

# Rules and Regulations for the Great Basin Unified Air Pollution Control District



# GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT

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## REGULATION I - GENERAL PROVISIONS

### RULE 100.   TITLE

Adopted: 09/05/74

These rules and regulations shall be known as the rules and regulations of the Great Basin Unified Air Pollution Control District, and shall have jurisdiction throughout the counties of Inyo, Mono and Alpine.

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## RULE 101. DEFINITIONS

Adopted: 09/05/74      Revised: 03/10/76, 10/01/76, 06/25/79, 02/09/81, 11/04/92, 05/08/96, 11/07/01, 09/24/03

Except as otherwise specifically provided in these rules and except where the content otherwise indicates, words used in these rules are used in exactly the same sense as the same words are used in Part 1 of Division 26 of the Health and Safety Code.

### A. AGRICULTURAL BURNING

1. "Agricultural burning" means open outdoor fires used in agricultural operations in the growing of crops or raising of fowl or animals, or open outdoor fires used in forest management, range improvement, or the improvement of land for wildlife and game habitat, or disease or pest prevention.
2. "Agricultural burning" also means open outdoor fires used in the operation or maintenance of a system for the delivery of water for the purposes specified in Subsection 1.
3. "Agricultural burning" also means open outdoor fires used in wildland vegetation management burning. Wildland vegetation management burning is the use of prescribed burning conducted by a public agency, or through a cooperative agreement or contract involving a public agency, to burn land predominantly covered with chaparral, trees, grass, tule, or standing brush. Prescribed burning is the planned application of fire to vegetation to achieve any specific objective on lands selected in advance of that application. The planned application of fire may also include natural or accidental ignition.

### B. AGRICULTURAL OPERATION

"Agricultural operation" means the growing of crops, the raising of fowl, animals or bees, as a gainful occupation.

### C. AGRICULTURAL WASTES

"Agricultural wastes" are defined as unwanted or unsalvageable material produced wholly from agricultural operations directly related to the growing of crops or the raising of animals for the primary purpose of making a profit or for a livelihood. This also includes, for the purpose of cultural practice burns, the burning of fence rows and ditch banks for weed control and weed maintenance and burning in nontillage orchards operations and of paper raisin trays, but does not include such items as shop wastes, demolition materials, garbage, oil filters, tires, pesticide containers (except paper pesticide containers), broken boxes, pallets, and other similar material, or orchard or vineyard wastes removed for land use conversion to non-agricultural purposes.

### D. AIR CONTAMINANTS

"Air Contaminant" includes smoke, charred paper, dust colloids, soot, grime, carbon, noxious acid, noxious fumes, noxious gases, odors, or particulate matter, or any combination thereof.

E.     ATMOSPHERE

"Atmosphere" means the air that envelopes or surrounds the earth. Where air contaminants are emitted into a building or structure not designed specifically as a piece of air pollution control equipment such emission into the building or structure shall be considered an emission into the atmosphere.

F.     BOARD

"Board" means the Air Pollution Control Board of the Great Basin Unified Air Pollution Control District.

G.     BRUSH TREATED

"Brush treated" means that the material to be burned has been felled, crushed or uprooted with mechanical equipment, has been desiccated with herbicides, or is dead.

H.     BURN DAY

"Burn day," or "permissive-burn day" means any day on which agricultural burning, including prescribed burning, is not prohibited by the state board within the Great Basin Unified Air Pollution Control District and is authorized by the Air Pollution Control Officer consistent with District regulations related to open outdoor fires.

I.     COMBUSTIBLE REFUSE

"Combustible Refuse" is any solid or liquid combustible waste material containing carbon in a free or combined state.

J.     COMBUSTION CONTAMINANTS

"Combustion Contaminants" are solid or liquid particles discharged into the atmosphere from the burning of any kind of material containing carbon in a free or combined state.

K.     DUSTS

"Dusts" are minute solid particles released into the air by natural forces or by mechanical processes such as crushing, grinding, milling, drilling, demolishing, blasting, shoveling, conveying, covering, bagging and sweeping or any combination thereof.

L.     FLUE

"Flue" means any duct or passage for air, gases, or the like, such as a stack or chimney.

M.     FOREST MANAGEMENT BURNING

"Forest Management Burning" means the use of open fires, as a part of a forest practice, to remove forest debris. Forest management practices include timber operations, silvicultural practices or forest protection practices.



1. "Timber Operations" means cutting or removal of timber or other forest vegetation.
2. "Silvicultural" means the establishment, development, care and reproduction of stands of timber.

N. FUMES

"Fumes" are minute solid particles generated by the condensation of vapors from solid matter after volatilization from the molten state, or generated by sublimation, distillation, calcination or chemical reaction, when these processes create air-borne particles.

O. HOUSEHOLD RUBBISH

"Household Rubbish" means combustible waste material and trash, including garden trash and prunings, normally accumulated by a family in a residence in the course of ordinary day to day living. See also Rule 101 BB. Waste.

P. INCINERATOR

"Incinerator" means any furnace or other closed fire chamber used for the burning of combustible refuse from which the products of combustion are directed through a chimney or flue. "Incinerator" also means any device constructed of nonflammable materials, including containers commonly known as burn barrels, for the purpose of burning therein trash, debris, and other flammable materials for volume reduction or destruction.

Q. MULTIPLE-CHAMBER INCINERATOR

"Multiple-chamber incinerator" is any article, machine, equipment, contrivance, structure or part of a structure used to dispose of combustible refuse by burning, consisting of three or more refractory lined combustion furnaces in series, physically separated by refractory walls, interconnected by gas passage ports or ducts and employing adequate design parameters necessary for maximum combustion of the material to be burned.

R. OIL-EFFLUENT WATER SEPARATOR

"Oil-effluent Water Separator" is any tank, box, sump or other container in which any petroleum or product thereof, floating on or entrained or contained in water entering such tank, box, sump or other container is physically separated and removed from such water prior to outfall, drainage, or recovery of such water.

S. OPEN OUTDOOR FIRE

"Open Outdoor Fire" means the burning or smoldering of any combustible material of any type outdoors in the open air, either inside or outside a fireproof container, where the products of combustion are not directed through a chimney or flue.

T. PARTICULATE MATTER

"Particulate matter (PM)" means any airborne finely divided material, except uncombined water, which exists as a solid or liquid at standard conditions (e.g., dust, smoke, mist, fumes or smog). "PM2.5" means particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers. "PM10" means particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (including PM2.5).

U. PERSON

"Person" means any person, firm, association, organization, partnership, business trust, corporation, company contractor, supplier, installer, user, owner, or any Federal, State or local governmental agency or public district, or any officer, or employee thereof. "Person" also means the United States or its agencies, to the extent authorized by Federal Law.

V. PRESCRIBED BURNING

"Prescribed burning" means the planned application of fire to vegetation on lands selected in advance of such application, where any of the purposes of the burning are specified in the definition of agricultural burning as set forth in Health and Safety Code Section 39011.

W. PROCESS WEIGHT PER HOUR

"Process Weight" is the total weight of all materials introduced into any specific process which process may cause any discharge into the atmosphere. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not. The "Process Weight per Hour" will be derived by dividing the total process weight by the number of hours in one cycle of operation from the beginning of any given process to the completion thereof, excluding any time during which the equipment is idle.

X. RANGE IMPROVEMENT BURNING

"Range Improvement Burning" means the use of open fires to remove vegetation for a wildlife, game or livestock habitat or for the initial establishment of an agricultural practice on previously uncultivated land.

Y. REGULATION

"Regulation" means one of the major subdivisions of the rules of the Great Basin Unified Air Pollution Control Districts.

Z. RULE

"Rule" means a rule of the Great Basin Unified Air Pollution Control District.

AA. SECTION

"Section" means the section of the Health and Safety Code of the State of California, as amended, effective January 1, 1976, unless some other statute is specifically mentioned.

AB. SOURCE OPERATION

"Source Operation" means the last operation preceding the emission of an air contaminant for which the operation both:

1. Results in the separation of the air contaminant from the process materials or in the conversion of the process materials into air contaminants, as in the case of combustion of fuel; and
2. Is not an air pollution abatement operation.

AC. WILDLAND VEGETATION MANAGEMENT BURNING

"Wildland vegetation management burning" means the use of prescribed burning conducted by a public agency, or through a cooperative agreement or contract involving a public agency, to burn land predominantly covered with chaparral (as defined in Title 14, California Code of Regulations, Section 1561.1), trees, grass, tule, or standing brush.

AD. NON-INDUSTRIAL WOOD WASTE

"Non-industrial wood waste" means wood waste from trees, vines and brush that is not produced as a result of an industrial process.

AE. OPEN BURN/OPEN DETONATION OPERATIONS (OB/OD)

"Open burn/open detonation operations" refers to the treatment of propellants, explosives, and pyrotechnics (PEP) at military bases. During "open burning," raw material mixes with air and burns at temperatures which can exceed 3500 degrees Kelvin and pressures greater than 1000 pounds per square inch absolute. The open burning process entails a rapid oxidation of some fuel with a heat release and formation of combustion products. The burning of waste munitions converts the solid materials to gaseous products and particulate matter. Open detonation produces temperatures and pressures that are considerably greater than open burning. Detonation is an explosion in which a chemical transformation passes through the material faster than the speed of sound.

AF. "Air quality" means the characteristics of the ambient air as indicated by state ambient air quality standards which have been adopted by the state board pursuant to section 39606 of the Health and Safety Code and by National Ambient Air Quality Standards which have been established pursuant to sections 108 and 109 of the federal Clean Air Act pertaining to criteria pollutants and section 169A of the federal Clean Air Act pertaining to visibility.

- AG. "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.
- AH. "CARB," "ARB" or "state board" means the California Air Resources Board.
- AI. "Burn plan" means an operational plan for managing a specific fire to achieve resource benefits and specific management objectives. The plan includes, at a minimum, the project objectives, contingency responses for when the fire is out of prescription with the smoke management plan, the fire prescription (including smoke management components), and a description of the personnel, organization, and equipment.
- AJ. "Burn project" means an active or planned prescribed burn or a naturally ignited wildland fire managed for resource benefits.
- AK. "Class I Area" means a mandatory visibility protection area designated pursuant to section 169A of the federal Clean Air Act.
- AL. "Fire protection agency" means any agency with the responsibility and authority to protect people, property, and the environment from fire, and having jurisdiction within a district or region.
- AM. "Land manager" means any federal, state, local, or private entity that administers, directs, oversees, or controls the use of public or private land, including the application of fire to the land.
- AN. "National Ambient Air Quality Standards (NAAQS)" mean standards promulgated by the United States Environmental Protection Agency that specify the maximum acceptable concentrations of pollutants in the ambient air to protect public health with an adequate margin of safety, and to protect public welfare from any known or anticipated adverse effects of such pollutants (e.g., visibility impairment, soiling, harm to wildlife or vegetation, materials damage, etc.) in the ambient air.
- AO. "No-burn day" means any day on which agricultural burning, including prescribed burning, is prohibited by the state board, or the Air Pollution Control Officer.
- AP. "Open burning in agricultural operations in the growing of crops or raising of fowl or animals" means:
1. The burning in the open of materials produced wholly from operations in the growing and harvesting of crops or raising of fowl or animals for the primary purpose of making a profit, of providing a livelihood, or of conducting agricultural research or instruction by an educational institution.
  2. In connection with operations qualifying under paragraph 1:
    - a. The burning of grass and weeds in or adjacent to fields in cultivation or being prepared for cultivation.

- b. The burning of materials not produced wholly from such operations, but which are intimately related to the growing or harvesting of crops and which are used in the field, except as prohibited by district regulations. Examples are trays for drying raisins, date palm protection paper, and fertilizer and pesticide sacks or containers, where the sacks or containers are emptied in the field.
- AQ. "Prescribed fire" means any fire ignited by management actions to meet specific objectives, and includes naturally-ignited wildland fires managed for resource benefits.
- AR. "Smoke Management Plan" means a document prepared for each prescribed fire by land managers or fire managers that provides the information and procedures required in Rule 411.
- AS. "Smoke sensitive areas" are populated areas and other areas where the Air Pollution Control Officer determines that smoke and air pollutants can adversely affect public health or welfare. Such areas can include, but are not limited to, towns and villages, campgrounds, trails, populated recreational areas, hospitals, nursing homes, schools, roads, airports, public events, shopping centers, and mandatory Class I areas.
- AT. "State ambient air quality standards" means specified concentrations and durations of air pollutants which reflect the relationship between the intensity and composition of air pollution to undesirable effects, as established by the state board pursuant to Health and Safety Code section 39606.
- AU. "Wildfire" means an unwanted wildland fire.
- AV. "Wildland" means an area where development is generally limited to roads, railroads, power lines, and widely scattered structures. Such land is not cultivated (i.e., the soil is disturbed less frequently than once in 10 years), is not fallow, and is not in the United States Department of Agriculture (USDA) Conservation Reserve Program. The land may be neglected altogether or managed for such purposes as wood or forage production, wildlife, recreation, wetlands, or protective plant cover. "Wildland" also means any lands that are contiguous to lands classified as a state responsibility area if wildland fuel accumulation is such that a wildland fire occurring on these lands would pose a threat to the adjacent state responsibility area. For California Department of Forestry (CDF) only, "Wildland" as specified in California Public Resources Code (PRC) section 4464(a) means any land that is classified as a state responsibility area pursuant to article 3 (commencing with section 4125) of chapter 1, part 2 of division 4 and includes any such land having a plant cover consisting principally of grasses, forbs, or shrubs that are valuable for forage.
- AW. "Wildland fire" means any non-structural fire, other than prescribed fire, that occurs in the wildland. For CDF only, "wildland fire" as specified in PRC section 4464(c) means any uncontrolled fire burning on wildland.
- AX. "Wildland/urban interface" means the line, area, or zone where structures and other human development meet or intermingle with the wildland.
- AY. "Approved ignition device" means an instrument or material that will ignite open fires without the production of black smoke by the ignition device, as approved by the APCO.

- AZ. "Burn Barrel" means a metal container used to hold combustible or flammable waste materials so that they can be ignited outdoors for the purpose of disposal.
- BA. "Natural vegetation" means all plants, including but not limited to grasses, forbs, trees, shrubs, flowers, or vines that grow in the wild or under cultivation. Natural vegetation excludes vegetative materials that have been processed, treated or preserved with chemicals for subsequent human or animal use, including but not limited to chemically-treated lumber, wood products or paper products.
- BB. "Waste" for the purpose of District Rules 406 and 407, means all discarded putrescible and non-putrescible solid, semisolid, and liquid materials, including but not limited to petroleum products and petroleum wastes; construction and demolition debris; coated wire; tires; tar; tarpaper; wood waste; processed or treated wood and wood products; metals; motor vehicle bodies and parts; rubber; synthetics; plastics, including plastic film, twine and pipe; fiberglass; styrofoam; garbage; trash; refuse; rubbish; disposable diapers; ashes; glass; industrial wastes; manufactured products; equipment; instruments; utensils; appliances; furniture; cloth; rags; paper or paper products; cardboard; boxes; crates; excelsior; offal; swill; carcass of a dead animal; manure; human or animal parts or wastes, including blood; fecal- and food-contaminated material. For the purpose of District Rule 406, dry, natural vegetation waste from yard maintenance is excluded from the meaning of "waste," if the material is reasonably free of dirt, soil and surface moisture.

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RULE 102. STANDARD CONDITIONS

Adopted: 09/05/74

As used in these regulations, standard conditions are a gas temperature of 60 degrees Fahrenheit and a gas pressure of 14.7 pounds per square inch absolute. Results of all analyses and tests shall be reduced to standard conditions and shall be calculated to and reported at this gas temperature and pressure.

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RULE 103. EFFECTIVE DATE

Adopted: 09/05/74

These Rules and Regulations replace the District's existing Rules and Regulations and shall take effect on March 11, 1976. Future amendments to these Rules and Regulations shall take effect on the dates specified therein or as specified in the order by which they are adopted.

[Intentionally left blank.]



RULE 104. AMENDMENT PROCEDURES

Adopted: 09/05/74

The procedures for the adoption of these Rules and Regulations, and future amendments herein, shall be in accordance with Sections 40700 through Section 40704 inclusive, of the California Health and Safety Code.

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RULE 105. ARRESTS AND NOTICES TO APPEAR

Adopted: 09/05/74

Pursuant to the provisions of Penal Code Section 836.5, the Air Pollution Control Officer and his deputies are authorized to arrest without a warrant and issue written notices to appear whenever they have reasonable cause to believe that the person to be arrested has committed a misdemeanor in their presence which is a violation of a rule or regulation of the Great Basin Unified Air Pollution Control District or a violation of a section in Part 1 or Part 4 of Division 26 of the Health and Safety Code of the State of California, or any provision of the Vehicle Code relating to the emission or control of air contaminants.

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RULE 106. INCREMENTS OF PROGRESS

Adopted: 09/05/74

- A. Unless and until the Air Pollution Control District Hearing Board authorizes such operation, no person shall operate any article, machine, equipment or any other contrivance if such person fails to achieve any scheduled increment of progress established pursuant to Sections 42358 or 41703, Health and Safety Code or by the Air Pollution Control Board pursuant to Section 41703 of the Health and Safety Code.
- B. Whenever the Air Pollution Control Board adopts or modifies a rule in Regulation IV of these regulations and such new rule or modified rule contains a compliance schedule with increments of progress, the owner or operator of the affected article, machine, equipment or other contrivance shall, within five days after each of the dates specified in the compliance schedule, certify to the Air Pollution Control Officer, in the form and manner specified by the Air Pollution Control Officer, that the increments of progress have or have not been achieved.
- C. Whenever the Air Pollution Control District Hearing Board approves a compliance schedule with increments of progress, the owner or operator of the affected article, machine equipment or other contrivance shall, within five days after each of the dates specified in the compliance schedule, certify to the Air Pollution Control Officer, in the form and manner specified, that the increments of progress have or have not been achieved.

FOR THE PURPOSES OF THIS RULE:

- 1. "Compliance Schedule" means the date or dates by which a source or category of sources is required to comply with specific emission limitations contained in any air pollution rule, regulation, or statute and with any increment of progress toward such compliance.
- 2. "Increments of Progress" means steps toward compliance which will be taken including:
  - a. The date of submittal of the source's final control plan to the Air Pollution Control Officer.
  - b. The date by which contracts for emission control systems or process modifications will be awarded; or the date by which orders will be issued for the purchase of component parts to accomplish modification.
  - c. The date of initiation of onsite construction or installation of emission control equipment or process change.
  - d. The date by which onsite construction or installation of emission control equipment or process modification is to be completed.
  - e. The date by which final compliance is to be achieved.
  - f. Such additional increments of progress as may be necessary or appropriate to permit close and effective supervision.

RULE 107.    CONSTITUTIONALITY

Adopted: 09/05/74

If any rule, part of a rule, sentence, clause or phrase of these regulations is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of these regulations.

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## RULE 108. VIOLATIONS AND DETERMINATION OF COMPLIANCE

Adopted: 03/08/95

### A. GENERAL

#### 1. Purpose

The purpose of this rule is to provide standards by which compliance with requirements derived from the federal Clean Air Act may be determined.

#### 2. Applicability

The provisions of this rule shall provide standards for compliance determinations required by, or derived from, federal law for the operation of any article, machine, equipment, or other contrivance within the District which may cause the issuance of air contaminants, or the use of which may eliminate, reduce, or control the issuance of air contaminants.

#### 3. Exemptions

Operations which are exempt from federal permit under Title V of the Clean Air Act Amendments of 1990 are exempt from this Rule.

#### 4. Effective Dates

This Rule becomes effective on March 8, 1995.

#### 5. References

The requirements of this Rule arise from the provisions of Sections 110(a)(2)(A),(C), and (F)(42 U.S.C. Sections 7401(a)(2)(A),(C), and (F): and Sections 113, 114(a)(3)(42 U.S.C. Sections 7413 and 7414(a)(3)) of the federal Clean Air Act.

### B. DEFINITIONS

1. "Administrator" means the Administrator of the United States Environmental Protection Agency or delegate.

2. "District" means the Air Pollution Control District.

### C. VIOLATIONS OF OTHER LEGAL MANDATES

Nothing in the District Regulations is intended to permit any practice which is a violation of any statute, ordinance, rule or regulation.

### D. STANDARDS FOR DETERMINATION OF COMPLIANCE

#### 1. Compliance Certification

Notwithstanding any other provision in any plan approved by the United States Environmental Protection Agency Administrator, for the purpose of submission of

compliance certification required by federal law, the owner or operator is not prohibited from using the following, in addition to any specified compliance methods:

- a. An enhanced monitoring protocol approved for the source pursuant to 40 CFR Part 64.
- b. Any other monitoring method approved for the source pursuant to 40 CFR 70.6(a)(3) and incorporated into a federally enforceable operating permit.

2. Credible Evidence

Notwithstanding any other provision in the District's State Implementation Plan approved by the Administrator, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of any such plan.

- a. Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at a source:
  - i. An enhanced monitoring protocol approved for the source pursuant to 40 CFR Part 64.
  - ii. A monitoring method approved for the source pursuant to 40 CFR 70.6(a)(3) and incorporated into a federally enforceable operating permit.
  - iii. Compliance test methods specified in the District's State Implementation Plan.
- b. The following testing, monitoring, or information-gathering methods are presumptively credible testing, monitoring, or information-gathering methods:
  - i. Any federally-enforceable monitoring or testing methods, including those in 40 CFR Parts 51, 60, 61 and 75.
  - ii. Other testing, monitoring, or information gathering methods that produce information comparable to that produced by any method in D.2.a. or D.2.b.i herein.

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## RULE 109. MINOR VIOLATIONS

Adopted: May 26, 1999      Repealed: January 1, 2001

Adopted & Revised: September 12, 2001

### A. GENERAL

#### 1. Purpose

The purpose of this rule is to implement the provisions of Chapter 3 of Part I of Division 25 of the California Health and Safety Code (Section 39150 et seq.) which defines a minor violation and establishes guidelines for issuing a Notice to Comply.

#### 2. Applicability

This rule applies to any person subject to a state requirement, or District rule, regulation, permit condition, administrative or procedural plan, or request for information from the District.

#### 3. Severability

If a court of competent jurisdiction issues an order that any provision of this rule is invalid, it is the intent of the Board of Directors of the District that other provisions of this rule remain in full force and effect to the extent allowed by law.

### B. DEFINITIONS

#### 1. Administrative Requirements

A provision of a state requirement, District rule, regulation, plan, or permit which requires a specified action but does not directly result in a measurable increase in air contaminant emissions to the atmosphere.

#### 2. Air Contaminant

Any discharge, release, or other propagation into the atmosphere of an air pollutant and includes but is not limited to smoke, charred paper, dust soot, grime, carbon, fumes, gases, odors, Volatile Organic Compounds (VOC), Nitrogen Oxides (NO<sub>x</sub>), Sulfur Oxides (SO<sub>x</sub>), Carbon Monoxide (CO), Hydrogen Sulfide, particulate matter, acids or any combination thereof.

#### 3. Ambient Air Quality Standard

Any National Ambient Air Quality Standard promulgated pursuant to the provisions of 42 U.S.C. 7406 or any State Ambient Air Quality Standards promulgated pursuant to the provisions of the California Health and Safety Code Section 39006.

4. Chronic Violation

A violation of a state requirement, District rule, regulation, plan or permit by a person that reflects a pattern of neglect, disregard or recurrence of the same or similar violation at the same facility, process, or piece of equipment.

5. Information

Data, records, photographs, analyses, plans or specifications which will disclose the nature, extent, quantity, or degree of air contaminants which are, or may be, discharged by the source for which a permit was issued or applied, or which is subject to a state requirement, District rule, regulation, permit condition, administrative or procedural plan or request for information by the District.

6. Minor Violation

- a. The failure of a person to comply with administrative or procedural requirements of an applicable state requirement, District rule, regulation, permit condition, administrative or procedural plan or request for information by the District which are all of the following;
  - i. It does not result in an increase of emissions of air contaminants; and
  - ii. It does not endanger the health, safety, or welfare of any person or persons; and
  - iii. It does not endanger the environment; and
  - iv. It does not cause or contribute to the violation of any State or National Ambient Air Quality Standard; and
  - v. It does not preclude or hinder the District's ability to determine compliance with other applicable state or federal requirement, District rule, regulation, administrative or procedural plan, permit condition, or request for information.
- b. Notwithstanding Section B.6.a, a violation of an applicable State requirement, District rule, regulation, permit, administrative or procedural plan or request for information by the District shall not be considered a minor violation if:
  - i. The violation involves failure to comply with the emissions standard in the applicable rule or regulation, including a requirement for control equipment, emissions rate, concentration limit, opacity limit, product material limitation, or other rule provision or permit requirement associated with emissions; or
  - ii. The violation is knowing, willful, or intentional; or
  - iii. The violation enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive advantage; or
  - iv. The violation is chronic; or
  - v. The violation is committed by a recalcitrant violator,
  - vi. The violation results in a nuisance, as defined by Rule 402 – NUISANCE.



