

**SACRAMENTO METROPOLITAN
AIR QUALITY MANAGEMENT DISTRICT**

For Agenda of **January 27, 2011**

To: Board of Directors
Sacramento Metropolitan Air Quality Management District

From: Larry Greene
Executive Director/Air Pollution Control Officer

Subject: Public Hearing to Adopt Resolutions Approving Amendments to Rule 203,
Prevention of Significant Deterioration

Recommendations

1. Conduct a public hearing;
 2. Determine that the amendments to Rule 203 are exempt from the California Environmental Quality Act (CEQA); and
 3. Adopt the attached resolution approving the amendments to Rule 203.
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Executive Summary

Regulation of pollutants under the federal Clean Air Act (CAA) is divided roughly into two programs. The New Source Review program regulates pollutants for which the District has not attained the federal standard, and the Prevention of Significant Deterioration (PSD) program governs pollutants for which the District meets the federal standard or for which the District is listed as unclassifiable. The permit thresholds in the PSD program are high and consequently only likely to impact 10 of the existing facilities within the District, or any new major sources that exceed the high permit thresholds in the PSD program.

In 2002, the U.S. Environmental Protection Agency (EPA) adopted substantial revisions to the federal PSD program, referred to as PSD Reform. In 2010, EPA adopted further revisions, which established new Greenhouse Gas (GHG) PSD requirements and are referred to as the Tailoring Rule¹. Staff is proposing amendments to the District's existing PSD rule, Rule 203, to address both sets of revisions to the federal CAA requirements. The provisions apply to new or modifying large industrial sources, and are intended to prohibit the permitting or operation of any facility that will cause or contribute to a new violation of health-based air quality standards.

On September 2, 2010, EPA took two actions regarding the District: (i) EPA made a preliminary finding² (referred to as a SIP Call) that California's State Implementation Plan (SIP) is "substantially inadequate" because Sacramento's approved PSD rule does not specifically require emission controls for GHG-emitting sources and (ii) EPA published a draft Federal

¹ "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, Final Rule", Federal Register, Volume 75 page 31514, June 3, 2010

² Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call, Proposed Rule", Federal Register, Volume 75, page 53892. September 2, 2010 (75 FR 53892)

Implementation Plan (FIP), which EPA will be required to finalize if the District fails to cure the SIP inadequacies. The District Staff worked with EPA to reverse the SIP Call, but EPA ultimately finalized the determination on December 13, 2010³. The final SIP Call set a deadline of January 31, 2011 for the District to submit a PSD rule revision. If the District does not submit a SIP revision before the January 31, 2011 deadline, EPA will finalize the draft FIP⁴. While a FIP is in place, only EPA would have the authority to issue a federal PSD permit regulating GHG emissions; however, separate state and local PSD requirements would still require issuance of a District PSD permit, resulting in a duplicative federal-state two permit system. The FIP would remain in place until EPA approves the Rule 203 revisions.

EPA's December SIP Call resulted in a construction moratorium that precludes the District from issuing federal PSD permits authorizing new construction or modifications if the facility will emit GHGs above specified thresholds. The moratorium will remain in effect until EPA adopts a FIP or approves the Rule 203 revisions. District staff spoke with potentially impacted sources, and confirmed that none of the sources have any plans that would require a PSD permit in 2011.

The proposed rule revisions are subject to special restrictions imposed by state law SB288. That legislation was adopted in 2003 in response to the federal PSD Reform. Under SB288, the Air Resources Board (ARB) must review all proposed rule revisions and ensure that the revision does not weaken prior requirements. In anticipation of this review, District Staff identified certain federal provisions that would have weakened the regulations and has proposed replacement language for those provisions. The replacement language simply keeps the existing district program intact and does not include new requirements (with the exception of including GHGs into the PSD program). Since the proposed rules do not incorporate the federal rules verbatim, Staff has also prepared an equivalency determination for EPA's use in finding that the District program is at least as stringent as the federal program. This item will be forwarded to the Board under separate cover.

Attachments

The following table identifies the attachments to this memo.

