Antelope Valley
Air Quality Management District

Appendix G
to Staff Report

for

Amendment of
Regulation XIII – New Source Review
Regulation XVII – Prevention of Significant Deterioration
And
Rule 1401 – New Source Review for Toxic Air Contaminants.

For Amendment on
June 15, 2021

Antelope Valley
Air Quality
Management District

43301 Division St. Suite 206
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STAFF REPORT
Regulation XIII – New Source Review
Regulation XVII – Prevention of Significant Deterioration
and
Rule 1401 – New Source Review for Toxic Air Contaminants

Appendix G – Additional Comments

1. USEPA Letter, L. Yannayon to B. Banks, *Proposed amendments to AVAQMD Regulation XIII and new adopted Rule 1700*, received via Email 6/7/2021 @ apx 11:16 A.M.

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UNITED STATES
ENVIRONMENTAL
PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA
94105-3901

Bret Banks Executive Officer
Antelope Valley Air Quality Management
43301 Division Street, Suite 206
Lancaster, California 93535

Re: Proposed amendments to AVAQMD Regulation XIII and new adopted Rule 1700

Dear Bret Banks:

This letter conveys comments by the U.S. Environmental Protection Agency (EPA), Region 9, on the Antelope Valley Air Quality Management District's (AVAQMD or "District") proposed amendment of District Rules 1300, 1301, 1302, 1303, 1304, 1305, 1306, and 1309, and the proposed adoption of Rule 1700. These rules implement preconstruction review and permitting requirements for stationary sources of air pollution, as required under the Clean Air Act (CAA) New Source Review (NSR) program. It is our understanding that the District intends to submit the revised rules for inclusion in the AVAQMD portion of the California SIP to satisfy NSR requirements for the 2015 ozone national ambient air quality standard (NAAQS).

The proposed revisions to the District's rules address issues very similar to those raised in a December 19, 2019 letter from the EPA to the Mojave Desert Air Quality Management District (MDAQMD) (attached for reference). That letter was based on the EPA's review of earlier submitted versions of the MDAQMD's NSR rules for compliance with applicable CAA requirements for NSR programs and other CAA general requirements for SIP submittals.[1] In March 2020, we began holding bi-weekly meetings with the California Air Resources Board and MDAQMD staff to discuss and resolve issues identified in the EPA's letter. In March 2021, we began to focus our efforts on the same issues contained in the AVAQMD rules. We appreciate the significant time and effort that you and your staff have contributed to ensure that the revised rules will satisfy the applicable CAA requirements.

Notwithstanding these efforts, the versions of the rules currently proposed for adoption do not address all the approvability issues identified by the EPA. In particular, the

[1] These requirements are described in section 110(a)(2)(C) and parts C and D of title I of the CAA and the EPA's implementing regulations at title 40 of the Code of Federal Regulations (CFR) part 51, subpart I and 40 CFR 51.307.

proposed rules do not address the issues identified in Section 1.2.2.c of our December 19, 2019 letter to MDAQMD, which are also present in AVAQMD Rules 1304 and 1305.[2] That section explains that use of a potential-to-potential test for determining the quantity of offsets required for a major modification, as allowed in MDAQMD Rules 1304 and 1305, does not comply with the requirement at 40 CFR 51.165(a)(3)(ii)(J) that offsets for a major modification be determined using a baseline of actual (not potential) emissions (i.e., through an actual-to-potential test). This requirement is included in the EPA's regulations to carry out the provisions of CAA section 173(c)(1), which requires reductions in *actual* emissions to offset the total tonnage of increased emissions from a new or modified source.

Revised AVAQMD Rule 1304(C)(2)(d) is deficient under this requirement because it allows major sources to use each emissions unit's Potential to Emit in place of Historical Actual Emissions when calculating Simultaneous Emission Reductions from a modification of the emissions unit, resulting in essentially the use of a potential-to-potential test for determining the net emissions increase (and thus, the number of offsets required for that unit).[3] Revised AVAQMD Rule 1305(C)(2) is also deficient because it relies on the Rule 1304(C)(2)(d) potential-to-potential test. The potential-to-potential test is also referenced in AVAQMD Rules 1301, 1302, and 1303.

By allowing sources to calculate the net emissions increase required to be offset for modifications using potential, rather than actual, emissions as a pre-project baseline, the District's rules will require fewer offsets for at least some major modification projects and therefore the rules are less stringent than federal NSR requirements. Federal NSR regulations require that all emissions increases, and decreases, included in the calculation of a net emissions increase be calculated using a pre-project baseline of actual emissions, and allow an emissions increase or decrease to be credited only as a change in actual emissions.[4] Calculating emissions decreases using a potential emissions baseline allows credit for "paper" reductions that do not represent real emissions reductions. Under the CAA, such paper reductions cannot be used to offset actual emission increases.

The EPA's December 19, 2019 letter to the MDAQMD suggests that the appropriate fix for this problem would be to update the rules to comply with 40 CFR 51.165(a)(3)(ii)(J). In that letter, we also offered to work the MDAQMD to discuss specific limited circumstances that would allow the District to retain a potential-to-potential test for calculating the quantity of offsets required. Pages 47–49 of the AVAQMD's Staff

[2] Recently revised versions of the MDAQMD's NSR rules also do not address this issue. The EPA sent a similar comment letter to the MDAQMD on March 18, 2021.

[3] The proposed revisions to Regulation XIII partially address the issue by requiring an actual-to-proposed emissions test for determining offset applicability.

[4] See 40 CFR 51.165(a)(1)(vi) (definition of "net emissions increase"); 51.165(a)(1)(xii)(A) (definition of "actual emissions"). Deviations from federal definitions and requirements are generally approvable only if a state specifically demonstrates that the submitted provisions are more stringent, or at least as stringent, in all respects as the corresponding federal provisions and definitions. 40 CFR 51.165(a)(1) and 40 CFR 51.165(a)(2)(ii). See also 42 USC 7503(c)(1) (requiring the total tonnage of increased emissions from a new or modified source to be offset by an equal or greater reduction in actual emissions).

Report[5] for the proposed revisions describe recent examples of the EPA approving these specific provisions for other Districts. We remain open to discussing these flexibilities with the AVAQMD.

Because of this outstanding deficiency, the rules as currently proposed are not fully approvable by the EPA. Because the deficiency relates to nonattainment NSR requirements under part D of title I of the Act, the offset sanction in CAA section 179(b)(2) would apply 18 months after the effective date of a final disapproval or limited disapproval, and the highway funding sanctions in CAA section 179(b)(1) would apply in the area six months after the offset sanction is imposed. Additionally, if the District does not address this deficiency in an approvable SIP submittal, the EPA will be obligated to promulgate a federal implementation plan under CAA 110(c) to ensure compliance with 40 CFR 51.165(a)(3)(ii)(J). Given the progress we have made with both Districts to resolve other approvability issues identified in the December 19, 2019 letter, the EPA would prefer to resolve this remaining issue prior to SIP submittal.

Thank you for your consideration of these comments. We look forward to continuing to work with you to protect air quality in the AVAQMD. If you have any questions or concerns regarding the matter, please feel free to contact me at (415) 972-3534 or Yannayon.Laura@epa.gov.