7. Notice to Comply

A written method of alleging a minor violation that:

- a. Is written in the course of conducting an inspection or during any review of the stationary source by the District; and
- b. Clearly states all of the following:
  - i. The nature of the alleged minor violation; and
  - ii. A means by which compliance with the requirements cited by the District may be achieved; and
  - iii. A time limit not to exceed 30 calendar days, by which date compliance must be achieved; and
  - iv. A statement that the inspected site or facility may be subject to reinspection at any time.

8. Permit

An Authority to Construct or Permit to Operate issued pursuant to Rule 200 PERMITS REQUIRED.

9. Procedural Requirement

A provision of a rule, regulation or permit condition that establishes a manner, method, or course of action, but does not specify, limit or otherwise affect air contaminant emissions.

10. Recalcitrant Violator

A person that has engaged in a pattern of neglect or disregard with respect to an applicable federal or state requirement, District rule, regulation, permit condition, administrative or procedural plan or request for information by to District.

C. STANDARDS

1. Notice to Comply

A Notice to Comply shall be issued for all minor violations cited as the result of the same inspection and the Notice to Comply shall separately list each cited minor violation and the manner in which each minor violation may be brought into compliance.

- a. Except as otherwise provided in Section D.2 of this regulation, a Notice to Comply shall be the only means by which the Air Pollution Control Officer shall cite a minor violation. The Air Pollution Control Officer shall not take any other enforcement action regarding a minor violation against a person who has received a Notice to Comply if the person is in compliance with Section C.3.

- b. If the Air Pollution Control Officer determines that the circumstances surrounding a particular minor violation are such that immediate enforcement is warranted to prevent harm to the public health or safety, or to the environment, including requirements of state and federal law, the Air Pollution Control Officer may take any needed enforcement action authorized by law.

## 2. Immediate On-Site Corrections

A Notice to Comply shall not be issued for any minor violation that is corrected immediately and in the presence of the inspector. Immediate compliance in this manner may be noted in the inspection report or other District documents, but the person shall not be subject to any further action by the District as a result of that minor violation.

- a. Corrected minor violations may be used to show a pattern of neglect or disregard by a recalcitrant violator, or a chronic violation.

## 3. Correction Requirements

Notwithstanding an appeal of the Notice to Comply pursuant to Section D.4, a person who receives a Notice to Comply pursuant to Section C.1 shall have no more than the period specified in the Notice to Comply from the date of receipt of the Notice to Comply in which to achieve compliance with the requirements cited on the Notice to Comply.

- a. Within 5 calendar days of achieving compliance, the person shall sign, date, and return the Notice to Comply to the Air Pollution Control Officer stating that the person has complied with the Notice to Comply, and how compliance was achieved.
- b. Notwithstanding any other provision of this rule if a person fails to comply with a Notice to Comply within the prescribed period, or if the Air Pollution Control Officer determines that the circumstances surrounding a particular minor violation are such that immediate enforcement is warranted to prevent harm to the public health or safety, or to the environment, the Air Pollution Control Officer may take any needed enforcement action authorized by law.

## 4. Federal Requirements

Notwithstanding any other provision of this regulation, if the Air Pollution Control Officer determines that the circumstances surrounding a particular minor violation are such that the assessment of a penalty pursuant to this rule is warranted or required by federal law, in addition to issuance of a Notice to Comply, the District shall assess a penalty in accordance with Division 26 of the Health and Safety Code, Section 42400, et seq., if the Air Pollution Control Officer makes written findings that set forth the basis for the determination of the District.

- a. The issuance of a Notice to Comply for a violation of state law will not interfere with an agency's duty and ability to enforce all federal requirements or laws.

D. ADMINISTRATIVE REQUIREMENTS

1. Appeal Process

If a person receives a Notice to Comply pursuant to Section C.1 and disagrees with one or more of the alleged violations cited in the Notice to Comply, the person may give written notice of appeal to the District within 5 working days of issuance of the Notice to Comply, stating in sufficient detail the grounds for challenging the Notice to Comply.

- a. The Air Pollution Control officer shall grant or deny the appeal within 5 calendar days of receipt of the appeal. If the Air Pollution Control Officer fails to respond, the appeal shall be deemed denied - The Air Pollution Control Officer's decision shall be final.

2. Penalty

Any person who fails to resolve a Notice to Comply by the date specified on the Notice to Comply or submits a false statement that compliance has been achieved shall be issued a Notice of Violation which may be subject to further legal action pursuant to the California Health and Safety Code, Section 42400, et seq.

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## REGULATION II – PERMITS

### RULE 200. PERMITS REQUIRED

Adopted: 09/05/74

- A. Authority to Construct. Before any person builds, erects, alters, or replaces any article, machine, equipment or other contrivance which may cause the issuance of air contaminants or the use of which may eliminate or reduce or control the issuance of air contaminants, such person shall obtain a written authority to construct from the Air Pollution Control Officer. An authority to construct shall remain in effect until the permit to operate the equipment for which the application was filed is granted or denied or the application is cancelled.
- B. Permit to Operate. Before any person operates or uses any article, machine, equipment or other contrivance which may cause the issuance of air contaminants, a written permit shall be obtained from the Air Pollution Control Officer. No permit to operate or use shall be granted either by the Air Pollution Control Officer, or the Hearing Board for any such article, machine, equipment or contrivance described herein until the information required is presented to the Air Pollution Control Officer and such article, machine, equipment or contrivance is altered, if necessary, and made to conform to the standards set forth in Rule 212 and elsewhere in these Rules and Regulations.
- C. Review of Permits. The Air Pollution Control Officer may at any time require from an applicant for, or holder of, any authority to construct or permit to operate, such information, analyses, plans or specifications as will disclose the nature, extent, quantity or degree of air contaminants which are or may be discharged into the atmosphere.
- D. Post of Permit to Operate. A person who has been granted under Rule 200 (B) a permit to operate any article, machine, equipment, or other contrivance described in Rule 200 (B), shall firmly affix such permit to operate, or an approved facsimile or other approved identification bearing the permit number upon the article, machine, equipment or other contrivance in such a manner as to be clearly visible and accessible. In the event that the article, machine, equipment, or other contrivance is so constructed or operated that the permit to operate cannot be so placed, the permit to operate shall be mounted so as to be clearly visible in an accessible place within 25 feet of the article, machine, equipment or other contrivance, or maintained readily available at all times on the operating premises.
- E. Alteration of Permit. A person shall not willfully deface, alter, forge, counterfeit, or falsify any permit issued under these Rules and Regulations.
- F. Control Equipment. Nothing in this rule shall be construed to authorize the control officer to require the use of machinery, devices, or equipment of a particular type or design if the required emission standard may be consistently met by machinery, devices, equipment, product or process change otherwise available.

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## RULE 201. EXEMPTIONS

Adopted: 09/05/74      Revised: 02/15/89, 05/08/96, 01/23/06

The exemptions contained in this Rule shall not apply to any new stationary source or modification as defined in Rule 209-A, (F), 2 and 3, which would emit any pollutants in excess of the quantities stated in Rule 209-A, (B), (2).

An authority to construct or a permit to operate shall not be required for the sources hereinafter set out, provided, however, said sources shall comply with all other applicable District Rules and Regulations.

- A. Vehicles as defined by the Vehicle Code of the State of California but not including any article, machine, equipment, or other contrivance mounted on such vehicle that would otherwise require a permit under the provisions of these Rules and Regulations.
- B. Vehicles used to transport passengers or freight.
- C. Equipment utilized, exclusively in connection with any structure which is designed for and used exclusively as a dwelling for not more than four families.
- D. The following equipment:
  - 1. Comfort air conditioning or comfort ventilating systems which are not designed to remove air contaminants generated by or released from specific units or equipment.
  - 2. Refrigeration units except those used as, or in conjunction with, air pollution control equipment.
  - 3. Piston type internal combustion engines except for diesel engines greater than 50 brake horsepower that are subject to emission control requirements pursuant to the Airborne Toxic Control Measure for Stationary Compression Ignition Engines (Title 17, California Code of Regulations, Section 93115).
  - 4. Water cooling towers and water cooling ponds not used for evaporative cooling of process water or not used for evaporative cooling of water from barometric jets or from barometric condensers.
  - 5. Equipment used exclusively for steam cleaning.
  - 6. Presses used exclusively for extruding metals, minerals, plastics or wood.
  - 7. Presses used for the curing of rubber products and plastic products.
  - 8. Equipment used exclusively for space heating other than boilers.
  - 9. Equipment used for hydraulic or hydrostatic testing.
  - 10. All sheet-fed printing presses and all other printing presses without dryers.

11. Tanks, vessels and pumping equipment used exclusively for the storage or dispensing of fresh commercial or purer grades of:
  - a. Sulfuric acid with an acid strength of 99 percent or less by weight.
  - b. Phosphoric acid with an acid strength of 99 percent or less by weight.
12. Ovens used exclusively for the curing of plastics which are concurrently being vacuum held to a mold or for the softening or annealing of plastics.
13. Equipment used exclusively for the dying or stripping (bleaching) of textiles where no organic solvents, diluents or thinners are used.
14. Equipment used exclusively to mill or grind coatings and molding compound where all materials charged are in a paste form.
15. Crucible type or pot type furnaces with a brimful capacity of less than 450 cubic inches of any molten metal.
16. Equipment used exclusively for the melting or applying of wax where no organic solvents, diluents or thinners are used.
17. Equipment used exclusively for bonding lining to brake shoes.
18. Lint traps used exclusively in conjunction with dry cleaning tumblers.
19. Equipment used in eating establishments for the purpose of preparing food for human consumption.
20. Equipment used exclusively to compress or hold dry natural gas.
21. Tumblers used for the cleaning or deburring of metal products without abrasive blasting.
22. Shell core and shell mold manufacturing machines.
23. Molds used for the casting of metals.
24. Abrasive blast cabinet-dust filter integral combination units where the total internal volume of the blast section is 50 cubic feet or less.
25. Batch mixers of five cubic feet rated working capacity or less.
26. Equipment used exclusively for the packaging of lubricants or greases.
27. Equipment used exclusively for the manufacture of water emulsions of asphalt, greases, oils or waxes.
28. Ovens used exclusively for the curing of vinyl plastisols by the closed molding curing process.

29. Equipment used exclusively for conveying and storing plastic pellets.
  30. Equipment used exclusively for the mixing and blending of materials at ambient temperature to make water-based adhesives.
  31. Smokehouses in which the maximum horizontal inside cross-sectional area does not exceed 20 square feet.
  32. Platen presses used for laminating.
  33. Equipment used exclusively to grind, blend or package tea, cocoa, spices or roasted coffee.
- E. The following equipment or any exhaust system or collector serving exclusively such equipment:
1. Blast cleaning equipment using a suspension of abrasive in water.
  2. Ovens, mixers and blenders used in bakeries where products are edible and intended for human consumption.
  3. Kilns used for firing ceramic water, heated exclusively by natural gas, liquefied petroleum gas, electricity or any combination thereof.
  4. Laboratory equipment used exclusively for chemical or physical analyses and bench scale laboratory equipment.
  5. Equipment used for inspection of metal products.
  6. Confection cookers where the products are edible and intended for human consumption.
  7. Equipment used exclusively for forging, pressing, rolling or drawing of metals or for heating metals immediately prior to forging, pressing, rolling or drawing.
  8. Die casting machines.
  9. Atmospheric generators used in connection with metal heat treating processes.
  10. Photographic process equipment by which an image is reproduced upon material sensitized to radiant energy.
  11. Brazing, soldering or welding equipment.
  12. Equipment used exclusively for the sintering of glass or metals.
  13. Equipment used for buffing (except automatic or semi- automatic tire buffers), or polishing, carving, cutting, drilling, machining, routing, sanding, sawing, surface grinding or turning of ceramic artwork, ceramic precision parts, leather, metals, plastics, rubber, fiberboard, masonry, carbon or graphite.

14. Equipment used for carving, cutting, drilling, surface grinding, liquefied, routing, sanding, sawing, shredding or turning of wood, or the pressing or storing of sawdust, wood chips or wood shavings.
  15. Equipment using aqueous solutions for surface preparation, cleaning, stripping, etching, (does not include chemical milling) or the electrolytic plating with electrolytic polishing of, or the electrolytic stripping of brass, bronze, cadmium, copper, iron, lead, nickel, tin, zinc and precious metals.
  16. Equipment used for washing or drying products fabricated from metal or glass, provided that no volatile organic materials are used in the process and that no oil or solid fuel is burned.
  17. Laundry dryers, extractors or tumblers used for fabrics cleaned only with water solutions of bleach or detergents.
  18. Foundry sand mold forming equipment to which no heat is applied.
  19. Ovens used exclusively for curing potting materials or castings made with epoxy resins.
  20. Equipment used to liquefied or separate oxygen, nitrogen or the rare gases from the air.
  21. Equipment used for compression molding and injection molding of plastics.
  22. Mixers for rubber or plastics where no material in powder form is added and no organic solvents, diluents or thinners are used.
  23. Equipment used exclusively to package pharmaceuticals and cosmetics or to coat pharmaceutical tablets.
  24. Roll mills or liquefied for rubber or plastics where no organic solvents, diluents or thinners are used.
  25. Vacuum producing devices used in laboratory operations or in connection with other equipment which is exempt by Rule 201.
- F. Steam generators, steam superheaters, water boilers, water heaters, and closed heat transfer systems that have a maximum heat input rate of less than 15 million British Thermal Units (BTU) per hour (gross), and are fired exclusively with natural gas or liquefied petroleum gas or any combination thereof.
- G. Natural draft hoods, natural draft stacks or natural draft ventilators.
- H. Containers, reservoirs or tanks used exclusively for:
1. Dipping operations for coating objects with oils, waxes, or greases where no organic solvents, diluents or thinners are used.



2. Dipping operations for applying coatings of natural synthetic resins which contain no organic solvents.
  3. Storage of liquefied gases.
  4. Unheated storage of organic materials with an initial boiling point of 300 F or greater.
  5. The storage of fuel oils with a gravity of 25 API or lower.
  6. The storage of lubricating oils.
  7. The storage of organic liquids, except gasoline, normally used as solvents, diluents or thinners, inks, colorants, paints, lacquers, enamels, varnishes, liquid resins or other surface coatings, and having a capacity of 6,000 gallons or less.
  8. The storage of liquid soaps, liquid detergents, waxes, wax emulsions, or vegetable oils.
  9. Asphalt Melting Kettles or molten asphalt holding tanks with less than 250 gallon capacity.
  10. Unheated solvent dispensing containers, unheated non-conveyorized coating dip tanks of 250 gallon capacity or less.
  11. Storage of gasoline in underground tanks having a capacity of 250 gallons or less or installed prior to December 31, 1970.
- I. Equipment used exclusively for heat treating glass or metals, or used exclusively for case hardening, carburizing, cyaniding, nitriding, carbonitriding, silicoconizing or diffusion treating of metal objects.
- J. Crucible furnaces, pot furnaces or induction furnaces, with a capacity of 1,000 pounds or less each, in which no sweating or distilling is conducted and from which only the following metals are held in a molten state:
1. Aluminum or any alloy containing over 50 percent aluminum.
  2. Magnesium or any alloy containing over 50 percent magnesium.
  3. Lead or any alloy containing over 50 percent lead.
  4. Tin or any alloy containing over 50 percent tin.
  5. Zinc or any alloy containing over 50 percent zinc.
  6. Copper.
  7. Precious metals.

- K. Furnaces for the melting of lead or any alloy, or the holding of lead or any alloy in a molten state where the metal is used exclusively in printing processes.
- L. Vacuum cleaning systems used exclusively for industrial, commercial or residential housekeeping purposes.
- M. Structural changes which cannot change the quality, nature or quantity of air contaminant emissions.
- N. Repairs or maintenance not involving structural changes to any equipment for which a permit has been granted.
- O. Identical replacements in whole or in part of any article, machine, equipment or other contrivance where a permit to operate has previously been granted for such equipment under Rule 200; however, this exception shall not be applicable to equipment or air pollution control equipment with respect to the loading of gasoline into stationary tanks (Rule 419).
- P. Open Burn/Open Detonation Operations on Military Bases, provided the operation complies with the requirements of Rules 217 and 432.

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RULE 202. TRANSFER

Adopted: 09/05/74

An authority to construct or permit to operate shall not be transferable, by operation of law or otherwise, either from one location to another, from one piece of equipment to another, or from one person to another.

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RULE 203. APPLICATIONS

Adopted: 08/20/79

Any person who desires to construct a new stationary source or modify an existing stationary source for which district regulations require an authority to construct shall file an application in writing with the Air Pollution Control Officer, except as provided in Section (E) of Rule 209A. Such application shall contain the information required pursuant to District regulations and the list and criteria adopted pursuant to 'AB 884' regarding information requirements.

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RULE 204. CANCELLATION OF APPLICATIONS

Adopted: 09/05/74

An authority to construct shall expire and the application shall be cancelled two years from the date of issuance of the authority to construct; provided, however, that when a period of longer than two years is stated in the application to be required for the construction, the authority to construct shall expire and the application shall be cancelled upon the expiration of the stated construction period, but in any event not later than five years from the date of issuance of the authority to construct.

[Intentionally left blank.]

RULE 205. ACTION AND APPLICATIONS

Adopted: 08/20/79

- A. The Air Pollution Control Officer shall determine whether the application is complete not later than 30 calendar days after receipt of the application, or after such longer time as both the applicant and the Air Pollution Control Officer may agree. Such determination shall be transmitted in writing immediately to the applicant at the address indicated on the application. If the application is determined to be incomplete, the determination shall specify which parts of the application are incomplete and how they can be made complete. Upon receipt by the Air Pollution Control Officer of any resubmittal of the application, a new 30-day period in which the Air Pollution Control Officer must determine completeness shall begin. Completeness of an application or resubmitted application shall be evaluated on the basis of the requirements set forth in District regulations adopted pursuant to AB 884 regarding information requirements as it exists on the date on which the application or resubmitted application was received. After the Air Pollution Control Officer accepts an application as complete, the Air Pollution Control Officer shall not subsequently request of an applicant any new or additional information which was not specified in the Air Pollution Control Officer's list of items to be included within such applications. However, the Air Pollution Control Officer may, during the processing of the application, request an applicant to clarify, amplify, correct, or otherwise supplement the information required in such list in effect at the time the complete application was received. Making any such request does not waive, extend, or delay the time limits in this rule for decision on the completed application, except as the applicant and Air Pollution Control Officer may both agree.
- B. Following acceptance of an application as complete, the Air Pollution Control Officer shall:
1. Perform the evaluations required to determine compliance with this rule and make a preliminary written decision as to whether an authority to construct should be approved, conditionally approved, or disapproved. The decision shall be supported by a succinct written analysis.
  2. Within 10 calendar days following such decision, publish a notice by prominent advertisement in at least one newspaper of general circulation in the District stating the preliminary decision of the Air Pollution Control Officer and where the public may inspect the information required to be made available under Subsection (3). The notice shall provide 30 days from the date of publication for the public to submit written comments on the preliminary decision.
  3. At the time notice of the preliminary decision is published, make available for public inspection at the Air Pollution Control District's office, the information submitted by the applicant, the Air Pollution Control Officer's supporting analysis for the preliminary decision, and the preliminary decision to grant or deny the authority to construct, including any proposed permit conditions, and the reasons therefore. The confidentiality of trade secrets shall be considered in accordance with Section 6254.7 of the Government Code and relevant sections of the Administrative Code of the State of California.
  4. No later than the date of publication of the notice required by Subsection (2), forward the analysis, the preliminary decision, and copies of the notice to the Air

Resources Board (attn: Chief, Stationary Source Control Division) and the Regional Office of the U.S. Environmental Protection Agency.

5. Consider all written comments submitted during the 30 day public comment period.
  6. Within 180 days after acceptance of the application as complete, take final action on the application after considering all written comments. The Air Pollution Control Officer shall provide written notice of the final action to the applicant, the Environmental Protection Agency, and the California Air Resources Board, shall publish such notice in a newspaper of general circulation, and shall make the notice and all supporting documents available for public inspection at the Air Pollution Control District's office.
- C. The public notice and reporting requirements set forth in Subsections B(2) and B(6) shall not be required for any permit which does not include conditions requiring the control of emissions from an existing source.

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RULE 206. MONITORING FACILITIES

Adopted: 09/05/74

- A. A person operating or using any article, machine equipment or other contrivance which may cause the issuance of air contaminants, or the use of which may eliminate, reduce, or control the issuance of air contaminants, shall, upon written notice from the Air Pollution Control Officer, install and maintain in good working order and operation, monitoring devices that will determine and record the nature, extent, quantity or degree of air contaminants discharged into the atmosphere by such article, machine, equipment or other contrivance.
- B. The records of the data obtained from the monitoring devices specified in paragraph A above shall be kept for a period of two years and shall be made available, upon request, to the Air Pollution Control Officer.
- C. A person operating a monitoring device specified in paragraph A above shall, upon written notice from the Air Pollution Control Officer, periodically provide a summary of the data in the form prescribed by the Air Pollution Control Officer.

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**RULE 207. INSTACK MONITORING - 100 TPY SOURCES**

Adopted: 09/05/74 Revised: 05/12/93

A person operating or using any article, machine, equipment, or other contrivance for which these rules require a permit and which emits into the atmosphere 100 tons or more per year of non-methane hydrocarbons, oxides of nitrogen, oxides of sulfur, reduced sulfur compounds, particulate matter or more per year of carbon monoxide shall install and maintain in good operational conditions continuous monitoring devices for the pollutants and sources designated.

TABLE I - PERFORMANCE SPECIFICATIONS	
A. Monitoring System for SO <sub>2</sub> and NO <sub>x</sub>	
<u>Parameter</u>	<u>Specification</u>
Accuracy*	< 20% of the mean value of the reference method test data
Calibration Error*	< 5% of each (50%, 90%) Calibration gas mixture value
Zero Drift (2 hour)*	2% of span
Zero Drift (24 hour)*	2% of span
Calibration drift (2-hour)*	2% of span
Calibration Drift (24-hour)*	2.5% of span
Response Time	15 minutes maximum
Operational Period	168 hours minimum
B. Monitoring System for O <sub>2</sub> or CO <sub>2</sub>	
<u>Parameter</u>	<u>Specification</u>
Zero drift (2 hours)*	< 0.4% O <sub>2</sub> or CO <sub>2</sub>
Zero drift (24 hours)*	< 0.5% O <sub>2</sub> or CO <sub>2</sub>
Calibration drift (2 hours)*	< 0.4% O <sub>2</sub> or CO <sub>2</sub>
Calibration drift (24-hour)*	< 0.5% O <sub>2</sub> or CO <sub>2</sub>
Operational period	168 hours minimum
Response time	10 minutes

\* Expressed as sum of absolute mean value plus 95 percent confidence interval of a series of tests.

**RULE 209-A. STANDARDS FOR AUTHORITIES TO CONSTRUCT**

Adopted: 08/20/79      Revised: 03/17/93, 05/12/93

**A. GENERAL**

The Air Pollution Control Officer shall deny an authority to construct for any new stationary source or modification, or any portion thereof, unless:

1. The new source or modification, or applicable portion thereof, complies with the provisions of this rule and all other applicable District rules and regulations and Sections 44300 (et. seq.) of the California Health and Safety Code.
2. The applicant certifies that all other stationary sources in the State which are owned or operated by the applicant are in compliance, or are on approved schedule for compliance, with all applicable emission limitations and standards under the Clean Air Act (42 USC 7401 et. seq.) and all applicable emission limitations and standards which are part of the State Implementation Plan approved by the Environmental Protection Agency.

**B. APPLICABILITY AND EXEMPTIONS**

1. This rule (excluding Section D) shall apply to all new stationary sources and modifications which are required pursuant to District rules to obtain a permit to construct.
2. Section (D) of this rule shall apply to new stationary sources and modifications which result in either:
  - a. A net increase in emissions of 250 or more pounds during any day of any pollutant for which there is a national ambient air quality standard (excluding carbon monoxide and particulate matter), or any precursor of such a pollutant; or
  - b. A net increase in carbon monoxide emissions which the Air Pollution Control Officer determines would cause the violation of any national ambient air quality standard for carbon monoxide at the point of maximum ground level impact; or
  - c. A net increase in emissions of 250 or more pounds during any day of particulate matter, measured as total suspended particulate from new stationary sources; or
  - d. A net increase in emissions of 80 or more pounds during any day of particulate matter measured as PM-10 (particulate matter with a nominal aerodynamic diameter less than 10 microns) from a modification to an existing stationary source that has net emissions of 250 pounds or more per day of particulate matter measured as total suspended particulate prior to the modification.
3. Any new stationary source or modification which receives a permit to construct pursuant to this rule and complying with the following two conditions shall be

deemed as having met the provisions of Part C of the Clean Air Act, as amended in 1977, and any regulations adopted pursuant to those provisions.