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³ Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call, Final Rule", Federal Register, Volume 75, page 77698. December 13, 2010 (75 FR 77698)

⁴ 75 FR 7770, December 13, 2010

Background

The federal Clean Air Act:⁵ 1) requires owners to obtain a permit before beginning construction or operation of any new major stationary source⁶, or commencing a major modification of an existing source⁷, 2) requires facilities to use best available emissions control technology, 3) prohibits operation of any facility that may cause or contribute to a new violation of health-based air quality standards where the area meets those standards, and 4) includes other provisions to protect national parks, monuments and wilderness areas.

The PSD program applies to all EPA-regulated air pollutants. Recently, EPA began regulating GHGs⁸. Other regulated air pollutants include fluorides, hydrogen sulfide, and total reduced sulfur. The District currently meets the federal health-based air quality standards for nitrogen dioxide (NO₂), lead (Pb), sulfur dioxide (SO₂) and carbon monoxide (CO). We recently requested that EPA formally recognize that the District meets the federal PM10 standards, which will make emissions of that pollutant subject to PSD requirements.

The EPA-approved PSD rules are contained in the 1984 version of Rule 202- New Source Review. In 1991, the District adopted a new PSD rule, Rule 203, which adopted by reference the 1991 version of the federal PSD requirements in 40 CFR 52.21. The 1991 rule was submitted to EPA but the agency has not approved that version of Rule 203.

In September, 2010, EPA issued a preliminary SIP Call finding that the District's 1984 rule did not authorize the District to regulated GHGs. Although we worked with EPA to reverse this determination, EPA issued a final SIP Call on December 13, 2010, giving the District until January 31, 2011 to submit a revised SIP. Today's rule amendments update the 1984 and 1991 rule and include provisions to clarify our authority to regulate GHGs. The rule also includes provisions to address PSD Reform and SB288. Under SB288, the 1991 rule provides the baseline for determining whether the proposed revisions constitute a relaxation of the PSD requirements.

Necessity for the Rule Changes

The SIP Call precludes the District from issuing a federal PSD permit to a facility that plans new construction that will emit GHGs above specified thresholds. PSD permit triggers are high and historically are rarely exceeded within the District. District staff has spoken to all potentially impacted sources, and was informed by them that they do not anticipate making any changes in 2011 that would trigger a PSD permit.

The September preliminary SIP Call included a proposed FIP rule⁹ that, if finalized by EPA, would give EPA the authority to issue a GHG PSD permit to sources in Sacramento. This action would lift the construction moratorium created by the Tailoring Rule and SIP Call. EPA may finalize the FIP rule if Rule 203 is not submitted before the January 31, 2011 deadline or if EPA finds that the submitted Rule 203 does not meet Clean Air Act requirements. If finalized,

⁵ 42 U.S.C.A. Section 7470 et. seq. and Code of Federal Regulations (CFR) Title 40, Part 52.21

⁶ 40 CFR 52.21(b)(1)

⁷ 40 CFR 52.21(b)(2)

⁸ 75 FR 17004, April 2, 2010

⁹ 75 FR 53883 September 2, 2010

EPA would implement the FIP and issue PSD permits. The District would still be required to issue PSD permits to satisfy state law requirements.

To avoid the FIP, the District must approve and submit a revised Rule 203 before the January 31st deadline. As required by SB288, when Staff revised Rule 203 to address the SIP Call and PSD Reform, it reviewed the regulations to determine whether the PSD Reform provisions weakened the existing regulation¹⁰. Staff determined, in consultation with ARB, that certain PSD Reform provisions, if included, would weaken current PSD requirements. Proposed Rule 203 explicitly excludes those specific provisions and establishes replacement requirements. The differences relate to methods for determining whether a PSD permit is required, and associated monitoring and recordkeeping provisions. The replacement language substitutes the current rule language in the 1991 version of Rule 203. As a result, with one exception, it will not alter the existing regulatory program for sources. The exception is the inclusion of language to incorporate GHG and any other pollutants identified by EPA in the future. That provision will avoid the need for future rule amendments whenever EPA augments the list of regulated pollutants.