Sincerely,

LAURA YANNAYON Digitally signed by LAURA YANNAYON Date: 2021.06.07 11:07:18 -07'00'

Laura Yannayon,
Acting Manager, Air Permits Office
Air and Radiation Division

Enclosure
EPA letter dated December 19, 2019 to the Mojave Desert Air Quality Management District (MDAQMD)

cc (via email):
Karen Nowak, District Counsel
Ariel Fideldy, CARB

[5] "Draft Staff Report for Amendment of Regulation XIII – New Source Review Regulation XVII – Prevention of Significant Deterioration and Rule 1401 – New Source Review for Toxic Air Contaminants, for Amendment on June 15, 2021," June 2, 2021.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

Brad Poiriez, Air Pollution Control Officer
Mojave Desert Air Quality Management District
14306 Park Avenue
Victorville, California 92392

Re: Mojave Desert Air Quality Management District New Source Review Program

Dear Mr. Poiriez:

The United States Environmental Protection Agency (EPA), Region 9, Air Permits Office has completed our technical review of the Mojave Desert Air Quality Management District's (MDAQMD or "District") rules submitted by the California Air Resources Board (CARB) for inclusion in the California state implementation plan (SIP). The rules implement preconstruction review and permitting requirements for stationary sources of air pollution, as required under the New Source Review (NSR) program. We reviewed the following nine rules: Rules 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1402, and 1600. The rule numbers, titles, adopted/amended dates, and submittal dates are listed in Table 1 below.

Table 1 - MDAQMD Submitted Rules

Rule#	Rule Title	Adopted or Amended	Submitted
Regulation XIII: New Source Review			
1300	General	08/22/2016	01/24/2017
1301	Definitions	09/24/2001	12/14/2001
1302	Procedure	08/22/2016	01/24/2017
1303	Requirements	09/24/2001	12/14/2001
1304	Emissions Calculations	09/24/2001	12/14/2001
1305	Emissions Offsets	08/28/2006	12/29/2006
1306	Electric Energy Generating Facilities	09/24/2001	12/14/2001
Regulation XIV: Emission Reduction Credit Banking			
1402	Emission Reduction Credit Registry	05/19/1997	08/1/1997
Regulation XVI: Prevention of Significant Deterioration			
1600	Prevention of Significant Deterioration	08/22/2016	01/24/2017

We have reviewed the submitted rules for compliance with the applicable Clean Air Act (CAA or Act) requirements for NSR programs under section 110(a)(2)(C), and parts C and D of title I of the Act, and the EPA's implementing regulations at title 40 of the Code of Federal Regulations (CFR) part 51, subpart I and 40 CFR 51.307, as well as other CAA general requirements for SIP submittals. Although the District's rules meet most applicable federal requirements, they do not meet all the requirements necessary for full approval. Primarily due to the many cross-references to Rule 1310, "Federal Major Facilities and Federal Major Modifications," which is not currently SIP-approved or included in the SIP

submittal package before the EPA, it is also not possible to propose a limited approval and limited disapproval action, as this would put the unenforceable provisions of these rules into the SIP. In order for the EPA to propose full approval of the submitted rules the District must correct the identified approvability issues.

The enclosed attachment provides a comprehensive list of identified approvability issues. While this list could be used as the basis for moving forward with a disapproval of the current rule submittals, we believe the best use of both the District's and the EPA's limited resources would be for the District to revise the submitted rules as necessary to address the identified approvability issues, have the EPA review the rule revisions to ensure all approvability issues have been addressed, and then adopt the revised rules locally and submit them to the EPA for SIP approval.

We look forward to continuing to work with you and your staff to protect air quality in the MDAQMD. If you have any questions or concerns regarding the list of issues, please feel free to contact me at 415- 972-3811 or Beckham.Lisa@epa.gov. Alternatively, you may contact my staff, Khoi Nguyen at (415) 947-4120 or Nguyen.Thien@epa.gov, or Laura Yannayon at (415) 972-3534, or Yannayon.Laura@epa.gov, or have your attorney contact Jesse Lueders of the Office of Regional Counsel at (415) 972-3174 or Lueders.Jesse@epa.gov.

Sincerely,

Lisa Beckham
Acting Manager, Air Permits
Office Air and Radiation
Division

Enclosure

cc (via email):

Alan De Salvio, Deputy Director
Karen Nowak, District Counsel
Tracy Walters, Air Quality
Specialist Brian Clerico, CARB
Carol Sutkus, CARB

Review of Mojave Desert's Regulation XIII – New Source Review and Rule 1600 – Prevention of Significant Deterioration (PSD) SIP Submittals

Prepared by EPA Region 9
December 19, 2019

In this document, the EPA provides findings from our evaluation of the nine rules adopted by the Mojave Desert Air Quality Management District (MDAQMD or "District") and submitted by the California Air Resources Board (CARB) for inclusion in the Mojave Desert portion of the California state implementation plan (SIP). The submitted rules implement preconstruction review and permitting requirements for stationary sources of air pollution, as required under the New Source Review (NSR) program of the Clean Air Act (CAA or Act). These rules are: Rule 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1402, and 1600. Our evaluation pertains to whether the submitted rules meet the applicable CAA requirements for NSR programs at section 110(a)(2)(C) and parts C and D of title I of the Act and the EPA's implementing regulations at title 40 of the Code of Federal Regulations (CFR) part 51, subpart I, 40 CFR 51.307, and other CAA general requirements for SIP submittals. Our review has identified several approvability issues (i.e., issues that could lead the EPA to disapprove one or more of the submitted rules) that must be addressed before the EPA can fully SIP-approve the submitted rules. These issues are described in Section 1. Errors and typos are listed in Section 2, and further recommendations are listed in Section 3.

1 Approvability Issues with Mojave Desert NSR/PSD Rule Submittals

1.1 Missing Elements and Deficiencies in the General NSR Program

The provisions of 40 CFR 51.160-164 provide the required "general" NSR program elements, i.e., the elements that apply to both minor and major source permit actions, that must be met as part of an NSR permit program. In the District's program, some of these elements are met by District rules already approved into the SIP. We have identified the following approvability issues in respect to the required general NSR program elements. Where feasible, we have included suggestions for correcting the identified deficiency.

1.1.1 40 CFR 51.160

1.1.1.a Facilities subject to review: 40 CFR 51.160(e) requires a submitted NSR program to include legally enforceable procedures that "identify the types and sizes of facilities, buildings, structures, or installations which will be subject to review" under the program. It also requires the submittal to "discuss the basis for determining which facilities will be subject to review."

Rule 1300(B), "Applicability," states "The provisions of this Regulation shall apply to…any new or modified Facility or Emissions Unit which requires a permit pursuant to the provisions of District Regulation II." Within Regulation II, Rule 201, "Permit to Construct," and Rule 203, "Permit to Operate," require permits for new or modified equipment prior to construction or operation, and Rule 219, "Equipment Not Requiring a Written Permit Pursuant to Regulation II" provides a list of equipment for which a written permit is not required. Taken together, these rules appear to identify the types and sizes of sources that are subject to review under the District's NSR permit program.

Rule 219 has been revised locally several times since its SIP approval in 1978. The EPA has been separately evaluating the current revised version of the rule for incorporation into the SIP. We have identified several potential approvability issues regarding certain exemption provisions in Rule 219. Because the provisions of Rule 219 are part of the EPA's evaluation of whether the District's NSR program satisfies the requirements of 40 CFR 51.160(e), the EPA must approve the revisions to Rule 219 prior to or contemporaneously with acting on the submitted NSR rules.