- a. Net emissions increase of all pollutants for which there is a national ambient air quality standard, and all precursors of such pollutants, shall be mitigated (offset) by reduced emissions from existing stationary or nonstationary sources. Emissions reductions shall be sufficient to offset any net emissions increase and shall take effect at the time of, or before, initial operation of the new source, or within 90 days after initial operations of a modification.
  - b. The applicant shall demonstrate, to the satisfaction of the Air Pollution Control Officer, that the proposed new source or modification will not have a significant air quality impact on any Class I area in cases where either the Air Pollution Control Officer, the Air Resources Board, or the U. S. Environmental Protection Agency requests such a demonstration at any time during the district's review of the application for an authority to construct or within 30 days of the public notice of the Air Pollution Control Officer's decision on the application.
4. Notwithstanding the provisions of Section (B)(2), the Air Pollution Control Officer shall exempt from Section(D)(2) any new source or modification:
- a. Which will be used exclusively for providing essential public services, such as schools, hospitals, or police and fire fighting facilities, but specifically excluding sources of electrical power generation other than for emergency standby use at essential public service facilities.
  - b. Which is exclusively a modification to convert from use of a gaseous fuel to a liquid fuel because of a demonstrable shortage of gaseous fuels, provided the applicant establishes to the satisfaction of the Air Pollution Control Officer that it has made its best efforts to obtain sufficient emissions offsets pursuant to Section (D) of this rule, that such efforts had been unsuccessful as of the date the application was filed and the applicant agrees to continue to seek the necessary emissions offsets until construction on the new stationary source or modification begins. This exemption shall only apply if, at the time the permit to operate was issued for the gas burning equipment, such equipment could have burned the liquid fuel without additional controls and been in compliance with all applicable district regulations.
  - c. Which is portable sandblasting equipment used on temporary basis within the District.
  - d. Which uses innovative control equipment or processes which will likely result in a significantly lower emission rate from the stationary source than would have occurred with the use of previously recognized best available control technology, and which can be expected to serve as a model for technology to be applied to similar stationary sources within the state resulting in a substantial air quality benefit, provided the applicant establishes by modeling that the new stationary source or modification

will not cause the violation of any national ambient air quality standard at the point of maximum ground level impact. This exemption shall apply only to pollutants which are controlled by the innovative control equipment or processes. The Air Pollution Control Officer shall obtain written concurrence from the Executive Officer of the Air Resources Board prior to granting an exemption pursuant to this subsection.

- e. Which is a cogeneration project, a project using refuse-derived or biomass-derived fuels for energy generation, or a resource recovery project using municipal wastes, provided:
  - (1) the applicant establishes by modeling that the new source or modification will not cause a new violation of any national ambient air quality standard at the point of maximum ground level impact; and
  - (2) the District has established an alternative energy project offset bank which contains sufficient credits to offset the net increase in emissions from the new source modification to the extent required by Section (D)(2). For each exemption granted pursuant to this subsection, and notwithstanding Section (D) (2) (d), credits shall be withdrawn from the alternative energy project offset bank to offset the net increase in emissions from the new source or modification at a ratio of 1.2:1.

In order to establish and maintain the alternative energy project offset bank, the District may adopt rules or permit conditions which result in the cost/effective control of emissions from stationary sources throughout the District. The District shall include in the offset bank any power plant emission reductions which result from orders of the California Energy Commission or the California Public Utilities Commission. Emissions reductions which result from measures required to achieve and maintain any national ambient air quality standard, and reductions which have been proposed to offset the impact of another new source or modification for which the District has received an application, shall not be included in the offset bank. The offset bank shall not be used to offset the emissions from those portions of a new source or modification which are not directly related to energy generation.

- f. Which consists solely of the installation of air pollution control equipment which, when in operation, will directly control emissions from an existing source.
- g. Which wishes to construct in an area which has a lack of major industrial development or an absence of significant industrial particulate emissions and low urbanized population as long as the source can comply with BACT and applicable Federal, State and District emission regulations; and the impact of the emissions plus emissions from other stationary sources in the vicinity of the proposed location, along with non-rural fugitive background, will not cause a violation of state or national ambient

air quality standards. This exemption shall apply only to particulate emissions.

#### C. CALCULATION OF EMISSIONS

1. The maximum design capacity of a new stationary source or modification shall be used to determine the emissions from the new source or modification unless the applicant, as a condition to receiving permits to construct and operate such new source or modification, agrees to limitations on the operations of the new source or modification, in which event the limitations shall be used to establish the emissions from the new source or modification.
2. The emissions from an existing source shall be based on the specific limiting conditions set forth in the source's authority to construct and permit to operate, and, where no such conditions are specified, on the actual operating conditions of the existing source averaged over the three consecutive years immediately preceding the date of application, or such shorter period as may be applicable in cases where the existing source has not been in operation for three consecutive years. If violations of laws, rules, regulations, permit conditions, or orders of the District, the California Air Resources Board, or the Federal Environmental Protection Agency occurred during the period used to determine the operating conditions, then adjustments to the operating conditions shall be made to determine the emissions the existing source would have caused without such violations.
3. The net increase in emissions from new stationary sources and modifications which are not seasonal sources shall be determined using yearly emissions profiles. Yearly emissions profiles for an existing or proposed stationary source or modification shall be constructed by plotting the daily emission from such source in descending order.

A separate profile shall be constructed for each pollutant. If, for example, a source emits 750 lbs. of NO<sub>x</sub> one day per week, 500 lbs. of NO<sub>x</sub> two days per week and 250 lbs. of NO<sub>x</sub> on the remaining 4 days each week, then the profile will consist of 52 days at 750 lbs./day, followed by 104 days at 500 lbs./day, and then 208 days at 250 lbs./day, as shown in Figure 1. The net increase in emissions from a modification to an existing source shall be determined by comparing the yearly emissions profiles for the existing source to the yearly emissions profiles for the proposed source after modification. A net increase in emissions exists whenever any part of an emissions profile for a modified source exceeds the emissions profile for the existing source.

4. The net increase in emissions from new stationary sources and modifications which are seasonal sources shall be determined using yearly and quarterly emissions profiles.

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Quarterly emissions profiles shall be constructed by plotting the daily emissions from an existing or proposed seasonal facility in descending order for the continuous 90 day period during which the greatest emissions from the proposed new or modified source will occur. Yearly emissions profiles shall be constructed as described in Section (C)(3). A separate profile shall be constructed for each pollutant.

The net increase in emissions from a modification to an existing seasonal source shall be determined by comparing the yearly and quarterly emissions profiles for the existing source to the yearly and quarterly emissions profiles for the proposed source after modification. A net increase in emissions exists whenever any part of an emissions profile for the modified source exceeds the emissions profile for the existing source.

5. When computing the net increase in emissions for modifications, the Air Pollution Control Officer shall take into account the cumulative net emissions changes which are represented by authorities to construct associated with the existing stationary source and issued pursuant to this rule or an equivalent regulation, excluding any emissions reductions required to comply with federal, state or district laws, rules or regulations.

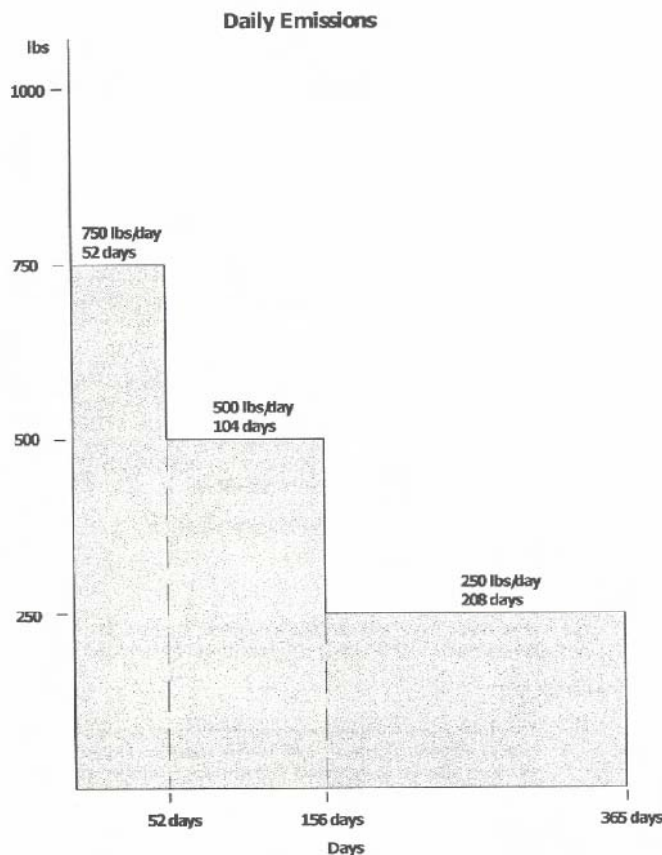


Figure 1. Yearly emissions profile

D. BEST AVAILABLE CONTROL TECHNOLOGY AND MITIGATION REQUIREMENTS

1. Best Available Control Technology

All new stationary sources and modifications subject to this section, excluding cargo carriers, shall be constructed using best available control technology.

2. Mitigation

a. For all new stationary sources and modifications subject to this section, mitigation shall be required for net emissions increases (i.e. increases after the application of best available control technology):

(1) of each pollutant for which a national ambient air quality standard was exceeded within the air basin more than three discontinuous times (or, for annual standards, more than one time) within the three years immediately preceding the date when the application for the authority to construct was filed, and for all precursors of such pollutants; provided, however, that mitigation of net emission increases of sulfur oxides, total suspended particulates or carbon monoxide shall not be required if the applicant demonstrates through modeling that emissions from the new source or modification will not cause a new violation of any national ambient air quality standard for such pollutants, or make any existing violation of any such standard worse, at the point of maximum ground level impact.

(2) not subject to Subsection (1) but which the Air Pollution Control Officer determines would cause a new violation of any national ambient air quality standard, or would make any existing violation of any such standard worse, at the point of maximum ground level impact. Emissions reductions required as a result of this subsection must be shown through modeling to preclude the new, or further worsening of any existing, violation of any national ambient air quality standard that would otherwise result from the operation of the new source or modification, unless such reductions satisfy the requirements of Section (D)(2)(b).

b. Net emissions increases subject to Section (D)(2)(1) shall be mitigated (offset) by reduced emissions from existing stationary or nonstationary sources. Emissions reductions shall be sufficient to offset any net emissions increase and shall take effect at the time, or before initial operation, of the new source, or within 90 days after initial operation of a modification.

c. Emissions offset profiles shall be used to determine whether proposed offsets mitigate the net emissions increases from proposed new sources or modifications.

(1) For all offset sources, a yearly emissions offset profile shall be constructed in a manner similar to that used to construct the

yearly emissions profile for the proposed new or modified source. Daily emissions reductions which will result from the further control of such sources shall be plotted in descending order. A separate profile shall be constructed for each pollutant. Seasonal offsets shall not be used to mitigate the emissions from nonseasonal sources.

- (2) In addition, for seasonal offset sources, a quarterly emissions offset profile shall be constructed for the same time period and in the same manner as that used to construct the quarterly emissions profile for the proposed new or modified source. Daily emissions reductions which will result from further control of existing sources shall be plotted on the quarterly offset profile in descending order. A separate profile (which may cover different months) shall be plotted for each pollutant.
  - (3) Adjusted emissions offset profiles shall be constructed by dividing each entry used in the construction of the emissions offset profiles by the offset ratio determined in Subsection (d).
  - (4) The adjusted emission offset profiles shall be compared with the emissions profiles to determine whether net emissions increases have been mitigated at all points on the profiles. For example, if emissions offsets of 900 lbs/day on 5 days per week, and 325 lbs/day the remaining 2 days per week are proposed for the new source described in Figure 1, the emissions offset profile would be as shown in Figure 2a. Further, if the offset ratio determined pursuant to Subsection (d) were 1.2:1, an adjusted emissions offset profile would be constructed as shown in Figure 2b. Finally, the adjusted emissions offset profile would be compared with the emissions profile, as shown in Figure 2c, to determine whether the net increase had been mitigated at all points on the profile.
- d. A ratio of emissions offsets to emissions from the new source or modification (offset ratio) of 1.2:1 shall be required for emissions offsets located either:
- (1) Upwind in the same or adjoining counties: or
  - (2) Within a 15 mile radius of the proposed new source or modification.

For emissions offsets located outside of the areas described above, the applicant shall conduct modeling to determine an offset ratio sufficient to show a net air quality benefit in the area affected by emissions from the new source or modification. Notwithstanding any other provision of this section the yearly emissions profiles and the yearly emissions offset profiles for a source subject to this section may be constructed based on the daily emissions from the source averaged on a monthly basis. In such event an offset ratio of 2.0:1 shall be required.



- e. If an applicant certifies that the proposed new source or modification is a replacement for a source which was shut down or curtailed after February 16, 1978, emissions reductions associated with such shutdown or curtailment may be used as offsets for the proposed source, subject to the other provisions of this section.

Sources which were shut down or curtailed prior to February 16, 1978 may be used to offset emissions increases for replacements for such sources, subject to the other provisions of this section provided:

- (1) The shutdown or curtailment was made in good faith pursuant to an established plan approved by the Air Pollution Control Officer for replacement and emissions control, and in reliance on air pollution laws, rules and regulations applicable at the time; and
- (2) The applicant demonstrates to the satisfaction of the Air Pollution Control Officer that there was good cause (which may include business or economic conditions) for delay in construction of the replacement facilities.

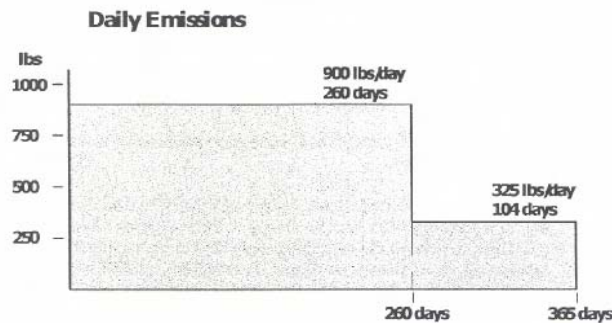


Figure 2a. Emission offset profile

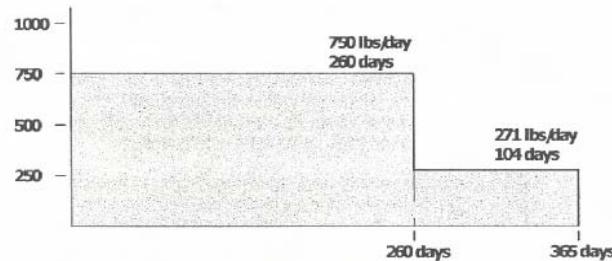


Figure 2b. Adjusted emission offset profile

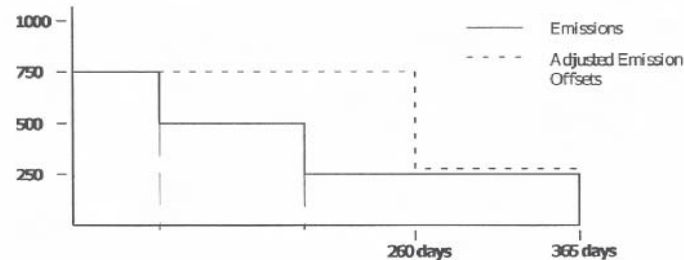


Figure 2c. Comparison of emission profile and adjusted emissions offset profile

- f. Notwithstanding any other provisions of this section any emissions reductions not otherwise authorized by this rule may be used as offsets of emissions increases from the proposed source provided the applicant demonstrates that such reductions by emissions from the new source or modification, and provided the written concurrence of the ARB is obtained.
- g. Emissions reductions resulting from measures required by adopted federal, state, or district laws, rules or regulations shall not be allowed as emissions offsets unless a complete application incorporating such offsets was filed with the District prior to the date of adoption of the laws, rules or regulations.
- h. The Air Pollution Control Officer shall allow emissions reductions which exceed those required by this rule for a new source or modification to be banked for use in the future by the applicant. Such reductions may be used only to offset emissions increases from proposed new sources or modifications owned or operated by the applicant within 15 miles of the site where the reductions occurred. All such reductions, when used as offsets for the increased emissions from a proposed new source or modification, shall be used in accordance with the other provisions of this Section.
- i. For all power plants subject to Section (E), the applicant may, upon written notice to the Air Pollution Control Officer and the Executive Officer of the Air Resources Board, establish an emissions offset bank for a specific power plant at a specific location. The emissions offset bank shall be established no earlier than the date the applicant's Notice of Intention for the power plant is accepted by the California Energy Commission. The emissions offset bank shall lapse if the Commission rejects the applicable power plant or site; however, in such case the applicant may transfer the emissions offsets contained in the bank to another power plant and location for which the Commission has accepted a Notice of Intention. Emission offsets may be deposited in the bank only by the applicant to construct the power plant, and all emissions offsets contained in the bank shall be used in accordance with Section (D)(2).
- j. If an applicant for a resource recovery project using municipal waste demonstrates to the satisfaction of the Air Pollution Control Officer that the most likely alternative for treating such waste would result in an increase in emissions allowed under existing district permits and regulations, those emissions increases which would not occur as a result of the resource recovery project may be used to offset any net emissions increase from the resource recovery project in accordance with the other provisions of this section.
- k. Emissions reductions of one precursor may be used to offset emissions increases of another precursor of the same secondary pollutant provided the applicant demonstrates to the satisfaction of the Air Pollution Control Officer that the net emissions increase of the latter precursor will not cause a new violation, or contribute to an existing violation, of any

national ambient air quality standard at the point of maximum ground level impact. The ratio of emission reductions between precursor pollutants of the same secondary pollutant shall be determined by the Air Pollution Control Officer based on existing air quality data and subject to the approval of the Air Resources Board.

#### E. POWER PLANTS

This section shall apply to all power plants proposed to be constructed in the District and for which a Notice of Intention (NOI) of Application for Certification (AFC) has been accepted by the California Energy Commission. The Air Pollution Control Officer pursuant to Section 25538 of the Public Resources Code, may apply for reimbursement of all costs, including lost fees, incurred in order to comply with the provisions of this section.

1. Within fourteen days of receipt of an NOI, the Air Pollution Control Officer shall notify the ARB and the Commission of the District's intent to participate in the NOI proceedings. If the District chooses to participate in the NOI proceeding, the Air Pollution Control Officer shall prepare and submit a report to the ARB and the Commission prior to the conclusion of the nonadjudicatory hearings specified in Section 25509.5 of the Public Resources Code. That report shall include, at a minimum:
  - a. A preliminary specific definition of best available control technology (BACT) for the proposed facility;
  - b. A preliminary discussion of whether there is substantial likelihood that the requirements of this rule and all other District regulations can be satisfied by the proposed facility;
  - c. A preliminary list of conditions which the proposed facility must meet in order to comply with this rule or any other applicable district regulation.

The preliminary determinations contained in the report shall be as specific as possible within the constraints of the information contained in the NOI.

2. Upon receipt of an Application for Certification (AFC) for a power plant, the Air Pollution Control Officer shall conduct a Determination of Compliance review. This Determination shall consist of a review identical to that which would be performed if an application for an authority to construct had been received for the power plant. If the information contained in the AFC does not meet the requirements of Section (E) of this rule, the Air Pollution Control Officer shall, within 20 calendar days of receipt of the AFC, so inform the Commission, and the AFC shall be considered incomplete and returned to the applicant for resubmittal.
3. The Air Pollution Control Officer shall consider the AFC to be equivalent to an application for an authority to construct during the Determination of Compliance review, and shall apply all provisions of this rule which apply to applications for an authority to construct.

4. The Air Pollution Control Officer may request from the applicant any information necessary for the completion of the Determination of Compliance review. If the Air Pollution Control Officer is unable to obtain the information, the Air Pollution Control Officer may petition the presiding Commissioner for an order directing the applicant to supply such information.
5. Within 180 days of accepting an AFC as complete, the Air Pollution Control Officer shall make a preliminary decision on:
  - a. Whether the proposed power plant meets the requirements of this rule and all other applicable district regulations; and
  - b. In the event of compliance, what permit conditions will be required including the specific BACT requirements and a description of required mitigation measures.
6. The preliminary written decision made under Subsection (5) shall be treated as a preliminary decision under Subsection (G)(2)(a) of this rule, and shall be finalized by the Air Pollution Control Officer only after being subject to the public notice and comment requirements of Subsection (G)(2)(b) through (G)(2)(f). The Air Pollution Control Officer shall not issue a Determination of Compliance unless all requirements of this rule are met.
7. Within 240 days of the filing date, the Air Pollution Control Officer shall issue and submit to the Commission a Determination of Compliance or, if such a determination cannot be issued, shall so inform the Commission. A Determination of Compliance shall confer the same rights and privileges as an authority to construct only when and if the Commission approves the AFC, and the Commission certificate includes all conditions of the Determination of Compliance.
8. Any applicant receiving a certificate from the Commission pursuant to this section and in compliance with all conditions of the certificate shall be issued a permit to operate by the Air Pollution Control Officer.

#### F. DEFINITIONS

1. "Best Available Control Technology (BACT)" means for any source the more stringent of:
  - a. The most effective emissions control technique which has been achieved in practice, for such category or class of source; or
  - b. Any other emissions control technique found, after public hearing, by the Air Pollution Control Officer or the Air Resources Board to be technologically feasible and cost/effective for such class or category of sources or for a specific source; or
  - c. The most effective emission limitation which the EPA certifies is contained in the implementation plan of any State approved under the Clean Air Act for such class or category or source, unless the owner or

operator of the proposed source demonstrates that such limitations are not achievable.

In no event shall the emission rate reflected by the control technique or limitation exceed the amount allowable under applicable new source performance standards.

2. "Modification" means any physical change in, change in method of operation of, or addition to an existing stationary source, except that routine maintenance or repair shall not be considered to be a physical change. A change in the method of operation, unless previously limited by an enforceable permit condition, shall not include:
  - a. An increase in the production rate, if such increase does not exceed the operating design capacity of the source.
  - b. An increase in the hours of operation.
  - c. Change in ownership of a source.
3. "Stationary Source" means any aggregation of air- contaminant-emitting equipment which includes any structure, building, facility, equipment, installation or operation (or aggregation thereof) which is located on one or more bordering properties within the District and which is owned, operated, or under shared entitlement to use by the same person. Items of air-contaminant-emitting equipment shall be considered aggregated into the same stationary source, and items of non-air-contaminant-emitting equipment shall be considered associated with air-contaminant-emitting equipment only if:
  - a. The operation of each item of equipment is dependent upon, or affects the process of, the other; and
  - b. The operation of all such items of equipment involves a common raw material or product.

Emissions from all such aggregated items of air-contaminant-emitting equipment and all such associated items of non-air-contaminant-emitting equipment of a stationary source shall be considered emissions of the same stationary source. The emissions from all cargo carriers (excluding motor vehicles) while operating within the Air Basin which load or unload at the source shall be considered as emissions from the stationary source.
4. "Precursor" means a directly emitted pollutant that, when released to the atmosphere, forms or causes to be formed or contributes to the formation of a secondary pollutant for which an ambient air quality standard has been adopted, or whose presence in the atmosphere will contribute to the violation of one or more ambient air quality standards. The following precursor-secondary pollutant relationships shall be used for purposes of this rule:

Precursors

Hydrocarbons and substituted  
Hydrocarbons (reactive organic gases)

Nitrogen oxides (NO<sub>x</sub>)

Sulfur oxides (SO<sub>x</sub>)

Secondary Pollutants

a. photochemical oxidant (ozone)

b. the organic fraction of suspended  
particulate matter

a. Nitrogen dioxide (NO<sub>2</sub>)

b. the nitrate fraction of suspended  
particulate matter

a. sulfur dioxide (SO<sub>2</sub>)

b. sulfates (SO<sub>4</sub>)

c. the sulfate fraction of suspended  
particulate matter

5. "Seasonal source" means any source with more than 75 percent of its annual operating hours within a consecutive 90-day period.
6. The "upwind" area shall be bounded by a line drawn perpendicular to the predominant wind flow line passing through or nearest to the site of the new source or modification and extending to the boundaries of the same or adjoining counties within the same air basin except where the APCO determines that for reasons of topography or meteorology such a definition is inappropriate.
7. "Modeling" means using an air quality simulation model, based on specified assumptions and data, which has been approved in writing by the Executive Officer of the Air Resources Board.