As discussed above, if EPA finalizes the FIP rule, and assumes authority for issuing a federal PSD permit, the District would still be required to issue a separate state PSD permit to the source under state law and existing Rule 203. To prevent sources from being subject to two sets of PSD permit requirements, it is critical that the submittal of revised Rule 203 occur before the January 31st deadline. This approach eliminates the duplicative state-federal PSD permit process and preserves local authority. This approach also offers a reasonable strategy for lifting the construction moratorium, since: (1) EPA states in the SIP Call that it would expedite review of the District's rule, and (2) affected sources have stated that their operations will not be impacted by the moratorium for at least one year. District staff has been working closely with both EPA and ARB staff to ensure that the rule is submitted before the deadline and will meet federal laws and rules.

Summary of Proposed Rule Amendments

The proposed amendments to Rule 203 will add GHG requirements to the District's PSD permitting program. The proposed changes also update other provisions of the regulations including explicit public noticing requirements. The federal PSD provisions contain more extensive public noticing and public participation requirements than other rules.

Several sections of the current federal PSD rules are excluded or replaced because they would violate SB288 by establishing less stringent methods to determine whether modifications trigger PSD and allow sources to avoid District review of modifications if a source determines (without the District's regulatory oversight) that the resulting emissions are below a specified facility-wide emissions limit (Plantwide Applicability Limit). For example, under the EPA approach, a source could avoid all pre-construction review and emission control requirements if, at the time it adds a new process it offsets any associated emission increases with reductions elsewhere at the facility. The facility would be required to submit biannual reports to the District, but at that juncture if the District disagrees with the facility's emissions estimates, the facility would be required to install more costly retrofit controls. In addition, the District will not have the benefit of

¹⁰ Health and Safety Code Section 42504

the emission reductions achieved by requiring emission controls at the outset. The prior and proposed rules do not consider offsetting reductions because that would prevent evaluation of emissions and available controls at the time of construction, when installation is most cost effective. Furthermore, under the PSD Reform provisions it may be very difficult to review the sources claims that its emissions fall below the PAL.

Staff also prepared an equivalency determination to assure EPA that proposed Rule 203 is at least as stringent as the federal PSD rules. EPA recently approved New York's PSD rule and equivalency determination, which affected the same PSD requirements at issue in Rule 203¹¹. The District's equivalency determination is consistent with New York's approach, but also includes additional analysis based on District-specific information.

For more details of the proposed changes, please see Appendix B of the Staff Report.

Cost Impacts and Emissions Benefits

The cost impacts and emission benefits of the proposed amendments to Rule 203 depend on the following factors:

- The size of the new major source or modification. Most projects are below PSD applicability thresholds.
- Whether the source plans include controls or other strategies that are considered the best available control technologies (BACT) for GHGs. If not, costs would include the actual cost to implement BACT.

The actual BACT requirements, and associated costs, are determined on a case-by-case basis considering factors such as technical feasibility and control levels achieved in practice by similar sources. EPA recently published a GHG guidance document¹² with information on potential GHG BACT; but the guidance does not provide any final BACT determinations. However, the BACT determination itself includes consideration of the cost of the controls, and controls that are overly costly would not be considered BACT.

There will be no change in costs, emission benefits, or cost effectiveness for any of the other PSD pollutants because the proposed rule does not substantially change the applicability thresholds, BACT, or any other requirements.

¹¹ "Approval and Promulgation of Implementation Plans; New York Prevention of Significant Deterioration of Air Quality and Nonattainment New Source Review, Final Rule", Federal Register, Volume 75, page 70140. November 17, 2010 (75 FR 70140)

¹² U.S. EPA. *PSD and Title V Permitting Guidance for Greenhouse Gases*. November 2010.

District Impacts

Historically, there have been very few sources that have triggered PSD requirements. At a December 15, 2010 meeting with potentially impacted sources (major sources and those with high GHG emissions), Staff asked whether any source anticipated making modifications that might trigger a PSD review. No source indicated any plans for such a change in the next year. Given the historic infrequency and source projections, at the present time, no additional staff resources are needed to implement the proposed amendments.

Environmental Review and Compliance

The proposed rules are exempt from the California Environmental Quality Act because: (i) they constitute an action by a regulatory agency for protection of the environment (Class 8 Categorical Exemption, Section 15308 State CEQA Guidelines) and (ii) it can be seen with certainty that there is no possibility that the activity in question may have a significant adverse effect on the environment (Section 15061(b)(3), State CEQA Guidelines).