Additionally, in our discussions with the District regarding the approvability of Rule 219, we have identified potential issues regarding whether the emissions from all equipment exempted by Rule 219 would be included when determining if a stationary source constitutes a major source, or if a modification constitutes a new major source or major modification. Because Rule 1300(B) determines applicability of the District's NSR program by reference to Regulation II, including Rule 219, these issues will affect our evaluation of whether the District's NSR program adequately includes the sources required to be subject to preconstruction review. We consider this an approvability issue under 40 CFR 51.160(e).

Additionally, 40 CFR 51.160(b)(1) requires NSR programs to include legally enforceable procedures by which the District will prevent construction or modification that "will result in a violation of applicable portions of the control strategy." The issues with Rule 219 implicate this provision because, for example, failure to regulate sources covered by certain reasonably available control technology (RACT) rules may mean that the District cannot prevent construction or modification of a source that may violate provisions of the control strategy.

Suggested fix: To address these issues the District should make appropriate revisions to Rule 219 to ensure the District's NSR program meets the requirements of 40 CFR 51.160(b)(1) and provide the basis for any exemptions consistent with 40 CFR 51.160(e).

1.1.1.b Air quality data and modeling: 40 CFR 51.160(f) requires an NSR permit program's procedures to discuss the air quality data and modeling to be used for evaluating proposed permits, and to require all required air quality modeling to be based on the requirements specified in Appendix W of 40 CFR part 51 (or an alternative method approved in writing by the EPA on a case-by-case or state-specific basis after an opportunity for public notice and comment).

Rule 1301's definition of "Modeling" in section (GG) specifies that the model, assumptions, and data used must be approved in advance and in writing by the Air Pollution Control Officer (APCO) and come from "a list of approved air quality simulation models prepared by CARB and the USEPA." However, it is unclear what kind of list is intended, and none of the rules specify the required use of Appendix W modeling procedures or an approved alternative method. Therefore, the rule does not satisfy 40 CFR 51.160(f).

Suggested fix: To address these issues, the District should revise its permitting procedures (e.g., in Rule 1302) to specify that all required modeling must be based on the applicable models, data bases, and other requirements specified in Appendix W (Guideline on Air Quality Models) or an alternative method approved by the EPA after an opportunity for public notice and comment. In addition, the District should revise the definition of "Modeling" at Rule 1301(GG) to remove any additional conflicting requirements.

1.1.2 40 CFR 51.161

1.1.2.a Public noticing – 30-day comment period: 40 CFR 51.161(b)(2) requires an NSR permit program to provide at least a 30-day period for submittal of public comment on proposed permit actions.

Rule 1302(C)(7) provides the provisions for determining if a permitting action is subject to notice requirements. Rule 1302(C)(7)(a) provides the notification requirements for new major sources and major modifications and requires the APCO to *commence issuance* pursuant to the provisions of subsection (D). For these sources, subsection (D)(3)(a)(i)b requires publication of a notice in at least one newspaper and subsection (D)(3)(a)(iii) requires a 30-day period for the public to submit written comments. These provisions are consistent with the requirements of 40 CFR 51.161.

However, for certain minor sources, Rule 1302(C)(7)(c) requires only that the APCO *provide notification* of permit issuance pursuant to subsection (D)(3)(a)(ii). Subsection (D)(3)(a)(ii) in turn requires posting the notice on the District's website, but it does not require a 30-day period for the public to submit written comments, as required by 40 CFR 51.161(b)(2). Therefore, the public notice provisions for these minor permit actions are deficient because they do not include a 30-day period for submitting public comments.

Suggested fix: To ensure the NSR program meets the requirements of 40 CFR 51.161(b)(2), the District should revise Section (D)(3)(a)(iii) to include a 30-day period for the public to submit written comments.

Also, please note that the EPA adopted revised public notice provisions for new major sources and major modifications at 40 CFR 51.165(i) and 40 CFR 51.166(q). See 81 FR 71613, October 18, 2016. These revised provisions allow for newspaper notice and/or e-notice, and contain specific requirements based on the consistent noticing method chosen, such as electronic access to the draft permit and support materials if e-notice is selected. The District may choose to update its rules accordingly.

1.1.2.b Public noticing – minor sources: 40 CFR 51.160(e) requires NSR programs to contain procedures for determining which facilities will be subject to preconstruction review, and for the plan to include the basis for this determination. These facilities are then subject to applicable review procedures, including the public notice requirements described at 40 CFR 51.161. Because these procedures must allow a state or district to identify and prevent construction of new sources and modifications that would interfere with attainment or maintenance of the National Ambient Air Quality Standard (NAAQS) or result in violation of applicable portions of the control strategy, a permitting program may exclude from review and notice only those sources or modifications whose emissions will be inconsequential to NAAQS attainment or maintenance and those that will not result in a violation of any control strategy requirements (e.g., RACT rules).

Rule 1302(C)(7)(c)(ii) requires public notice for any new or modified minor source if the resulting emissions increase exceeds 80% of the major facility thresholds for a nonattainment pollutant or Hazardous Air Pollutant (HAP), or exceeds the federal significance levels at 40 CFR 52.21(b)(23) for all other pollutants. As indicated in the District's staff report dated August 22, 2016, this corresponds to the following notice thresholds: 20 tons per year (tpy) for nitrogen

oxides (NO_x) and volatile organic compounds (VOC); 12 tpy for Particulate Matter less than 10 microns (PM_{10}); 8 tpy for a single HAP and 20 tpy of multiple HAPs; and the significance levels at 40 CFR 52.21(b)(23)(i) for all other regulated pollutants. These thresholds serve to exclude smaller emission increases from new and modified sources from the minor source public notice requirements.

To support these minor source public notice thresholds, the District's staff report includes an analysis demonstrating what the proposed minor source notice thresholds represent in terms of their contribution to the District's permitted and overall emission inventory.[1] The analysis uses the minor source public notice thresholds and applies them to each existing facility to determine the percent of permitted and overall emissions that would be subject to public notice if the existing facility were being permitted today. From this data, the District concludes that only four percent of the District's overall emission inventory will not receive public notice and that this amount is not large enough to affect the District's ability to attain or maintain the NAAQS. While this data is correct as an overall percentage of the emissions from all permitted and non-permitted sources (mobile, area and biogenic), it does not reflect the impact of individual permitted pollutants that might interfere with attaining or maintaining the NAAQS.

In addition, line 9 of the analysis provides the percentage of permitted emissions for each pollutant that would not be subject to public notice at the proposed thresholds, when considered as a percentage of the District's total emission inventory. For all pollutants except VOC and PM_{10}, the data shows that less than 5% of all permitted emissions would not be subject to public notice. For VOC and PM_{10}, at least 14% and 7%, respectively, of the permitted emissions would not be subject to public notice.

Line 10 of the analysis provides the percentage of permitted emissions for each pollutant that would be subject to public notice at the proposed thresholds. For all pollutants except VOC and PM_{10}, the data shows that 90% or more of all permitted emissions would be subject to public notice. Based on this data the public notice thresholds for all pollutants except VOC and PM_{10} are adequately supported. However, for VOC and PM_{10}, only 43% and 76%, respectively, of the permitted emissions would be subject to public notice at the specified public notice thresholds.

Based on this data, the District has not adequately demonstrated that the public notice thresholds for VOC and PM_{10} are sufficiently stringent (i.e., that emissions not subject to public notice will be inconsequential to NAAQS attainment or maintenance and will not result in a violation of any control strategy requirements).