G. SEVERABILITY

If any portion of this rule is found to be unenforceable, such finding shall have no effect on the enforceability of the remaining portions of the rule, which shall continue to be in full force and effect.

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## RULE 209-B. STANDARDS FOR PERMITS TO OPERATE

Adopted: 08/20/79      Revised: 05/12/93

### A. GENERAL

The Air Pollution Control Officer shall deny a permit to operate for any new or modified stationary source or any portion thereof to which Rule 209-A applies unless:

1. The owner or operator of the source has obtained an authority to construct granted pursuant to Rule 209-A; and
2. The Air Pollution Control Officer has determined that the source and any sources which provide offsets have been constructed and/or modified to operate, and emit quantities of air contaminants, consistent with the conditions imposed on their respective authorities to construct under Rule 210; and
3. The Air Pollution Control Officer has determined that any offsets required as a condition of the authority to construct will commence at the time of or prior to initial operations of the new source or modification, and that the offsets will be maintained throughout the operation of the new or modified source. In the case of new or modified source which will be, in whole or in part, a replacement for an existing source on the same property, the Air Pollution Control Officer may allow a maximum of ninety (90) days as a start-up period for simultaneous operation of the existing stationary source and the new stationary source or replacement; and
4. The Air Pollution Control Officer has determined that all conditions specified in the authority to construct have been or will be likely complied with by any dates specified.

### B. REQUIREMENTS

The Air Pollution Control Officer shall require as a condition for the issuance of any permit to operate for a new or modified source, that the source and any offset source be operated consistent with any conditions imposed on their respective authorities to construct under Rule 210, and Section 44300 (et. seq.) of the California Health and Safety Code.

### C. PROCEDURES

1. The Air Pollution Control Officer shall perform the evaluations required to determine compliance with this rule and shall take final action to approve, approve with conditions, or disapprove any permit to operate a new or modified stationary source or any portion thereof to which Rule 209-A applies within 60 days after receipt of an application for such a permit.
2. In the event that the Air Pollution Control Officer fails to take final action on such written request within such 60-day period, such failure to act shall be deemed denial of such permit to operate and may be appealed to the District Hearing Board.

C. EXEMPTIONS

The Air Pollution Control Officer shall exempt from the provisions of this Rule any stationary source which is a continuing operation, without modification or change in operating conditions, when a permit to operate is required solely because of permit renewal or change of ownership.

E. DEFINITIONS

The definitions contained in Rule 209-A shall be applicable to this rule.

F. SEVERABILITY

If any portion of this rule is found to be unenforceable, such finding shall have no effect on the enforceability of the remaining portions of the rule which shall continue to be in full force and effect.



## RULE 209-C. TEMPORARY PERMITS TO OPERATE

Adopted: 09/05/74

Whenever necessary and appropriate to ensure compliance with all applicable conditions prior to the issuance of a permit to operate a new or modified source, a temporary permit to operate will be issued. The temporary permit to operate shall specify a reasonable period of time during which the source may be operated in order for the District to determine whether it will operate in accordance with the conditions specified in the authority to construct. The source must comply with all permit conditions and Federal, State, and District rules and regulations while under a temporary permit to operate.

The temporary permit to operate may not be issued for a period longer than one year. Temporary permits to operate may be reissued for the same source up to but not exceeding five consecutive temporary permits to operate; however, the total time for a source to be under temporary permits cannot exceed two years. Annual renewal fees will be required when temporary permits to operate are reissued for the same source according to the applicable fee schedule for permits to operate set forth in Rule 301: Permit Fee Schedules.

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## RULE 210. CONDITIONAL APPROVAL

Adopted: 08/20/79

- A. The Air Pollution Control Officer may issue an authority to construct or a permit to operate or use, subject to conditions which will assure the operation of any article, machine, equipment or other contrivance within the standards of Rule 209 in which case the conditions shall be specified in writing. Commencing work under such an authority to construct or operation under such a permit to operate shall be deemed acceptance of all the conditions so specified. The Air Pollution Control Officer shall issue an authority to construct or a permit to operate with revised conditions upon receipt of new application, if the applicant demonstrates that the article, machine, equipment or other contrivance can operate within the standards of Rule 209 under the revised conditions.
- B. The Air Pollution Control Officer shall, as condition for the issuance of an authority to construct for a new stationary source or modification and with prior written consent of the owner or operator of any source which provides offsets:
1. Require that the new source or modification and any sources which provide offsets be operated in the manner assumed in making the analysis. The permit shall include an emissions limitation which corresponds with the application of best available control technology.
  2. Modify, or require modification of, the permit to operate for any source used to provide offsets to ensure that emissions reductions at that source which provide offsets will be enforceable and shall continue for the reasonable expected useful life of the proposed source. If offsets are obtained from a source for which there is no permit to operate, a written contract shall be required between the applicant and the owner or operator of such source which contract, by its terms, shall be enforceable by the Air Pollution Control Officer to ensure that such reductions will continue for the reasonable expected useful life of the proposed source.
  3. Permit any other reasonably enforceable methods, other than those described in Subsections 1 and 2 which the Air Pollution Control Officer is satisfied will assure that all required offsets are achieved.
- C. ANNUAL REVIEW OF CONDITIONS

Upon annual renewal, each permit to operate will be reviewed to determine that permit conditions are adequate to ensure compliance with, and the enforceability of, District rules and regulations applicable to the source for which the permit was issued which were in effect at the time the permit was issued or modified, or which have subsequently been adopted and made retroactively applicable to an existing source by the District board and, if the conditions are not consistent, the permit will be revised to specify the permit conditions in accordance with all applicable rules and regulations.

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RULE 211. DENIAL OF APPLICATIONS

Adopted: 09/05/74

In the event of denial of an Authority to Construct or permit to operate, the Air Pollution Control Officer shall notify the applicant in writing of the reasons therefore. Service of this notification may be made in person or by mail, addressed to the applicant at the address set forth on the application, and such service may be approved by the written acknowledgement of the persons served or affidavit of the person making the service. The Air Pollution Control Officer shall not accept a further application unless the applicant has complied with the objections specified by the Air Pollution Control Officer as his reasons for denial of the authority to construct or the permit to operate.

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RULE 212. STATE AMBIENT AIR QUALITY STANDARDS

Adopted: 08/20/79

All references in Rules 209-A and 209-B to national ambient air quality standards shall be interpreted to include state ambient air quality standards.

[Intentionally left blank.]

RULE 213. IMPLEMENTATION PLANS

Adopted: 08/20/79

The Air Pollution Control Officer may issue a permit to construct for a new stationary source or modification which is subject to Section (D) of Rule 209-A only if all district regulations contained in the State Implementation Plan approved by the Environmental Protection Agency are being carried out in accordance with that plan.

[Intentionally left blank.]

RULE 214. APPEALS

Adopted: 09/05/74

Within 10 days after notice by the Air Pollution Control Officer of denial or conditional approval of an authority to construct or permit to operate, or within 10 days after the application is deemed denied, pursuant to Rule 213, the applicant may petition the Hearing Board, in writing, for a public hearing. The Hearing Board, after notice and a public hearing held within 30 days after filing the petition, may sustain, reverse or modify the action of the Air Pollution Control Officer; such order may be made subject to specified conditions.

[Intentionally left blank.]

RULE 215. PUBLIC AVAILABILITY OF EMISSION DATA

Adopted: 09/05/74

- A. The owner or operator of any stationary source within the Great Basin Unified Air Pollution Control District shall, upon notification from the Air Pollution Control Officer, maintain records of the nature and amounts of emissions from such source and/or any other information as may be deemed necessary by the Air Pollution Control Officer to determine whether such source is in compliance with applicable emission limitations or other control measures.
- B. The information recorded shall be summarized and reported to the Air Pollution Control Officer on forms furnished by the Great Basin Unified Air Pollution Control District and shall be submitted within 30 days after the end of the reporting period. Reporting periods are January 1 - June 30 and July 1 - December 31, except that the initial reporting period shall commence on the date the Air Pollution Control Officer issues notification of the record keeping requirements.
- C. Information recorded by the owner or operator and copies of the summarizing reports submitted to the Air Pollution Control Officer shall be retained by the owner or operator for two years after the date on which the pertinent report is submitted.
- D. Emission data obtained from owners or operators of stationary sources pursuant to this paragraph will be correlated with applicable emission limitations and other control measures and will be available to the public during normal business hours at the District's Office.
- E. Request for public records should be specific and in sufficient detail that the District may readily identify the specific information requested. However, the owner of a source may request that information provided to the Air Pollution Control District, which information shall not include actual emission data, be treated as a trade secret pursuant to Government Code Section 6254.7. Written justification for such requests are to be submitted to the Air Pollution Control District, and such justification will be considered public record. The Air Pollution Control Officer shall rule upon requests for trade secret status within thirty (30) days of receipt of such request.

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RULE 216. NEW SOURCE REVIEW REQUIREMENTS FOR DETERMINING IMPACT ON  
AIR QUALITY

Adopted: 03/10/76

A. AUTHORITY TO CONSTRUCT

1. The Air Pollution Control Officer shall deny an Authority to Construct for any new stationary source or modification of an existing stationary source specified in paragraph (2) of this rule unless he determines that the emissions from the new source or modification may not be expected to result in the violation or a contribution to the continued violation of any state or national ambient air quality standard.
2. The Air Pollution Control Officer shall apply the provisions of this rule to:
  - a. Any proposed new stationary source which he estimates will emit:
    - i. More than either fifteen (15) pounds per hour or 150 pounds per day of nitrogen oxides, organic gases or any air contaminant for which there is a state or national ambient air quality standard, except carbon monoxide, or,
    - ii. More than either 150 pounds per hour or 1500 pounds per day of carbon monoxide, or
  - b. Any proposed modification of an existing stationary source that he estimates will emit after modification:
    - i. More than either fifteen (15) pounds per day of nitrogen oxides, organic gases or any air contaminant for which there is a state or national ambient air quality standard except carbon monoxide, or,
    - ii. More than either 150 pounds per hour or 1500 pounds per day of carbon monoxide.
3. The Air Pollution Control Officer may exempt from the provisions of this rule any new stationary source or modification which he determines:
  - a. Is a modification which eliminates, reduces or controls air contaminant emissions from an existing stationary source, provided that the emissions of any contaminant(s) from the modified source will not be greater than such emissions were from the existing source.
  - b. Will be a replacement for an existing stationary source and will not result in emissions of any air contaminant greater than those from the existing source.



- c. Will have demonstrable basin-wide air quality benefits, provided however, that the California Air Resources Board U.S. Environmental Protection Agency, after making a technical analysis, concur with the Air Pollution Control Officer's conclusion that such benefits will be derived. Calculations and technical data used by the Air Pollution Control Officer as the basis for granting the exemption shall be made available to the Air Resources Board and Environmental Protection Agency, or
  - d. Will be used exclusively for providing essential public services, including but not limited to hospitals, police, and fire fighting facilities, and will employ the best practicable emission control methods and equipment.
- 4. When the Air Pollution Control Officer intends to grant an exemption under paragraph (3) he shall publicize a notice by prominent advertisement in at least one newspaper of general circulation in the District and shall notify in writing the U.S. Environmental Protection Agency, and the California Air Resources Board and all counties in the Air Basin of his intention. No exemption shall be granted until at least 30 days after the date of publication and notification to the above agencies. In making his decision the Air Pollution Control Officer shall consider any comments received, and, in the case of exemptions proposed under subparagraph (3-c), a condition of a decision to grant an exemption shall be the concurrence of the California Air Resources Board and the U.S. Environmental Protection Agency, as provided for in said subparagraph (c).
- 5. Notwithstanding the criteria specified in paragraph (2) the Air Pollution Control Officer may apply the provisions of this rule to any new or modified stationary source if, in his opinion, the emissions from the source might result in a violation or a contribution to the continued violation of any state or national ambient air quality standard.
- 6. Before granting or denying an Authority to Construct for any new stationary source or modification subject to the requirements of this rule, the Air Pollution Control Officer shall:
  - a. Require the applicant to submit information sufficient to describe the nature and amounts of emissions, location, design, construction, and operation of the source; and to submit any additional information required by the Air Pollution Control Officer to make the analysis of this rule.
  - b. Require the applicant to submit the projected expansion plans for the stationary source for the ten-year period subsequent to the date of application for Authority to Construct.
  - c. Analyze the effect of the new stationary source or modification on air quality. Such analyses shall consider expected air contaminant emissions and air quality in the vicinity of the new source or modification, within the Air Basin, and within adjoining Air Basins at the time the source or modification is proposed to commence operation. Such analyses shall be based on application of existing state and local control strategies.

- d. Make available for public inspection at the Air Pollution Control District office, the information submitted by the applicant, the Air Pollution Control Officer's analysis of the effect of the source on air quality, and the preliminary decision to grant or deny the Authority to Construct.
  - e. Publish a notice by prominent advertisement in at least one newspaper of general circulation in the District stating where the public may inspect the information required in subparagraph (d) of this paragraph. The notice shall provide 30 days, beginning on the date of publication, for the public to submit comments on the application.
  - f. Forward copies of the notice required in subparagraph (e) of this paragraph to the U.S. Environmental Protection Agency, the California Air Resources Board, all Counties in the Air Basin, and all adjoining Air Pollution Control Districts in other Air Basins.
  - g. Consider the public comments submitted.
- 7. Receipt of an Authority to Construct shall not relieve the owner or operator of responsibility to comply with the applicable portions of the control strategy.
  - 8. Within 30 days after the granting of an Authority to Construct to a source subject to this Rule, the Air Pollution Control Officer shall forward to the California Air Resources Board a copy of the Authority to Construct, including conditions imposed upon the source and calculations and support data used in determining that the Authority to Construct should be granted.

#### B. PERMITS TO OPERATE

- 1. The Air Pollution Control Officer shall deny a Permit to Operate to any stationary source subject to the requirements of Section A except as provided in paragraph (2) of this rule.
- 2. The Air Pollution Control Officer shall not grant a Permit to Operate to any stationary source that he determines emits quantities of air contaminants greater than those assumed in the analysis required for the Authority to Construct for the source, unless the Air Pollution Control Officer performs the air quality impact analysis required by paragraph (6) of Section A and determines that the actual emissions from the source may not be expected to result in the violation or a contribution to the continued violation of any state or national ambient air quality standard.
- 3. The Air Pollution Control Officer shall impose conditions on a Permit to Operate such as he deems necessary to ensure that the stationary source will be operated in the manner assumed in making the analysis required by Section A or paragraph (2) of this rule, whichever is applicable. Where appropriate, this shall include a condition to prohibit a new stationary source which is a replacement for an existing stationary source from operating, unless the operation of the existing source is terminated.

4. Sources having received an Authority to Construct prior to the adoption of Section A shall not be subject to the provisions of this rule.
  5. Within 30 days after granting of a Permit to Operate to a source subject to this rule, the Air Pollution Control Officer shall forward to the Air Resources Board a copy of the permit including conditions imposed upon the source and calculations and support data used in determining that the permit should be granted.
- C. Sources existing and in operation prior to the adoption of Regulation II are not subject to the provisions of this Regulation II. This exemption is not intended and shall not be applied to modifications of sources occurring after the adoption of this regulation. Additionally, this exemption does not exempt a source from other provisions within these rules and regulations.
- D. For the purpose of Sections A, B, and C in Rule 216, the following definitions shall be applicable:
1. "Stationary source" means a unit or an aggregation of units of air contaminant emitting articles, machines, equipment or other contrivances, all of which are located on adjoining properties having one ownership, and all of which are determined by the Air Pollution Control Officer to be related to one another through a similar product, raw material or function.
  2. "Modification" means any physical change in a stationary source, or change in the method of operation thereof.
  3. "Control Strategy" means a combination of measures designed to reduce air contaminant emissions.

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RULE 216-A. NEW SOURCE REVIEW REQUIREMENTS FOR DETERMINING IMPACT ON  
AIR QUALITY SECONDARY SOURCES

Adopted: 10/15/79

Revised: 07/07/05

A. GENERAL

1. A person shall not initiate, modify, construct or operate any secondary source which will cause the emission of any manmade air pollutant for which there is a state or national ambient air quality standard without first obtaining a permit from the Air Pollution Control Officer.
2. The Air Pollution Control Officer shall deny a permit for any new secondary source or modification which he determines will cause a violation or contribute to the continued violation of any state or national ambient air quality standard.

B. EXEMPTIONS

1. The Air Pollution Control Officer may exempt from the provisions of this rule any new secondary source or modification which includes:
  - a. Vehicular parking facilities without dust retardant agents and which have a parking capacity of less than 50 vehicles.
  - b. Unpaved roads having less than 100 vehicle trip-ends in any one hour period, or less than 300 vehicle trip-ends in an eight hour period per a 20 mile continuous road length.
  - c. Unpaved runways and airports having less than 60 operations per month.
  - d. [Deleted: 07/07/05]
  - e. Other secondary sources deemed by the Air Pollution Control Officer that emit insignificant amounts of air contaminants.

C. APPLICATIONS

1. Before granting or denying a permit for any new secondary source or modification, subject to the requirements of this rule, the Air Pollution Control Officer shall:
  - a. Require the applicant to submit information sufficient to describe the nature and amounts of emissions, location, design, construction, and operation of the secondary source; and to submit any additional information required by the Air Pollution Control Officer to make the analysis.
  - b. Require the applicant to submit the projected expansion plans for the secondary source for the ten-year period subsequent to the date of application for the permit.
  - c. Analyze the effect of the new secondary source or modification on air quality. Such analysis shall consider expected air contaminant emissions

and air quality in the vicinity of the new secondary source or modification, within the Air Basin and within adjoining air basins at the time the secondary source or modification is proposed to commence operation.

- d. Make available for public inspection at the Air Pollution Control District office, the information submitted by the applicant, the Air Pollution Control Officer's analysis of the effect on air quality, and the preliminary decision to grant or deny the permit.
- e. Publish a notice by prominent advertisement in at least one newspaper of general circulation in the District stating where the public may inspect the information required in subparagraph (d) of this paragraph. The notice shall provide 30 days, beginning on the date of publication, for the public to submit comments on the application.
- f. Forward copies of the notice required in sub-paragraph (e) of this paragraph to the U.S. Environmental Protection Agency, the California Air Resources Board, all counties within the air basin and all adjoining Air Pollution Control Districts in other air basins.
- g. Consider public comments submitted.

#### D. CONDITIONAL APPROVAL

The Air Pollution Control Officer shall impose conditions on the permit as he deems necessary to ensure the secondary source or modification will be operated in such a manner assumed in making the analysis required by this rule.

#### E. EFFECTIVE DATE

This rule shall become effective upon adoption. All new secondary sources or modifications pending on the date of adoption of this rule are subject to its provisions.

#### F. DEFINITIONS

- 1. "Secondary Source" includes any structure, building, facility, equipment, installation or operation (or aggregation thereof) which is located on one or more bordering properties within the District and which is owned, operated or under shared entitlement to use by the same person.
- 2. "Manmade air pollutant" means air pollution which results directly or indirectly from human activities.
- 3. "Modification" means any physical change in, change in method of, or addition to an existing secondary source, except that routine maintenance or repair shall not be considered to be a physical change.

G. SEVERABILITY

If any portion of this rule is found to be unenforceable, such finding shall have no effect on the enforceability of the remaining portions of the rule which shall continue to be in full force and effect.

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RULE 217. ADDITIONAL PROCEDURES FOR ISSUING PERMITS TO OPERATE FOR  
SOURCES SUBJECT TO TITLE V OF THE FEDERAL CLEAN AIR ACT  
AMENDMENTS OF 1990

Adopted: 09/15/93      Revised: 03/08/95, 05/09/01

I. PURPOSE AND GENERAL REQUIREMENTS OF RULE 217.

Rule 217 implements the requirements of Title V of the Federal Clean Air Act as amended in 1990 (CAA) for permits to operate. Title V provides for the establishment of operating permit programs for sources which emit regulated air pollutants, including attainment and nonattainment pollutants. Additionally, Rule 217 is used to implement the Phase II acid deposition control provisions of Title IV of the CAA, including provisions for Acid Rain Permits. The effective date of Rule 217 is the date the United States Environmental Protection Agency (U.S. EPA) promulgates interim, partial, or final approval of this rule in the Code of Federal Regulations (CFR).

[NOTE: Interim approval effective 6/02/95]

By the effective date of Rule 217, the Great Basin Unified Air Pollution Control District (District) shall implement an operating permit program pursuant to the requirements of this rule. The District shall also continue to implement its existing programs pertaining to permits required by Regulation II - Permits, including authorities to construct, Rule 209-A. Nothing in Rule 217 limits the authority of the District to revoke or terminate a permit pursuant to sections 40808, and 42307-42309 of the California Health and Safety Code (H&SC).

Sources subject to Rule 217 include major sources, acid rain units subject to Title IV of the CAA, solid waste incinerators subject to section 111 or 129 of the CAA, and any other sources specifically designated by rule of the U.S. EPA. Sources subject to Rule 217 shall obtain permits to operate pursuant to this rule. Each permit to operate issued pursuant to Rule 217 shall contain conditions and requirements adequate to ensure compliance with and the enforceability of:

- A. All applicable provisions of Division 26 of the H&SC, commencing with section 39000;
- B. All applicable orders, rules, and regulations of the District and the California Air Resources Board (ARB);
- C. All applicable provisions of the applicable implementation plan required by the CAA;
- D. Each applicable emission standard or limitation, rule, regulation, or requirement adopted or promulgated to implement the CAA; and

- E. The requirements of all preconstruction permits issued pursuant to Parts C and D of the CAA.

The operation of an emissions unit to which Rule 217 is applicable without a permit or in violation of any applicable permit condition or requirement shall be a violation of Rule 217.

## II. DEFINITIONS

The definitions in this section apply throughout Rule 217 and are derived from related provisions of the U.S. EPA's Title V regulations in Part 70 Code of Federal Regulations (CFR), "State Operating Permit Programs." The terms defined in this section are italicized throughout Rule 217.