California Public Resources Code (Section 21159) requires an environmental analysis of the reasonably foreseeable methods of compliance. Staff compared the impact of the amendments of the rules with the existing rules. The proposed rule implements PSD permitting for GHG emissions. The analysis concludes the amendments to Rule 203 may result in an emission benefit; therefore, Staff has concluded that no adverse environmental impacts will be caused by compliance with the proposed rules.

Public Outreach and Comments

Staff conducted an informational meeting with sources to explain the changes to the PSD rules, specifically how inclusion of GHG will be implemented. As noted above, we also contacted each potentially impacted source directly to discuss the requirements and the impact of the rule changes on their current business plans. Because both the existing rules that are retained and the EPA rules that are adopted by reference have already been through an extensive public process we did not have a public workshop. This is consistent with past practice for rules adopted by reference. On December 27, 2010, a public hearing notice was published in the Sacramento Bee and sent via e-mail to interested and potentially affected parties. The draft rule was also posted on the District's website on that day. One comment has been received. The comment letter and staff response are in Attachment E.

Non-substantive Change After Posting of Rule 203

The proposed Rule 203 has been modified after posting of the public hearing notice to correct the date of the federal rule (40 CFR 52.21) that is incorporated by reference, to restructure the exemption sections, to prevent potential inconsistency of the rule applicability, and to more clearly specify the location for public review of materials related to proposed PSD permits.

The noticed rule incorrectly stated that the effective date of the federal Tailoring Rule was July 1, 2010. In fact, the effective date is August 2, 2010, and the final rule corrects the error. Since this is simply a date correction, the change is non-substantive. This change was made in Sections 103, 104, and 105.

Under the noticed rule language, the rule would apply to any major modification with a significant net emissions increase. However, the language inadvertently also included a federal definition of major modification that was inconsistent with this approach. To maintain the integrity and enforceability of the rule, Staff has replaced the federal definition with the existing language in the 1991 version of the District Rule. Staff considers this revision a non-substantive change to the proposed rule language since it simply clarifies application of the rule to major modifications. The change was made in Section 205.

In addition, the proposed Rule 203 has been modified to clarify and restructure the discussion of the subsections of 40 CFR 52.21 that are excluded and the corresponding replacement subsection. Rather than simply referencing the excluded and replacement sections, the rule language now includes the text.

A clarification has also been made to Section 401.2 to state that proposed permits and related information would be made available at the District's office.

The revised proposed Rule 203 is included in Attachment B.

Conclusion

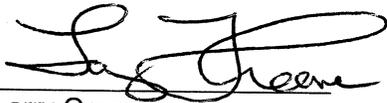
The effect of the EPA's final SIP Call is the implementation of a construction moratorium that prohibits our largest local businesses from locating new or expanding existing facilities if the project will increase greenhouse gas pollution levels more than specified amounts. The SIP Call established a January 31, 2011 deadline to change our existing air district rule, Rule 203 – Prevention of Significant Deterioration. Businesses are very infrequently affected by Rule 203, and when we contacted the businesses that might be affected, none of them had any plans for the next year that would be impacted by the construction moratorium.

If we do not meet the January 31, 2011 deadline, EPA could take over permitting authority for greenhouse gases and lift the construction moratorium. If that happened, businesses would be required to obtain two permits before making facility changes, one from EPA and one from our District. Therefore, staff is recommending that the Board approve changes to Rule 203 which, when approved by EPA, will lift the construction moratorium, prevent duplicative permit requirements, and retain exclusive District permitting authority for our local businesses. We have been working closely with EPA and ARB on the details of these rule changes and both agencies support local air districts retaining their permitting authority.

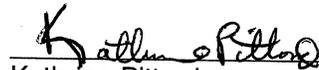
Staff included a provision in the adopting Resolution to direct staff to work with ARB to expedite the submittal of Rule 203 to EPA for approval before the January 31, 2011 SIP Call deadline. Staff recommends that the Board determine that the proposed rules are exempt from CEQA and approve the attached resolution adopting Rule 203.

Respectfully submitted,

Approved as to form:



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Sacramento Metropolitan
Air Quality Management District



Kathrine Pittard
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Attachments