In addition, under Rule 1302(C)(7)(a)(i), any permit unit at a facility subject to the provisions of Regulation XII – Federal Operating Permits (i.e. a facility that is a major source under title V of the CAA) requires public notice consistent with the requirements of Rule 1302(D)(3)(a)(i) and (iii). As written, this would include title V administrative amendments and minor permit revisions, regardless of the magnitude of the resulting emissions increase. This may be an error. The District should review this provision to ensure it accurately reflects the District's intent for which permit units will be subject to public notice.

[1] MDAQMD Final Staff Report, Proposed Amendments to Regulation XIII – *New Source Review* and Adoption of Rule 1600 – *Prevention of Significant Deterioration* (PSD), dated August 22, 2016. See Table 4.

Rule 1302(C)(7)(c)(ii)(b) also includes a cross-reference to Rule 1201, which is not SIP-approved.

Suggested fix: To meet the requirements of 40 CFR 51.160(e), the District should provide an adequate basis for the NSR program's public notice thresholds to demonstrate that the emissions from sources and modifications excluded from public notice provisions are inconsequential and will not interfere with NAAQS attainment and maintenance. In particular, the demonstration should consider the significance of individual NSR pollutants instead of all pollutants combined, including Particulate Matter less than 2.5 microns ($PM_{2.5}$). The District may also need to consider lowering the public notice threshold for particular pollutants in order to provide an adequate justification. The District should also remove the cross-reference to Rule 1201 and replace it with numerical thresholds for HAPs.

1.1.3 40 CFR 51.164

1.1.3.a Stack Height: 40 CFR 51.164 requires NSR program procedures to "provide that the degree of emission limitation required of any source for control of any air pollutant must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique, except as provided in §51.118(b)." Additionally, "such procedures must provide that before a State issues a permit to a source based on a good engineering practice stack height that exceeds the height allowed by §51.100(ii)(1) or (2), the State must notify the public of the availability of the demonstration study and must provide opportunity for public hearing on it. This section does not require such procedures to restrict in any manner the actual stack height of any source." Supporting definitions are provided at 40 CFR 51.100(hh)-(kk).

The District's NSR program does not include any provisions regarding stack height procedures as required in 40 CFR 51.164, and as clarified in the supporting provisions at 40 CFR 51.118, and 51.100(hh) through (kk).

Suggested fix: The District should add provisions to the rules to address the requirements of 40 CFR 51.164. The District should revise the rules to include the stack height provisions described in 40 CFR 51.164 consistent with the related requirements and definitions in 40 CFR 51.118 and 51.100(hh)-(kk). For example, a definition for good engineering practice stack height could be incorporated by reference or added to Rule 1301, and the control strategy procedures for stack height could be incorporated into Rule 1302.

1.2 Missing Elements and Deficiencies in the Nonattainment NSR Program

Part D of title I of the Act, and the implementing regulations at 40 CFR 51.165, contain the NSR requirements for areas designated nonattainment for a NAAQS. These requirements, referred to as the "nonattainment NSR" program, apply to nonattainment pollutants at major stationary sources and major modifications at sources located in nonattainment areas.

1.2.1 40 CFR 51.165 – Definitions

An NSR program is required to include either the specific definitions provided in 40 CFR 51.165, or definitions that are substantially equivalent, more stringent, or at least as stringent, in all respects, as the corresponding regulatory definition. We have identified approvability issues

with the definitions listed below. Where feasible, we have included suggestions for correcting these deficiencies.

1.2.1.a "Net emissions increase": This term is defined in 40 CFR 51.165(a)(1)(vi). Nonattainment areas designated as serious and above for an ozone standard must also comply with the provisions of CAA section 182(c)(6) (limiting when VOC and NO_x emissions may be considered *de minimis* when determining applicability of permit requirements) when determining net emission increases.

Rule 1301(KK) defines a "Net Emissions Increase" as "an emissions change as calculated pursuant to District Rule 1304(B) which exceeds zero." Rule 1304(B) calculates an emissions change at a facility as equal to Proposed Emissions minus Historic Actual Emissions (HAE). However, the definition of HAE in Rule 1301(CC) includes fugitive emissions, but the definition of Proposed Emissions at 1301(WW) does not include fugitive emissions. This difference may result in undercounting net emissions increases under Rule 1304(B), making the NSR program less stringent than 40 CFR 51.165(a)(1)(vi). If the District chooses to include fugitive emissions in the HAE (or baseline emissions), then the rule must also provide that fugitive emissions are included in the Proposed Emissions to ensure there is no undercounting of emissions increases. Alternatively, fugitive emissions may be excluded from the definition of HAE to resolve this deficiency.

Suggested fix: To satisfy the definition in 40 CFR 51.165(a)(1)(vi), the District should revise the definition for "Historic Actual Emissions" or "Proposed Emissions" to apply a consistent approach for considering fugitive emissions.

1.2.1.b "Fugitive emissions": 40 CFR 51.165(a)(1)(ix) defines "fugitive emissions" as "those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening." The definition of "Fugitive Emissions" at Rule 1301(AA) does not include "functionally equivalent opening," and is therefore deficient.

Suggested fix: The District should add "or other functionally equivalent opening" to the definition of Fugitive Emissions at Rule 1301(AA) to address this deficiency.

1.2.1.c "Necessary preconstruction approvals or permits": 40 CFR 51.165(a)(1)(xvii) defines the term "necessary preconstruction approvals or permits" as the Federal air quality control laws and regulations, and air quality control laws and regulations included in the applicable SIP. Rule 1301(O) uses the term "necessary preconstruction approvals and/or permits" but does not include a definition or otherwise specify the meaning or scope of this term and is therefore deficient.

Suggested fix: The District must add a definition for the term "necessary preconstruction approvals or permits" consistent with 40 CFR 51.165(a)(1)(xvii).

1.2.1.d "Regulated NSR pollutant": 40 CFR 51.165(a)(1)(xxxvii) provides a definition for this term.

This term is not defined in Regulation XIII. The term "Regulated Air Pollutant" defined in Rule 1301(AAA) is substantially equivalent, except in one regard: Paragraph (D) of the EPA's definition states that condensable particulate matter (i.e., gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures) shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in nonattainment major NSR permits.

Because at least a portion of the District is designated nonattainment for PM_{10}, the District's NSR program must include this provision regarding the treatment of condensable particulate matter. Without such a provision, the District's NSR program is deficient, in this regard.

Suggested fix: The District should update the definition of "PM_{10}" at Rule 1301(TT) consistent with the definition at 40 CFR 51.165(a)(1)(xxxvii)(D) to specify that PM_{10} emissions include condensable particulate matter.

1.2.1.e Federal Land Manager: The term "Federal Land Manager" is used in the rules but not defined per 40 CFR 51.165(a)(1)(xlii). The term must be defined for the NSR program.

Suggested fix: The District should define "Federal Land Manager" in Rule 1301 in accordance with 40 CFR 51.165(a)(1)(xlii).

1.2.2 40 CFR 51.165 – Other Provisions

1.2.2.a Offsets: 40 CFR 51.165(a)(3)(ii)(C)(*1*)(*i*) requires emission reductions achieved by shutdown or curtailing production or operating hours to be "surplus, permanent, quantifiable, and federally enforceable." The submitted rules contain the following deficiencies regarding these integrity criteria.

