Section 7.1.1) exceeds the surplus value of creditable emission reductions used as offsets (as tracked pursuant to Section 7.1.3).

7.2.2.2.4 Any additional emission reductions described in Section 7.2.2.2 that are not included in the demonstration required by this subsection, may be used in future demonstrations in accordance with this subsection.

7.3 Reporting Schedule

7.3.1 The report shall cover the period August 20 to August 19 of each year. For the Initial report, the District shall track offset requirements for new and modified sources for which a complete application for Authority to Construct was submitted after August 20, 2001. Additional emission reductions, other than banked emission reductions, may be used in the

equivalency demonstration only if the reduction occurred after August 20, 2001

7.3.2 For each reporting period, the APCO shall submit the report and data described in Section 7.2 to ARB and the EPA no later than November 20 of each year. In addition, the APCO shall release the report to the public and shall present it to the District Governing Board, each year, at the first Board meeting following its submittal to the EPA.

7.3.3 All documents created and/or used in implementing the requirements of Section 7.0 shall be kept and maintained by the APCO for no less than five years from the date of their creation and/or use.

7.4 Remedy for Emission Offset Shortfalls

7.4.1 Failure to Demonstrate Equivalency in Offset Requirements

7.4.1.1 If the comparison described in Section 7.2.1 does not show, or EPA determines the comparison erroneously shows, that the annual quantity of offsets actually required under this rule (as tracked pursuant to Section 7.1.2) equals or exceeds the annual quantity of federal offsets that would have been required (as tracked pursuant to Section 7.1.1), the District shall retire additional creditable emission reductions that have not been used as offsets and have been banked or have been generated as a result of permitting actions such that the surplus value of these emission reductions satisfies any shortfall.

7.4.1.1.1 The surplus value of these additional credits shall be determined as of the date of the issuance of the Authority to Construct utilizing such reductions in demonstration described in this subsection.

7.4.1.1.2 Any such additional emission reductions used in this demonstration shall be permanently retired and shall not be used to meet any offset or netting requirements and shall not be used in future demonstrations required by Section 7.0.

7.4.1.2 If the District does not have sufficient additional creditable emission reductions to satisfy the shortfall described in 7.4.1.1, all ATCs issued after the report deadline for that year shall comply with the offset requirements of 40 CFR 51.165, and part D of Title I of the CAA, for each pollutant for which there is a shortfall, until the applicability and offset requirements of this rule are revised to

comply with the federal new source review requirements and approved into the SIP by EPA.

7.4.1.3 If the APCO fails to submit a report meeting the requirements of Section 7.2.1, all ATC issued after the report deadline and until the APCO submits to ARB, EPA and the public a report complying with the requirements of Section 7.2.1 shall comply with the offset requirements of 40 CFR 51.165, and part D of Title I of the CAA.

7.4.2 Failure to Demonstrate Adequate Creditable Emission Reductions

7.4.2.1 If the comparison described in Section 7.2.2 does not show, or EPA determines the comparison erroneously shows, that the surplus value of creditable emission reductions used as offsets during the year (as tracked pursuant to Section 7.1.3) combined with additional emission reductions as described in Section 7.2.2.2 equals or exceeds the annual quantity of federal offsets that would have been required (as tracked pursuant to Section 7.1.1), all ATCs issued, for new major sources or federal major modifications, for each pollutant for which there is a shortfall, after the report deadline shall ensure that emission reductions used to satisfy offset requirements are creditable and that the surplus value of those credits is determined at the time of ATC issuance.

7.4.2.2 The requirements of Section 7.4.2.1 shall remain in effect until this rule is revised to require offset discounting at time of use and such revision is approved into the SIP by EPA, or until a subsequent annual report prepared in accordance with Section 7.2.2 demonstrates that the surplus value of creditable emission reductions used as offsets (as tracked pursuant to Section 7.1.3) combined with additional emission reductions as described in Section 7.2.2.2 equals or exceeds the annual quantity of federal offsets that would have been required (as tracked pursuant to Section 7.1.1).

7.4.2.3 If the APCO fails to submit a report meeting the requirements of Section 7.2.2, all ATCs issued for new major sources or federal major modifications after the report deadline and until the APCO submits to ARB, EPA and the public a report complying with the requirements of Section 7.2.1 shall ensure that emission reductions used to satisfy offset requirements are creditable and that the surplus value of those credits is determined at the time of ATC issuance.

- 7.5 Pre-Baseline ERC Usage Caps from District Attainment Plans
 - 7.5.1 ERCs that were banked prior to the baseline year for a given District-adopted and EPA-approved Attainment Plan shall not be used to offset emissions increases under the provisions of this rule if the usage of such credits during the effective period of the plan exceeds the respective pollutant's Pre-Baseline ERC Usage Cap in the plan.
 - 7.5.2 Such caps on pre-baseline ERC usage remain in effect until the end of the plan's effective period, or until such time as EPA approves revised caps through an Attainment Plan revision process or a Rate of Progress update.
- 8.0 Application Shield for Routine Replacement Emissions Units and Temporary Replacement Emissions Units (TREUs)
 - 8.1 For a Routine Replacement Emissions Unit, or a TREU, for which an Authority to Construct is required, the permitted source may continue to operate under an application shield, provided that all of the following conditions are met.
 - 8.1.1 An application for the Routine Replacement Emissions Unit or TREU has been submitted within seven calendar days of completing the construction or installation of the replacement.
 - 8.1.2 The source operates in compliance with all applicable requirements of the federal, state, and District rules and regulations.
 - 8.1.3 For a TREU, all of the following conditions must be met:
 - 8.1.3.1 The TREU results in no increase in design capacity, unless a replacement unit of the same or lower design capacity is not available, in which case the replacement can result in a design capacity increase of up to 10%.
 - 8.1.3.2 The TREU results in no change to the permitted throughput or emission limits due to a change in the design capacity as part of the replacement.
 - 8.1.3.3 The TREU performs the same function as the equipment being replaced.
 - 8.1.3.4 The TREU either is addressed by a BARCT rule or is equipped with a control device capable of at least 85% emission control.
 - 8.2 When the application has been deemed complete by the APCO, the application shield shall be made effective retroactive from the date of application submittal until the application is either approved or denied.

- 8.2.1 The application shield is not applicable if the District's final action is delayed due to the failure of the applicant to submit timely information requested by the District. The source must also submit additional information for any requirements that become applicable after a complete application is submitted, but before a PTO is issued.
- 8.3 The application shield does not exempt the operator from any applicable requirements.
- 8.4 The application shield applies only to applications for Routine Replacement Emissions Units, and TREUs meeting the requirements of 8.1.3.1 through 8.1.3.4, and does not authorize any increases to the permitted throughput or emissions due to a change in design capacity as part of a Routine Replacement Emissions Unit or a TREU.
- 8.5 For replacements at major sources, the application shield applies only to Routine Replacement Emissions Units that result in no significant emissions increase according to the applicability calculations of 40 CFR 51.165(a)(2)(ii)(C), "Actual-to-projected actual applicability test for projects that only involve existing emissions units". For the purposes of this section, a Routine Replacement Emissions Unit is an existing emissions unit. A copy of the emission calculations used to determine that the Routine Replacement Emissions Unit did not result in a significant emissions increase must be included with the application required by Section 8.1.1.
- 8.6 For a TREU that is removed from the Stationary Source within seven calendar days of completing the installation of the TREU, the application requirements of Section 8.1.1 shall not apply, provided the permittee submits, within seven calendar days of completing the installation of the TREU, a report to the District demonstrating compliance with the requirements of Section 8.

APPENDIX C

Draft Rule 2301

April 15, 2019

SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT

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RULE 2301 EMISSION REDUCTION CREDIT BANKING (Adopted September 19, 1991; Amended March 11, 1992; Amended December 17, 1992; Amended January 19, 2012; Amended [date of adoption])

1.0 Purpose

The purposes of this rule are to:

1.1 For affected pollutants:

1.1.1 Provide an administrative mechanism for sources to store emission reduction credits for later use as offsets where allowed by District Rules and Regulations or State and Federal Rules and Regulations.

1.1.2 Provide an administrative mechanism for sources to transfer emission reduction credits to other sources for use as offsets as allowed by Rule 2201 (New and Modified Stationary Source Review Rule) or State and Federal Rules and Regulations.

1.1.3 Define eligibility standards, quantitative procedures and administrative practices to ensure that emission reduction credits (ERCs) are real, permanent, quantifiable, surplus, and enforceable.

1.2 For greenhouse gasses:

1.2.1 Provide an administrative mechanism for sources to bank voluntary greenhouse gas emission reductions for later use.

1.2.2 Provide an administrative mechanism for sources to transfer banked greenhouse gas emission reductions to others for any use.

1.2.3 Define eligibility standards, quantitative procedures and administrative practices to ensure that banked greenhouse gas emission reductions are real, permanent, quantifiable, surplus, and enforceable.

2.0 Applicability

The provisions of this rule apply to all transactions involving the storage, transfer, or use of emission reduction credits of affected pollutants and greenhouse gases.

3.0 Definitions

Unless otherwise defined, terms as used in this rule are defined in Rule 2201 (New and Modified Stationary Source Review Rule).

- 3.1 Actual Emission Reductions: as defined in Rule 2201 (New and Modified Stationary Source Review Rule). If the reductions are authorized by an Authority to Construct, the adjustments made to the actual emissions reductions as defined in Rule 2201 (New and Modified Stationary Source Review Rule), shall be based on the rules, plans, workshop notices at the time the application for such Authority to Construct was deemed complete.
- 3.2 Affected Pollutant: as defined in Rule 2201 (New and Modified Stationary Source Review Rule), except for the purposes of this rule greenhouse gases shall not be considered affected pollutants.
- 3.3 Bankable Emission Reductions: emission reductions of affected pollutants and their precursors for which ambient air quality standards exist, and greenhouse gases, which reductions meet the provisions of this rule. Such reductions may be deposited in the District's ERC Bank. Once banked and certified, the emission reductions become ERCs.
- 3.4 Banking: the District's system of quantifying, certifying, recording, and storing ERCs for future use or transfer. This system shall be called the District's Emission Reduction Credit Bank (herein referred to as the ERC Bank).
- 3.5 Banking Register: the document that records all ERC deposits, withdrawals, transfers, and transactions.
- 3.6 Baseline Period: the same period as defined in Rule 2201 (New and Modified Stationary Source Review Rule).
- 3.7 Carbon Dioxide Equivalent (CO₂E): the mass of carbon dioxide (CO₂) that would have the same global warming potential as a given mass of another greenhouse gas. Conversions between GHGs and CO₂Es shall be made using the conversion factors in Table 1.

