

**SACRAMENTO METROPOLITAN
AIR QUALITY MANAGEMENT DISTRICT**

For Agenda of **July 28, 2011**

To: Board of Directors
Sacramento Metropolitan Air Quality Management District

From: Larry Greene
Executive Director/Air Pollution Control Officer

Subject: Adopt a Resolution Approving Amendments to Rule 207, Title V – Federal Operating Permit Program

Recommendations

1. Conduct a public hearing; and
 2. Adopt the attached resolution approving amendments to Rule 207.
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Executive Summary

Staff is proposing to amend Rule 207 – TITLE V – FEDERAL OPERATING PERMIT PROGRAM. Rule 207 sets procedures for reviewing and issuing federal operating permits to specified sources as required by Title V of the Clean Air Act. Rule 207 generally applies to large emission sources, such as power plants and manufacturing facilities, but can affect smaller sources. The primary purpose of the proposed amendments is to add federal greenhouse gas (GHG) requirements established in the U.S. Environmental Protection Agency's (EPA) Tailoring Rule¹. The District worked closely with EPA on the Tailoring Rule and the input the District and other local agencies provided was instrumental in EPA's decision to make a more reasonable approach in the final version of the Tailoring Rule. Rule 207 will be submitted to EPA as an amendment to 40 CFR 70 Appendix A for California Section (w).

The District has 16 Title V sources. Three additional sources may be required to obtain a GHG Title V permit unless these sources choose to request new permit conditions that limit emissions below Title V applicability thresholds. If EPA finalizes their proposed rule² to defer bioenergy and biogenic CO₂ emissions from the Title V program, one of those three sources will not be required to obtain a Title V permit. Biogenic emissions are those that result from the combustion or decomposition of biologically-based material³. Sources with existing Title V permits would be required to submit GHG information when they renew or amend their Title V permit.

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

² "Deferral for CO₂ emissions from Bioenergy and Other Biogenic Sources under the Prevention of Significant Deterioration (PSD) and Title V Programs: Proposed Rule," Federal Register 76 (March 21, 2011) p. 15249

³ Non-fossilized and biodegradable organic material originating from plants, animals or microorganisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material.

Attachments

The following table identifies the attachments to this memo.

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Background

Title V of the federal Clean Air Act (CAA) requires all states and, where appropriate, districts to adopt a permitting program that provides:

- EPA veto authority over permit issuance,
- greater opportunity for federal citizen enforcement,
- enhanced public participation during the permit issuance process,
- clearer determination of applicable requirements, and
- improved enforceability of applicable requirements.

EPA approved Sacramento's Rule 207 Title V program November 30, 2001⁴.

Title V permits are required for businesses and other types of stationary sources that emit air pollutants in excess of specified levels or fall into specified categories. In general, the Title V program applies to 'major stationary sources' such as power plants and manufacturing facilities; however, other sources may be required to obtain Title V permits if subject to certain New Source Performance Standards or National Emission Standards for Hazardous Air Pollutants, the acid rain provisions under Title IV of the CAA, the requirements for solid waste incineration units under Title V of the CAA, or for any other reason as designated by rule by EPA.

Reasons for Rule Changes

The key purpose of the amendments is to retain local Title V permitting authority by meeting new federal Title V permitting requirements. Without amendments to Rule 207, EPA will issue a notice of deficiency (NOD) to the District for not adequately administering or enforcing the Title V permitting program. If the District fails to take a "significant action" within 90 days to correct the deficiencies, then EPA can take one or more of the following actions⁵: 1) withdraw program approval, 2) apply sanctions, or 3) implement Title V for the District's sources.

⁴ Title V for agricultural sources was not required until 2004 when SB700 changed the state law that previously prohibited permitting agricultural sources (California Health and Safety Code §42301.16).

⁵ 40 CFR 70.10(b) and (c)

If EPA withdraws approval of the Title V program because the deficiencies are not corrected within the initial 90 day period, then EPA will impose sanctions in the form of more stringent permitting requirements if the deficiencies are not corrected within 18 months. If the deficiencies are not corrected within 24 months, EPA will impose additional sanctions by withholding federal transportation funding.

Summary of Proposed Rule Amendments

Under the amended rules, Title V sources include sources with a potential to emit of 100,000 tpy or more of CO₂ equivalents (CO₂e⁶), and with a potential to emit all greenhouse gases⁷ equal to or greater than 100 tpy. The proposed language also incorporates EPA's planned deferral for bioenergy and biogenic sources.

Other significant amendments include: 1) setting the GHG emission threshold for defining a significant Title V permit modification, 2) allowing equipment removal to be an administrative permit revision instead of a more complex minor permit modification, and 3) making changes to the applicability and exemption sections to exempt certain smaller sources from Title V requirements consistent with federal regulations.