1.2.2.a.1 Definitions: The terms "Surplus," "Permanent," and "Quantifiable" are used extensively throughout the rules, but the terms are not defined in Regulation XIII. While these terms are not defined in 40 CFR 51.165, an NSR program should define these terms to ensure general enforceability of the rules as required by CAA section 110(a)(2)(C). This deficiency may be corrected by providing adequate approvable definitions for these terms.

1.2.2.a.2 Demand-shifting: Rule 1305(B)(2)(a)(iii)c allows offsets to be generated from the shutdown or modification of previously unpermitted units. *See also* Rule 1402(C)(4) (addressing emission reductions originating from previously unpermitted emission unit). While it is feasible to generate emissions reductions credits from an unpermitted emissions unit if the source agrees to accept a federally enforceable permit to operate the modified emissions unit, emissions reductions may not be credited from the shutdown of an unpermitted emissions unit (even if the source agrees to accept limits in another form that is not federally enforceable, such as a contract). It is not possible to demonstrate that the emissions reductions from unpermitted emissions units are permanent and federally enforceable, because no authorization is required to operate a replacement emissions unit. In addition, emissions reductions from these types of sources may serve to shift demand to other similar unpermitted sources that do require offsets, meaning that the emissions reductions would not be surplus or permanent. This deficiency may be addressed by not allowing the generation of Emission Reduction Credits (ERC) from the shutdown of unpermitted equipment, and by adding provisions to evaluate whether proposed ERCs could be replaced by demand-shifting and prohibiting the creation of such ERCs.

1.2.2.a.3 Nontraditional offsets: The rules provide that offsets may be generated from sources other than "traditional" permitted stationary sources, including mobile and indirect sources. See Rule 1305(B)(3). The rule indicates that offsets from these sources must be approved in advance by the EPA. The rule does not specify how a source or the District would seek this approval, or how the EPA would grant it. The rules may provide that nontraditional emission

reductions can be generated and used as offsets, but they must include more specific instruction on the requirements for accomplishing this.

The EPA suggests adding language to clarify that generation of these offsets would require the EPA to SIP-approve an ERC generating rule adopted by the District and submitted through CARB. The rules should also state that any ERC generating program must meet all the offset integrity criteria of being real, surplus, quantifiable, permanent and federally enforceable. Alternatively, the District could limit the provisions related to the use of nontraditional offsets in Rule 1305(B)(3) to minor sources or minor modifications.

1.2.2.a.4 **Director's discretion:** Some provisions in the submitted rules related to offset integrity require the District to make determinations interpreting the meaning or application of the criteria. See, *e.g.*, Rule 1402(C)(5)(b)(ii), which requires the APCO to determine whether offsets are "surplus" without providing any criteria, such as a definition for this term. As a result, the rules do not provide sufficient criteria to ensure that offsets will be surplus, as required by 40 CFR 51.165(a)(3)(ii)(C)(*1*)(*i*). Any provisions related to the integrity criteria should be clear and enforceable through the text of the rules, including providing a definition for each of the integrity criteria, as described above.

1.2.2.a.5 **Curtailment**: 40 CFR 51.165(a)(3)(ii)(C) contains specific requirements for offsets generated by curtailing production or operating hours. Rule 1302(C)(3)(b)(ii)(a) applies these requirements to offsets generated by shutdown, but not those generated by curtailing production or operating hours. This deficiency may be addressed by adding language to Rule 1302(C)(3)(b)(ii)(a) to address this requirement.

The District must revise the rules to ensure the offset provisions meet the integrity criteria, as noted above, including adopting definitions of the integrity criteria within Regulation XIII.

1.2.2.b **Potential-to-Potential Test for Applicability**: 40 CFR 51.165(a)(2)(ii)(C) provides the methodology for determining if a project at an existing source will result in a major modification. It states that a significant emissions increase is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, equals or exceeds the significance threshold for the pollutant emitted. This applicability test is referred to as an "actual-to-projected-actual" test. States may also choose to adopt an "actual-to-potential" test.

Rule 1304(B) applies a "potential-to-potential" test for modifications to existing emission units that have previously been fully offset. This provision states that an emission change shall be calculated by subtracting the historic actual emissions from proposed emissions (as these terms are defined in Rule 1304(D). Rule 1304(D)(2)(a) provides four situational definitions for the term HAE. In paragraph (iv) of this section, the rule allows HAE to equal potential to emit for modified emission units if all the emissions from that unit have been previously offset in a prior permitting action pursuant to Regulation XIII or early NSR rules. Because this methodology could allow certain projects to avoid the application of LAER, it is not allowed as an acceptable applicability test. Therefore, Rule 1304 is deficient in that it does not satisfy the applicability procedure requirements of 40 CFR 51.165(a)(2)(ii)(C).

Suggested fix: The District should update Rule 1304(D)(2)(a)(iv) to comply with 40 CFR 51.165(a)(2)(ii)(C).

1.2.2.c Potential-to-Potential Test for Offsets: 40 CFR 51.165(a)(3)(ii)(J) states that the total tonnage of increased emissions resulting from a major modification that must be offset shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit (*i.e.*, using an actual-to-potential test). Rule 1304(D)(3) and Rule 1305(B)(2)(b) appear to apply a potential-to-potential test instead, in which PTE also takes into account any emission reduction credits issued and banked.

Suggested fix: The District should update Rule 1304(D)(3) and 1305(B)(2)(b) to comply with 40 CFR 51.165(a)(3)(ii)(J). If the District would like to use a potential-to-potential test for offsets, the District should work with the EPA to discuss additional flexibilities, consistent with CAA requirements.

1.2.2.d Source obligation: 40 CFR 51.165(a)(5)(ii) requires a major NSR program to include enforceable procedures to provide that a source or modification that becomes a major stationary source or major modification solely by virtue of a relaxation in an enforceable limitation on emissions established after August 7, 1980 is subject to major NSR requirements as though construction had not yet commenced. While Rule 1303(B)(3) and 1305(A)(2)(b)(ii)c both require additional offsets if a facility becomes a major facility due to a relaxation of a federally enforceable requirement, the rule does not apply LAER to such facilities. The District's rules are deficient regarding this requirement because they do not include a provision requiring the application of LAER as though construction had not yet commenced.

Suggested fix: The District should add provisions consistent with 40 CFR 51.165(a)(5)(ii).

1.2.2.e Interpollutant trading: On December 6, 2018, EPA published a final rulemaking entitled "Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Are State Implementation Plan Requirements." 83 FR 62998. The final rule contains revisions to the provisions found in 40 CFR 51.165(a)(11) pertaining to provisions an NSR program must contain to allow interpollutant trading for a new major source or major modification.

Rule 1305(B)(6)(a)(i) allows interpollutant offsets on a case-by-case basis upon approval of the APCO and in consultation with CARB, and with EPA approval for Federal Major Facilities or Federal Major Modifications under Rule 1310. In addition, Rule 1305(B)(6)(d) states that interpollutant trading between PM_{10} and PM_{10} precursors is allowed on a case-by-case basis but does not specify the need for CARB or EPA approval. These provisions are not consistent with 40 CFR 51.165(a)(11) provisions pertaining to interpollutant trading for a new major source or major modification. Therefore, as applied to new major sources or major modifications these provisions are deficient.

Suggested fix: Revise Rule 1305 to specify that interpollutant trading for major sources and modifications is allowed only as specified in 40 CFR 51.165(a)(11). The District will need to choose which of the options listed in 40 CFR 51.165(a)(11) to specify in the rules. See also the issues related to cross-referencing with Rule 1310 and the use of "Federal Major Facilities" and "Federal Major Modifications" in Section 1.3 below, and accompanying Attachment A.