Table 1
Conversion factors between GHGs and CO₂E

GHG metric ton	CO ₂ E metric ton
CO ₂	1
CH ₄	21
N ₂ O	310
HFC-23 (hydrofluorocarbons)	11,700
HFC-32	650
HFC-125	2,800
HFC-134a	1,300
HFC-143a	3,800

HFC-152a	140
HFC-227ea	2,900
HFC-236fa	6,300
HFC-4310mee	1,300
CF ₄ (perfluorocarbons)	6,500
C ₂ F ₆	9,200
C ₄ F ₁₀	7,000
C ₆ F ₁₄	7,400
SF ₆ (sulfur hexafluoride)	23,900

- 3.8 Emission Reduction Credits (ERCs): reductions of actual emissions of affected pollutants or greenhouse gas emissions from emission unit recognized by the District as available for use as tradeoffs, offsets, CEQA mitigation, or for other purposes, in accordance with the requirements of this rule. To be eligible for certification as ERCs, emissions reductions must be real, surplus, permanent, quantifiable and enforceable. All emission reductions meeting these requirements may be certified as ERCs.
- 3.9 ERC Certificate: a document certifying title to a defined quantity and type of ERCs issued by the District to the owner(s) identified on the Certificate.
- 3.10 Greenhouse gas (GHG): carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), and perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆).
- 3.11 Non-inventoried Emissions: those emissions of an air pollutant into the atmosphere from any source which has not been recorded on the District emission inventory.
- 3.12 Non-permitted Emissions: those emissions of an air pollutant into the atmosphere from non-permitted emission sources that are not required to have air pollution permits. Non-permitted emissions may include emissions from agricultural waste burning, mobile source emissions, exempt emissions units, and sources that were never subject to the requirements of Rule 2201 (New and Modified Stationary Source Review Rule).
- 3.13 Offset: the use of an ERC to mitigate emission increases of an affected pollutant from a new or modified source subject to the requirements of Rule 2201 (New and Modified Stationary Source Review Rule).
- 3.14 Shutdown: shall mean either the earlier of the permanent cessation of emissions from an emitting unit or the surrender of that unit's operating permit. If, prior to the surrender of the operating permit, the APCO determines that:

3.14.1 the unit has been removed or fallen into an inoperable and unmaintained condition such that startup would require an investment exceeding 50% of the current replacement cost; and

3.14.2 the owner cannot demonstrate to the satisfaction of the APCO that the owner intended to operate again, then the APCO may cancel the permit and deem the source shutdown as of the date of last emissions. Evidence of an intent to operate again may include valid production contracts, orders, other agreements, or any economically based reasons which would require the operation of the emitting unit after initial cessation of emissions.

3.15 Transfer: the conveyance of an ERC from one entity to another.

4.0 Eligibility of Emission Reductions

4.1 Affected Pollutant Emissions Reductions Occurring Before September 19, 1991

For the purpose of this section District means the San Joaquin Unified Air Pollution Control District (SJVUAPCD) or any former county Air Pollution Control District that is now included in the SJVUAPCD.

Upon application and approval by the APCO, the following emissions reductions occurring prior to September 19, 1991 may receive Emissions Reduction Banking Certificates:

4.1.1 Emission reductions occurring after January 1, 1988 and prior to the date of adoption of this rule which have been recognized by the District pursuant to a banking rule or pursuant to a formal internal tracking mechanism shall be deemed eligible emission reductions, provided:

4.1.1.1 the APCO determines that such emission reductions comply with the definition of AER;

4.1.1.2 the reductions are real, surplus, permanent, quantifiable, and enforceable; and

4.1.1.3 they have not been used for approval of an Authority to Construct or used as offsets.

4.1.2 Emissions reductions occurring prior to January 1, 1988 which have been recognized by the District pursuant to a banking rule or were formally recognized in writing by the District as available for offsets shall be eligible for emissions reductions banking certificates provided:

- 4.1.2.1 the APCO determines that such emissions reductions comply with the definition of AER, and such reductions are real, surplus, permanent, quantifiable, and enforceable;
 - 4.1.2.2 the reductions have not been used for the approval of an Authority to Construct or used as offsets;
 - 4.1.2.3 the reductions are included in or have been added to the 1987 emissions inventory, or will be accounted for in subsequent revisions to the 1991 AQAP and will be included in the Plan's annual tracking of emissions reductions.
 - 4.1.2.4 a banking application is filed prior to June 17, 1993 in accordance with the requirements of Section 6.0, and the applicable requirements of Section 8.0 are met.
- 4.1.3 Except for reductions listed below, emission reductions for NO_x, VOC, and CO (in non-attainment areas for CO) occurring prior to January 1, 1988 shall not be eligible for use as offsets, netting, or in any way mitigating an increase in emissions until the District, through rulemaking, has adopted an appropriate discounting or other mitigation measures to show progress towards air quality attainment. The restrictions shall not apply to the following reductions:
- 4.1.3.1 reductions for which the District issued an Emissions Reduction Certificate according to a banking rule prior to December 17, 1992.
 - 4.1.3.2 Reductions for which the District has accepted a banking application in accordance with the provisions of this rule prior to December 17, 1992.
 - 4.1.3.3 Reductions authorized by the District for use as offsets, or as mitigation for new or modified emissions units prior to December 17, 1992.
- 4.1.4 Under no circumstances shall any emissions reductions occurring before September 19, 1991, other than as described in sections 4.1.1 or 4.1.2 be eligible for emissions reduction credit banking certificates.
- 4.2 Affected Pollutant Emissions Reductions Occurring After September 19, 1991
For emission reductions occurring after September 19, 1991, the following criteria must be met in order to deem such reductions eligible for banking:

- 4.2.1 The emission reductions are real, surplus, permanent, quantifiable, and enforceable;
 - 4.2.2 AERs are calculated in accordance with the calculation procedures of Rule 2201 (New and Modified Stationary Source Review Rule) and comply with the definition of AERs of Rule 2201 (New and Modified Stationary Source Review Rule). Adjustment to emissions reductions for the Community Bank shall be made at the time the reductions are quantified pursuant to Rule 2201 (New and Modified Stationary Source Review Rule).
 - 4.2.3 An application for ERC has been filed no later than 180 days after the emission reductions occurred.
 - 4.2.4 For non-permitted emission units, emissions must have been included in the 1987 emissions inventory and the source creating ERCs shall apply for and acquire a Permit to Operate subject to enforceable permit conditions which ensures that the emission reductions will be provided in accordance with the provisions of this rule, and shall continue for the reasonably expected life of the proposed stationary source. If the district, pursuant to state laws, is prohibited to permit the emission unit, the stationary source creating ERCs shall execute a legal binding contract with the District which ensures that the emission reductions will be provided in accordance with the provisions of this rule, and shall continue for the reasonably expected life of the proposed source.
- 4.3 A stationary source which provided offsets for increase in permitted emissions pursuant to Rule 2201 (New and Modified Stationary Source Review Rule) and has been issued an Authority to Construct since January 1, 1988 may apply to bank such offsets pursuant to section 4.2 if the Authority to Construct is voluntarily surrendered, expires or is canceled or if the Permit to Operate resulting from such Authority to Construct is voluntarily modified, surrendered or is revoked.
- 4.4 The following affected pollutant emission reductions are not eligible as ERCs for banking:
- 4.4.1 Emission reductions from the shutdown or curtailment of gasoline dispensing operations, or dry cleaning operations.
 - 4.4.2 Emission reductions occurring at a fossil fuel-fired power plant as the result of the operation of a cogeneration facility.
 - 4.4.3 Emission reductions occurring from the shutdown or curtailment of a stationary source for which the District originally provided the required offsets.

4.4.4 Emission reductions occurring from the shutdown or curtailment of a stationary source for which the offsets originally provided are no longer enforceable by the District such as reductions in open burning of agricultural waste used to offset emissions from a resource recovery project.

4.5 Greenhouse Gas Emission Reductions

The following criteria must be met in order to deem such reductions eligible for banking:

4.5.1 The greenhouse gas emission reduction must have actually occurred on or after January 1, 2005, except as allowed in specific CARB approved GHG emission reduction project protocols.

4.5.2 The greenhouse gas emission reductions must have occurred within the San Joaquin Valley Unified Air Pollution Control District.

4.5.3 The greenhouse gas emission reductions are real, surplus, permanent, quantifiable, and enforceable, except as provided in Section 4.5.5.

4.5.3.1 Greenhouse gas emission reductions that occur at a facility subject to the CARB greenhouse gas cap and trade regulation on or after January 1, 2012 are not surplus.

4.5.3.2 Greenhouse gas emission reductions that occur as a result of law, rule, or regulation that required the greenhouse gas emission reduction are not surplus.

4.5.3.3 Greenhouse gas emission reductions that occur due to an action taken by a facility that is not the result of any greenhouse gas emission reduction requirement are surplus and additional of all greenhouse gas reduction requirements. Such emission reduction credit certificates shall be identified as specified in Section 6.15.2.

4.5.3.4 Greenhouse gas emission reductions that occur due to an action taken by a facility that is not the result of any requirement, including any requirement that is not intended to control greenhouse gases, are surplus and additional of all requirements. Such emission reduction credit certificates shall be identified as specified in Section 6.15.3.

4.5.4 Greenhouse gas emission reductions are calculated as the difference between the historic annual average greenhouse gas emissions (as CO₂E) calculated

using the consecutive 24 month period immediately prior to the date the emission reduction occurred, or another consecutive 24 month period in the 60 months prior to the date the emission reduction occurred if determined by the APCO as being more representative of normal operations, and the potential greenhouse gas emissions (as CO₂E) after the project is complete, except as provided in section 4.5.5.

4.5.5 Greenhouse gas emission reductions proposed to be quantified using CARB approved emission reduction project protocols shall be calculated in accordance with the applicable protocol.

4.5.6 Emission reduction credits shall be made enforceable through permit conditions. If the district, pursuant to state laws, is prohibited from permitting the emission unit, the source creating the greenhouse gas emission reduction shall execute a legal binding contract with the District which ensures that the emission reductions will be generated in accordance with the provisions of this rule, and shall continue for the reasonably expected life of the proposed equipment, operation, or source.

5.0 ERC Certificate Application Procedures

5.1 Any entity which owns or operates a source at which an eligible emission reduction has occurred or will occur may apply for an ERC Certificate in accordance with the requirements of this rule.

5.2 The entity requesting the ERC Certificate shall make an application on forms supplied by the District.

5.3 An application shall be filed for each emission reduction. The application may be for reductions in one or more affected pollutant or greenhouse gas. The application shall contain sufficient information to allow for adequate evaluation of actual emission reductions from each emission unit.

5.4 In accordance with the provisions of Rule 1030 (Confidential Information) and Section 114(c) of the Federal Clean Air Act, applicants may claim confidentiality of information contained in the application.

5.5 Except for reductions covered under Sections 4.1.2 and 4.5.1, ERC Certificate applications for reductions shall be submitted within 180 days after the emission reduction occurs.

5.5.1 For reductions covered under Section 4.1.2, ERC Certificate applications shall be filed with the District by June 17, 1993.

