

SACRAMENTO METROPOLITAN
AIR QUALITY MANAGEMENT DISTRICT

For Agenda of: January 26, 2006

To: Board of Directors
Sacramento Metropolitan Air Quality Management District

From: Larry Greene
Air Pollution Control Officer

Subject: INFORMATION ON IMPLEMENTING FEDERAL NEW SOURCE REVIEW
REFORM CHANGES

Recommendation

Staff recommends that your Board receive this report to brief the Board members on staff's proposed response to Federal New Source Review reform.

Background

In December 2002, the United States Environmental Protection Agency (EPA) adopted amendments to the Clean Air Act modifying New Source Review requirements for modifications of major sources (NSR reform). These federal NSR reforms were designed by EPA to allow major sources of air contaminants greater flexibility to modify existing facilities without triggering NSR requirements, such as Best Available Control Technology (BACT) and offsets. EPA's premise was that some facilities delayed modernizing equipment to avoid triggering NSR requirements, that lifting the requirements would encourage facilities to upgrade, and that the upgrades would yield a net air quality benefit.

The California Air Resources Board (CARB) and many of the air districts, including ours, disagreed with EPA's conclusions. These agencies took the position that: (i) NSR requirements are necessary to improve air quality in California; and (ii) there is no evidence that California facilities have delayed upgrades to avoid NSR requirements.

California responded to EPA NSR reform on two fronts. First, the state legislature passed California Senate Bill 288 – Protect California Air Act of 2003 (SB 288), which was sponsored by State Senator Byron Sher. The bill prohibits local districts from amending or revising their NSR rules or regulations to be less stringent than certain requirements in those rules and regulations that existed on December 30, 2002. Second, the state took part in a lawsuit filed against EPA to try to prevent the implementation of the reforms. Your Board voted to participate in this lawsuit in February 2003. On June 24, 2005 the Court issued a decision vacating some provisions of the NSR reform, remanding some provisions back to EPA for further consideration, and upholding other provisions.

Under Federal regulations, the District was mandated to amend its NSR program and re-establish equivalency with the federal requirements and implement such a program by January 2, 2006. Amendments to the District's NSR program were not completed by the January 2, 2006 deadline. EPA may issue a SIP call, which will start a sanction clock to comply with the mandate. If the District does not comply with the mandate by the end of the sanction clock, then two federal sanctions could result: (i) increase credit requirements for large sources; and (ii) withholding transportation funding. We anticipate having rule amendments in place before a SIP call is issued or, worst case, sanctions imposed.

Staff's Proposed Response

With the promulgation of both the Federal NSR Reform and California's SB288, the District (and all other California air districts) is faced with the task of amending its rules to comply with the NSR Reforms, as required by EPA, yet not making its rules any less stringent than they were on December 30, 2002. Staff throughout the State has been working closely with the California Air Pollution Control Officers' Association (CAPCOA), CARB, and EPA to meet these two conflicting requirements. The methods developed rely on the Clean Air Act authorization for state and local agencies to adopt rules that are more stringent than required by the Clean Air Act.

Consistent with the method developed, staff is proposing to adopt a new rule, Rule 213, FEDERAL MAJOR MODIFICATIONS, which will be similar to a rule adopted by the South Coast Air Quality Management District (SCAQMD) on December 2, 2005. This new rule will define a "federal major modification" and will exempt those modifications from the alternative siting analysis required by Rule 202, NEW SOURCE REVIEW. Federal major modifications are those sources that emit more than specified levels (e.g. 50 tons per year of nitrogen oxides) and have increased their emissions more than the significance levels set by the Clean Air Act. An alternative siting analysis is an analysis of alternative sites, sizes, production processes and environmental control techniques for the proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification. Non-major stationary sources are not required to do an alternative siting analysis. EPA staff, at both Region IX and EPA Headquarters, has indicated preliminary approval of SCAQMD's new rule pending a public comment rulemaking process.

Conclusion

Staff is drafting Rule 213, FEDERAL MAJOR MODIFICATIONS and will return to the Board for consideration of this rule by June 2006.

Respectfully Submitted,

Larry Greene
Air Pollution Control Officer