- A. Acid Rain Unit: An "acid rain unit" is any fossil fuel-fired combustion device that is an affected unit under 40 CFR Part 72.6 and therefore subject to the requirements of Title IV (Acid Deposition Control) of the CAA.
- B. Administrative Permit Amendment: An "administrative permit amendment" is an amendment to a permit to operate which:
  - 1. Corrects a typographical error;
  - 2. Identifies a minor administrative change at the stationary source; for example, a change in the name, address, or phone number of any person identified in the permit;
  - 3. Requires more frequent monitoring or reporting by a responsible official of the stationary source; or
  - 4. Transfers ownership or operational control of a stationary source, provided that, prior to the transfer, the APCO receives a written agreement which specifies a date for the transfer of permit responsibility, coverage, and liability from the current to the prospective permittee.
- C. Affected State: An "affected state" is any state that: 1) is contiguous with California and whose air quality may be affected by a permit action, or 2) is within 50 miles of the source for which a permit action is being proposed.
- D. Air Pollution Control Officer (APCO): "Air Pollution Control Officer" refers to the air pollution control officer of the Great Basin Unified Air Pollution Control District, or his or her designee.
- E. Applicable Federal Requirement: An "applicable federal requirement" is any requirement which is enforceable by the U.S. EPA and citizens pursuant to section 304 of the CAA and is set forth in, or authorized by the Clean Air Act or a U.S. EPA



regulation. An "applicable federal requirement" includes any requirement of a regulation in effect at permit issuance and any requirement of a regulation that becomes effective during the term of the permit. Applicable federal requirements include:

1. Title I requirements of the CAA, including:
  - a. New Source Review requirements in the State Implementation Plan approved by the U.S. EPA and the terms and conditions of the preconstruction permit issued pursuant to an approved New Source Review rule;
  - b. Prevention of Significant Deterioration (PSD) requirements and the terms and conditions of the PSD permit (40 CFR Part 52);
  - c. New Source Performance Standards (40 CFR Part 60) and all standards and requirements under sections 111 of the Clean Air Act;
  - d. National Ambient Air Quality Standards, increments, and visibility requirements as they apply to portable sources required to obtain a permit pursuant to section 504(e) of the CAA;
  - e. National Emissions Standards for Hazardous Air Pollutants (40 CFR Part 61);
  - f. Maximum Achievable Control Technology or Generally Available Control Technology Standards (40 CFR Part 63);
  - g. Risk Management Plans (section 112(r) of the CAA);
  - h. Solid Waste Incineration requirements (sections 111 or 129 of the CAA);
  - i. Consumer and Commercial Product requirements (section 183 of the CAA);
  - j. Tank Vessel requirements (section 183 of the CAA);
  - k. District prohibitory rules that are approved into the state implementation plan;
  - l. Standards or regulations promulgated pursuant to a Federal Implementation Plan; and

- m. Enhanced Monitoring and Compliance Certification requirements (section 114(a)(3) of the CAA).
  - 2. Title III, section 328 (Outer Continental Shelf) requirements of the CAA (40 CFR Part 55);
  - 3. Title IV (Acid Deposition Control) requirements of the CAA (40 CFR Parts 72, 73, 75, 76, 77, 78 and regulations implementing sections 407 and 410 of the CAA);
  - 4. Title VI (Stratospheric Ozone Protection) requirements of the CAA (40 CFR Part 82); and
  - 5. Monitoring and Analysis requirements (section 504(b) of the CAA).
- F. California Air Resources Board (ARB): "California Air Resources Board" refers to the Air Resources Board of the State of California.
  - G. Clean Air Act (CAA): "Clean Air Act" refers to the federal Clean Air Act as amended in 1990 (42 U.S.C. Section 7401 et seq.).
  - H. Code of Federal Regulations (CFR): "Code of Federal Regulations" refers to the United States Code of Federal Regulations.
  - I. Commence Operation: "Commence operation" is the date of initial operation of an emissions unit, including any start-up or shakedown period authorized by a temporary permit to operate issued pursuant to section 42301.1 of the H&SC.
  - J. Direct Emissions: "Direct emissions" are emissions that may reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
  - K. District: "District" refers to the Great Basin Unified Air Pollution Control District.
  - L. Effective Date of Rule 217: The "effective date of Rule 217" is the date the U.S. EPA promulgates interim, partial, or final approval of the rule in the Code of Federal Regulations. [NOTE: Interim approval effective 6/02/95]
  - M. Emergency: An "emergency" is any situation arising from a sudden and reasonably unforeseeable event beyond the control of a permittee (e.g., an act of God) which causes the exceedance of a technology-based emission limitation under a permit and requires immediate corrective action to restore compliance. An emergency shall not include noncompliance as a result of improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

- N. Emissions allowable under the permit: A federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emission limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid on applicable requirement to which the source would otherwise be subject.O.
- O. Emissions Unit: An "emissions unit" is any identifiable article, machine, contrivance, or operation which emits, may emit, or results in the emissions of, any regulated air pollutant or hazardous air pollutant.
- P. Federally-enforceable Condition: A "federally-enforceable condition" is any condition set forth in the permit to operate which addresses an applicable federal requirement or a voluntary emissions cap.
- Q. Fugitive Emissions: "Fugitive emissions" are emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
- R. Generally Available Control Technology (GACT) Standard: A "generally available control technology standard" refers to any generally available control technology standard or management practice promulgated pursuant to section 112(d) of the CAA (40 CFR Part 63).
- S. Hazardous Air Pollutant (HAP): A "hazardous air pollutant" is any air pollutant listed pursuant to section 112(b) of the CAA.
- T. Health and Safety Code (H&SC): "Health and Safety Code" refers to the California Health and Safety Code.
- U. Initial Permit: An "initial permit" is the first operating permit for which a source submits an application that addresses the requirements of the federal operating permits program as implemented by Rule 217.
- V. Major Source: A "major source" is a stationary source which has the potential to emit a regulated air pollutant or a HAP in quantities equal to or exceeding the lesser of any of the following thresholds:
1. 100 tons per year (tpy) of any regulated air pollutant;
  2. 70 tpy of PM<sub>10</sub> (particulate matter of 10 microns or less) in those areas of the District designated as federal PM<sub>10</sub> nonattainment and classified as serious;
  3. 10 tpy of one HAP or 25 tpy of two or more HAPs; or
  4. Any lesser quantity threshold promulgated by the U.S. EPA.

- W. Maximum Achievable Control Technology (MACT) Standard: A "maximum achievable control technology standard" refers to any maximum achievable control technology emission limit or other requirement promulgated pursuant to section 112(d) of the CAA as set forth in 40 CFR Part 63.
- X. Minor Permit Modification: A "minor permit modification" is any modification to a federally enforceable condition on a permit to operate which: 1) is not a significant permit modification, and 2) is not an administrative permit amendment.
- Y. Permit Modification: A "permit modification" is any addition, deletion, or revision to a permit to operate condition.
- Z. Potential to Emit: For the purposes of Rule 217, "potential to emit" as it applies to an emissions unit and a stationary source is defined below.
1. Emissions Unit: The "potential to emit" for an emissions unit is the maximum capacity of the unit to emit a regulated air pollutant or HAP considering the unit's physical and operational design. Physical and operational limitations on the emissions unit shall be treated as part of its design, if the limitations are set forth in permit conditions or in rules or regulations that are legally and practicably enforceable by U.S. EPA and citizens or by the District.
  2. Stationary Source: The "potential to emit" for a stationary source is the sum of the potential to emit from all emissions units at the stationary source. If two or more HAPs are emitted at a stationary source, the potential to emit for each of those HAPs shall be combined to determine applicability. Fugitive emissions shall be considered in determining the potential to emit for: 1) sources as specified in 40 CFR Part 70.2 Major Source (2) and (3), and 2) sources of HAP emissions. Notwithstanding the above, any HAP emissions from any oil or gas exploration or production well (with its associated equipment) and any pipeline compressor or pump station shall not be aggregated with emissions of similar units for the purpose of determining a major source of HAPs, whether or not such units are located in contiguous areas or are under common control.
- AA. PRECONSTRUCTION PERMIT: A "preconstruction permit" is a permit authorizing construction prior to construction and includes:
1. A preconstruction permit issued pursuant to a program for the prevention of significant deterioration of air quality required by section 165 of the CAA; or
  2. A preconstruction permit issued pursuant to a new source review program required by sections 172 and 173 of the CAA or Rule 209.
- BB. REGULATED AIR POLLUTANT: A "regulated air pollutant" is any pollutant: 1) which is emitted into or otherwise enters the ambient air, and 2) for which the U.S.

EPA has adopted an emission limit, standard, or other requirement. Regulated air pollutants include:

1. Oxides of nitrogen and volatile organic compounds;
2. Any pollutant for which a national ambient air quality standard has been promulgated pursuant to section 109 of the CAA;
3. Any pollutant subject to a new source performance standard promulgated pursuant to section 111 of the CAA;
4. Any ozone-depleting substance specified as a Class I (chlorofluorocarbons) or Class II (hydro fluorocarbons) substance pursuant to Title VI of the CAA; and
5. Any pollutant subject to a standard or requirement promulgated pursuant to section 112 of the CAA, including:
  - a. Any pollutant listed pursuant to section 112(r) of the CAA (Prevention of Accidental Releases) shall be considered a "regulated air pollutant" upon promulgation of the list.
  - b. Any HAP subject to a standard or other requirement promulgated by the U.S. EPA pursuant to section 112(d) or adopted by the District pursuant to 112(g) and (j) of the CAA shall be considered a "regulated air pollutant" for all sources or categories of sources: 1) upon promulgation of the standard or requirement, or 2) 18 months after the standard or requirement was scheduled to be promulgated pursuant to section 112(e)(3) of the CAA.
  - c. Any HAP subject to a District case-by-case emissions limitation determination for a new or modified source, prior to the U.S. EPA promulgation or scheduled promulgation of an emissions limitation shall be considered a "regulated air pollutant" when the determination is made pursuant to section 112(g)(2) of the CAA. In case-by-case emissions limitation determinations, the HAP shall be considered a "regulated air pollutant" only for the individual source for which the emissions limitation determination was made.

CC. RESPONSIBLE OFFICIAL: A "responsible official" is an individual with the authority to certify that a source complies with all applicable federal requirements and federally-enforceable conditions of permits issued to sources in accordance with Rule 217. "Responsible official" means one of the following:

1. For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person

who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

- a. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
  - b. The delegation of authority to such representative is approved in advance by the APCO;
2. For a partnership or sole proprietorship, a general partner or the proprietor, respectively;
  3. For a municipality, state, federal, or other public agency, either a principal executive officer or a ranking elected official. For the purposes of this rule, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g.. a Regional Administrator of EPA); or
  4. For phase II acid rain affected sources subject to Title V:
    - a. The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Clean Air Act or regulations promulgated thereunder are concerned; and
    - b. The designated representative for any other purpose under 40 CRR Part 70 regulations.

DD. **SIGNIFICANT PERMIT MODIFICATION:** A "significant permit modification" is any modification to a federally enforceable condition on a permit to operate which:

1. Involves any permit modification under section 112(g) of Title I of the CAA or under U.S. EPA regulations promulgated pursuant to Title I of the CAA, including 40 CFR Parts 51, 52, 60, 61, and 63;
2. Significantly changes monitoring conditions;
3. Provides for the relaxation of any reporting or recordkeeping conditions;
4. Involves a permit term or condition which allows a source to avoid an applicable federal requirement, including: 1) a federally-enforceable voluntary emissions cap assumed in order to avoid triggering a modification

requirement of Title I of the CAA, or 2) an alternative HAP emission limit pursuant to section 112(i)(5) of the CAA;

5. Involves a case-by-case determination of any emission standard or other requirement; or
6. Involves a source-specific determination for ambient impacts, visibility analysis, or increment analysis on portable sources.

EE. **SOLID WASTE INCINERATOR:** A "solid waste incinerator" is any incinerator which burns solid waste material from commercial, industrial, medical, general public sources (e.g., residences, hotels, or motels), or other categories of solid waste incinerators subject to a performance standard promulgated pursuant to sections 111 or 129 of the CAA. The following incinerators are excluded from the definition of "solid waste incinerator" for the purpose of Rule 217:

1. Any hazardous waste incinerator required to obtain a permit under the authority of section 3005 of the Solid Waste Disposal Act (42 U.S.C. section 6925);
2. Any materials recovery facility which primarily recovers metals;
3. Any qualifying small power production facility as defined in 16 U.S.C.A. section 796(17)(C);
4. Any qualifying cogeneration facility which burns homogenous waste for the production of energy as defined in 16 U.S.C.A. section 796(18)(B); or
5. Any air curtain incinerator which burns only wood, yard, or clean lumber waste and complies with the opacity limitations to be established by the Administrator of the U.S. EPA.

FF. **STATIONARY SOURCE:** For the purposes of Rule 217, a "stationary source" is any building, structure, facility, or installation (or any such grouping) that:

1. Emits, may emit, or results in the emissions of any regulated air pollutant or HAP;
2. Is located on one or more contiguous or adjacent properties;
3. Is under the ownership, operation, or control of the same person (or persons under common control) or entity; and
4. Belongs to a single major industrial grouping; for example, each building,

structure, facility, or installation in the grouping has the same two-digit code under the system described in the 1987 Standard Industrial Classification Manual.

GG. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (U.S. EPA): "United States Environmental Protection Agency" refers to the Administrator or appropriate delegate of the "United States Environmental Protection Agency."

HH. VOLUNTARY EMISSIONS CAP: A "voluntary emissions cap" is an optional, federally enforceable emissions limit on one or more emissions unit(s) which a source assumes in order to avoid an applicable federal requirement. The source remains subject to all other applicable federal requirements.

### III. APPLICABILITY

#### A. SOURCES SUBJECT TO RULE 217

The sources listed below are subject to the requirements of Rule 217:

1. A major source;
2. A source with an acid rain unit for which application for an Acid Rain Permit is required pursuant to Title IV of the CAA;
3. A solid waste incinerator subject to a performance standard promulgated pursuant to section 111 or 129 of the CAA;
4. Any other source in a source category designated by rule of the U.S. EPA; and
5. Any source that is subject to a standard or other requirement promulgated pursuant to section 111 or 112 of the CAA, published after July 21, 1992, that the U.S. EPA does not exempt from the requirements of Title V of the CAA.

#### B. SOURCES EXEMPT FROM RULE 217

The sources listed below are not subject to the requirements of Rule 217:

1. Any stationary source that would be required to obtain a permit solely because it is subject to 40 CFR Part 60, Subpart AAA (Standards of Performance for New Residential Wood Heaters);
2. Any stationary source that would be required to obtain a permit solely because it is subject to 40 CFR Part 61, Subpart M, section 145 (National



Emission Standards for Asbestos, Standard for Demolition and Renovation); and

3. Any other source in a source category deferred pursuant to 40 CFR Part 70.3 by U.S. EPA rulemaking, unless such source is otherwise subject to Title V (i.e. , it is a major source).

#### IV. ADMINISTRATIVE PROCEDURES FOR SOURCES

##### A. PERMIT REQUIREMENT AND APPLICATION SHIELD

A source shall operate in compliance with permits to operate issued pursuant to Rule 217. Rule 217 does not alter any applicable requirement that a source obtain preconstruction permits.

If a responsible official submits, pursuant to Rule 217, a timely and complete application for a permit, a source shall not be in violation of the requirement to have a permit to operate until the APCO takes final action on the application. The application shield here will cease to insulate a source from enforcement action if a responsible official of the source fails to submit any additional information requested by the APCO pursuant to subsection IV.C.2.c, below.

If a responsible official submits a timely and complete application for an initial permit, the source shall operate in accordance with the requirements of any valid permit to operate issued pursuant to section 42301 of the H&SC until the APCO takes final action on the application. If a responsible official submits a timely and complete application for renewal of a permit to operate, the source shall operate in accordance with the permit to operate issued pursuant to Rule 217, notwithstanding expiration of this permit, until the APCO takes final action on the application.

The application shield does not apply to sources applying for permit modifications. For permit modifications, a source shall operate in accordance with the applicable federal requirements, the permit to operate issued pursuant to Rule 217 and any temporary permit to operate issued pursuant to section 42301.1 of the H&SC.

##### B. APPLICATION REQUIREMENTS

###### 1. INITIAL PERMIT

- a. For a source that is subject to Rule 217 on the date the rule becomes effective, a responsible official shall submit a standard District application within 12 months after the date the rule becomes effective.
- b. For a source that becomes subject to Rule 217 after the date the rule becomes effective, a responsible official shall submit a standard District application within 12 months of the source commencing operation.
- c. For a source with an acid rain unit subject to Phase II of the Acid

Deposition Control Program of Title IV of the CAA, initial Phase II acid rain permits shall be submitted to the District by January 1, 1996 for sulfur dioxide and for coal-fired units by January 1, 1998 for oxides of nitrogen.

- d. Sources which become subject to Rule 217 after the effectiveness date for reasons other than commencing operations must apply within 12 months of becoming subject.

## 2. PERMIT RENEWAL

For renewal of a permit, a responsible official shall submit a standard District application no earlier than 18 months and no later than 6 months before the expiration date of the current permit to operate. Permits to operate for all emissions units at a stationary source shall undergo simultaneous renewal.

## 3. SIGNIFICANT PERMIT MODIFICATION

After obtaining any required preconstruction permits, a responsible official shall submit a standard District application for each emissions unit affected by a proposed permit revision that qualifies as a significant permit modification. Upon request by the APCO, the responsible official shall submit copies of the latest preconstruction permit for each affected emissions unit. The emissions unit(s) shall not commence operation until the APCO takes final action to approve the permit revision.

## 4. MINOR PERMIT MODIFICATION

After obtaining any required preconstruction permits, a responsible official shall submit a standard District application for each emissions unit affected by the proposed permit revision that qualifies as a minor permit modification. The emissions unit(s) affected by the proposed permit modification shall not commence operation until the APCO takes final action to approve the permit revision. In the application, the responsible official shall include the following:

- a. A description of the proposed permit revision, any change in emissions, and additional applicable federal requirements that will apply;
- b. Proposed permit terms and conditions; and
- c. A certification by a responsible official that the permit revision meets criteria for use of minor permit modification procedures and a request that such procedures be used.

Minor permit modifications procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by EPA.

5. ACID RAIN UNIT PERMIT MODIFICATION

A permit modification of the acid rain portion of the operating permit shall be governed by regulations promulgated pursuant to Title IV of the CAA.

C. APPLICATION CONTENT AND CORRECTNESS

1. STANDARD DISTRICT APPLICATION

The standard District application submitted shall include the following information:

- a. Information identifying the source;
- b. Description of processes and products (by Standard Industrial Classification Code) including any associated with proposed alternative operating scenarios;
- c. Identification of fees specified in Regulation III;
- d. A listing of all existing emissions units at the stationary source and identification and description of all points of emissions from the emissions units in sufficient detail to establish the applicable federal requirements and the basis for fees pursuant to section VII, below;
- e. Citation and description of all applicable federal requirements, information and calculations used to determine the applicability of such requirements and other information that may be necessary to implement and enforce such requirements;
- f. Calculation of all emissions, including fugitive emissions, in tons per year and in such terms as are necessary to establish compliance with the all applicable District, state, or federal requirements for the following.
  - 1) All regulated air pollutants emitted from the source,
  - 2) Any HAP that the source has the potential to emit in quantities equal to or in excess of 10 tons per year, and

- 3) If the source has the potential to emit two or more HAPs in quantities equal to or in excess of 25 tons per year, all HAPs emitted by the source;
- g. As these affect emissions from the source, the identification of fuels, fuel use, raw materials, production rates, operating schedules, limitations on source operation or workplace practices;
- h. An identification and description of air pollution control equipment and compliance monitoring devices or activities;
- i. Other information required by an applicable federal requirement;
- j. The information needed to define permit terms or conditions implementing a source's options for operational flexibility, including alternative operating scenarios, pursuant to subsection V.G., below;
- k. A compliance plan and compliance schedule with the following:
  - 1) A description of the compliance status of each emissions unit within the stationary source with respect to applicable federal requirements,
  - 2) A statement that the source will continue to comply with such applicable federal requirements that the source is in compliance,
  - 3) A statement that the source will comply, on a timely basis, with future-effective requirements which have been adopted, and
  - 4) A description of how the source will achieve compliance with requirements for which the source is not in compliance;
- l. For a source not in compliance with any applicable federal requirement at the time of permit issuance, renewal, and modification (if the noncompliance is with units being modified), a schedule of compliance approved by the District hearing board that identifies remedial measures with specific increments of progress, a final compliance date, testing and monitoring methods, record keeping requirements, and a schedule for submission of certified progress reports to the U.S EPA and the APCO at least every 6 months, any compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree, administrative order or schedule approved by the District hearing board if required by state law. Any such schedule of compliance in a permit shall be supplemental to, and shall not sanction noncompliance with, the applicable requirement on which it is based;

- m. A certification by a responsible official of all reports and documents submitted for permit application compliance progress reports at least every 6 months, statements on compliance status with any applicable enhanced monitoring, and compliance plans at least annually which shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete;
- n. For a source with an acid rain unit, an application shall include the elements required by 40 CFR Part 72;
- o. For a source of HAPs, the application shall include verification that a risk management plan has been prepared in accordance with section 112(r) of the CAA and registered with the authorized local fire or health department; and
- p. For proposed portable sources, an application shall identify all locations of potential operation and how the source will comply with all applicable District, state, and federal requirements at each location.
- q. Insignificant activities shall be considered as follows:
  - 1) For the purposes of this rule, an insignificant activity shall be any activity, process, or emissions unit which is not subject to a source-specific applicable federal requirement and which emits no more than 0.5 tons per year of a HAP and no more than two tons per year of a regulated air pollutant that is not a HAP. Source-specific applicable federal requirements include requirements for which emission unit-specific information is required to determine applicability.
  - 2) An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required in Section VII of this rule. [Reference: 40 CFR Part 70.5(c)]

## 2. CORRECTNESS OF APPLICATIONS

A responsible official of a source shall submit an accurate and complete application in accordance with the requirements of the District.

- a. Upon written request of the APCO, a responsible official shall supplement any complete application with additional information within the timeframe specified by the APCO.
- b. A responsible official shall promptly provide additional information in writing to the APCO upon discovery of submittal of any inaccurate

information as part of the application or as a supplement thereto, or of any additional relevant facts previously omitted which are needed for accurate analysis of the application.

- c. Intentional or negligent submittal of inaccurate information shall be reason for denial of an application.

#### D. WRITTEN REQUESTS FOR DISTRICT ACTION

A responsible official shall submit a written request to the APCO for the following permit actions:

##### 1. ADMINISTRATIVE PERMIT AMENDMENT

For an administrative permit amendment, a responsible official may implement the change addressed in the written request immediately upon submittal of the request.

##### 2. PERMIT MODIFICATION FOR A CONDITION THAT IS NOT FEDERALLY ENFORCEABLE

For a permit modification for a condition that is not federally enforceable, a responsible official shall submit a written request in accordance with the requirements of Rule 209-B.

##### 3. PERMITS TO OPERATE FOR NEW EMISSIONS UNITS

For permits to operate for a new emissions unit at a stationary source, a responsible official shall submit a written request in accordance with the requirements of Rule 209, except under the following circumstances:

- a. The construction or operation of the emissions unit is a modification under U.S. EPA regulations promulgated pursuant to Title I of the CAA, including 40 CFR Parts 51, 52, 60, 61, 63;
- b. The construction or operation of the emissions unit is addressed or prohibited by permits for other emissions units at the stationary source; or
- c. The emissions unit is an acid rain unit subject to Title IV of the CAA,

In the circumstances specified in subsections a., b., or c., above, a responsible official shall apply for a permit to operate for the new emissions unit pursuant to the requirements of Rule 217.

## E. RESPONSE TO PERMIT REOPENING FOR CAUSE

Upon notification by the APCO of a reopening of a permit for cause for an applicable federal requirement pursuant to section V.H., below, a responsible official shall respond to any written request for information by the APCO within the timeframe specified by the APCO.

## V. DISTRICT ADMINISTRATIVE PROCEDURES

### A. COMPLETENESS REVIEW OF APPLICATIONS

The APCO shall determine if an application is complete and shall notify the responsible official of the determination within the following timeframes:

1. For an initial permit, permit renewal, or a significant permit modification, within 60 days of receiving the application;
2. For a minor permit modification, within 30 days of receiving the application; The application shall be deemed complete unless the APCO requests additional information or otherwise notifies the responsible official that the application is incomplete within the timeframes specified above.

### B. NOTIFICATION OF COMPLETENESS DETERMINATION

The APCO shall provide written notification of the completeness determination to the U.S. EPA, the ARB and any affected state and shall submit a copy of the complete application to the U.S. EPA within five working days of the determination. The APCO need not provide notification for applications from sources that are not major sources when the U.S. EPA waives such requirement for a source category by regulation or at the time of approval of the District operating permits program.

### C. APPLICATION PROCESSING TIMEFRAMES

The APCO shall act on a complete application in accordance with the procedures in subsections D., E. and F., below (except as application procedures for acid rain units are provided for under regulations promulgated pursuant to Title IV of the CAA), and take final action within the following timeframes:

1. For an initial permit for a source subject to Rule 217 on the date the rule becomes effective, no later than three years after the date the rule becomes effective;
2. For an initial permit for a source that becomes subject to Rule 217 after the date the rule becomes effective, no later than 18 months after the complete application is received;

3. For a permit renewal, no later than 18 months after the complete application is received;
4. For a significant permit modification, no later than 18 months after the complete application is received;
5. For a minor permit modification, within 90 days after the application is received or 60 days after written notice to the U.S. EPA on the proposed decision, whichever is later; or
6. For any permit application with early reductions pursuant to section 112(i)(5) of the CAA, within 9 months from the date a complete application is received.

D. NOTIFICATION AND OPPORTUNITY FOR REVIEW OF PROPOSED DECISION

Within the applicable timeframe specified in subsection C., above, the APCO shall provide notice of and opportunity to review the proposed decision to issue a permit to operate in accordance with requirements in this subsection.