- 5.5.2 For reductions covered under Section 4.5.1 that occurred prior to January 19, 2012 ERC Certificate applications shall be filed with the District by July 19, 2012. For reductions covered under Section 4.5.1 that occur on or after January 19, 2012 ERC Certificate applications shall be submitted within 180 days after the emission reduction occurs.
- 5.6 An entity that was previously issued an ERC for greenhouse gas emission reductions that was not quantified using a CARB approved emission reduction project protocol may subsequently submit an application to have the ERC re-issued pursuant a CARB approved emission reduction project protocol at such time that an applicable emission reduction project protocol is approved by CARB. Such an application must meet the requirements, including timeliness, of the CARB approved emission reduction project protocol.
- 5.7 Where appropriate, to confirm emission reductions claimed in conjunction with an application for an ERC Certificate, the District may require source tests, continuous monitoring, production records, fuel use records, or any other appropriate means of measurement.
- 5.8 The form of the ERC Certificate shall be established by the APCO.
- 5.9 ERC applicants for emission reductions derived from a single reduction at a single emitting unit may apply for and receive single or multiple ERC Certificates. Multiple ERC Certificates shall be issued for each owner's proportional share.
- 6.0 Registration of ERC Certificates
- 6.1 The APCO may only grant an ERC Certificate after the emission reductions have actually occurred upon satisfaction of the following applicable provision(s):
- 6.1.1 A revised Permit to Operate has been issued if the emission reductions were created as a result of greater operating efficiencies or from the application of more efficient control technology. This revised permit must include specific quantifiable emission limits reflecting the reduced emissions;
- 6.1.2 If the emission reductions were created as a result of the shutdown of a permitted emissions unit, the relevant Permit(s) to Operate has been surrendered and voided.
- 6.1.3 If the emission reductions from a permitted emissions unit were created by means of reducing production or production rates, the relevant Permit(s) to Operate have been modified to reflect the emission reductions.

- 6.1.4 If the emission reductions were created as a result of the application of greater operating efficiencies or from the application of a more efficient control technology to a then non-permitted source: Permit(s) to Operate has been obtained; or a written contract between the owner or operator of such source and the ERC applicant has been executed, which by its terms, shall be enforceable by the APCO. The referenced permit or contract shall include specific quantifiable emission limits reflecting reduced emissions. If the emissions reductions were created as a result of the modification of a non-permitted emissions unit, the stationary source shall be prohibited from operating a new emissions unit in the same source category without first obtaining Authority to Construct and Permit to Operate.
- 6.2 When all the requirements of this rule have been satisfied and the emission reduction has actually occurred, the APCO shall issue the ERC Certificate. Upon the APCO's determination to grant an ERC Certificate, title to such ERC shall be registered in the Banking Register. Such titles may be computerized and made available for public inspection.
- 6.3 All information concerning titles, interests, and other matters such as liens, encumbrances, and changes of record shall be identified in the District's ERC Banking Register, as well as pertinent date(s) concerning such information, until such time as the ERC Certificate is used, canceled, or nullified by operation of law.
- 6.4 Each ERC Certificate shall be numbered, bear the date of issuance, be signed by the District official charged with the responsibility of keeping the District's ERC Bank, and bear the seal of the District. One (1) copy of the ERC Certificate shall be retained by the District, and the original shall be delivered to the owner or party acting for the owner. The record of issued ERC Certificates shall be retained by the District, and this record may be in computer storage. Delivery by the District of an ERC Certificate to an owner shall be accomplished in person or by registered mail. The person accepting the ERC Certificate must sign a receipt therefor and provide such proof of identity as the APCO shall require.
- 6.5 At the option of joint owners of ERCs, such persons may receive one (1) ERC Certificate for the entirety or separate ERC Certificates reflecting each proportional share, provided that such ERCs are derived from a single reduction at a single emitting unit. The District's ERC Bank shall reflect the consolidation or separation of the ERCs, and the previous Certificate(s) shall be canceled upon the issuance of the new Certificate(s).
- 6.6 After receiving written notice from an owner that they have released their right of control of valid existing banked emission reductions, or if an owner fails to file an application for banking emission reductions in accordance with procedures outlined

in this rule, the APCO may place such emission reductions in the District's Community Bank without consent from the owner.

- 6.7 Adjustments to the quantity of banked ERCs shall be allowed without the owner's consent so long as the action to reduce the quantity of ERCs is consistent with applicable District, state, and federal rules and/or planning requirements, including Reasonable Further Progress. Actions to reduce the quantity of banked ERCs which are inconsistent with applicable District, state, or federal rules shall require the consent of the owner. Such adjustments shall only be made after public notice and hearing.
- 6.8 Prior to adjusting the estimated quantity or the conditions of deposit, use, or withdrawal of banked ERCs for any reason, the APCO shall notify the ERC Certificate owner in writing.
- 6.9 Except as provided in Section 6.7 of this rule, deposits are permanent until used by the depositor or any party to whom the ERC Certificate has been transferred. After issuance of the ERC Banking Certificate, subsequent changes in regulations to require the type of reduction which is banked shall not reduce or eliminate the deposit.
- 6.10 If the APCO determines that additional mandatory emission reductions will be necessary to achieve ambient air quality standards, the APCO may declare a full or partial moratorium on banked ERCs of the applicable contaminant. Prior to imposing any kind of moratorium, the APCO must provide public notice that the District has determined that sufficient emission reductions cannot be achieved through the imposition of controls on existing permitted or non-permitted emissions units. Should such a determination be made, a moratorium on deposits shall first be imposed. Should the APCO determine that a moratorium on withdrawals of banked ERCs is also necessary to attain applicable air quality standards, a public notice shall first be provided to this effect. Only after a public hearing resulting in the determination that a moratorium is needed and written notice to ERC Certificate owners of the applicable contaminant may any moratorium be imposed. Any such moratorium shall be lifted upon the determination by the APCO and public notice that Reasonable Further Progress can be demonstrated by the District.
- 6.11 Title to an ERC shall be deemed registered at the time the required information concerning the ERC is entered into the Register.
- 6.12 All dealings with ERCs or any interest therein, and all liens, encumbrances, and charges upon the same subsequent to the first registration thereof, shall be deemed to be subject to the terms of this regulation, and to such amendments and alterations as may hereafter be made.

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- 6.13 The APCO may reissue lost or destroyed ERC Certificates after the owner vouches that the original has been lost or destroyed.
 - 6.14 Greenhouse gas emission reductions shall be banked as metric tons of CO₂E per year, rounded to the nearest metric ton.
 - 6.15 Greenhouse gas emission reduction certificates shall include a notation that indicates how the emission reductions were quantified, as follows:
 - 6.15.1 Emission reductions quantified using a CARB approved protocol pursuant to Section 4.5.5 shall include a notation of the specific name and approval date of the protocol
 - 6.15.2 Emission reductions that are surplus of all greenhouse gas emission reduction requirements pursuant to Section 4.5.3.3 shall include the following notation “This emission reduction is surplus and additional to all applicable greenhouse emission reduction regulatory requirements.”
 - 6.15.3 Emission reductions that are surplus of any regulatory requirement pursuant to Section 4.5.3.4 shall include the following notation “This emission reduction is surplus and additional to all applicable regulatory requirements.”
- 7.0 Withdrawal, Transfer, and Use of ERCs
- 7.1 ERCs may be used at the time of, or anytime after deposit into the District's ERC Bank by the owner of the ERC Certificate to provide contemporaneous offsets for increase in onsite emissions from new or modified emission units.
 - 7.2 An ERC Certificate may be transferred or used in whole or in part and in accordance with provisions of this rule. Transfer in whole or in part of a registered ERC Certificate shall be done in accordance with application procedures of this rule. Upon payment of an application fee, a new ERC Certificate certifying the title or interest in the ERC, shall be issued and the last previous original(s) shall be canceled. Such cancellation shall be recorded in the Banking Register.
 - 7.3 Nothing in this rule prevents the lease or temporary transfer, in whole or in part of, ERCs represented by ERC Certificates. However, all transfers shall be considered permanent until modified by application which demonstrates to the satisfaction of the APCO that the emissions for which the ERCs were required have either ceased or other emission reductions have been secured.
 - 7.4 All emissions reductions to be used as offsets which are not contemporaneous with emissions increases shall be transferred by application pursuant to this rule.

Reductions to be used as offsets which are contemporaneous and meet the requirements of Rule 2201 (New and Modified Stationary Source Review Rule) and the requirements of this rule may take place without application for ERC.

- 7.5 This rule does not define or mandate any uses of banked greenhouse gas emission reductions.

8.0 Administrative Requirements

- 8.1 The APCO shall determine whether an ERC Banking Certificate application is complete not later than 30 calendar days following receipt of the application, or after a longer time period agreed upon in writing by both the applicant and the APCO.

- 8.2 If the APCO determines that the application is not complete, the applicant shall be notified in writing of the decision, specifying the additional information that is required. The applicant shall have 90 days to submit the requested information. Upon receipt of all requested information, the District shall have 30 days to determine completeness. If no data is submitted or the application is still incomplete, the APCO may cancel the ERC Banking Certificate application with written notification to applicant. Upon determination that the application is complete, the APCO shall notify the applicant in writing. Thereafter, only information to clarify, correct, or otherwise supplement the information submitted in the application may be requested.

- 8.3 Withdrawal of a banking application by an applicant shall result in cancellation of the application; any resubmittal shall be evaluated using a baseline calculated as of the date of resubmittal.

- 8.4 Upon acceptance of a complete application, the APCO shall have 60 days to perform an initial assessment of the application. Upon completion of this initial assessment the District shall provide written notice of such to the applicant and shall also provide written notice of acceptance to ARB and EPA and electronically publish notice on the District's website ~~in a newspaper of local and general circulation in the District.~~ The notice shall specify the applicant and the quantity of emission reductions requested and a statement of the initial assessment.

Publication of the notice shall commence a 30 day public comment period during which the APCO shall accept written comments on the merits of the ERC Certificate application. Upon conclusion of this 30 day period, the APCO shall have 30 days to render a decision as to whether the APCO approves, conditionally approves, or denies the application. This decision shall be promptly supplied in writing to the applicant and published electronically on the District's website ~~in a newspaper of local circulation.~~

The noticing requirements period shall be waived by the APCO if the emission reductions have already been subject to ARB, EPA and public comment. Noticing requirements shall not be waived for emissions reductions which were not formally banked and which occurred prior to January 1, 1988.

8.5 The applicant or any other party may appeal the APCO's decision following provisions specified in the applicable rules in Regulation V (Procedure Before the Hearing Board).

8.6 The District shall maintain a Banking Register, which shall consist of a record of all deposit applications, deposits, withdrawals, and transactions with regard to the District's ERC Bank.

APPENDIX D

Draft Rule 2520

April 15, 2019

SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT

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RULE 2520 FEDERALLY MANDATED OPERATING PERMITS (Adopted June 15, 1995; Amended June 21, 2001; Amended [date of adoption])

1.0 Purpose

The purpose of this rule is to provide for the following:

- 1.1 An administrative mechanism for issuing operating permits for new and modified sources of air contaminants in accordance with requirements of 40 CFR Part 70.
- 1.2 An administrative mechanism for issuing renewed operating permits for sources of air contaminants in accordance with requirements of 40 CFR Part 70.
- 1.3 An administrative mechanism for revising, reopening, revoking, and terminating operating permits for sources of air contaminants in accordance with requirements of 40 CFR Part 70.
- 1.4 An administrative mechanism for incorporating requirements authorized by preconstruction permits issued under District Rule 2201 (New and Modified Stationary Source Review) in a Part 70 permit as administrative amendments, provided that such permits meet procedural requirements substantially equivalent to the requirements of 40 CFR 70.7 and 70.8, and compliance requirements substantially equivalent to those contained in 40 CFR 70.6.
- 1.5 The applicable federal and local requirements to appear on a single permit.