1.3 Cross-Referencing Issues

In order to be approved into a SIP, a rule may not rely on cross-references to provisions that are not federally enforceable, including references to state codes and rules that have not been approved into

the SIP or submitted for SIP approval with this package. The submitted rules contain problematic cross-references and various instances of incorrect cross-references. Examples of some instances are provided below. These examples represent our best attempt at spotting cross-referencing issues, but we recommend that the District also carefully review each rule independently as additional rule revisions are made, to avoid introducing new errors.

1.3.1 Cross-references to Rule 1310: Rules 1302 and 1305 contain numerous cross-references to Rule 1310, which is not SIP-approved and was withdrawn as a SIP submittal by the District because it was determined that there is no need to adopt a standalone rule to implement the NSR reform requirements. The District must revise the submitted rules to eliminate these cross-references or submit Rule 1310 for SIP approval. Attachment A contains a list of the cross-references to Rule 1310, with the EPA's suggestions for how to make the language SIP-approvable.

1.3.2 Cross-references to Regulation II: Rules 1300, 1301, and 1302 define sources subject to the NSR requirements in part through cross-references to the applicability criteria in Regulation II. Within Regulation II, Rule 201 provides the general requirement to obtain a preconstruction permit, and Rule 219 provides exemptions for specified equipment. Both rules are approved into the SIP; however, the EPA is also currently evaluating an updated version of Rule 219 adopted by the District on August 22, 2016. Because the updated version of Rule 219 significantly alters the kinds of sources subject to preconstruction permitting requirements relative to the federally enforceable version of the rule currently approved in the SIP, it potentially alters the legal enforceability of the District's NSR program. Rule 219 is also relevant to the EPA's analysis of whether the submitted rules meet the applicable requirements for an NSR permitting program, including the requirement at 40 CFR 51.160(e) to identify the types and sizes of sources subject to review. Therefore, the EPA will need to approve the updates to Rule 219 prior to or contemporaneously with our action on the submitted NSR rules. The EPA will likely be taking action on all of these rules together, following any submitted revisions. Attachment A contains a list of cross-references to Regulation II that may be affected by the changes in Rule 219.

1.3.3 Cross-references to Rule 1320: Rule 1320 was recently withdrawn as a SIP submittal because it contains provisions not required for the District's NSR program and is not SIP-approved. However, several of the submitted rules contain problematic cross-references to Rule 1320, such as the sections within Rule 1302(C).

1.3.4 Incorrect cross-references: The EPA has identified instances where the submitted rules appear to misidentify cross-referenced material due to typographical or other errors within citations. Several examples are listed below, with suggested fixes in blue:

a. 1302(C)(4)(a)(ii)a.: "§75~~30~~03(a)(5)"
b. 1302(C)(4)(b): "(B)(1)(a)(vi)a." (potentially "(B)(1)(a)~~(vi)~~(ii)a.3")
c. 1302(C)(4)(b)(i): "§75~~30~~03(a)(5)"
d. 1302(C)(5)(a): "New Source Review ~~of Carcinogenic~~ for Toxic Air Contaminants"
e. 1600(A)(3)(a)(ii): "subsection (D)~~(2)~~(3)(c) and (d)"

2 Errors and Typos

The EPA has identified several instances of typographical errors and extraneous markings that should be corrected before the rules are approved into the SIP. The EPA suggests that the District address these errors when making other necessary revisions of the submitted rules.

2.1 **Federal Class I area**: Rule 1302 inconsistently uses "Mandated," "Modified," and "Mandatory" before the term "Class I Federal Area." The correct terminologies are "Federal Class I area" and "Mandatory Class I Federal Area" as defined in 40 CFR 51.301. These references should be updated to reflect the correct terms. We also recommend that the District add revise Rule 1301 to incorporate the definitions contained in 40 CFR 51.301 by reference.

2.2 **Bracketed text and markup**: The clean version of the rules submitted to the EPA contain bracketed explanatory comments and markup from prior revisions. These are not part of the regulatory text, and should be removed from the clean copy version submitted to EPA for SIP approval. These include the following:

a. 1301(K)(3) contains bracketed text: *"[Clarifies current practice.]"*
b. 1301(Z) contains bracketed text: *"[See CARB Comment #7 of 11/14/00.]"*
c. 1301(Y)(3) contains markup: "SIC~~C~~"
d. 1301(EE) contains markup (in red text): "(DDD)"; also includes bracketed text: "*[Citation revised.]*"
e. 1301(QQ) contains bracketed text: *"[Corrects typographical error.]"*
f. 1301(UU) contains bracketed text: *"[See 1301(Z). CARB Comment #7 of 11/14/00]"*
g. 1600(B) contains an extra closed bracket: "*]*"
h. 1301, 1303, 1305, 1306, and 1402 include bracketed notes at the end regarding past SIP submittals and approvals
i. 1300 and 1302 include notes at the end to "See SIP Table" at the District's website

2.3 **Typos**: The submitted rules contain assorted typographical errors in addition to the incorrect cross-references listed above. Several examples are listed below with suggested fixes in blue:

a. 1301(E), 1301(X), 1301(GGG): Replace "and" with "or" where defining to include alternate designees
b. 1301(G): "pursuant to"
c. 1301(O): "of a new Facility or Facility undergoing"
d. 1301(HH): "functionally identical ~~as~~ to"
e. 1301(UU)(1): "or ~~processes~~ processed"
f. 1302(D)(3)(a)(i)b.: "~~a~~ the notice"
g. 1600(B)(6): "a~~n~~ PSD Air Pollutant"

3 Further Recommendations

3.1 **Missing secondary pollutant:** The column for secondary pollutants corresponding to the precursor Hydrogen Sulfide (H_2S) is empty in the precursor table in Rule 1301(VV).

Suggested fix: The EPA recommends either deleting this precursor since there are no federal provisions for H_2S as a precursor or correcting the precursor table to provide the secondary pollutant. The current SIP-approved version of Rule 102 provides this information and the District

should revise the definition in Rule 1301 to reference the definition of Precursor in Rule 102 or to delete the column for H_2S.

3.2 **Significant Emission Rates:** Rule 1301(DDD) provides the table of significant emission rates for air pollutants. Under the heading "Emission Rate within an attainment or unclassified area," the row for PM_{10} indicates "NA" rather than providing a specific rate even though part of the District is designated attainment for PM_{10}. No emission rates are listed for $PM_{2.5}$ included in the table. As significant emission rates for these pollutants are incorporated by references to EPA's PSD regulations include in Rule 1600, which is applicable to sources located in attainment areas, this is not a deficiency in the program, but we recommend making updates for clarity.

Suggested fix: Provide emission rates for PM_{10} for attainment or unclassified areas and provide appropriate emission rates for $PM_{2.5}$. Another option is to remove the significant emission rates for attainment pollutants from Rule 1301(DDD) and instead rely on the significant emission rates provided in Rule 1600.

3.3 **Nonattainment area**: Although the term "Federal nonattainment area" is used throughout the regulation (see Attachment A), the term is not defined.

Suggested fix: Define "Federal nonattainment area" by referencing 40 CFR 81.305 as it applied on a specific date.