Please refer to Appendix A of the Staff Report (Attachment C) for a more detailed description of changes.

Cost Impacts

Impact on Businesses in Sacramento: Proposed Rule 207 amendments implements the federal Title V permit requirements and may require 3 additional sources to obtain a Title V permit. Typically, sources are permitted at higher emission levels than they actually emit. Consequently, these sources may be able to avoid the Title V permit by accepting permit limits below Title V applicability thresholds. If they do not, then the cost impacts depend on the actual amount of time required for processing their Title V permit application. The fee is calculated based on the time to process the permit, currently \$132 per hour⁸.

On average, Staff spends approximately 100 hours processing an initial Title V permit application. The actual number of hours typically ranges between 50 to 100 hours; however, a few sources have required significantly more time to process. The processing time depends on the number of District permits, the complexity of the permits, and the number of different rules and regulations that are applicable to the source.

For existing Title V sources that are subject to Title V requirements for pollutants other than GHGs, Staff review of GHGs can be done concurrently with Title V permit reviews; therefore, costs will not increase for existing sources with Title V permits.

⁶ Greenhouse gases are often reported on standardized basis of CO₂e that reflects the potential each gas has to trap heat in the atmosphere.

⁷ Greenhouse gases currently include the following six gases: carbon dioxide (CO₂), methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride.

⁸ Rule 301 – Stationary Source Permit Fees, Section 308.12

Emission Impacts

There are no new GHG emission requirements imposed by the Title V permitting program. The Title V permitting program was established to increase emission reductions by enhancing compliance with air quality rules. Overall, increased oversight of GHGs for all Title V sources and oversight of both GHGs and criteria pollutants for the three potential new Title V sources may result in a small, but unquantifiable, emission reductions.

District Impacts

Cost to District: The District currently has 16 Title V facilities and does not anticipate any cost increases relative to those facilities. The addition of GHG emissions to the Title V permitting program is expected to require up to 3 additional facilities to obtain a Title V permit; however, some of these facilities may choose to accept permit conditions to limit their potential GHG emissions to emit to less than 100,000 tpy CO₂e to avoid the Title V permitting program. If all three identified facilities obtain a Title V permit (rather than take a permit limit), Staff estimates 0.15 FTE will be needed to issue these Title V permits.

Environmental Review and Compliance

Staff finds that the proposed rule is not subject to the California Environmental Quality Act because it is an activity that will not result in a direct or reasonably foreseeable indirect physical change in the environment. (Public Resources Code 21084(a) and Preliminary Review, Section 15060(c)(2) State CEQA Guidelines).

Public Outreach and Comments

Staff conducted a public workshop on May 12, 2011. The noticing for this workshop included:

- notices sent to all Title V permitted sources in the District;
- notices sent to the three potential new Title V sources; and
- notices sent to those who have requested rulemaking notices by e-mail or hardcopy.

Staff received several questions at the workshop. Comments and responses are listed in Appendix C of the Staff report (Attachment C). These new federal requirements were generally already understood by the facilities affected and therefore they didn't have any adverse comments at the workshop. Questions centered on when the GHG requirements will be effective and how long the District may take to process a Title V application.

A notice for the Board's July 28, 2011 public hearing was published in the Sacramento Bee on June 27, 2011. The notice was also sent to attendees of the public workshop, all Title V permitted sources and those sources that may be required to obtain a Title V permit, and persons who have requested rulemaking notices by e-mail or hardcopy.

Non-substantive Change After Posting of Rule 207

The proposed Rule 207 has been modified after posting of the public hearing. The two changes are:

1. Added the word "Plan" when referring to the 'State Implementation Plan' in Sections 206.2, 227.2, and 308.3(b).
2. Added the definition of chemical processing plants⁹ from the federal Title V regulation that had been inadvertently omitted.

The revised proposed Rule 207 is included in Attachment B.

Conclusion

The proposed amendments are necessary to add GHGs and make other changes required by federal regulations. Incorporation of the changes into Rule 207 will allow the District to retain local authority to issue and enforce Title V permits. Staff recommends that the Board approve the attached resolution adopting the amendments to Rule 207.

Respectfully submitted,

Approved as to form:

Larry Greene
Executive Director/Air Pollution Control Officer

Kathrine Pittard
District Counsel

Attachments

⁹ 40 Code of Federal Regulations (CFR) 70.2, the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140. This change was made in Section 219.5.20.

Attachment A
Board Resolution

Attachment B

Draft Rule 207

Attachment C

Staff Report

Attachment D
Written Comments

Attachment E

Evidence of Public Notice