2.0 Applicability

The provisions of this rule shall apply to the following sources:

- 2.1 Major air toxics sources,
- 2.2 Any stationary source that emits or has the potential to emit 100 tons per year of any air contaminant,
- 2.3 Any major source,
- 2.4 Any emissions unit, including an area source, subject to a standard or other requirement promulgated pursuant to section 111 (NSPS) or 112 (HAPs) of the CAA published after July 21, 1992 except as provided for in section 4.2 of this rule.
 - 2.4.1 For stationary sources, which are subject to Rule 2520 solely as a result of Section 2.4, only the emissions units within the a stationary source that are

subject to the section 111 or 112 standard or requirement shall be subject to the Part 70 permitting requirements;

- 2.5 A source with an acid rain unit for which application for an acid rain permit is required pursuant to Title IV of the CAA;
 - 2.6 Any source required to have a preconstruction review permit pursuant to the requirements of the prevention of significant deterioration (PSD) program under Title I of the Federal Clean Air Act;
 - 2.7 A solid waste incinerator subject to a performance standard promulgated pursuant to section 111 or 129 of the CAA; and
 - 2.8 Any source in a source category designated, pursuant to 40 CFR Part 70.3, by rule of the EPA.
 - 2.9 When calculating the potential to emit for the purpose of determining if the requirements of this rule are applicable, fugitive emissions must only be included for determining non-hazardous air pollutant emissions if the source is included in the list of source categories identified in the major source definition in 40 CFR part 70.2, or when determining if a stationary source is a major air toxics source.
- 3.0 Definitions
- 3.1 Acid Rain Unit: an acid rain unit is any fossil fuel-fired combustion device that is an affected unit under 40 CFR Part 72.6 and therefore subject to the requirements of Title IV (Acid Deposition Control) of the CAA.
 - 3.2 Administrative Permit Amendments: Administrative amendment is a permit amendment that:
 - 3.2.1 Corrects typographical errors;
 - 3.2.2 Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;
 - 3.2.3 Requires more frequent monitoring or reporting by the permittee; or
 - 3.2.4 Allows for a change in ownership or operational control of a source where the District determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the District; and

- 3.2.5 Incorporates other applicable requirements which the EPA has determined as part of an approved part 70 program to be similar to those in Sections 3.2.1 through 3.2.4.
- 3.2.6 Incorporates requirements from an Authority to Construct for a new or modified emissions unit pursuant to the provisions of District Rule 2201 (New and Modified Stationary Source Review) provided that a certificate of conformity with procedural requirements of 40 CFR part 70 has been issued in conjunction with the Authority to Construct.
- 3.3 Affected Source: a source that contains one or more affected units.
- 3.4 Affected Unit: an emissions unit subject to a requirement or limitation of Title IV of the Federal Clean Air Act.
- 3.5 Affected States: states that are within 50 miles of a permitted source, or states contiguous to California whose air quality may be affected by a Part 70 permitting action, renewal, or modification.
- 3.6 Applicable Requirements: any of the federally enforceable requirements listed in the definition of applicable requirements in 40 CFR part 70.2.
- 3.7 Certificate of Conformity: a written document issued by the District certifying that an Authority to Construct for the new or modified source issued under District Rule 2201 (New and Modified Stationary Source Review) has been issued in accordance with procedural requirements substantially equivalent to the requirements of 40 CFR 70.7 and 70.8, and compliance requirements substantially equivalent to those contained in 40 CFR 70.6(c).
- 3.8 Clean Air Act (CAA): refers to the Federal Clean Air Act as amended in 1990 (42 U.S.C. Section 7401 et seq.).
- 3.9 Designated representative: a responsible person or official authorized by the owner or operator of a unit at an affected source to represent the owner or operator in manners pertaining to emission allowances, permitting, and compliance plans.
- 3.10 District's Effective Date of Major Source Permitting Program: date of approval by EPA of the District's Title V operating permits program.
- 3.11 Emissions Unit: any part or activity of a stationary source which emits, may emit, or results in the emissions of any regulated pollutant or hazardous air pollutant.
- 3.12 Federally Enforceable: enforceable by the EPA or the public.

- 3.13 Final Permit: a permit that has completed all review requirements of Section 11 of this rule.
- 3.14 Fugitive Emissions: emissions that could not reasonably pass through a vent, chimney, stack, or other functionally equivalent opening.
- 3.15 General Permit: a Part 70 permit issued to sources qualifying for a model general permit. Permits issued under general permit provisions shall be subject to the same requirements of any Part 70 permit relating to renewal, revision, and permit term and content.
- 3.16 Hazardous Air Pollutant: pollutants listed pursuant to section 112(b) of the Federal Clean Air Act.
- 3.17 Initial Permits: the first permits issued to sources in accordance with the requirements of this rule for emissions units that were in existence and not exempted from the requirements of this rule on the District's effective date of major source permitting.
- 3.18 Major Air Toxics Source: a stationary source that emits or has the potential to emit, including fugitive emissions, 10 tons per year or more of a hazardous air pollutant, or 25 tons per year or more, including fugitive emissions, of a combination of hazardous air pollutants or such lesser quantity as the EPA may establish by rule. Emissions from any oil or gas production well, with its associated equipment, and emissions from any pipeline compressor station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major air toxic sources.
- 3.19 Major Source: same as that defined in District Rule 2201 (New and Modified Stationary Source); except that the reference to a threshold in tons per year of nitrogen oxides shall not apply with respect to any source for which the EPA Administrator has made a finding, under section 182(f)(1) or (2) of the CAA, that requirements under section 182(f) of the CAA do not apply.
- 3.20 Minor Permit Modifications: are permit modifications that:
 - 3.20.1 Do not violate requirements of any applicable federally enforceable local or federal regulations;
 - 3.20.2 Do not relax monitoring, reporting, or recordkeeping requirements in the permit and are not significant changes in existing monitoring permit terms or conditions;

- 3.20.3 Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
- 3.20.4 Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:
 - 3.20.4.1 A federally enforceable emission cap assumed to avoid classification as a modification under any provisions of title I of the Federal Clean Air Act, prevention of significant deterioration (PSD) provisions of the CAA, or EPA PSD regulations; and
 - 3.20.4.2 An alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Federal Clean Air Act; and
- 3.20.5 Are not Title I modifications as defined in this rule, or modifications as defined in section 111 or 112 of the Federal Clean Air Act, or major modifications under the prevention of significant deterioration (PSD) provisions of Title I of the CAA or under EPA PSD regulations; and
- 3.20.6 Do not seek to consolidate overlapping applicable requirements.
- 3.21 **Model General Permit:** a model permit issued by the District after notice and opportunity for public participation provided under sections 11.1.4 and 11.1.5 of this rule covering numerous similar sources. Any general permit shall meet the requirements of 40 CFR 70.6(d). Any model general permit shall comply with all requirements applicable to other Part 70 permits and shall identify criteria by which sources may qualify for the general permit. A model general permit shall specify the necessary application content for sources applying for the general permit. General permits shall not be authorized for affected sources under the acid rain program unless otherwise provided in regulations promulgated by EPA under Title IV of the CAA.
- 3.22 **Model General Permit Template:** a list of conditions issued by the District after notice and opportunity for public participation provided under section 11.1.4 and 11.1.5 of this rule covering numerous similar sources that address general non-source-specific requirements applicable to a source category. A model general permit template shall specify the necessary application content, including the criteria

that must be met by the applicants in order to qualify for the template, for sources applying to include the general permit template in their Part 70 permit.

- 3.23 New Source: for the purpose of determining the applicable administrative requirements of Rule 2520, a new source is a source that commences operation after the District's effective date of the District's Part 70 permitting program.
- 3.24 Part 70 Permit: an operating permit that is issued pursuant to the requirements of this rule.
- 3.25 Permit Amendment: revision to a federally enforceable term or condition of a permit issued pursuant to the requirements of this rule.
- 3.26 Potential to Emit: the maximum capacity of an emissions unit to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including pollution control equipment and restrictions in hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is incorporated into the applicable permit as a federally enforceable permit condition, or is contained in an EPA approved State Implementation Plan (SIP). In addition, until 1/25/97 any physical or operational limitation on the capacity of the source to emit a pollutant, including pollution control equipment and restrictions in hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if such limitations are contained in a District permit, or a District SIP submittal on which EPA has not taken a final action.
- 3.27 Regulated Air Pollutant: A "regulated air pollutant" is any pollutant: 1) which is emitted into or otherwise enters the ambient air, and 2) for which the EPA has adopted an emission limit, standard, or other requirement. Regulated air pollutants include:
 - 3.27.1 Oxides of nitrogen and volatile organic compounds;
 - 3.27.2 Any pollutant for which a national ambient air quality standard has been promulgated pursuant to section 109 of the CAA;
 - 3.27.3 Any pollutant subject to a new source performance standard promulgated pursuant to section 111 of the CAA;
 - 3.27.4 Any ozone-depleting substance specified as a Class I (chlorofluorocarbons) or Class II (hydrofluorocarbons) substance pursuant to Title VI of the CAA; and

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- 3.27.5 Any pollutant subject to a standard or requirement promulgated pursuant to section 112 of the CAA, including:
- 3.27.5.1 Any pollutant listed pursuant to section 112(r) of the CAA (Prevention of Accidental Releases) shall be considered a "regulated air pollutant" upon promulgation of the list.
 - 3.27.5.2 Any hazardous air pollutant subject to a standard or other requirement promulgated by the U.S. EPA pursuant to section 112(d) or adopted by the District pursuant to 112(j) of the CAA shall be considered a "regulated air pollutant" for all sources or categories of sources: 1) upon promulgation of the standard or requirement, or 2) 18 months after the standard or requirement was scheduled to be promulgated pursuant to section 112(e)(3) of the CAA, whichever is earlier.
 - 3.27.5.3 Any hazardous air pollutant subject to a District case-by-case emissions limitation determination for a new or modified source, prior to the EPA promulgation or scheduled promulgation of an emissions limitation shall be considered a "regulated air pollutant" when the determination is made pursuant to section 112(g)(2) of the CAA. In case-by-case emissions limitation determinations made pursuant to section 112(g) of the CAA, the hazardous air pollutant shall be considered a "regulated air pollutant" only for the individual source for which the emissions limitation determination was made.
- 3.28 Responsible Official: is one of the following:
- 3.28.1 For a corporation, the responsible official shall be a president, secretary, treasurer, or vice president in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation. The responsible official may be a duly authorized representative rather than any of the above if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit; and
 - 3.28.1.1 the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million in 1980 dollars; or
 - 3.28.1.2 the District has approved a petition from the original responsible person to delegate authority.