1. For initial permits, renewal of permits, significant permit modifications, and reopening for cause, the APCO shall provide the following:
  - a. Written notice, the proposed permit and, upon request, copies of the District analysis to interested persons or agencies. The District analysis shall include a statement that sets forth the legal and factual basis for the proposed permit conditions, including references to the applicable statutory and regulatory provisions. Interested persons or agencies shall include persons who have requested in writing to be notified of proposed Rule 217 decisions, any affected state and the ARB. The District shall notify EPA and Affected States in writing of any refusal by the permitting authority to accept all recommendations for the proposed permit that the Affected State submitted during the public/Affected State review period.
  - b. On or after providing written notice pursuant to subsection a., above, public notice that shall be published in at least one newspaper of general circulation in the District and, if necessary, by other means to assure adequate notice to the affected public. The notice shall provide the following information:
    - 1) The identification of the source, the name and address of permit holder, the activity(ies) and emissions change involved in the permit action;
    - 2) The name and address of the District, the name and telephone number of District staff to contact for additional information;



- 3) The availability, upon request, of a statement that sets forth the legal and factual basis for the proposed permit conditions;
    - 4) The location where the public may inspect the complete application, the District analysis, and the proposed permit;
    - 5) A statement that the public may submit written comments regarding the proposed decision within at least 30 days from the date of publication and a brief description of commenting procedures, and
    - 6) A statement that members of the public may request a public hearing if a hearing has not been scheduled. The APCO shall provide notice of any public hearing scheduled to address the proposed decision at least 30 days prior to such hearing in accordance with Rule 205;
  - c. Public notice will be given by other means if necessary to ensure adequate notice to the affected public.
  - d. A copy of the complete application, the District analysis and the proposed permit at District offices for public review and comment during normal business hours;
  - e. A written response to persons or agencies that submitted written comments which are postmarked by the close of the public notice and comment period. All written comments and responses to such comments shall be kept on file at the District office and made available upon request.
  - f. After completion of the public notice and comment period pursuant to subsection a., above, written notice to the U.S. EPA of the proposed decision along with copies of the proposed permit, the District analysis, the public notice submitted for publication, the District's response to written comments, and all necessary supporting information.
2. For minor permit modifications, the APCO shall provide written notice of the proposed decision to the U.S. EPA, the ARB, and any affected state. Additionally, the District shall provide to the U.S. EPA (and, upon request, to the ARB or any affected state) copies of the proposed permit, the District analysis, and all necessary supporting information. The District analysis shall include a statement that sets forth the legal and factual basis for the proposed permit conditions, including references to the applicable statutory and regulatory provisions.

## E. CHANGES TO THE PROPOSED DECISION

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

1. The APCO may modify or change the proposed decision, the proposed permit, or the District analysis on the basis of information set forth in the comments received during the public comment period provided pursuant to subsection D.1.a., above, or due to further analysis of the APCO. Pursuant to subsection D.1.f., above, the APCO shall forward any such modified proposed decision, the proposed permit, the District analysis, and all necessary supporting information to the U.S. EPA above.
2. If the U.S. EPA objects in writing to the proposed decision within 45 days of being notified of the decision and receiving a copy of the proposed permit and all necessary supporting information pursuant to subsection D.1.f., above, the APCO shall not issue the permit. The APCO shall either deny the application or revise and resubmit a permit which addresses the deficiencies identified in the U.S. EPA objection within the following timeframes:
  - a. For initial permits, permit renewals, and significant permit modifications, within 90 days of receiving the U.S. EPA objection; or
  - b. For minor permit modifications, within 90 days of receipt of the application or 60 days of the notice to U.S. EPA, whichever is later.
3. If the EPA does not object under Section V.E.2, any person may petition the EPA within 60 days after the expiration of the EPA's 45-day review period to make such objection. Any such petition shall be based only on objections to the Title V permit that were raised with reasonable specificity during the public comment period provided for in Section V.D, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or that the grounds for such objection arose after the end of the review period. If the APCO receives a written objection from EPA as a result of the petition filed under this Section, the APCO shall not issue the Title V permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of the Title V permit if the Title V permit was issued after the end of the 45-day review period and prior to EPA objection. If the District has issued the Title V permit prior to receiving a written objection from EPA pursuant to objections raised under this Section, the Title V permit may be reopened for cause by EPA pursuant to Section V.H. If EPA notifies the APCO to modify, terminate, or revoke the Title V permit, the APCO shall revise the Title V permit and issue a revised Title V permit that satisfies EPA's objection. The APCO shall revise and submit a proposed Title V permit in response to EPA objection no later than 90 days from the EPA objection date. In any case, the source will not be in violation of the requirement to have submitted a timely and complete Title V application.

## F. FINAL DECISION

If the U.S. EPA does not object in writing within 45 days of the notice provided pursuant to subsection D.1.f., above, or the APCO submits a revised permit pursuant to subsection E.2., above, the APCO shall, expeditiously, deny the application or issue the final permit to operate. In any case, the APCO shall take final action on an application within the applicable timeframe specified in subsection C., above. Failure of the APCO to act on a permit application or permit renewal application in accordance to the timeframes provided in subsection C., above, shall be considered final action for purposes of obtaining judicial review to require that action on the application be taken expeditiously.

Written notification of the final decision shall be sent to the responsible official of the source, the U.S. EPA, the ARB and any person or affected state that submitted comments during the public comment period. Written notification of any refusal by the District to accept all recommendations for the proposed permit that an affected state submitted during the public comment period shall be sent to U.S. EPA and affected states.

The APCO shall submit a copy of a permit to operate as issued to the U.S. EPA and provide a copy to any person or agency requesting a copy. If the application is denied, the APCO shall provide reasons for the denial in writing to the responsible official along with the District analysis and cite the specific statute, rule, or regulation upon which the denial is based.

## G. DISTRICT ACTION ON WRITTEN REQUESTS

The APCO shall act on a written request of a responsible official for permit action using the applicable procedure specified in this subsection.

### 1. ADMINISTRATIVE PERMIT AMENDMENT

The APCO shall take final action no later than 60 days after receiving the written request for an administrative permit amendment.

- a. After designating the permit revisions as an administrative permit amendment, the APCO may revise the permit without providing notice to the public or any affected state.
- b. The APCO shall provide a copy of the revised permit to the responsible official and the U.S. EPA.
- c. While the APCO need not make a completeness determination on a written request, the APCO shall notify the responsible official if the APCO determines that the permit cannot be revised as an administrative permit amendment.

2. PERMIT MODIFICATION FOR A CONDITION THAT IS NOT FEDERALLY ENFORCEABLE

The APCO shall take action on a written request for a permit modification for a condition that is not federally enforceable in accordance with the requirements of Rule 209 under the following circumstances:

- a. Any change at the stationary source allowed by the permit modification shall meet all applicable federal requirements and shall not violate any existing permit term or condition; and
- b. The APCO provides to the U.S. EPA a contemporaneous written notice describing the change, including the date, any change in emissions or air pollutants emitted, and any applicable federal requirement that would apply as a result of the change.

3. PERMITS TO OPERATE FOR NEW EMISSIONS UNIT

The APCO shall take action on a written request for a permit to operate for a new emissions unit in accordance with the requirements for of Rule 209 under the circumstances specified in subsection 2.a. and 2.b., above. However, if subsections IV.D.3.a., IV.D.3.b., or IV.D.3.c., above, apply, the APCO shall require the submittal of a standard District application and take action on that application pursuant to the requirements of Rule 217.

H. PERMIT REOPENING FOR CAUSE

The APCO shall reopen and revise a permit to operate during the annual review period required by section 42301(c) of the H&SC, or petition the District hearing board to do so pursuant to section 42307 of the H&SC, whichever is applicable, prior to its expiration date upon discovery of cause for reopening or upon notification of cause for reopening by the U.S. EPA, or within 18 months of promulgation of a new applicable federal requirement. The APCO shall act only on those parts of the permit for which cause to reopen exists.

1. Circumstances that are cause for reopening and revision of a permit include, but are not limited to, the following:
  - a. The need to correct a material mistake or inaccurate statement;
  - b. The need to revise or revoke a permit to operate to assure compliance with applicable federal requirements;
  - c. The need to incorporate any new, revised, or additional applicable federal requirements, if the remaining authorized life of the permit is 3

years or greater, no later than 18 months after the promulgation of such requirement (where less than 3 years remain in the authorized life of the permit, the APCO shall incorporate these requirements into the permit to operate upon renewal); or

- d. The need to reopen a permit issued to acid rain unit subject to Phase II of Title IV of the CAA to include:
  - 1) Oxides of nitrogen requirements prior to January 1, 1999, and
  - 2) Additional requirements promulgated pursuant to Title IV as they become applicable to any acid rain unit governed by the permit.
- 2. In processing a permit reopening, the APCO shall use the same procedures as for an initial permit and additionally:
  - a. Provide written notice to a responsible official and the U.S. EPA at least 30 days in advance of the proposed change, or a shorter period in the case of an emergency, prior to reopening a permit; and
  - b. Complete action to revise the permit as specified in the notice of reopening within 60 days after the written notice to the U.S. EPA pursuant to subsection D.1.f., if the U.S. EPA does not object, or after the APCO has responded to U.S. EPA objection pursuant to subsection E.2., above.

#### I. OPTIONS FOR OPERATIONAL FLEXIBILITY

The APCO shall allow specified changes in operations at a source without requiring a permit revision for conditions that address an applicable federal requirement. The APCO shall not allow changes which constitute a modification under Title I of the CAA or Regulation II, or that result in an exceedance of the emissions allowable under the permit, whether expressed therein as a rate of emissions or in terms of total emissions without revision to the permit. The source may gain operational flexibility through use of the following options:

##### 1. Alternative Operating Scenarios

The APCO shall allow the use of alternative operating scenarios provided that:

- a. Terms and conditions applicable to each operating scenario are identified by the responsible official in the permit application,
- b. The terms and conditions are approved by the APCO,

- c. The terms and conditions are incorporated into the permit; and
- d. The terms and conditions are in compliance with all applicable District, state, and federal requirements.

A permit condition shall require a contemporaneous log to record each change made from one operating scenario to another.

## 2. Voluntary Emissions Caps

The APCO shall issue a permit that contains terms and conditions, including all terms required under CFR 40 § 70.6 (a) and (c) of this part to determine compliance, allowing for the trading of emissions increases and decreases within the stationary source solely for the purpose of complying with a voluntary emissions cap established in the permit independent of otherwise applicable federal requirements, provided that:

- a. The requirements of subsections 1.a., 1.c., and 1.d., above, are met;
- b. The terms and conditions are approved by the APCO as quantifiable and enforceable; and
- c. The terms and conditions are consistent with the applicable preconstruction permit.

A permit condition shall require that a responsible official provide written notice to the U.S. EPA and APCO 30 days in advance of a change by clearly requesting operational flexibility under this subsection of Rule 217. The written notice shall describe the change, identify the emissions unit which will be affected, the date on which the change will occur and the duration of the change, any change in emissions of any air pollutant, whether regulated or not, and any new emissions of any air pollutant not emitted before the change, whether regulated or not.

## 3. Contravening an Express Permit Condition

The APCO shall allow for changes in operation that contravene an express condition addressing an applicable federal requirement in a permit to operate provided that:

- a. The change will not violate any applicable federal requirement;
- b. The change will not contravene federally enforceable conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements;

- c. The change is not a modification under Title I of the CAA or any provision of Regulation II:
- d. The change does not result in exceeding the emissions allowable under the permit, whether expressed therein as a rate of emissions or in terms of total emissions;
- e. Written notice is given to the U.S. EPA and APCO 30 days in advance of a change, and the notice clearly indicates which term or condition will be contravened, requests operational flexibility under this subsection, describes the change, identifies the emissions units which will be affected, the date on which the change will occur, the duration of the change, any change in emissions of any air pollutant, whether regulated or not, and any new emissions of any air pollutant not emitted before the change, whether regulated or not; and
- f. The APCO has not provided a written denial to the responsible official within 30 days of receipt of the request for an operational change.

## VI. PERMIT CONTENT REQUIREMENTS

A permit-to-operate shall contain permit conditions that will assure compliance with all applicable federal requirements.

### A. INCORPORATION OF APPLICABLE FEDERAL REQUIREMENTS

A permit to operate shall incorporate all applicable federal requirements as permit conditions. The following procedure shall be used to incorporate an applicable federal requirement as a permit condition:

1. A permit condition that addresses an applicable federal requirement shall be specifically identified in the permit, or otherwise distinguished from any requirement that is not federally enforceable;
2. Where an applicable federal requirement and a similar requirement that is not federally enforceable apply to the same emissions unit, both shall be incorporated as permit conditions, provided that they are not mutually exclusive; and
3. Where an applicable federal requirement and a similar requirement that is not federally enforceable apply to the same emissions unit and are mutually exclusive (e.g., require different air pollution control technology), the requirement specified in the preconstruction permit (or, in the case of sources without preconstruction permits, the more stringent requirement) shall be incorporated as a permit condition and the other requirement shall be referenced.

## B. GENERAL REQUIREMENTS

All permits to operate shall contain the conditions or terms consistent with 40 CFR Part 70.6 Permit Content. No permit revision shall be required, under any approved economic incentives, marketable permits, emission trading, and other similar programs or processes for changes that are provided for in the permit, including:

### 1. Emission and Operational Limitations

The permit shall contain conditions that require compliance with all applicable federal requirements, including any operational limitations or requirements.

### 2. Preconstruction Permit Requirements

The permit shall include all of the preconstruction permit conditions for each emissions unit.

### 3. Origins and Authority for Permit Conditions

Specification of, and reference to, the origin of and authority for each permit term or condition, and identity of any difference in form from the applicable requirement upon which the term or condition is based.

### 4. Equipment Identification

The permit shall identify the equipment to which a permit condition applies.

### 5. Monitoring, Testing, and Analysis

The permit shall contain conditions that require monitoring, analytical, compliance certification, test method, equipment management, and statistical procedures consistent with any applicable federal requirement, including those pursuant to Sections 110(a)(2)(A),(C), and (F)(42 U.S.C. Sections 7401(a)(2)(A),(C), and (F); and Sections 113, 114(a)(3) and 504(b) (42 U.S.C. Sections 7413 and 7414(a)(3)) of the federal Clean Air Act, and 40 CFR Part 64. Periodic monitoring shall be required as a condition to ensure that the monitoring is sufficient to yield reliable data which are representative of the source's compliance with permit conditions over the relevant time period.

[Continued]



a. Standards for Determination of Compliance

Compliance Certification

Notwithstanding any other provision in any plan approved by the United States Environmental Protection Agency Administrator, for the purpose of submission of compliance certification required by federal law, the owner or operator is not prohibited from using the following, in addition to any specified compliance methods:

- 1) An enhanced monitoring protocol approved for the source pursuant to 40 CFR Part 64.
- 2) Any other monitoring method approved for the source pursuant to 40 CFR 70.6(a)(3) and incorporated into a federally enforceable operating permit.

b. Credible Evidence

Notwithstanding any other provision in the District's State Implementation Plan approved by the Administrator, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of any such plan.

- 1) Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at a source:
  - a) An enhanced monitoring protocol approved for the source pursuant to 40 CFR Part 64.
  - b) A monitoring method approved for the source pursuant to 40 CFR 70.6(a)(3) and incorporated into a federally enforceable operating permit.
  - c) Compliance test methods specified in the District's State Implementation Plan.
- 2) The following testing, monitoring, or information-gathering methods are presumptively credible testing, monitoring, or information-gathering methods:
  - a) Any federally enforceable monitoring or testing methods, including those in 40 CFR Parts 51, 60, 61 and 75.

- b) Other testing, monitoring, or information gathering methods that produce information comparable to that produced by any method in 4.2.1 or 4.2.2.1 herein.

## 6. Record keeping

The permit shall include record keeping conditions that require:

- a. Record maintenance of all monitoring and support information associated with any applicable federal requirement, including:
  - 1) Date, place, and time of sampling;
  - 2) Operating conditions at the time of sampling;
  - 3) Date, place, and method of analysis; and
  - 4) Results of the analysis;
- b. Retention of records of all required monitoring data and support information for a period of at least five years from the date of sample collection, measurement, report, or application; and
- c. Any other record keeping deemed necessary by the APCO to ensure compliance with all applicable federal requirements.

## 7. Reporting

The permit shall include reporting conditions. Any application form, report, or compliance certification submitted pursuant to these regulations shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this rule shall state that, based on information and belief formed after reasonable inquiry, the statements are true, accurate, and complete. All reports and documents required by the permit shall be certified by a responsible official and include the following:

- a. Any deviation from permit requirements, including that attributable to upset conditions (as defined in the permit), shall be promptly (within 2 to 10 days of the deviation) reported to the APCO, in the case of deviations due to upset or emergency conditions, no longer than the timeframes provided for under the emergency provisions in Rule 217 VI.B.12;

- b. A monitoring report shall be submitted at least every six months, state whether compliance was continuous or intermittent and shall identify any deviation from permit requirements, including that previously reported to the APCO (see subsection 7.a. above);
- c. All reports of a deviation from permit requirements shall include the probable cause of the deviation and any preventative or corrective action taken;
- d. A progress report shall be made on a compliance schedule at least semi-annually and shall include: 1) the date when compliance will be achieved, 2) an explanation of why compliance was not, or will not be, achieved by the scheduled date, and 3) a log of any preventative or corrective action taken; and
- e. Each monitoring report shall be accompanied by a written statement from the responsible official which certifies the truth, accuracy, and completeness of the report.

#### 8. Compliance Plan

The permit shall include a compliance plan that:

- a. Describes the compliance status of an emissions unit with respect to each applicable federal requirement;
- b. Describes how compliance will be achieved if an emissions unit is not in compliance with an applicable federal requirement at the time of permit issuance;
- c. Assures that an emissions unit will continue to comply with those permit conditions with which it is in compliance; and
- d. Assures that an emissions unit will comply with any future applicable federal requirement on a timely basis.

#### 9. Compliance Schedule

The permit shall include a compliance schedule for any emissions unit which is not in compliance with current applicable federal requirements at the time of permit issuance, renewal, and modification (if the non-compliance is with units being modified). The compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree, administrative order or schedule approved by the District hearing board if required by state law. Any such schedule of compliance in a permit shall be

supplemental to, and shall not sanction noncompliance with, the applicable requirement on which it is based. The compliance schedule shall require:

- a. A statement that the emissions unit will continue to comply with those permit conditions with which it is in compliance;
- b. A statement that the emissions unit will comply with any future applicable federal requirement on a timely basis;
- c. For each condition with which the emissions unit is not in compliance with an applicable federal requirement, a schedule of compliance which lists all preventative or corrective activities, and the dates when these activities will be accomplished; and
- d. For each emissions unit that is not in compliance with an applicable federal requirement, a schedule of progress on at least a semi-annual basis which includes: 1) the date when compliance will be achieved, 2) an explanation of why compliance was not, or will not be, achieved by the scheduled date, and 3) a log of any preventative or corrective actions taken.

10. Right of Entry

The permit shall require that the source allow the entry of the District, ARB, or U.S. EPA officials for the purpose of inspection and sampling, including:

- a. Inspection of the stationary source, including equipment, work practices, operations, and emission-related activity;
- b. Inspection and duplication of records required by the permit to operate; and
- c. Source sampling or other monitoring activities.

11. Compliance with Permit Conditions

The permit shall include the following provisions regarding compliance:

- a. The permittee shall comply with all permit conditions;
- b. The permit does not convey property rights or exclusive privilege of any sort;
- c. The non-compliance with any permit condition is grounds for permit

termination, revocation and reissuance, modification, enforcement action, or denial of permit renewal;

- d. The permittee shall not use the "need to halt or reduce a permitted activity in order to maintain compliance" as a defense for non-compliance with any permit condition;
- e. A pending permit action or notification of anticipated non-compliance does not stay any permit condition; and
- f. Within a reasonable time period, the permittee shall furnish any information requested by the APCO, in writing, for the purpose of determining: 1) compliance with the permit, or 2) whether or not cause exists for a permit or enforcement action.

## 12. Emergency Provisions

The permit shall include the following emergency provisions:

- a. The responsible official shall submit to the District a properly signed contemporaneous log or other relevant evidence which demonstrates that:
  - 1) An emergency occurred;
  - 2) The permittee can identify the cause(s) of the emergency;
  - 3) The facility was being properly operated at the time of the emergency;
  - 4) All steps were taken to minimize the emissions resulting from the emergency; and
  - 5) Within two working days of the emergency event, the permittee provided the district with a description of the emergency and any mitigating or corrective actions taken;
- b. In any enforcement proceeding, the permittee has the burden of proof for establishing that an emergency occurred; and
- c. In addition to the emergency provisions above, the permittee shall comply with the emergency or upset provisions contained in all applicable federal requirements and District requirements.

13. Severability

The permit shall include a severability clause to ensure the continued validity of otherwise unaffected permit requirements in the event of a challenge to any portion of the permit.

14. Compliance Certification

The permit shall contain conditions for compliance certification which include the following requirements:

- a. The responsible official shall submit a compliance certification to the U.S. EPA and the APCO every 12 months or at more frequently as specified in an applicable requirement or by the District. All compliance reports and other documents required to be submitted to the District by the responsible official shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.
- b. The compliance certification shall identify the basis for each permit term or condition (e.g., specify the emissions limitation, standard, or work practice) and a means of monitoring compliance with the term or condition;
- c. The compliance certification shall include the compliance status and method(s) used to determine compliance for the current time period and over the entire reporting period; and
- d. The compliance certification shall include any additional inspection, monitoring, or entry requirement that may be promulgated pursuant to sections 114(a) and 504(b) of the CAA.

15. Permit Life

With the exception of acid rain units subject to Title IV of the CAA and solid waste incinerators subject to section 129(e) of the CAA, each permit to operate for any source shall include a condition for a fixed term not to exceed five years from the time of issuance. A permit to operate for an acid rain unit shall have a fixed permit term of five years. A permit to operate for a solid waste incinerator shall have a permit term of 12 years; however, the permit shall be reviewed at least every five years.

16. Payment of Fees

The permit shall include a condition to ensure that appropriate permit fees are paid on schedule. If fees are not paid on schedule, the permit is forfeited. Operation without a permit subjects the source to potential enforcement action by the District and the U.S. EPA pursuant to section 502(a) of the CAA.

17. Alternative Operating Scenarios

Where a responsible official requests that an alternative operating scenario be included in the permit for an emissions unit, the permit shall contain specific conditions for each operating scenario, including each alternative operating scenario. Each operating scenario, including each alternative operating scenario, identified in the permit must meet all applicable federal requirements and all of the requirements of this section. Furthermore, the source is required to maintain a contemporaneous log to record each change from one operating scenario to another.

18. Voluntary Emissions Caps

To the extent applicable federal requirements provide for averaging emissions increases and decreases within a stationary source without case-by-case approval, a responsible official may request, subject to approval by the APCO, to permit one or more emissions unit(s) under a voluntary emissions cap. The permit for each emissions unit shall include federally enforceable conditions requiring that:

- a. All applicable federal requirements, including those authorizing emissions averaging, are complied with;
- b. No individual emissions unit shall exceed any emissions limitation, standard, or other requirement;
- c. Any emissions limitation, standard, or other requirement shall be enforced through continuous emission monitoring, where applicable; and
- d. All affected emissions units under a voluntary emissions cap shall be considered to be operating in violation of the permit, if the voluntary emissions cap is exceeded.

19. Acid Rain Units Subject to Title IV

The permit for an acid rain unit shall include conditions that require

compliance with any federal standard or requirement promulgated pursuant to Title IV (Acid Deposition Control) of the CAA and any federal standard or requirement promulgated pursuant to Title V of the CAA, except as modified by Title IV. Acid rain unit permit conditions shall include the requirements of 40 CFR Part 72.9 and the following provisions:

- a. The sulfur dioxide emissions from an acid rain unit shall not exceed the annual emissions allowances (up to one ton per year of sulfur dioxide may be emitted for each emission allowance allotted) that the source lawfully holds for that unit under Title IV of the CAA or the regulations promulgated pursuant to Title IV;
- b. Any increase in an acid rain unit's sulfur dioxide emissions authorized by allowances acquired pursuant to Title IV of the CAA shall not require a revision of the acid rain portion of the operating permit provided such increases do not require permit revision under any other applicable federal requirement;
- c. Although there is no limit on the number of sulfur dioxide emissions allowances held by a source, a source with an acid rain unit shall not use these emissions allowances as a defense for noncompliance with any applicable federal requirement or District requirement, including District Rule 209; and
- d. An acid rain unit's sulfur dioxide allowances shall be accounted for according to the procedures established in regulations promulgated pursuant to Title IV of the CAA.

## VII. SUPPLEMENTAL ANNUAL FEE

The fees collected pursuant to this section shall supplement the fee requirements in Regulation III, if applicable.

### A. PAYMENT OF SUPPLEMENTAL FEE

A responsible official, or his or her delegate, shall pay an annual supplemental fee for a permit to operate pursuant to this rule as determined by the calculation method in subsection C. below to meet an overall fee rate of \$25 per ton of fee-based emissions (CPI adjusted), unless subsection B. below applies.

1. "Fee-based emissions" means the actual rate of emissions in tons per year of any fee pollutant, including fugitive emissions, emitted from the stationary source over the preceding year or any other period determined by the APCO to be representative of normal operation. Fee-based emissions shall be calculated using each emission unit's actual operating hours, production rates, and in-place control equipment; types of material processed, stored, or



combusted during the preceding calendar year, or other time period established by the APCO.