3.4 **Facility information**: The rules do not include the required provisions of 40 CFR 51.160(c)(2), which state that an NSR program must include legally enforceable procedures requiring a permit applicant to submit information regarding:

> The location, design, construction, and operation of such facility, building, structure, or installation as may be necessary to permit the State or local agency to make the determination referred to in paragraph (a) of this section.

Suggested fix: Include the information required under 40 CFR 51.160(c)(2) in the application requirements in Rule 1302(B)(1)(a)(i) after the "including but not limited to" phrase.

3.5 **Cross-reference to Rule 1201**: Rule 1201 is referenced in Rule 1302(C)(7)(c)(ii)(b) to provide a major facility threshold for HAPs. Rule 1201 is not SIP-approved.

Suggested fix: The thresholds should be included in the submitted rules without cross-referencing Rule 1201.

ATTACHMENT A: Cross-Referencing Issues

The list below identifies cross-reference issues with Rules 219 and 1310 and suggests fixes. These examples represent our best attempt at spotting cross-referencing issues, but we recommend the District also review the rules independently, especially as the District revises the rules to avoid introducing new errors.

A.1Cross-references to Rule 219 and Regulation II

The submitted rules include cross-references to Rule 219 and Regulation II, including references that may be affected by issues raised in EPA's concurrent review of Rule 219. Some examples are listed below:

i. 1300(B)(1): "The provisions of this Regulation shall apply to: (a) Any new or modified Facility or Emissions Unit which requires a permit pursuant to the provisions of District Regulation II." (Within Regulation II, Rule 201 provides the general requirement for preconstruction permits, and Rule 219 provides exemptions for specified equipment.)

ii. 1300(D)(1)(b)(i): "ATC(s) and PTO(s) issued pursuant to this Regulation shall also comply with the applicable provisions of District Regulation II."

iii. 1302(B)(1)(a): "Any application for an ATC or modification to a PTO, submitted pursuant to the procedures of District Regulation II, shall be analyzed to determine if such application is complete."

iv. 1302(C)(7)(c): "If none of the provisions listed in subsection (7)(a) or (b) above apply then the APCO shall commence the issuance of the ATC(s) or modification of the PTO(s) pursuant to the provisions of District Regulation II and provide notification of such permit issuance pursuant to the provisions of subsection (D)(3)(a)(ii) if any of the following apply…"

v. 1302(C)(7)(d): "If none of the provisions listed in subsection (7)(a), (b) or (c) above apply then the APCO shall commence the issuance of the ATC(s) or modification of the PTO(s) pursuant to the provisions of District Regulation II."

vi. 1302(D)(5)(a): "In conjunction with final action on the NSR Document the APCO shall issue ATC(s) for the new or modified Facility pursuant to the provisions of District Regulation II."

vii. 1302(D)(6)(a): "After the final action on the New Source Review Document pursuant to this Regulation and/or the issuance of ATC(s) pursuant to the provisions of District Regulation II, the APCO shall deny the subsequent issuance of PTO(s) unless the APCO determines that…"

viii. 1402(B)(1)(d)(ii): "For emission reductions which occurred after June 28, 1995, an application for ERCs shall be submitted within six (6) months after any of the following:"

"a. District issuance of an Authority to Construct pursuant to District Regulation II – Permits"

"c. District issuance of a modified permit pursuant to Regulation II – Permits"

Suggested fix: The District should resolve any deficiency issues with Rule 219.

A.2 Cross referencing with Rule 1310

Rule 1310 and the Plantwide Applicability Limit (PAL) program for the nonattainment NSR program are not SIP-approved but are cross-referenced numerous times. Namely, the federal aspects of the program must remain, including "Federal Major Facility," "Federal Major Modification," and "Federal nonattainment area."

a. Possible Approaches

The EPA provides suggested fixes for resolving the issues below, but the District may prefer their own method for resolving the cross-referencing issues with Rule 1310.

i. The submitted rules refer to terms such as "Federal Major Facility," "Federal Major Modification," or "Federal nonattainment area," which are currently only defined in Rule 1310. If Rule 1310 is not submitted for SIP approval, but other Regulation XIII rules continue to use these terms, then these key definitions should be included in Rule 1301 instead. EPA suggests also adding definitions for "federal major facility threshold" and "federal significant emissions increase threshold."

ii. Alternatively, the District may choose to submit a modified version of Rule 1310 that maintains the federal requirements.

b. Cross Referencing Instances

The list below provides instances where Rule 1310 or PAL are mentioned in the submitted rules.

i. Rule 1302(B)(1)(a)(ii)(a)(3): A District Rule 1310 applicability analysis sufficient to show that the Facility or Modification is or is not a Federal Major Facility or a Federal Major Modification as defined in District Rule 1310(C).

Suggested fix: Modify paragraph, for example, by cross referencing to new definitions for the terms in Rule 1301.

ii. Rule 1302(B)(1)(a)(ii)(a)(4): The requirements of subsections (B)(1)(a)(ii)a.1 and a.2 shall not apply if the Facility or Modification has been determined to not be a Federal Major Facility or a Federal Major Modification as defined in District Rule 1310(C)(6) and (7) or the Facility has previously applied for and received a valid Plantwide Applicability Limit (PAL) pursuant to the provisions of District Rule 1310(F).

Suggested fix: Modify paragraph, for example, by cross referencing to new definitions for the terms in Rule 1301.

iii. Rule 1302(B)(1)(a)(iii)(a): Mandated Class I Federal Area Protection Analysis

An application for a Federal Major Facility or a Facility with a Federal Major Modification as defined in District Rule 1310(C)(6) and (7) which is located within 100 km (62.137 miles) or which may have an impact upon visibility in any Mandatory Class I Federal Area, as defined in 40 CFR 51.301, shall include in its application an analysis of any anticipated impacts on visibility within that Mandated Class I Federal Area. Such analysis shall include, but is not limited to, an analysis of the factors found in 40 CFR 51.307(c).

Suggested fix: Modify paragraph, for example, by cross-referencing new definitions for the terms in Rule 1301.

Furthermore, as noted above, the phrase "Mandated Class I Federal Area Protection Analysis" and "Mandatory Class I Federal Area" should be changed to "Federal Class I area".

iv. Rule 1302(B)(1)(a)(iv) Plantwide Applicability Limit (PAL) Analysis

For a Facility requesting a PAL pursuant to District Rule 1310(F) an analysis sufficient to justify the classification of the Facility as a Federal Major Facility as defined in District Rule 1310(C) and any information necessary to issue the proposed PAL in conformance with all applicable provisions of 40 CFR 51.165(f)(1-15).

Suggested fix: This paragraph should be removed unless Rule 1310 is submitted as part of the District's NSR program.

Rule 1302(C)(1)(a): The APCO shall analyze the application to determine the type, amount, and change (if any) in emissions pursuant to the provisions of District Rules 1304, 1310 and 1600.

Suggested fix: Remove reference to 1310.

v. Rule 1302(c)(3)(b)(iii)(a): For a Federal Major Facility as defined in District Rule 1310(C)(6) or Federal Major Modification as defined in District Rule 1310(C)(7) and which is located in a Federal nonattainment area, the APCO's approval shall be subject to the approval of CARB and USEPA during the comment period required pursuant to subsection (D)(2) below.

Suggested fix: Modify paragraph, for example, by cross referencing to new definitions for the terms in Rule 1301.

vi. Rule 1302(C)(4)(a): For Facilities which have provided information pursuant to subsection (B)(1)(a)(ii)a.3 the APCO shall, after the analysis, determine if any or all of the provisions of District Rule 1310 apply to the new or modified Facility.