- 3.28.2 For a public agency the responsible official shall be either the principal executive officer or the ranking elected official. The principal executive officer, in the case of a federal agency, may be the executive officer having responsibility for a geographical unit.
 - 3.28.3 For a partnership or sole proprietorship, the responsible official is a general partner or the proprietor, respectively.
 - 3.29 Significant Permit Modification: Permit amendments that do not qualify as minor permit modifications or as administrative amendments.
 - 3.30 Stationary Source: same as that defined in District Rule 2201 (New and Modified Stationary Source Review)
 - 3.31 Title I Modification: same as that defined in District Rule 2201 (New and Modified Stationary Source Review).
- 4.0 Sources Exempt from Rule 2520

The following sources are exempt from obligation to obtain a Part 70 permit subject to the provisions of this rule or 40 CFR part 70:

- 4.1 Any source listed in section 2.0 of this rule that is not: 1) a major source; 2) a major air toxics source; 3) a stationary source with the potential to emit of 100 tons per year of any air contaminant, 4) affected source; 5) a source that EPA determines is required to obtain a Part 70 permit upon promulgation of a standard issued pursuant to section 111 or 112 of the CAA; or 6) a solid waste incineration unit required to obtain a Part 70 permit pursuant to section 129(e) of the CAA;
- 4.2 Non-major sources subject to a standard or other requirement under either section 111 (NSPS) or section 112 (HAPs) of the CAA after July 21, 1992 publication, if the EPA, at the time the new standard is promulgated, determines that such sources are deferred or exempt from the requirements to obtain a Part 70 permit under the provisions of this rule;
- 4.3 All sources and source categories that would be required to obtain a Part 70 permit solely because they are subject to 40 CFR part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters;
- 4.4 All sources and source categories that would be required to obtain a Part 70 permit solely because they are subject to 40 CFR part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, section 61.145, Standard for Demolition and Renovation; and

4.5 Permitting actions that do not involve a change to the federally enforceable terms or conditions of a Part 70 permit. The requirements of other applicable rules, such as Rule 2201 (New and Modified Stationary Source Review), apply to these permitting actions.

4.6 All sources exempted from the requirements of 40 CFR part 70 by District Rule 2530 (Federally Enforceable Potential to Emit) as approved by the EPA into the state implementation plan.

5.0 Requirements for Filing Timely Applications

The owner or operator of any source subject to the requirements of this rule shall file timely and complete applications in accordance with the following requirements:

5.1 Initial Permits

5.1.1 For sources subject to the requirements of this rule, and in existence prior to effective date of the District's Part 70 permitting program, no later than 12 months after the effective date of the District's Part 70 permitting program. To allow for an orderly transition, the District may establish an earlier application deadline for various sources or source categories. In no event shall applications be required prior to the effective date of the District's Part 70 permitting program.

5.1.2 For a source that becomes subject to the requirements of this rule, including a sources previously exempt from the requirements of Rule 2520 pursuant to section 5.2 of Rule 2530, no later than 12 months after the source becomes subject to the requirements of this rule. To allow for an orderly transition, the District may establish an earlier application deadline for various sources or source categories. The District may also receive applications for the purpose of determining applicability of the requirement to obtain a Part 70 permit.

5.2 Permit Renewals

The holder of a Permit to Operate issued subject to the provisions of this rule shall submit to the District an application for renewal at least six months, but not greater than 18 months, prior to the permit expiration date. Permits to operate for all emissions units at a stationary source shall undergo simultaneous renewal.

5.3 New and Modified Sources Subject to the Requirements of this Rule

5.3.1 New Sources

New Sources, or sources subject to section 5.2 of Rule 2530 shall submit an application for Permit to Operate that complies with the requirements of this rule within 12 months of commencing operations.

5.3.2 Minor or Significant Permit Modifications

Except when allowed by the operational flexibility provisions of section 6.4 of this rule, the permittee shall file an application for a permit modification prior to implementing the requested change. This also applies to sources not previously subject to the requirements of this rule that become subject to the requirements due to a minor or significant modification. Applications for permit amendments to conditions or limitations required under title IV (acid rain) must meet the requirements of 40 CFR part 72 of the Federal Clean Air Act and all applicable District rules.

5.3.3 A source applying for an Authority to Construct for a new or modified emissions unit pursuant to the provisions of District Rule 2201 (New and Modified Stationary Source Review) may apply simultaneously for a Part 70 permit, or a certificate of conformity in accordance with the deadlines specified in subsections 5.3.1 or 5.3.2 of this rule.

5.3.4 Administrative Permit Amendments

Except when allowed by the operational flexibility provisions of section 6.4 of this rule, the permittee shall file an application for administrative permit amendments prior to implementing the requested change.

6.0 Source's Ability to Make Changes

Except as provided by the application shield provisions of section 13.1 of this rule, or by the operational flexibility provisions of section 6.4 of this rule, a source's ability to implement changes shall be limited to the following:

6.1 Administrative Permit Amendments

The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request. Should the District or EPA ultimately reject the source's proposed amendments, the source shall be subject to enforcement proceedings for violation of any existing permit terms and conditions.

6.2 Minor Permit Modifications

The source may implement the changes addressed in the request for a minor permit modification immediately upon submittal of the request, provided that the modification has been authorized by an Authority to Construct if required by District Rule 2010. If the source implements the changes before its part 70 permit is amended, the source need not comply with the existing part 70 permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions, the existing permit terms and conditions it seeks to modify may be enforced against it. Should the District or EPA ultimately reject the source's proposed amendments, the source shall be subject to enforcement proceedings for violation of any existing permit terms and conditions.

6.3 Significant Permit Amendments

The source may implement the changes addressed in the request for a significant permit modification only after a final Part 70 permit amendment is issued by the District.

6.4 Operational Flexibility

The APCO shall allow specified changes in operations at a source without requiring a permit amendment. The source may gain operational flexibility through the use of the following options:

6.4.1 Contravening an Express Permit Term

The permittee may implement certain changes that contravene an express condition without triggering the requirements of this rule for permit modifications, if the following conditions are met:

6.4.1.1 At least 7 days prior to implementation of the proposed change the District and the EPA are notified in a written notice which includes a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change;

6.4.1.2 The District does not object in writing to the proposed change within the 7 day review period;

6.4.1.3 The proposed change is not a Title I modification, or a modification under section 111 or 112 of the CAA, or a major modification under the prevention of significant deterioration (PSD) provisions of Title I of the CAA or EPA PSD regulations;

6.4.1.4 The change will not violate any applicable federal requirement;

6.4.1.5 The change will not contravene federally enforceable conditions for monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements; and

6.4.1.6 The proposed change will not result in emissions in excess of those allowed by the permit, including a work place standard or a federally enforceable emissions cap.

6.4.2 Alternative Operating Scenarios

The Part 70 permit may include alternative operating scenarios provided that:

6.4.2.1 Each alternative operating scenario is identified in the permit application;

6.4.2.2 The terms and conditions are approved in writing by the APCO;

6.4.2.3 The terms and conditions are incorporated into the permit; and

6.4.2.4 The terms and conditions are in compliance with all applicable District, state, and federal requirements.

6.4.2.5 Changes between operating scenarios must be recorded in a contemporaneous log.

6.4.3 Voluntary Emission Caps

The APCO shall issue a Part 70 permit that contains terms and conditions that allow for trading of emissions increases and decreases within the stationary source solely for the purpose of complying with a voluntary emissions cap established in the permit independent of otherwise applicable federal requirements provided that:

6.4.3.1 The requirements of subsections 6.4.2.1, 6.4.2.3, and 6.4.2.4 are met;

- 6.4.3.2 The terms and conditions are approved in writing by the APCO as quantifiable and enforceable;
- 6.4.3.3 The terms and conditions are consistent with the applicable Authority to Construct: and
- 6.4.3.4 At least 7 days prior to implementation of the proposed change the District and the EPA are notified in a written notice which includes when the change will occur, a brief description of the change in emissions that will occur, and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

6.4.4 Other Changes Not Requiring Permit Amendment

A permittee may implement changes, including the addition of new emission units, without triggering the permit modification or amendment requirements of this rule until the time of permit renewal, provided:

- 6.4.4.1 The changes meet all applicable District, state, and federal requirements;
- 6.4.4.2 Contemporaneous with implementation of the change, the District and the EPA are notified in a written notice which includes a brief description of the change, the date the change occurred, any change in emissions, the pollutants emitted, and any new applicable requirement as a result of the change;
- 6.4.4.3 The owner or operator of the source maintains records of the resulting emissions changes;
- 6.4.4.4 The changes are neither addressed nor prohibited in any existing permit term or condition;
- 6.4.4.5 The changes, either by themselves or in combination with all other changes that have occurred without permit amendment under the requirements of this rule since the most recent renewal, do not constitute a Title I modification or a major modification under the prevention of significant deterioration (PSD) provisions of Title I of the CAA; or
- 6.4.4.6 The changes do not constitute a modification as defined in Section 111 (NSPS) or section 112 (Hazardous Air Pollutants) of the Federal Clean Air Act; and

6.4.4.7 The change does not violate any terms or conditions of the existing permit.

6.4.5 Temporary Sources

The District may issue a single permit authorizing emissions from similar operations by the same source owner or operator at more than one location provided:

6.4.5.1 The source is not subject to the provisions of Title IV of the CAA;

6.4.5.2 The permit contains conditions that assure compliance with all applicable requirements at each location; and

6.4.5.3 The permit includes a requirement that the operator notifies the District in writing at least 10 days prior to changing locations.

6.4.5.4 The operation is temporary and involve at least one change of location during the term of the permit.

7.0 Application Content

7.1 Permit Applications

To be deemed complete, a Part 70 permit application must contain the following:

7.1.1 Identifying information, including company name and address (or plant name and address if different from the company name and address), owner's name and agent, and telephone number and names of plant site contact person.

7.1.2 A description of the source's processes and products (by Standard Industrial Classification Code), including any associated with each alternate scenario(s) proposed by the applicant.

7.1.3 The following emission-related information:

7.1.3.1 All emissions of pollutants, including fugitive emissions, for which the source is major, and all emissions of regulated air pollutants, including fugitive emissions, for which the source is subject to an underlying applicable requirement. A permit application shall describe all emissions of regulated air

pollutants emitted from any permitted emissions unit, and list the exempt categories from Rule 2020 which describe any insignificant equipment located at the facility. Applicant may submit quantification of actual emissions, except when potential emissions are needed to demonstrate compliance with an applicable requirement. As a demonstration of actual emissions, a source may submit the most recent emissions statement under Rule 1160, Emissions Statement, or emissions inventory report under Health and Safety Code 44300, to the extent that the statement addresses all regulated pollutants.