2. "Fee pollutant" means oxides of nitrogen, volatile organic compounds, any pollutant for which a national ambient air quality standard has been promulgated by the U.S. EPA (excluding carbon monoxide), and any other pollutant that is subject to a standard or regulation promulgated by the U.S. EPA under the CAA or adopted by the District pursuant to section 112(g) and (j) of the CAA. Any air pollutant that is regulated solely because of a standard or regulation under section 112(r) of the CAA for accidental release or under Title VI of the CAA for stratospheric ozone protection shall not be included.
3. "(CPI adjusted)" means adjusted by the percentage, if any, by which the Consumer Price Index of the year exceeds the Consumer Price Index for calendar year 1989. The value for (CPI adjusted) shall be obtained from the U.S. EPA.

B. NO SUPPLEMENTAL FEE

There shall not be a supplemental annual fee if the total annual fee rate paid by the source under Regulation III and H&SC section 44380 (AB 2588 Toxic Hot Spots) equals or exceeds \$25 per ton of fee-based emissions (CPI adjusted). Only those AB 2588 Toxic Hot Spots fees that fund direct and indirect costs associated with activities related to the operating permits program as specified in section 502(b)(3)(A) of the CAA are to be used to meet the overall fee rate of \$25 per ton of fee-based emissions (CPI adjusted).

C. DETERMINATION OF SUPPLEMENTAL FEE

The supplemental annual fee shall be determined by completing the following steps:

Step 1: Calculation of Supplemental Annual Fee

$$S = [\$25 \text{ per ton (CPI adjusted)} \times e] - f$$

where:

s = supplemental annual fee in dollars

e = fee-based emissions in tons per year

f = sum (in dollars) of annual fee under Regulation III and that portion of AB 2588 Toxic Hot Spots fees that funds direct and indirect costs associated with activities related to the operating permits program as specified in section 502(b)(3)(A) of the CAA

Step 2: When the Supplemental Annual Fee is Zero

If "f" is equal to or greater than "[ \$25 per ton (CPI adjusted) x e ]",  
then "s" shall be zero and subsection B., above, applies.

If "f" is less than "[ \$25 per ton (CPI adjusted) x e ]",  
then "s" shall be as calculated in Step 1.

D. SUBMITTAL OF INFORMATION

The responsible official, or his or her delegate, shall provide the APCO sufficient information to determine the supplemental fee.

[Intentionally left blank.]

RULE 218. LIMITING POTENTIAL TO EMIT

Adopted: 12/04/95

A. APPLICABILITY

1. General Applicability: This rule shall apply to any stationary source which would, if it did not comply with the limitations set forth in this rule, have the potential to emit air contaminants equal to or in excess of the threshold for a major source of regulated air pollutants or a major source of hazardous air pollutants (HAPs) and which meets one of the following conditions:
  - a. In every 12-month period, the actual emissions of the stationary source are less than or equal to the emission limitations specified in section C.1. below; or
  - b. In every 12-month period, at least 90 percent of the emissions from the stationary source are associated with an operation limited by any one of the alternative operational limits specified in section F.1. below.
2. Stationary Source with De Minimis Emissions: The recordkeeping and reporting provisions in sections D, E and F below shall not apply to a stationary source with de minimis emissions or operations as specified in either subsection a. or b. below:
  - a. In every 12-month period, the stationary source emits less than or equal to the following quantities of emissions:
    - i. 5 tons per year of a regulated air pollutant (excluding HAPs),
    - ii. 2 tons per year of a single HAP,
    - iii. 5 tons per year of any combination of HAPs, and
    - iv. 20 percent of any lesser threshold for a single HAP that the
    - v. United States Environmental Protection Agency (U.S. EPA) may establish by rule.
  - b. In every 12-month period, at least 90 percent of the stationary source's emissions are associated with an operation for which the throughput is less than or equal to one of the quantities specified in subsections (i) through (viii) below:
    - i. 1,400 gallons of any combination of solvent-containing materials but no more than 550 gallons of any one solvent-containing material, provided that the materials do not contain the following: methyl chloroform (1,1,1-trichloroethane), methylene chloride (dichloromethane), tetrachloroethylene (perchloroethylene), or trichloroethylene;

- ii. 750 gallons of any combination of solvent-containing materials where the materials contain the following: methyl chloroform (1,1,1-trichloroethane), methylene chloride (dichloromethane), tetrachloroethylene (perchloroethylene), or trichloroethylene, but not more than 300 gallons of any one solvent-containing material;
- iii. 4,400,000 gallons of gasoline dispensed from equipment with Phase I and II vapor recovery systems;
- iv. 470,000 gallons of gasoline dispensed from equipment without Phase I and II vapor recovery systems;
- v. 1,400 gallons of gasoline combusted;
- vi. 16,600 gallons of diesel fuel combusted;
- vii. 500,000 gallons of distillate oil combusted, or
- viii. 71,400,000 cubic feet of natural gas combusted.

Within 30 days of a written request by the District or the U.S. EPA, the owner or operator of a stationary source not maintaining records pursuant to sections D or F shall demonstrate that the stationary source's emissions or throughput are not in excess of the applicable quantities set forth in subsection a. or b. above.

- 3. Provision for Air Pollution Control Equipment: The owner or operator of a stationary source may take into account the operation of air pollution control equipment on the capacity of the source to emit an air contaminant if the equipment is required by Federal, State, or District rules and regulations or permit terms and conditions. The owner or operator of the stationary source shall maintain and operate such air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions. This provision shall not apply after January 1, 1999 unless such operational limitation is federally enforceable or unless the District Board specifically extends this provision and it is submitted to the U.S. EPA. Such extension shall be valid unless, and until, the U.S. EPA disapproves the extension of this provision.
- 4. Exemption, Stationary Source Subject to Rule 217: This rule shall not apply to the following stationary sources:
  - a. Any stationary source whose actual emissions, throughput, or operation, at any time after the effective of this rule, is greater than the quantities specified in sections C.1. or F.1. below and which meets both of the following conditions:
    - i. The owner or operator has notified the District at least 30 days prior to any exceedance that s/he will submit an application for a Part 70 permit, or otherwise obtain federally-enforceable permit limits, and

- ii. A complete Part 70 permit application is received by the District, or the permit action to otherwise obtain federally-enforceable limits is completed, within 12 months of the date of notification.

However, the stationary source may be immediately subject to applicable federal requirements, including but not limited to, a maximum achievable control technology (MACT) standard.

- b. Any stationary source that has applied for a Part 70 permit in a timely manner and in conformance with Rule 217, and is awaiting final action by the District and U.S. EPA.
- c. Any stationary source required to obtain an operating permit under Rule 217 for any reason other than being a major source.
- d. Any stationary source with a valid Part 70 permit.

Notwithstanding subsections b. and d. above, nothing in this section shall prevent any stationary source which has had a Part 70 permit from qualifying to comply with this rule in the future in lieu of maintaining an application for a Part 70 permit or upon rescission of a Part 70 permit if the owner or operator demonstrates that the stationary source is in compliance with the emissions limitations in section C.1. below or an applicable alternative operational limit in section F.1. below.

- 5. Exemption, Stationary Source with a Limitation on Potential to Emit: this rule shall not apply to any stationary source which has a valid operating permit with federally-enforceable conditions or other federally-enforceable limits limiting its potential to emit to below the applicable threshold(s) for a major source as defined in sections B.7 and B.8 below.
- 6. Within three years of the effective date of Rule 217, the District shall maintain and make available to the public upon request, for each stationary source subject to this rule, information identifying the provisions of this rule applicable to the source.
- 7. This rule shall not relieve any stationary source from complying with requirements pertaining to any otherwise applicable preconstruction permit, or to replace a condition or term of any preconstruction permit, or any provision of a preconstruction permitting program.<sup>1</sup> This does not preclude issuance of any preconstruction permit with conditions or terms necessary to ensure compliance with this rule.

## B. DEFINITIONS

All terms shall retain the definitions provided under 40 CFR Part 70.2 unless otherwise defined herein.

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<sup>1</sup> For example, PSD, NSR and ATC

1. 12-month period: A period of twelve consecutive months determined on a rolling basis with a new 12-month period beginning on the first day of each calendar month.
2. Actual Emissions: The emissions of a regulated air pollutant from a stationary source for every 12-month period. Valid continuous emission monitoring data or source test data shall be preferentially used to determine actual emissions. In the absence of valid continuous emissions monitoring data or source test data, the basis for determining actual emissions shall be: throughputs of process materials; throughputs of materials stored; usage of materials; data provided in manufacturer's product specifications, material volatile organic compound (VOC) content reports or laboratory analyses; other information required by this rule and applicable District, State and Federal regulations; or information requested in writing by the District. All calculations of actual emissions shall use U.S. EPA, California Air Resources Board (CARB) or District approved methods, including emission factors and assumptions.
3. Alternative Operational Limit: A limit on a measurable parameter, such as hours of operation, throughput of materials, use of materials, or quantity of product, as specified in Section F, Alternative Operational Limit and Requirements.
4. Emission Unit: Any article, machine, equipment, operation, contrivance or related groupings of such that may produce and/or emit any regulated air pollutant or hazardous air pollutant.
5. Federal Clean Air Act: The federal Clean Air Act (CAA) as amended in 1990 (42 U.S.C. section 7401 et seq.) and its implementing regulations.
6. Hazardous Air Pollutant: Any air pollutant listed pursuant to section 112(b) of the federal Clean Air Act.
7. Major Source of Regulated Air Pollutants (excluding HAPs): A stationary source that emits or has the potential to emit a regulated air pollutant (excluding HAPs) in quantities equal to or exceeding the lesser of any of the following thresholds:
  - a. 100 tons per year (tpy) of any regulated air pollutant;
  - b. 50 tpy of volatile organic compounds or oxides of nitrogen for a federal ozone nonattainment area classified as serious, 25 tpy for an area classified as severe, or 10 tpy for an area classified as extreme; and
  - c. 70 tpy of PM<sub>10</sub> for a federal PM<sub>10</sub> nonattainment area classified as serious.

Fugitive emissions of these pollutants shall be considered in calculating total emissions for stationary sources in accordance with 40 CFR Part 70.2 "Definitions- Major source(2)".

8. Major Source of Hazardous Air Pollutants: A stationary source that emits or has the potential to emit 10 tons per year or more of a single HAP listed in section 112(b) of the CAA, 25 tons per year or more of any combination of HAPs, or such

lesser quantity as the U.S. EPA may establish by rule. Fugitive emissions of HAPs shall be considered in calculating emissions for all stationary sources. The definition of a major source of radionuclides shall be specified by rule by the U.S. EPA.

9. Part 70 Permit: An operating permit issued to a stationary source pursuant to an interim, partial or final Title V program approved by the U.S. EPA.
10. Potential to Emit: The maximum capacity of a stationary source to emit a regulated air pollutant based on its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation is federally enforceable.
11. Process Statement: An annual report on permitted emission units from an owner or operator of a stationary source certifying under penalty of perjury the following: throughputs of process materials; throughputs of materials stored; usage of materials; fuel usage; any available continuous emissions monitoring data; hours of operation; and any other information required by this rule or requested in writing by the District.
12. Regulated Air Pollutant: The following air pollutants are regulated:
  - a. Oxides of nitrogen and volatile organic compounds;
  - b. Any pollutant for which a national ambient air quality standard has been promulgated;
  - c. Any Class I or Class II ozone depleting substance subject to a standard promulgated under Title VI of the federal Clean Air Act;
  - d. Any pollutant that is subject to any standard promulgated under section 111 of the federal Clean Air Act; and
  - e. Any pollutant subject to a standard or requirement promulgated pursuant to section 112 of the federal Clean Air Act, including:
    - i. Any pollutant listed pursuant to section 112(r) (Prevention of Accidental Releases) shall be considered a regulated air pollutant upon promulgation of the list.
    - ii. Any HAP subject to a standard or other requirement promulgated by the U.S. EPA pursuant to section 112(d) or adopted by the District pursuant to 112(g) and (j) shall be considered a regulated air pollutant for all sources or categories of sources: 1) upon promulgation of the standard or requirement, or 2) 18 months after the standard or requirement was scheduled to be promulgated pursuant to section 112(e)(3).

- iii. Any HAP subject to a District case-by-case emissions limitation determination for a new or modified source, prior to the U.S. EPA promulgation or scheduled promulgation of an emissions limitation shall be considered a regulated air pollutant when the determination is made pursuant to section 112(g)(2). In case-by-case emissions limitation determinations, the HAP shall be considered a regulated air pollutant only for the individual source for which the emissions limitation determination was made.

#### C. EMISSION LIMITATIONS

1. Unless the owner or operator has chosen to operate the stationary source under an alternative operational limit specified in section F.1. below, no stationary source subject to this rule shall emit in every 12-month period more than the following quantities of emissions:
  - a. 50 percent of the major source thresholds for regulated air pollutants (excluding HAPs),
  - b. 5 tons per year of a single HAP,
  - c. 12.5 tons per year of any combination of HAPs, and
  - d. 50 percent of any lesser threshold for a single HAP as the U.S. EPA may establish by rule.
2. The APCO shall evaluate a stationary source's compliance with the emission limitations in section C.1. above as part of the District's annual permit renewal process required by Health & Safety Code section 42301(e). In performing the evaluation, the APCO shall consider any annual process statement submitted pursuant to Section E, Reporting Requirements. In the absence of valid continuous emission monitoring data or source test data, actual emissions shall be calculated using emissions factors approved by the U.S. EPA, CARB, or the APCO.
3. Unless the owner or operator has chosen to operate the stationary source under an alternative operational limit specified in section F.1. below, the owner or operator of a stationary source subject to this rule shall obtain any necessary permits prior to commencing any physical or operational change or activity which will result in actual emissions that exceed the limits specified in section C.1. above.

#### D. RECORDKEEPING REQUIREMENTS

Immediately after adoption of this rule, the owner or operator of a stationary source subject to this rule shall comply with any applicable recordkeeping requirements in this section. However, for a stationary source operating under an alternative operational limit, the owner or operator shall instead comply with the applicable recordkeeping and reporting requirements specified in Section F, Alternative Operational Limit and Requirements. The recordkeeping requirements of this rule shall not replace any



recordkeeping requirement contained in an operating permit or in a District, State, or Federal rule or regulation.

1. A stationary source previously covered by the provisions in section A.2 above shall comply with the applicable provisions of section D above and sections E and F below if the stationary source exceeds the quantities specified in section A.2.a. above.
2. The owner or operator of a stationary source subject to this rule shall keep and maintain records for each permitted emission unit or groups of permitted emission units sufficient to determine actual emissions. Such information shall be summarized in a monthly log, maintained on site for five years, and be made available to District, CARB, or U.S. EPA staff upon request.

a. Coating/Solvent Emission Unit

The owner or operator of a stationary source subject to this rule that contains a coating/solvent emission unit or uses a coating, solvent, ink or adhesive shall keep and maintain the following records:

- i. A current list of all coatings, solvents, inks and adhesives in use. This list shall include: information on the manufacturer, brand, product name or code, VOC content in grams per liter or pounds per gallon, HAPS content in grams per liter or pounds per gallon, or manufacturer's product specifications, material VOC content reports or laboratory analyses providing this information;
- ii. A description of any equipment used during and after coating/solvent application, including type, make and model; maximum design process rate or throughput; control device(s) type and description (if any); and a description of the coating/solvent application/drying method(s) employed;
- iii. A monthly log of the consumption of each solvent (including solvents used in clean-up and surface preparation), coating, ink and adhesive used; and
- iv. All purchase orders, invoices, and other documents to support information in the monthly log.

b. Organic Liquid Storage Unit: The owner or operator of a stationary source subject to this rule that contains a permitted organic liquid storage unit shall keep and maintain the following records:

- i. A monthly log identifying the liquid stored and monthly throughput; and
- ii. Information on the tank design and specifications including control equipment.

c. Combustion Emission Unit

The owner or operator of a stationary source subject to this rule that contains a combustion emission unit shall keep and maintain the following records:

- i. Information on equipment type, make and model, maximum design process rate or maximum power input/output, minimum operating temperature (for thermal oxidizers) and capacity, control device(s) type and description (if any) and all source test information; and
- ii. A monthly log of hours of operation, fuel type, fuel usage, fuel heating value (for non-fossil fuels; in terms of BTU/lb or BTU/gal), percent sulfur for fuel oil and coal, and percent nitrogen for coal.

d. Emission Control Unit

The owner or operator of a stationary source subject to this rule that contains an emission control unit shall keep and maintain the following records:

- i. Information on equipment type and description, make and model, and emission units served by the control unit;
- ii. Information on equipment design including where applicable: pollutant(s) controlled; control effectiveness; maximum design or rated capacity; inlet and outlet temperatures, and concentrations for each pollutant controlled; catalyst data (type, material, life, volume, space velocity, ammonia injection rate and temperature); baghouse data (design, cleaning method, fabric material, flow rate, air/cloth ratio); electrostatic precipitator data (number of fields, cleaning method, and power input); scrubber data (type, design, sorbent type, pressure drop); other design data as appropriate; all source test information; and
- iii. A monthly log of hours of operation including notation of any control equipment breakdowns, upsets, repairs, maintenance and any other deviations from design parameters.

e. General Emission Unit

The owner or operator of a stationary source subject to this rule that contains an emission unit not included in subsections a., b. or c. above shall keep and maintain the following records:

- i. Information on the process and equipment including the following: equipment type, description, make and model; maximum design process rate or throughput; control device(s) type and description (if any);

- ii. Any additional information requested in writing by the APCO;
- iii. A monthly log of operating hours, each raw material used and its amount, each product produced and its production rate; and
- iv. Purchase orders, invoices, and other documents to support information in the monthly log.

#### E. REPORTING REQUIREMENTS

1. At the time of annual renewal of a permit to operate under Rule 209, each owner or operator of a stationary source subject to this rule shall submit to the District a process statement. The statement shall be signed by the owner or operator and certify that the information provided is accurate and true.
2. For the purpose of determining compliance with this rule, this requirement shall not apply to stationary sources which emit in every 12-month period less than or equal to the following quantities:
  - a. For any regulated air pollutant (excluding HAPs),
    - i. 25 tons per year including a regulated air pollutant for which the District has a federal area designation of attainment, unclassified, transitional, or moderate nonattainment,
    - ii. 15 tons per year for a regulated air pollutant for which the District has a federal area designation of serious nonattainment,
    - iii. 6.25 tons per year for a regulated air pollutant for which the District has a federal area designation of severe nonattainment,
  - b. 2.5 tons per year of a single HAP,
  - c. 6.25 tons per year of any combination of HAPs, and
  - d. 25 percent of any lesser threshold for a single HAP as the U.S. EPA may establish by rule.
3. A stationary source previously covered by provisions in section E.2 above shall comply with the provisions of section E.1 above if the stationary source exceeds the quantities specified in section E.2.
4. Any additional information requested by the APCO under section E.1 above shall be submitted to the APCO within 30 days of the date of request.

#### F. ALTERNATIVE OPERATIONAL LIMIT AND REQUIREMENTS

The owner or operator may operate the permitted emission units at a stationary source subject to this rule under any one alternative operational limit, provided that at least 90 percent of the stationary source's emissions in every 12-month period are associated with the operation(s) limited by the alternative operational limit.

1. Upon choosing to operate a stationary source subject to this rule under any one alternative operational limit, the owner or operator shall operate the stationary source in compliance with the alternative operational limit and comply with the specified recordkeeping and reporting requirements.
  - a. The owner or operator shall report within 24 hours to the APCO any exceedance of the alternative operational limit.
  - b. The owner or operator shall maintain all purchase orders, invoices, and other documents to support information required to be maintained in a monthly log. Records required under this section shall be maintained on site for five years and be made available to District or U.S. EPA staff upon request.
  - c. Gasoline Dispensing Facility Equipment with Phase I and II Vapor Recovery Systems.

The owner or operator shall operate the gasoline dispensing equipment in compliance with the following requirements:

- i. No more than 7,000,000 gallons of gasoline shall be dispensed in every 12-month period.
  - ii. A monthly log of gallons of gasoline dispensed in the preceding month with a monthly calculation of the total gallons dispensed in the previous 12 months shall be kept on site.
  - iii. A copy of the monthly log shall be submitted to the APCO at the time of annual permit renewal. The owner or operator shall certify that the log is accurate and true.
- d. Degreasing or Solvent-Using Unit

The owner or operator shall operate the degreasing or solvent-using unit(s) in compliance with the following requirements:

- i. If the solvents do not include methyl chloroform (1,1,1-trichloroethane), methylene chloride (dichloromethane), tetrachloroethylene (perchloroethylene), or trichloroethylene, no more than 5,400 gallons of any combination of solvent-containing materials and no more than 2,200 gallons of any one solvent-containing material shall be used in every 12-month period. If the solvents include methyl chloroform (1,1,1-trichloroethane), methylene chloride (dichloromethane), tetrachloroethylene (perchloroethylene), or trichloroethylene, no more than 2,900 gallons of any combination of solvent-containing materials and no more than 1,200 gallons of any one solvent-containing material shall be used in every 12-month period.

- ii. A monthly log of amount and type of solvent used in the preceding month with a monthly calculation of the total gallons used in the previous 12 months shall be kept on site.
  - iii. A copy of the monthly log shall be submitted to the APCO at the time of annual permit renewal. The owner or operator shall certify that the log is accurate and true.
- e. Diesel-Fueled Emergency Standby Engine(s) with Output Less Than 1,000 Brake Horsepower

The owner or operator shall operate the emergency standby engine(s) in compliance with the following requirements:

- i. The emergency standby engine(s) shall not operate more than 5,200 hours in every 12-month period and shall not use more than 265,000 gallons of diesel fuel in every 12-month period.
  - ii. A monthly log of hours of operation, gallons of fuel used, and a monthly calculation of the total hours operated and gallons of fuel used in the previous 12 months shall be kept on site.
  - iii. A copy of the monthly log shall be submitted to the APCO at the time of annual permit renewal. The owner or operator shall certify that the log is accurate and true.
- 2. The owner or operator of a stationary source subject to this rule shall obtain any necessary permits prior to commencing any physical or operational change or activity which will result in an exceedance of an applicable operational limit specified in section F.1. above.

#### G. VIOLATIONS

- 1. Failure to comply with any of the applicable provisions of this rule shall constitute a violation of this rule. Each day during which a violation of this rule occurs is a separate offense.
- 2. A stationary source subject to this rule shall be subject to applicable federal requirements for a major source, including Rule 217, when the conditions specified in either subsections a. or b. below, occur:
  - a. Commencing on the first day following every 12-month period in which the stationary source exceeds a limit specified in section C.1 above and any applicable alternative operational limit specified in section F.1, above, or
  - b. Commencing on the first day following every 12-month period in which the owner or operator can not demonstrate that the stationary source is in compliance with the limits in section C.1. above or any applicable alternative operational limit specified in section F.1. above.

## RULE 219. REQUEST FOR SYNTHETIC MINOR SOURCE STATUS

Adopted: 12/04/95

### A. PURPOSE

This rule authorizes the owners or operators of specified stationary sources that would otherwise be major sources to request and accept federally-enforceable emissions limits sufficient to allow the sources to be considered "synthetic minor sources."

A synthetic minor source is not subject to Rule 217 unless it is subject to that rule for any reason other than being a major source. A synthetic minor source is subject to all applicable federal requirements for non-major stationary sources and to all federally-enforceable conditions and requirements pursuant to this rule. In addition, a synthetic minor source is subject to all applicable State and District rules, regulations, and other requirements.

### B. APPLICABILITY

1. General Applicability: This rule applies to any major source for which the owner or operator requests, and would be able to comply with, federally-enforceable conditions that qualify the source to be a synthetic minor source, as defined herein.
2. Exclusion: This rule shall not apply to any source subject to Rule 217 for any reason other than being a major source.

### C. DEFINITIONS

All terms shall retain the definitions provided under Rule 217, unless otherwise defined herein.

1. Major Source Threshold: A major source threshold is the potential to emit a regulated air pollutant in the amounts specified in the definition of "major source" as defined in Rule 217.
2. Modification: For the purposes of this rule, a modification is any physical or operational change at a source or facility which necessitates a revision of any federally-enforceable condition, established pursuant to this rule or by any other mechanism, that enables a source to be a synthetic minor source.
3. Operating Scenario: An operating scenario is any mode of operation to be permitted, including: normal operation, start-up, shutdown, and reasonably foreseeable changes in process, feed, or product.
4. Owner or Operator: For the purposes of this rule, an owner or operator is any person who owns, operates, controls, or supervises a stationary source.
5. Synthetic Minor Source: A synthetic minor source is a stationary source which, pursuant to this rule or another mechanism, is subject to federally-enforceable conditions that limit its potential to emit to below major source thresholds.