(i) If none of the provisions of District Rule 1310 apply to the new or modified Facility the APCO shall continue the analysis at subsection (C)(5) below.

(ii) If any of the provisions of District Rule 1310 apply to the new or modified Facility the APCO prior to issuing any ATC or PTO shall:

a. Ensure that an alternative site analysis required under 42 U.S.C. §7530(a)(5) (Federal Clean Air Act §173(a)(5)) has been performed; and

b. Ensure that a statewide compliance certification pursuant to subsection (B)(1)(a)(ii)a.2. has been performed and submitted; and

c. Add any conditions to the applicable permits required to implement any provisions of District Rule 1310; and

d. Continue the analysis at subsection (C)(5) below.

Suggested fix: Modify paragraph, for example, by cross referencing to new definitions for the terms in Rule 1301.

vii. Rule 1302(C)(4)(b)(ii): Add any conditions to the applicable permits required to implement any provisions of District Rule 1310; and…

Suggested fix: Remove paragraph (ii).

Rule 1302(C)(4)(c): For a Facility requesting a PAL pursuant to the provisions of District Rule 1310(F) the APCO shall add any conditions to the applicable permits required to implement the PAL and continue the analysis at subsection (C)(5) below.

Suggested fix: Remove paragraph (c).

viii. Rule 1302(C)(7)(a)(iii): The provisions of District Rule 1310 apply;

Suggested fix: Remove paragraph (iii).

ix. Rule 1305(B)(3)(a)(iv): For a Federal Major Facility as defined in District Rule 1310(C)(6) or a Federal Major Modification as defined in District Rule 1310(C)(7) and which is located in a Federal nonattainment area the specific proposed Mobile Source AERs are approved prior to the issuance of the New Source Review document and any ATC(s) by USEPA.

Suggested fix: Modify paragraph, for example, by cross referencing to new definitions for the terms in Rule 1301.

x. Rule 1305(B)(3)(b)(v): For a Federal Major Facility as defined in District Rule 1310(C)(6) or a Federal Major Modification as defined in District Rule 1310(C)(7) and which is located in a Federal nonattainment area the specific Mobile Source ERCs are approved for use prior to the issuance of the New Source Review document and the issuance of any ATCs by USEPA; and…

Suggested fix: Modify paragraph, for example, by cross referencing to new definitions for the terms in Rule 1301.

xi. Rule 1305(B)(3)(c)(iv): For a Federal Major Facility as defined in District Rule 1310(C)(6) or a Federal Major Modification as defined in District Rule 1310(C)(7) and which is located in a Federal nonattainment area the specific proposed Area or Indirect Source AERs are approved prior to the issuance of the New Source Review document and any ATC(s) by USEPA; and…

Suggested fix: Modify paragraph, for example, by cross referencing to new definitions for the terms in Rule 1301.

xii. Rule 1305(B)(3)(d)(iv): For a Federal Major Facility as defined in District Rule 1310(C)(6) or a Federal Major Modification as defined in District Rule 1310(C)(7) and which is located in a Federal nonattainment area the specific Area or Indirect Source ERCs are approved for use prior to the issuance of the New Source Review document and the issuance of any ATCs by USEPA; and…

Suggested fix: Modify paragraph, for example, by cross referencing to new definitions for the terms in Rule 1301.

xiii. Rule 1305(B)(4)(a)(i): For a Federal Major Facility as defined in District Rule 1310(C)(6) or a Federal Major Modification as defined in District Rule 1310(C)(7) and which is located in a Federal nonattainment area the APCO's approval shall be made in consultation with CARB and the USEPA, on a case-by-case basis.

Suggested fix: Modify paragraph, for example, by cross referencing to new definitions for the terms in Rule 1301.

xiv. Rule 1305(B)(5)(a)(i): For a Federal Major Facility as defined in District Rule 1310(C)(6) or a Federal Major Modification as defined in District Rule 1310(C)(7) and which is located in a Federal nonattainment area the APCO's approval shall be made in consultation with CARB and USEPA, on a case-by-case basis.

Suggested fix: Modify paragraph, for example, by cross referencing to new definitions for the terms in Rule 1301.

xv. Rule 1305(B)(6)(a)(i): For a Federal Major Facility as defined in District Rule 1310(C)(6) or a Federal Major Modification as defined in District Rule 1310(C)(7) and which is located in a Federal nonattainment area the APCO's approval shall be made in consultation with CARB and the approval of USEPA, on a case-by-case basis as long as the provisions of subsection (B)(6)(b) below are met.

Suggested fix: Modify paragraph, for example, by cross referencing to new definitions for the terms in Rule 1301.

AVAQMD Responses to Comment #1

Comment 1-1: Revised AVAQMD Rule 1304(C)(2)(d), along with proposed 1305(C)(2) which relies upon it, allows major sources to use Potential to Emit (PE) in place of Historical Actual Emissions (HAE) when calculating simultaneous emissions reductions (SERs) resulting in a potential to potential test for determining the net emissions increase which is not approvable.

Response 1-1: This issue and its practical impacts has long been the subject of differing interpretations by and between USEPA and many California air districts. As USEPA so kindly notes this is also a matter of contention regarding the Mojave Desert Air Quality Management District's (MDAQMD) recently amended New Source Review rules.

As discussed extensively in the Staff Report (Subsections VI. A. 6. and VI. E. 6.) the underlying disagreement regarding the use of previously offset emissions in the calculation of the amount (as opposed to the necessity) in case where simultaneous emissions reductions are used to reduce the offset burden simply boils down to the issue of whether the net result is equivalent or more stringent to the methodology asserted by USEPA. The AVAQMD asserts that the proposed calculation methodology and structure of the New Source Review program results in at least as many overall emissions reductions as that proposed by USEPA. This is especially true since there is and has never been a De Minimis provision in the AVAQMD's NSR program and thus there is no potential for nonoffset increases in Potential to Emit at a Major Facility.[1]

USEPA points out in its letter, that other air districts have chosen to "make up" for alleged deficiencies in offsets in different manners. While these strategies may be appropriate and effective in these districts they are not usable within the AVAQMD for a variety of reasons as discussed in the staff report (Subsection VI. E. 6.). Despite this the AVAQMD is still willing to explore alternatives and/or additional justifications to prove its current NSR program stringency with USEPA. However, due to the upcoming deadline of August 3, 2021 for submission of an NSR program to satisfy the 2008 and 2015 O_3 NAAQS requirements such explorations and/or additional justifications will by necessity need to take place after such submission has occurred to avoid any sanctions clock which would be triggered by a nonsubmittal.

Comment B: USEPA has attached its letter (dated 12/19/2019) to the MDAQMD indirectly implying that all of the issues contained therein also needed to be addressed in the AVAQMD New Source Review Rules.

Response B: All of the issues in the above referenced letter have been addressed. See Section VI of the staff report in general for detailed discussions of particular issues. Additional issues have been noted by USEPA comment number in the *[bracketed italicized]* notations in the redline versions of the rules as contained in Appendix A of the staff report.

[1] Please note that current USEPA de minimis policy allows "small" increases of less than the major facility threshold amounts to occur over a rolling period of 5 years. In the AVAQMD this increase would be 25 tpy of NOx or VOC over 5 years which would effectively allow an unoffset increase potential to emit at a particular facility of that amount every 5 years or so. This cannot happen under the New Source Review rules as proposed.

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