- 7.1.3.2 Information related to emissions of air pollutants needed by the District to verify which requirements are applicable to the source, and other information necessary to determine and collect the fees as prescribed in Regulation III of the District rules and regulations.
 - 7.1.3.3 Identification and description of all points of emissions described in section 7.1.3.1 of this rule in sufficient detail to establish the basis for fees and applicable requirements.
 - 7.1.3.4 Emissions rate in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.
 - 7.1.3.5 The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, process weight rate, production rates, and operating schedules.
 - 7.1.3.6 Identification and description of air pollution control equipment and compliance monitoring devices or activities.
 - 7.1.3.7 Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants.
 - 7.1.3.8 Other information required pursuant to any applicable requirement (including information related to stack height limitations developed pursuant to section 123 of the CAA).
 - 7.1.3.9 Calculations on which the information in sections 7.1.3.1 through 7.1.3.8 of this rule is based.
- 7.1.4 The following air pollution control requirements:

- 7.1.4.1 Citation and description of all applicable requirements, and
- 7.1.4.2 Description of or reference to any applicable test method for determining compliance with each applicable requirement.
- 7.1.4.3 In addition to identifying all applicable requirements, an applicant may propose consolidation of overlapping requirements. The applicant shall provide information that demonstrates that the proposed consolidation of requirements, as a whole, is at least as stringent as, and assures compliance with, each individual requirement.
- 7.1.5 Other specific information that may be necessary to implement and enforce other applicable requirements of the CAA or of 40 CFR Part 70 or to determine the applicability of such requirements.
- 7.1.6 An explanation of any proposed exemptions from otherwise applicable requirements.
- 7.1.7 The applicant may submit copies of valid Permits to Operate issued by the District, to the extent that the information required under sections 7.1.1 through 7.1.6 is contained in those permits.
- 7.1.8 Additional information as determined to be necessary by the District to define alternative operating scenarios proposed by the source or to define other permit terms and conditions implementing the operational flexibility provisions of section 6.4 of this rule.
- 7.1.9 A compliance plan that contains all the following:
 - 7.1.9.1 A description of the compliance status of the source with respect to all applicable requirements.
 - 7.1.9.2 For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.
 - 7.1.9.3 For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

- 7.1.9.4 For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.
- 7.1.9.5 A compliance schedule as follows:
- 7.1.9.5.1 For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.
- 7.1.9.5.2 A schedule of compliance for a source that will not be in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will not be in compliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree, Hearing Board order or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.
- 7.1.9.6 For sources required to have a schedule of compliance to remedy a violation, a schedule for submission of certified progress reports no less frequently than every 6 months.
- 7.1.9.7 The compliance plan content requirements specified in this section shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under title IV of the CAA with regard to the schedule and method(s) the source will used to achieve compliance with the acid rain emissions limitations.
- 7.1.10 Requirements for compliance certification, including the following:

- 7.1.10.1 A certification of compliance with all applicable requirements by a responsible official consistent with requirements of section 10.0 of this rule and section 114(a)(3) of the CAA;
 - 7.1.10.2 A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;
 - 7.1.10.3 A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the District; and
 - 7.1.10.4 A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the CAA, which includes 40 CFR part 64 requirements under section 114(a)(3) of the CAA.
- 7.1.11 The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under title IV of the Act.
 - 7.1.12 Corrected information shall be provided to the District when the responsible official becomes aware that incorrect or incomplete information has been submitted.
 - 7.1.13 Demonstration of applicability of the most stringent applicable requirement amongst multiple options can be made by a simple declaration of applicability by the applicant.

7.2 General Permit

The District may, in a model general permit, provide for permit applications that deviate from the application content requirements of section 7.1, provided that such applications meet the requirements of Title V of the CAA, and include all information necessary to determine qualification for, and to assure compliance with, the model general permit.

7.3 General Permit Template

The District may, in a model general permit template, provide for permit applications that deviate from the application content requirements of section 7.1, provided that such applications meet the requirements of Title V of the CAA, and

include all information necessary to determine qualification for, and to assure compliance with, the model general permit template. For applicable requirements not covered by the general permit template, an application shall include information required pursuant to section 7.1 of this rule.

8.0 Duration of a Permit to Operate

- 8.1 Each Permit to Operate, including model general permits and model general permit templates, shall be valid for up to five years, or twelve years for solid waste incineration units combusting municipal waste under section 129(e) of the Federal Clean Air Act unless revoked or suspended by the Air Pollution Control Officer, the EPA, or the District's Hearing Board. Any permit for solid waste incineration units combusting municipal waste under section 129(e) of the Federal Clean Air Act that has a permit term of more than 5 years shall be subject to review, including public notice and comment in accordance with section 11.3 of this rule, at least once every 5 years. The District shall also revoke, suspend, or modify a model general permit or a model general permit template when the sources described in the model permit become subject to additional applicable requirements.
- 8.2 The permit expiration date shall be specified on the Permit to Operate.
- 8.3 Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with the requirements of section 5.2 of this rule. Once a timely and complete renewal application has been submitted, all terms and conditions of the permit shall remain in effect until the renewal permit has been issued or denied.
- 8.4 Failure to pay the annual permit fees and other applicable fees as prescribed in Regulation III of these Rules and Regulations may result in revocation or suspension of the Permit to Operate.

9.0 Permit Content

Each permit issued under this rule, including model general permits and temporary source permits, shall include the following elements:

- 9.1 Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.
 - 9.1.1 The permit shall specify and reference the origin of an authority for each term or condition, and identify any difference in form as compared to the applicable requirements upon which the term or condition is based.

9.1.2 The permit shall state that, where an applicable requirement of the CAA is more stringent than an applicable requirement or regulations promulgated under title IV of the CAA, both provisions shall be incorporated into the permit and shall be enforceable by the administrator.

9.1.3 If an applicable implementation plan allows a determination of an equivalent alternative emission limit to be made in the permit issuance, renewal, or significant modification process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

9.2 The permit expiration date shall be specified on the Permit to Operate.

9.3 Monitoring Requirements

Each permit shall contain the following requirements with respect to monitoring:

9.3.1 All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to sections 504(b) or 114(a)(3) of the CAA. Where standard test methods or procedures are used, a reference to the test method or procedure shall be sufficient;

9.3.2 Where applicable requirements do not require periodic testing or instrumental or non-instrumental monitoring, periodic monitoring to yield reliable data for the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to the requirements of section 9.5 of this rule. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with applicable requirement. Recordkeeping requirements may be sufficient to meet the requirements of this section; and

9.3.3 As necessary, requirements concerning the use, maintenance, and where appropriate, installation of monitoring equipment or methods.

9.4 Recordkeeping Requirements

The permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

9.4.1 Records of required monitoring that include the following:

- 9.4.1.1 The date, place as defined in the permit, and time of sampling or measurement;
 - 9.4.1.2 The date(s) analyses were performed;
 - 9.4.1.3 The company or entity that performed the analysis;
 - 9.4.1.4 The analytical techniques or methods used;
 - 9.4.1.5 The results of such analysis; and
 - 9.4.1.6 The operating conditions as existed at the time of sampling or measurement;
 - 9.4.2 Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, or report. Support information includes copies of all reports required by the permit and, for continuous monitoring instrumentation, all calibration and maintenance records and all original strip-chart recordings.
- 9.5 Reporting Requirements
- The permit shall incorporate all applicable reporting requirements and require the following:
- 9.5.1 Submittal of reports of any required monitoring at least every six months unless a different frequency is required by an applicable requirement. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with requirement of section 10.0 of this rule.
 - 9.5.2 Prompt reporting of deviations from permit requirements, including those attributable to upset conditions, as defined in the permit. The report shall include the probable cause of such deviations, and any corrective actions or preventive measures taken.
- 9.6 A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under title IV of the CAA or the regulation promulgated thereunder.
- 9.6.1 No permit amendment shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit amendment under any other applicable requirement and are not considered a modification

- pursuant to District Rule 2201 (New and Modified Stationary Source Review).
- 9.6.2 No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.
 - 9.6.3 Any such allowance shall be accounted for according to the procedures established in regulations promulgated under title IV of the CAA.
- 9.7 A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portion of the permit.
- 9.8 Provisions stating the following:
- 9.8.1 The permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the CAA, and the District Rules and Regulations, and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.
 - 9.8.2 That it should not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.
 - 9.8.3 The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.
 - 9.8.4 The permit does not convey any property rights of any sort, or any exclusive privilege.
 - 9.8.5 The Permittee shall furnish to the District, within a reasonable time, any information that the District may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the District copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to EPA along with a claim of confidentiality.
- 9.9 Provisions to ensure payment of annual permit fees and other applicable fees as prescribed in Regulation III of these Rules and Regulations.

- 9.10 Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application and approved by the District. Such terms and conditions:
- 9.10.1 Shall require the source, contemporaneous with making a change from one operating scenario to another, to record in a log at the permitted facility the scenario under which it is operating; and
 - 9.10.2 Meet all applicable requirements and the requirements of 40 CFR Part 70.
- 9.11 Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that any applicable requirement provides for such trading without a case-by-case approval of each emissions trade, if the District is given 7 days advance notice. With regards to emissions reduction credits, this provision only applies to the transfer of emissions reduction credits from one entity to another. The banking or use of emission reduction credits requires case-by-case approval in accordance with District Rules 2201 and 2301. Such conditions:
- 9.11.1 Shall include all terms required to determine compliance with all applicable requirements; and
 - 9.11.2 Must meet all applicable requirements and requirements of 40 CFR Part 70.
- 9.12 Federally-enforceable requirements
- 9.12.1 All terms and conditions of a permit that are required pursuant to the CAA, including provisions designed to limit potential to emit, are enforceable by the EPA and Citizens under the CAA.
 - 9.12.2 Notwithstanding section 9.12.1 of this rule, the District shall specifically designate as not being federally enforceable under the Federal Clean Air Act any terms and conditions included in the permit that are not required under the CAA or under any of its applicable requirements. Terms and conditions so designated are not subject to the administrative requirements of this rule, but are still subject to the requirements of other District rules, when applicable.
- 9.13 Compliance Requirements

All permits, including model general permits and temporary source permits, shall contain the following elements with respect to compliance:

- 9.13.1 Compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any report or document submitted under a permit requirement or a request for information by the District or EPA shall contain a certification by a responsible official of truth, accuracy, and completeness.

- 9.13.2 Inspection and entry requirements that require that, upon presentation of credentials and other documents that may be required by law, the permittee shall allow an authorized representative of the District to perform the following:
 - 9.13.2.1 Enter upon the permittee's premises where a permitted source is located or emissions related activity is conducted, or where records must be kept under condition of the permit;
 - 9.13.2.2 Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;
 - 9.13.2.3 Inspect at reasonable times any facilities, equipment, practices, or operations regulated or required under the permit; and
 - 9.13.2.4 Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

- 9.14 Compliance Schedules
 - 9.14.1 For sources in violation of any applicable requirement, a schedule of compliance approved by the District Hearing Board in accordance with the procedure outlined in District Rule 5050 and meeting the requirements of section 7.1.9.5.2 of this rule, or as contained in applicable requirement;
 - 9.14.2 For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements; and
 - 9.14.3 For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement,

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- 9.15 For sources in violation of any applicable requirement, progress reports consistent with the applicable schedule of compliance shall be submitted at least semiannually, or at a more frequent period if required by the District Hearing Board or any other applicable requirement. Such progress report shall contain the following:
- 9.15.1 Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were or will be achieved; and
 - 9.15.2 An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.
- 9.16 Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:
- 9.16.1 The frequency (not less than annually or such more frequent periods as specified in applicable requirements or by the District) of submission of compliance certifications;
 - 9.16.2 A means for monitoring the compliance of the source with its emission limitations, standards, and work practices;
 - 9.16.3 A requirement that the compliance certification include the following:
 - 9.16.3.1 The identification of each term or condition of the permit that is the basis of the certification;
 - 9.16.3.2 The compliance status;
 - 9.16.3.3 Whether compliance was continuous or intermittent;
 - 9.16.3.4 The methods used for determining the compliance status of the source, currently and over the reporting period consistent with section 9.5 of this rule; and
 - 9.16.3.5 Such other facts as the District may require to determine the compliance status of the source.
 - 9.16.4 A requirement that all compliance certifications be submitted to the EPA as well as to the District; and
 - 9.16.5 Any additional requirements under sections 114(a)(3) and 504(b) of the CAA.

9.16.6 Other provisions to assure compliance with all applicable requirements, including applicable requirements with future compliance deadlines.

9.17 Part 70 permits utilizing one or more model general permit templates shall contain the terms and conditions of each template without any revisions.

9.18 Permit shield provisions indicating that compliance with the permit shall be deemed compliance with all other applicable provisions of the CAA, if the applicable requirements of such provisions are included in the permit or if the District, in acting on the permit, determines that other provisions are not applicable. A concise summary of this determination shall be included in the permit.

10.0 Certification Requirements

Any application form, report, or compliance certification submitted pursuant to these regulations shall contain certification of truth, accuracy, and completeness by a responsible official. This certification and any other certification required under this rule shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

11.0 Administrative Requirements

11.1 Model General Permits and Model General Permit Templates

All model general permits and model general permit templates shall be issued subject to the following procedures:

11.1.1 The APCO may issue a model general permit or model general permit template on the APCO's own initiative or in response to a petition.

11.1.2 Any person may submit a written petition to the APCO requesting the issuance of a model general permit or model general permit template for a defined class of sources. The petition shall propose a particular class of facilities, list the expected number and size of sources in the proposed class, and include a description of the processes and operating conditions of the sources within the proposed class.

11.1.3 The APCO shall provide a written response to the petition within 60 days of receipt.

11.1.4 Public Notification

- 11.1.4.1 The APCO shall provide a written notice of the proposed permit and, upon request, copies of the District analysis to interested parties. Interested parties shall include affected states, ARB and persons who have requested in writing to be notified. The notice shall also be given by electronic publication on the District's website~~in a newspaper of general circulation in the District~~ and by any other means if necessary to assure adequate notice to the affected public. The public shall be given 30 days from the date of publication to submit written comments on the District's proposed action.

A copy of the District analysis and the proposed permit shall be made available at District offices for public review and comment during normal business hours and shall also be made available on the District's website. The District analysis shall include a statement that sets forth the legal and factual basis for the proposed permit conditions, including references to the applicable statutory and regulatory provisions.

The notice shall provide the following information:

- 11.1.4.1.1 The identification of the source categories, the activities and emissions change involved in the permitting action;
- 11.1.4.1.2 The name and address of the District, the name and telephone number of District staff to contact for additional information;
- 11.1.4.1.3 The availability, upon request, of a statement that sets forth the legal and factual basis for the proposed permit conditions;
- 11.1.4.1.4 The location where the public may inspect the complete application, the District analysis, the proposed permit, and all relevant supporting materials;
- 11.1.4.1.5 A statement that the public may submit written comments regarding the proposed decision within at least 30 days from the date of publication and a brief description of commenting procedures, and

11.1.4.1.6 A statement that members of the public may request the APCO or his designee to preside over a public hearing for the purpose of receiving oral public comment, if a hearing has not already been scheduled. The APCO shall provide notice of any public hearing scheduled to address the proposed decision at least 30 days prior to such hearing.

11.1.5 EPA Notification

The APCO shall provide written notice to the EPA of the proposed decision along with copies of the proposed permit, the District analysis, the public notice submitted for publication, and all necessary supporting information.

11.1.6 The APCO shall provide written response to persons or agencies that submitted written comments which are postmarked by the close of the public notice and comment period. All written comments and responses to such comments shall be kept on file at the District office and made available upon request.

11.1.7 For permit applications utilizing model general permit templates, public and agency comments on District's proposed actions shall be limited to the applicant's eligibility for the model general permit template, applicable requirements not covered by the model general permit template, and the applicable procedural requirements of this rule.

11.1.8 Changes to the Proposed Decision

Changes to the proposed decision shall be governed by the following procedure:

11.1.8.1 The APCO may modify or change the proposed decision, the proposed permit, or the District analysis on the basis of information set forth in the comments received during the public comment period provided pursuant to subsection 11.1.4 and 11.1.5, or due to further analysis by the APCO. The APCO shall forward any such modified proposed decision, the proposed permit, the District analysis, and all necessary supporting information to the EPA. EPA shall be given 45 days to review the District's revised decision.

11.1.8.2 If the EPA objects pursuant to section 11.7 of this rule, the APCO shall either not issue the model general permit or model

general permit template, or revise and submit a model permit which addresses the deficiencies identified by the EPA within 90 days.

11.1.9 Final Decision

If the EPA does not object pursuant to section 11.7 of this rule, the APCO shall issue the final model general permit or model general permit template.

11.1.10 Notification and Publication of Final Action

Written notification of the final decision shall be sent to the EPA, the ARB and any person and affected state that submitted comments during the public comment period. The APCO shall submit a copy of the model general permit or model general permit template as issued to the EPA and provide a copy to any person or agency requesting a copy. The APCO shall electronically publish such notice on the District's website~~in a newspaper of general circulation.~~

11.1.11 Public Inspection of Final Action Documents

No later than at the time that notice of final action is published, the APCO shall make available for public inspection at ~~the District offices~~ a copy of the notice ~~submitted for publication~~ and all supporting documents. Information submitted which contains trade secrets shall be handled in accordance with Rule 1030 (Confidential Information) of these Rules and Regulations, with section 6254.7 of the Government Code, and with relevant sections of the Administrative Code of the State of California. The contents of a permit issued under the requirements of this rule may not be considered a trade secret.

11.1.12 Public Petitions to the EPA

If the EPA does not object in writing to the District's preliminary decision during the EPA's 45 day review period, any person may petition the EPA within 60 days after the expiration of the EPA's 45 day review period. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided in section 11.1.4 of this rule, unless the petitioner demonstrates to the EPA that it was impracticable to raise such objections within such period, or unless grounds for such objections arose after such period. Petitions shall be based on the compliance of the permit provisions with applicable requirements.

11.2 General Permits

- 11.2.1 For applications meeting the qualifications as specified in a model general permit, the APCO may issue a general permit containing the terms and conditions of the model general permit without repeating the public participation procedures required under section 11.1.4 of this rule.
- 11.2.2 The APCO shall submit a copy of the application to the EPA within 30 days of receipt of a complete application.
- 11.2.3 If the EPA does not object pursuant to section 11.7 of this rule, the APCO shall issue the final general permit.

11.3 Initial Permits, Permit Renewals, New Sources, and Significant Permit Modifications

Except for permitting actions that qualify as general permits, minor modifications, or administrative amendments, all permits shall be issued subject to the following procedures:

11.3.1 Public Notification

11.3.1.1 The APCO shall provide a written notice of the proposed permit and, upon request, copies of the District analysis to interested parties. Interested parties shall include affected states, ARB and persons who have requested in writing to be notified. The notice shall also be given by electronic publication on the District's website~~in a newspaper of general circulation in the District~~ and by any other means if necessary to assure adequate notice to the affected public. The public shall be given 30 days from the date of publication to submit written comments on the District proposed action.

11.3.1.2 The notice shall provide the following information:

11.3.1.2.1 The identification of the source, the name and address of the permit holder, the activities and emissions change involved in the permit action;

11.3.1.2.2 The name and address of the District, the name and telephone number of District staff to contact for additional information;

- 11.3.1.2.3 The availability, upon request, of a statement that sets forth the legal and factual basis for the proposed permit conditions;
 - 11.3.1.2.4 The location where the public may inspect the complete application, the District analysis, the proposed permit, and all relevant supporting materials;
 - 11.3.1.2.5 A statement that the public may submit written comments regarding the proposed decision within at least 30 days from the date of publication and a brief description of commenting procedures; and
 - 11.3.1.2.6 A statement that members of the public may request the APCO or his designee to preside over a public hearing for the purpose of receiving oral public comment, if a hearing has not already been scheduled. The APCO shall provide notice of any public hearing scheduled to address the proposed decision at least 30 days prior to such hearing.
- 11.3.1.3 The APCO shall provide written response to persons or agencies that submitted written comments which are postmarked by the close of the public notice and comment period. All written comments and responses to such comments shall be kept on file at the District office and made available upon request. The APCO shall notify the EPA and any affected State in writing of any refusal by the District to accept all recommendations for the proposed permit that the affected State submitted during the public or affected State review period. The notice shall include the District's reason for not accepting any such recommendation.
- 11.3.1.4 A copy of the complete application, the District analysis and the proposed permit shall be made available at District offices for public review and comment during normal business hours. The District analysis shall include a statement that sets forth the legal and factual basis for the proposed permit conditions, including references to the applicable statutory and regulatory provisions.

11.3.2 EPA Notification

The APCO shall provide written notice to the EPA of the proposed decision along with copies of the proposed permit, the District analysis, the public notice submitted for publication, and all necessary supporting information.

11.3.3 Changes to the Proposed Decision

Changes to the proposed decision shall be governed by the following procedure:

11.3.3.1 The APCO may modify or change the proposed decision, the proposed permit, or the District analysis on the basis of information set forth in the comments received during the public comment period provided pursuant to subsection 11.1.4 and 11.1.5, or due to further analysis by the APCO. The APCO shall forward any such modified proposed decision, the proposed permit, the District analysis, and all necessary supporting information to the EPA. EPA shall be given 45 days to review the District's revised decision.

11.3.3.2 If the EPA objects pursuant to section 11.7 of this rule, the APCO shall either not issue the permit, or revise and submit a permit which addresses the deficiencies identified by the EPA within 90 days.

11.3.4 Final Decision

If the EPA does not object pursuant to section 11.7 of this rule, the APCO shall issue the final permit.

11.3.5 Notification and Publication of Final Action

Written notification of the final decision shall be sent to the EPA, the ARB and any person and affected state that submitted comments during the public comment period. The APCO shall submit a copy of the permit as issued to the EPA and provide a copy to any person or agency requesting a copy. The APCO shall electronically publish such notice on the District's website~~in a newspaper of general circulation~~.

11.3.6 Public Inspection of Final Action Documents

No later than at the time that notice of final action is published, the APCO shall make available for public inspection at ~~the~~ District offices a copy of the notice ~~submitted for publication~~ and all supporting documents. Information submitted which contains trade secrets shall be handled in accordance with Rule 1030 (Confidential Information) of these Rules and Regulations, with section 6254.7 of the Government Code, and with relevant section of the Administrative Code of the State of California. The contents of a permit issued under the requirements of this rule may not be considered a trade secret.

11.3.7 Public Petitions to the EPA

If the EPA does not object in writing to the District's preliminary decision during the EPA's 45 day review period, any person may petition the EPA within 60 days after the expiration of the EPA's 45 day review period. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided in section 11.3.1 of this rule, unless the petitioner demonstrates to the EPA that it was impracticable to raise such objections within such period, or unless grounds for such objections arose after such period.

11.3.8 For permit applications utilizing or model general permit templates, public and agency comments on District's proposed actions shall be limited to the applicant's eligibility for the model general permit template, applicable requirements not covered by the model general permit template, and the applicable procedural requirements of this rule.

11.4 Minor Permit Modifications

11.4.1 Within 5 working days after the receipt of a complete application for a minor permit modification, the District shall provide notice of the requested modification to the EPA pursuant to section 11.3.2 of this rule, and affected states pursuant to section 11.3.1.1 of this rule.

11.4.2 An application requesting the use of minor permit modification procedures shall meet the requirements of section 7.0 of this rule and shall include the following:

11.4.2.1 A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

11.4.2.2 The source's suggested draft permit;

- 11.4.2.3 Certification by a responsible official that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used.
- 11.4.3 The District shall not issue a final permit modification until after a 45-day period review of the proposed permit modification by EPA or until EPA has notified the District that EPA will not object to issuance of the permit modification, whichever is first.
- 11.4.4 Within 90 days after District's receipt of an application for a minor permit modification or 15 days after the end of the EPA's 45-day review, whichever is later, the District shall do one of the following:
 - 11.4.4.1 Issue the permit as proposed;
 - 11.4.4.2 Deny the permit modification application;
 - 11.4.4.3 Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed pursuant to the administrative requirements for significant permit modifications; or
 - 11.4.4.4 Revise the draft permit modification and transmit the new proposed permit modification to EPA and the affected states.
- 11.5 Administrative Permit Amendments
 - 11.5.1 Within 60 days after receiving an application for an administrative change, the District shall do one of the following:
 - 11.5.1.1 Take final action on the request incorporating the requested administrative amendments in the Part 70 permit; or
 - 11.5.1.2 Determine that the requested amendments do not meet the Administrative Permit Amendment criteria and should be reviewed pursuant to the administrative requirements for minor or significant permit modifications.
 - 11.5.2 A copy of the permit revised by administrative amendments shall be sent to the EPA within 10 days of the date that final action is taken.

11.5.3 Administrative amendments to permit conditions related to Title IV requirements shall be consistent with the requirements of 40 CFR part 72 and any District rule that implements the requirements of 40 CFR part 72.

11.6 Application Processing Deadlines

11.6.1 Completeness Determination

For all permitting actions except for applications for administrative amendments, the APCO shall determine whether the application is complete not later than 60 days after receipt of the application. If the APCO determines that the application is incomplete, the applicant shall be notified in writing of the decision specifying the information required. Unless the APCO requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. Upon receipt of any resubmittal of the application, a new 60-day period to determine completeness shall begin. Completeness of an application or resubmitted application shall be evaluated on the basis of the information requirements set forth in the District Rules and Regulations as they exist on the date on which the application or resubmitted application is received. Upon determination that the application is complete, the APCO shall notify the applicant in writing. The APCO may, during the processing of the application, request an applicant to clarify, amplify, correct, or otherwise supplement the information submitted in the application. The APCO shall submit a copy of the complete application to the EPA within five working days of the determination. The APCO need not provide notification for applications from sources that are not major sources when the EPA waives such requirements for a source category by regulation or at the time of approval of the District Part 70 permitting program.

11.6.2 Final Action

The APCO shall act on a complete application and take final action within the following time frames:

11.6.2.1 For an initial permit for a source subject to this rule on the date the rule becomes effective, no later than three years after the date the rule becomes effective.

11.6.2.2 For an initial permit for a source that becomes subject to this rule after the date the rule becomes effective, no later than 18 months after the complete application is received;

- 11.6.2.3 For a permit renewal, no later than 18 months after the complete application is received;
- 11.6.2.4 For a significant permit modification, no later than 18 months after the complete application is received;
- 11.6.2.5 For a minor permit modification, within 90 days after the application is received or 60 days after written notice to the EPA on the proposed decision, whichever is later; or
- 11.6.2.6 For any permit application with early reductions pursuant to section 112(i)(5) of the CAA, within 9 months after the complete application is received;
- 11.6.2.7 For applications for administrative amendments, no later than 60 days from receipt of the application.

11.7 EPA Objection

- 11.7.1 If the EPA objects in writing to the District's proposed decision within 45 days of being notified of the decision, the APCO shall not issue the permit.
- 11.7.2 Any EPA objection shall include a statement of the EPA's reasons for objection and a description of the terms and conditions that the permit must include to respond to the objections. The EPA shall provide the permit applicant a copy of the objection.
- 11.7.3 If the District fails, within 90 days after the date of EPA's objection to revise and submit a proposed permit in response to the objection, the EPA will issue or deny the permit in accordance with requirements of 40 CFR Part 70.
- 11.7.4 If the EPA objects to the permit as a result of a public petition, the APCO shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the District has issued a permit prior to receipt of an EPA objection, the EPA will modify, terminate, or revoke such permit, and shall do so consistent with procedures in section 70.7(g)(4) or (5)(i) and (ii) of the 40 CFR regulations, and the District may thereafter reissue only a revised permit that satisfies EPA objection.

- 11.7.5 For applications for a Part 70 permit, EPA objection shall be limited to the compliance with applicable requirements and the requirements of 40 CFR part 70.
- 11.7.6 For applications utilizing model general permit templates, EPA's objection shall be limited to the applicant's eligibility for the model general permit template, applicable requirements not covered by the model general permit template, and the applicable procedural requirements of this rule.
- 11.7.7 For applications for general permits, EPA's objection shall be limited to the applicant's eligibility for the model general permit and the applicable procedural requirements of this rule.

12.0 Reopening of Permits for Cause

- 12.1 Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:
 - 12.1.1 The source becomes subject to additional applicable requirements and there is at least three years remaining on the permit term.
 - 12.1.2 Additional requirements become applicable to Phase II acid rain facilities under the acid rain program. Upon approval by the District, excess emissions offset plans shall be deemed to be incorporated into the permit.
 - 12.1.3 The District or EPA determine that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.
 - 12.1.4 The District or EPA determine that the permit must be revised or revoked to assure compliance with the applicable requirements.
- 12.2 Administrative requirements to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Reopenings made under section 12.1.1 of this rule shall be completed no later than 18 months after promulgation of the applicable requirement.
- 12.3 Reopenings under section 12.1 of this rule shall not be initiated before a notice of such intent is provided to the permittee by the APCO at least 30 days in advance of the date that the permit is to be reopened, except that the APCO may provide a shorter time period in the case of an emergency.

12.4 Reopenings for cause by EPA

- 12.4.1 If the EPA finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to sections 12.1.1 through 12.1.4 of this rule, the EPA will notify the District and the permittee of such finding in writing.
- 12.4.2 The District, within 90 days after receipt of such notification, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The EPA may extend this 90-day period for an additional 90 days if it finds that a new or revised permit application is necessary or that the District must require the permittee to submit additional information.
- 12.4.3 The EPA will review the proposed determination from the District authority within 90 days of receipt.
- 12.4.4 The District shall have 90 days from receipt of an EPA objection to resolve any objection that EPA makes and to terminate, modify, or revoke and reissue the permit in accordance with the Administrator's objection.
- 12.4.5 If the District fails to submit a proposed determination pursuant to section 12.4.2 of this rule or fails to resolve any objection pursuant to paragraph 12.4.4 of this rule, the EPA will terminate, modify, or revoke and reissue the permit after taking the following actions:
 - 12.4.5.1 Providing at least 30 days' notice to the permittee in writing of the reasons for any such action. This notice may be given during the procedures in sections 12.4.1 through 12.4.4 of this rule.
 - 12.4.5.2 Providing the permittee an opportunity for comment on the EPA's proposed action and an opportunity for a hearing.

13.0 Compliance

13.1 Application Shield

- 13.1.1 Stationary sources for which timely and complete applications for initial permits have been submitted in accordance with the requirements of this rule may continue to operate under an application shield until the application is either approved or denied. Sources operating under the application shield shall not be in violation of the requirement of this rule to obtain a permit to operate. This requirement does not allow the source to operate in violation of any other requirement. The source is still

required to comply with the requirements of District Rule 2010 (Permits Required). For the purpose of this subsection, an application may be deemed complete if all information required under section 7.0 of this rule, except for information required under subsections 7.1.3.3 through 7.1.3.10, is provided.

- 13.1.2 Stationary Sources for which timely and complete renewal applications have been submitted may continue to operate until the renewal is either issued or denied. Under the renewal application shield, the existing permit shall not expire and the conditions of the existing permit shall remain in effect until the renewal permit has been issued or denied.
- 13.1.3 The application shield is not applicable if the District's final action is delayed due to the failure of the responsible official of the source to submit timely information requested by the District. The source must also submit additional information regarding applicable requirements that become applicable after a complete application is submitted, but before a draft permit is released.

13.2 Permit Shield

Compliance with permit conditions in part 70 permits that expressly state that a permit shield exists shall be deemed compliance with the applicable requirements on which the permit conditions are based, except for:

- 13.2.1 Requirements that become applicable after the permit is issued;
- 13.2.2 Requirements that become applicable with minor permit modifications, or any other changes, made without public comment; and
- 13.2.3 Requirements not specifically addressed in writing in response to an application for a permit or a revision to a permit. The permit shield applies only to requirements that are either identified and included by the District in the permit, or are requirements that the District, in acting on the application, determines in writing are not applicable to the source. In cases where the District determines that a requirement is not applicable to the source and provides a permit shield, the permit shall include the determination or a concise summary of the determination.
- 13.2.4 A part 70 permit that does not expressly state that a permit shield exists.

Notwithstanding these permit shield provisions, if a source that is operating under a general permit or a part 70 permit based on a general permit template is later determined not to qualify for the terms and conditions of

the general permit or template, then the source is subject to enforcement action for operation without a part 70 permit. For sources operating under a part 70 permit based on a general permit template, if the source is later determined not to qualify for the template, only the portion of the facility covered by the template shall be subject to enforcement action for operation without a part 70 permit.

13.3 Penalties

Any person who violates any provision of this rule is guilty of a misdemeanor and is liable for a penalty as provided for in the California Health and Safety Code. Every day during any portion of which such violation occurs constitutes a separate offense.

13.4 Emergency Provisions

13.4.1 An emergency shall constitute an affirmative defense to an action brought for noncompliance with a technology based limitation providing:

13.4.1.1 The emergency arises from unforeseeable events beyond the control of the source;

13.4.1.2 The emergency does not result from improperly designed equipment, careless or improper operation, lack of preventive maintenance, or operator error;

13.4.1.3 Signed contemporaneous operating logs or other evidence demonstrate that the facility was being operated properly at the time of the emergency and that the permittee took all reasonable steps to minimize excessive emissions and meet all applicable requirements; and

13.4.1.4 The permittee notified the district within 48 hours of the time that the emergency occurred. Notification must contain a description of the emergency, steps taken to mitigate emissions, and corrective actions taken.

13.4.2 The provisions of District Rule 1100 (Breakdowns) apply in addition to the provisions of this section.