D. REQUEST FOR SYNTHETIC MINOR SOURCE STATUS

A request for synthetic minor source status shall not relieve a source of the responsibility to comply with the application requirements of Rule 217 within the specified timeframes. A major source subject to this rule may request synthetic minor source status in accordance with the following:

1. Content of Request: A request for designation as a synthetic minor source shall include:
  - a. The identification and description of all existing emission units at the source;  
  
The calculation of each emission unit's maximum annual and maximum monthly emissions of regulated air pollutants for all operating scenarios to be permitted, including any existing federally-enforceable limits established by a mechanism other than this rule;
  - b. The calculated emissions for each emissions unit shall include the following fugitive emissions: 1) hazardous air pollutant fugitive emissions for all sources, and 2) other regulated air pollutant fugitive emissions for sources specified in 40 CFR Part 70.2 Major Sources (2).
  - c. Proposed federally-enforceable conditions which:
    - i. Limit source-wide emissions to below major source thresholds, and
    - ii. Are permanent, quantifiable, and otherwise enforceable as a practical matter;
  - d. Proposed federally-enforceable conditions to impose monitoring, recordkeeping, and reporting requirements sufficient to determine compliance;
  - e. Any additional information requested by the APCO; and
  - f. Certification by a responsible official that the contents of the request are true, accurate, and complete.
2. Timely Request: The owner or operator of a major source who chooses to request synthetic minor source status shall make such a request within the following time frames:
  - a. For any major source that is operating or is scheduled to commence operating on the effective date of Rule 217, the owner or operator shall request synthetic minor source status no later than 60 days before an application is required under Rule 217;
  - b. For any major source that commences operating after the effective date of Rule 217, the owner or operator shall request synthetic minor source

status no later than 60 days before an application is required under Rule 217; or

- c. For any major source that is operating in compliance with a permit pursuant to Rule 217, the owner or operator shall request synthetic minor source status at any time, but no later than eight months prior to permit renewal.

3. Synthetic Minor Source Modification Requirements: The following requirements apply to any modification of a synthetic minor source:

- a. For a modification which would not increase the synthetic minor source's potential to emit to equal or exceed any major source threshold, the source shall comply with the requirements of Rules 209-A and 216 (adopted 3/10/76).
- b. For a modification which would increase the synthetic minor source's potential to emit to equal or exceed any major source threshold or would affect a monitoring, recordkeeping, or reporting requirement pursuant to section E.2.b. of this rule, the owner or operator shall comply with the applicable requirements of Rules 209-A and 216 (adopted 3/10/76) and shall:
  - i. Submit a revised request for synthetic minor source status in accordance with section D.1. of this rule no later than 180 days prior to the intended modification; or
  - ii. Submit an application in accordance with the requirements of Rule 217 no later than 180 days prior to the intended modification.

E. DISTRICT PROCEDURES AND FEDERALLY-ENFORCEABLE CONDITIONS

The District shall take the following actions on requests for synthetic minor source status:

- 1. Completeness Determination: The APCO shall determine if the request for synthetic minor source status is complete within 30 days of receipt, unless a longer period of time is agreed upon by the APCO and the source's owner or operator. Thirty-one days after the request has been submitted, it shall be deemed complete unless the APCO notifies the owner or operator that it is incomplete. Upon request by the APCO, the owner or operator shall provide additional information whether or not the request for synthetic minor source status has been deemed complete.
- 2. Federally-enforceable Conditions: Federally-enforceable conditions enabling a source to become a synthetic minor source shall be identified as federally enforceable and included in the source's permit-to-operate issued by the District pursuant to Rules 209 and 216 (adopted 3/10/76) and sections E.3. through E.5. of this rule, and shall be:



- a. Permanent, quantifiable, and practically enforceable permit conditions, including any operational limitations or conditions, which limit the source's potential to emit to below major source thresholds;
- b. Monitoring, recordkeeping, and reporting conditions sufficient to determine ongoing compliance with the emissions limits set forth pursuant to section E.2.a. of this rule; and
- c. Subject to public notice and U.S. EPA review pursuant to sections E.3. and E.4. of this rule.

Permits that do not conform to the requirements of this section, any other requirements of this rule, or any underlying federal regulations which set forth criteria for federal-enforceability may be deemed not federally-enforceable by the U.S. EPA.

- 3. Public Notification and Review: After a request for synthetic minor source status is determined to be complete, the APCO shall:
  - a. Publish a notice of the request in one or more major newspapers in the area where the source is located;
  - b. In the public notice:
    - i. State that conditions identified as federally enforceable in the source's permit will establish a voluntary emissions limit in accordance with Rule 219, and
    - ii. Describe how the public may obtain copies of the proposed permit including the federally-enforceable conditions addressing the emissions limit; and
  - c. Provide 30 days for public review of the proposed permit prior to final permit action.
- 4. U.S. EPA Review: After a request for synthetic minor source status is determined to be complete, the APCO shall:
  - a. Provide the U.S. EPA with copies of the proposed permit including the conditions which:
    - i. Are identified as federally enforceable, and
    - ii. Limit emissions to below major source thresholds;
  - b. Provide 30 days for U.S. EPA review of the proposed permit prior to final permit action; and
  - c. Provide the U.S. EPA with copies of the final permit.
- 5. Final Action: Until the District takes final action to issue the permit-to-operate pursuant to this section, a source requesting synthetic minor source status shall

not be relieved of the responsibility to comply with the application or other requirements of Rule 217 within the specified timeframes.

Upon fulfilling the requirements of sections E.1. through E.4. of this rule, the APCO shall consider any written comments received during public and U.S. EPA review and take final action on the permit-to-operate of a source requesting synthetic minor source status within 90 days of deeming such request complete or within three years of the effective date of Rule 217, whichever is later.

The District shall maintain a public record of all pertinent documents regarding a request for synthetic minor source status, including: the request, proposed permit, all written comments and responses, and the final permit.

6. **Renewal of Synthetic Minor Source Status:** Renewal of synthetic minor source status shall be made in accordance with Rule 210. In addition, at permit renewal, any revision of conditions identified as federally enforceable shall be subject to sections D.1. and E.1. through E.5. of this rule.

#### F. COMPLIANCE

The owner or operator of a synthetic minor source which exceeds the conditions identified as federally enforceable and established pursuant to section e.2.a. of this rule shall report such exceedances to the APCO in accordance with Rule 403.

The owner or operator of a synthetic minor source that is not in compliance with any condition identified as federally enforceable or with any requirement set forth in this rule, or that files false information with the District to obtain synthetic minor source designation, is in violation of the Clean Air Act and District rules and regulations. A non-complying synthetic minor source may be subject to any one or combination of the following actions: enforcement action, permit termination, permit revocation and reissuance, and permit renewal denial.

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RULE 220. CONSTRUCTION OR RECONSTRUCTION OF MAJOR SOURCES OF  
HAZARDOUS AIR POLLUTANTS

Adopted: 07/19/99

A. PURPOSE

The purpose of this rule is to require the installation of best available control technology for toxics (T-BACT) at any constructed or reconstructed major source of hazardous air pollutants (HAPs). All T-BACT determinations shall ensure a level of control that the Air Pollution Control Officer (APCO) has determined to be, at a minimum, no less stringent than new source maximum achievable control technology (MACT) as required by the federal Clean Air Act (CAA), §112 (g)(2)(B) and implemented through 40 CFR, subpart B §§63.40-63.44.

B. APPLICABILITY

The requirements of this rule shall apply to all owners or operators that construct or reconstruct a major source of HAPs, unless the major source is exempt pursuant to section D. Compliance with this rule does not relieve any owner or operator of a major source of HAPs from complying with all other District rules or regulations, any applicable State airborne toxic control measure (ATCM), or other applicable State and federal laws.

C. EFFECTIVE DATE

This rule is effective on July 19, 1999.

D. EXEMPTIONS

The provisions of this rule do not apply to:

1. any major source that is subject to an existing National Emissions Standard (NESHAPs) for HAPs pursuant to sections 112 (d), 112 (h) or 112 (j) of the CAA,
2. any major source that has been specifically exempted from regulation under a NESHAP issued pursuant to sections 112 (d), 112 (h) or 112(j) of the CAA,
3. any major source that has received all necessary air quality permits for such construction or reconstruction project before July 19, 1999,
4. electric utility steam generating units, unless and until such time as these units are added to the source category list pursuant to section 112 (c)(5) of the CAA,
5. any stationary sources that are within a source category that has been deleted from the source category list pursuant to section 112 (c)(9) of the CAA,
6. research and development activities as defined in 40 CFR §63.41, and

7. any other stationary source exempted by section 112 of the CAA.

E. DEFINITIONS

Terms used in this rule that are not defined in this section have the meaning given to them in District Rule 217.

Best Available Control Technology for Toxics (T-BACT)

T-BACT means the most effective emissions limitation or control technique which:

1. has been achieved in practice for such permit unit category or class of sources; or
2. is any other emissions limitation or control technique, including process and equipment changes of basic and control equipment, found by the Air Pollution Control Officer to be technologically feasible for such a category or class of sources, or for a specific source.

Construct a Major Source means the same as defined in 40 CFR §63.41 Definitions.

Hazardous Air Pollutants (HAPs) means any air pollutant listed in or pursuant to CAA, section 112 (b).

Major Source of HAPs means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of hazardous air pollutants or 25 tons per year or more of any combination of hazardous air pollutants.

Potential to Emit (PTE) means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitations or the effect it would have on emissions are incorporated into the applicable permit as enforceable permit conditions.

Reconstruct a Major Source means the same as defined in 40 CFR §63.41 Definitions.

F. REQUIREMENTS

No person shall construct a major source or reconstruct a major source of HAPs unless the air pollution control officer determines that the T-BACT requirements of this rule will be met.

G. CALCULATION PROCEDURES

The potential to emit for a source of HAP emissions shall equal the sum of the potentials to emit of the constructed or reconstructed source of HAPs. All fugitive HAP

emissions associated with the construction or reconstruction shall be included in the potential to emit determination.

H. ADMINISTRATIVE PROCEDURES

An application for authority to construct a major source or reconstruct a major source of HAPs shall be subject to the administrative procedures contained in District Rule 217.

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**Rule 221. PREVENTION OF SIGNIFICANT DETERIORATION (PSD)**  
**PERMIT REQUIREMENTS FOR NEW MAJOR FACILITIES OR MAJOR**  
**MODIFICATIONS IN ATTAINMENT OR UNCLASSIFIABLE AREAS**

Adopted: 09/05/12

**A. Purpose**

The federal Prevention of Significant Deterioration (PSD) program is a construction permitting program for new major facilities and major modifications to existing major facilities located in areas classified as attainment or in areas that are unclassifiable for any criteria air pollutant. The application, processing requirements and procedures are those contained in District Rules 200 through 205 unless otherwise superseded by federal regulation. The intent of this Rule is to incorporate the federal PSD rule requirements into the District's Rules and Regulations by incorporating the federal requirements by reference.

**B. Applicability**

The provisions of this rule shall apply to any source and the owner or operator of any source subject to any requirement under Title 40 of the Code of Federal Regulations Part 52.21 as incorporated into this rule.

**C. Incorporation by Reference**

Except as provided below, the provisions of Title 40 of the Code of Federal Regulations (CFR) Part 52.21, in effect on July 1, 2012, are incorporated herein by reference and made part of the Rules and Regulations of the Great Basin Unified Air Pollution Control District.

1. The following subsections of 40 CFR Part 52.21 are excluded: (a)(1), (b)(55-58), (f), (g), k(2), (p)(6-8), (q), (s), (t), (u), (v), (w), (x), (y), (z) and (cc).
2. The following terms found in 40 CFR Part 52.21 are revised as follows:
  - (i) The term "administrator" means:
    - (a) "EPA administrator" in 40 CFR 52.21(b)(17), (b)(37)(i), (b)(43), (b)(48)(ii)(c), (b)(50)(i), (b)(51), (l)(2) and (p)(2); and
    - (b) Air Pollution Control Officer (APCO)
  - (ii) The phrase "paragraph (q) of this section" in 40 CFR 52.21(p)(1) and (l)(2) shall read as follows: the public notice and comment provisions of District Rule 221, section D.6.

## **D. Requirements**

1. The APCO shall provide written notice of any permit application for a proposed major stationary source or major modification to the EPA administrator. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct.
2. The APCO shall determine whether an application is complete not later than 30 days after receipt of the application or after such longer time as both the applicant and the APCO may agree. If the APCO determines that the application is not complete, the applicant shall be notified in writing of the decision specifying the information that is required. Upon receipt of any re-submittal of the application, a new 30-day period to determine completeness shall begin. Upon determination that the application is complete, the APCO shall notify the applicant in writing. The date of receipt of the application shall be the date on which the reviewing authority received all required information.
3. An owner or operator must obtain a Prevention of Significant Deterioration (PSD) permit pursuant to this Rule before beginning actual construction of a new major stationary source, a major modification, or a PAL major modification, as defined in 40 CFR 52.21(b).
4. Notwithstanding the provisions of any other District Rule or Regulation, the Air Pollution Control Officer shall require compliance with this rule prior to issuing a federal Prevention of Significant Deterioration permit as required by Clean Air Act (CAA) Section 165.
5. The applicant shall pay the applicable fees specified in District Regulation III – Fees.
6. Prior to issuing a federal PSD permit pursuant to this rule and within one year after receipt of a complete application, the Air Pollution Control Officer shall:
  - (i) Make a preliminary determination whether construction should be approved with conditions or disapproved.
  - (ii) Make available in at least one location in each region in which the proposed source would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination, a copy of the proposed permit and a copy or summary of other materials, if any, considered in making the preliminary determination.
  - (iii) Notify the public, by advertisement in a newspaper of general circulation in the Great Basin Unified Air Pollution Control District, of the application, the preliminary determination, the degree of increment consumption that

is expected from the source or modification, and of the opportunity for written public comment.

- (iv) Send a copy of the notice of public comment to the applicant, EPA Region 9, any persons requesting such notice and any other interested parties such as: Any other State or local air pollution control agencies, the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency, and any State, Federal Land Manager, or Indian Governing body whose lands may be affected by emissions from the source or modification.
- (v) Provide opportunity for a public hearing for persons to appear and submit written or oral comments on the air quality impact of the source, alternatives to it, the control technology required, and other appropriate considerations, if in the Air Pollution Control Officer's judgment such a hearing is warranted.
- (vi) Consider all written comments that were submitted within 30 days after the notice of public comment is published and all comments received at any public hearing(s) in making a final decision on the approvability of the application and make all comments available for public inspection in the same locations where the District made available preconstruction information relating to the proposed source or modification.
- (vii) Make a final determination whether construction should be approved with conditions or disapproved.
- (viii) Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the District made available preconstruction information and public comments relating to the source.

End



RULE 222. NEW SOURCE REVIEW REQUIREMENTS FOR NEW AND MODIFIED MAJOR  
SOURCES IN NONATTAINMENT AREAS

Adopted: 01/06/22

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1.1 PRECONSTRUCTION REVIEW REQUIREMENTS

- (a) The preconstruction review requirements of this rule apply to the proposed construction of any new major stationary source or major modification in the District that is major for a nonattainment pollutant, if the stationary source or modification is located anywhere in the designated nonattainment area, except as provided in Section 9 of this rule.
- (b) Sources subject to this rule may also be subject to other District Rules and Regulations. For purposes of the implementation and enforcement of this rule, the provisions and requirements of this rule, including but not limited to the requirements for obtaining an Authority to Construct, application submittal and content, conditional approval, public participation, and granting an Authority to Construct, shall take precedence over any other such provisions and requirements in other District Rules and Regulations. To the extent that other District Rules or Regulations may affect the stringency or applicability of this rule, such other Rules and Regulations shall not apply for purposes of the implementation or enforcement of this rule.

1.2 AUTHORITY TO CONSTRUCT REQUIREMENT

No new major stationary source or major modification to which the requirements of this rule apply shall begin actual construction without first obtaining an Authority to Construct from the reviewing authority, pursuant to this rule.

1.3 EMISSION CALCULATION REQUIREMENTS TO DETERMINE NSR APPLICABILITY

1.3.1 New Major Stationary Sources

The definition of *Major Stationary Source* in Section 2 shall be used to determine if a new or modified stationary source is a new major stationary source. Different pollutants, including individual precursors, are not summed to determine applicability of a major stationary source.

1.3.2 Major Modifications

The provisions set out in paragraphs (a) through (e) below shall be used to determine if a proposed project will result in a major modification. Different pollutants, including individual precursors, are not summed to determine applicability of a major modification. These provisions shall not be used to determine the quantity of offsets required for a project subject to the requirements of this rule.

- (a) Except as otherwise provided in Section 1.4, a project is a major modification for a nonattainment pollutant if it causes two types of emissions increases: a significant emissions increase and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.
- (b) The procedure for calculating (before beginning actual construction) whether a significant emissions increase will occur depends upon the type of emissions units being added or modified as part of the project, according to paragraphs (c) through (e) of this Section. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source is contained in the definition of *Net Emissions Increase*. Regardless of any such

preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

- (c) **Actual-to-Projected-Actual Applicability Test for Projects that Only Involve Existing Emissions Units.** A significant emissions increase of a nonattainment pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, for each existing emissions unit, equals or exceeds the significant amount for that pollutant.
- (d) **Actual-to-Potential Test for Projects that Only Involve Construction of a New Emissions Unit(s).** A significant emissions increase of a nonattainment pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.
- (e) **Hybrid Test for Projects that Involve Multiple Types of Emissions Units.** A significant emissions increase of a nonattainment pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs (c) or (d) of this Section, as applicable, with respect to each emissions unit, equals or exceeds the significant amount for that pollutant.

#### 1.4 MAJOR SOURCES WITH PLANT-WIDE APPLICABILITY LIMITATIONS (PAL)

For any major stationary source with a PAL Permit for a nonattainment pollutant, the major stationary source shall comply with the requirements in Section 9 of this rule.

#### 1.5 PROJECTS THAT RELY ON A PROJECTED ACTUAL EMISSIONS TEST

Except as otherwise provided in paragraph (g)(iii) of this Section, the provisions of this Section shall apply with respect to any nonattainment pollutant that is emitted from projects at existing emissions units located at a major stationary source, other than a source with a PAL Permit, when there is a reasonable possibility, within the meaning of paragraph (g) of this Section, that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in paragraphs (B)(1) through (B)(3) of the definition of *Projected Actual Emissions* to calculate projected actual emissions.

- (a) Before beginning actual construction of the project the owner or operator shall document and maintain a record of the following information:
  - (i) A description of the project;
  - (ii) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and
  - (iii) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph (B)(3) of the definition of *Projected Actual Emissions* and an explanation for why such amount was excluded, and any netting calculations, if applicable.
- (b) If the emissions unit is an existing emissions unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in paragraph (a) of this Section to the APCO. Nothing in this paragraph shall be construed to require the owner or operator of such a unit to obtain any determination

from the APCO concerning compliance with this rule before beginning actual construction. However, such owner or operator may be subject to the requirements of District Regulation II- Permits, Regulation IV- Prohibitions, or other applicable requirements.

- (c) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that are emitted by any emissions unit identified in paragraph (a)(ii) of this Section; and calculate and maintain a record of the annual emissions, in tpy, on a calendar year basis for a period of five years following resumption of regular operations after the change, or for a period of ten years following resumption of regular operations after the change if the project increases the design capacity or potential to emit that regulated NSR pollutant at such emissions unit.
- (d) If the emissions unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the APCO within sixty days after the end of each calendar year during which records must be generated under paragraph (c) of this Section, setting out the unit's annual emissions during the calendar year that preceded submission of the report.
- (e) If the emissions unit is an existing emissions unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the APCO if the annual emissions, in tpy, from the project identified in paragraph (a) of this Section exceed the baseline actual emissions by a significant amount for that regulated NSR pollutant, and if such emissions differ from the projected actual emissions (prior to exclusion of the amount of emissions specified under paragraph (B)(3) of the definition of *Projected Actual Emissions*) as documented and maintained pursuant to paragraph (a)(iii) of this Section. Such report shall be submitted to the APCO within sixty days after the end of such year. The report shall contain the following:
  - (i) The name, address, and telephone number of the major stationary source;
  - (ii) The annual emissions, as calculated pursuant to paragraph (c) of this Section; and
  - (iii) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).
- (f) The owner or operator of the source shall make the information required to be documented and maintained pursuant to this Section available for review upon a request for inspection by the APCO or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).
- (g) A "reasonable possibility" under this Section occurs when the owner or operator calculates the project to result in either:
  - (i) A projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as defined in this rule (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or
  - (ii) A projected actual emissions increase that, added to the amount of emissions excluded under paragraph (B)(3) of the definition of *Projected Actual Emissions*, sums to at least 50 percent of the amount that is a "significant emissions increase," as defined in this rule (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant.

- (iii) For a project in which a reasonable possibility occurs only within the meaning of paragraph (g)(ii), and not also within the meaning of (g)(i), the provisions of paragraphs (b) through (e) of this Section do not apply to the project.

#### 1.6 SECONDARY EMISSIONS

Secondary emissions shall not be considered in determining whether a stationary source would qualify as a major stationary source. If a stationary source is subject to this rule on the basis of direct emissions from the stationary source, the requirements of Section 4 must also be met for secondary emissions.

#### 1.7 STATIONARY SOURCES

For purposes of this rule, the term stationary source does not refer to the source of emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in Section 216 of the Clean Air Act (42 U.S.C. §7550 Definitions).

#### 1.8 ENVIRONMENTAL PROTECTION AGENCY DETERMINATION

Notwithstanding any other requirements of this rule governing the issuance of an Authority to Construct, the APCO shall not issue an Authority to Construct to a new major stationary source or major modification subject to the requirements of this rule if the federal Environmental Protection Agency has determined that the SIP is not being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified in accordance with the requirements of Title I, Part D of the Clean Air Act.

## 2 DEFINITIONS

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For the purposes of this rule, the definitions provided in paragraphs (a), (b), (c) and (d) below apply to the terms used in this rule. In the event of any discrepancy between the definitions specified in paragraphs (a), (b), (c), and (d), below, the definition in the paragraph that is listed first below shall control.

- (a) The definitions contained in 40 CFR 51.165(a)(1) shall apply, and are hereby incorporated by reference, with the exception of the definitions of "Major Modification," "Major Source," "Reviewing authority", and "Significant" at 40 CFR 51.165(a)(1)(xxxviii), which have the meaning specified in paragraph (b) below.
- (b) The following definitions shall also apply:
  - "Air Pollution Control Officer (APCO)"* means the Air Pollution Control Officer of the Great Basin Unified Air Pollution Control District.
  - "Class I area"* means any area listed as Class I in 40 CFR Part 81 Subpart D, including Section 81.405, or an area otherwise specified as Class I in the legislation that creates a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, or a national lakeshore or seashore.
  - "Clean Air Act (CAA)"* means the federal Clean Air Act, 42 U.S.C. 7401 *et seq.*, as amended.
  - "Complete"* means, in reference to an application, that the application contains all of the information necessary for processing it.

*“Contemporaneous”* means, when used in the definition of a “Net Emissions Increase,” an increase or decrease in actual emissions which occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.

*“District”* means the Great Basin Unified Air Pollution Control District.

*“Emission reduction credit (ERC)”* means reductions of actual emissions from emissions units that are certified by a California air district in accordance with applicable district rules and issued by the air district in the form of ERC certificates.

*“Internal emission reductions”* means emission reductions which have occurred or will occur at the same major stationary source where the proposed emissions increase will occur.

*“Major Modification”* means any physical change in or change in the method of operation of, a major stationary source that would result in a significant emissions increase of PM10 and a significant net emissions increase of PM10 from the major stationary source.

- (a) A physical change or change in the method of operation shall not include:
- (i) Routine maintenance, repair, and replacement;
  - (ii) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation), or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;
  - (iii) Use of an alternative fuel by reason of an order or rule under Section 125 of the Act;
  - (iv) Use of an alternative fuel at a steam generating unit, to the extent that the fuel is generated from municipal solid waste;
  - (v) Use of an alternative fuel or raw material by a stationary source which:
    - A. The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I; or
    - B. The source is approved to use under any permit issued under regulations approved pursuant to 40 CFR 51.165.
  - (vi) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR part 51 subpart I;
  - (vii) Any change in ownership at a stationary source;
  - (viii) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:
    - A. The State Implementation Plan for the State in which the project is located, and

- B. Other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated.
- (b) This definition shall not apply with respect to a particular regulated NSR pollutant when the Major Stationary Source is complying with the requirements under Section 9 for a PAL for that regulated NSR pollutant. Instead, the definition of *PAL major modification* shall apply.

“Major Stationary Source” means:

- (a) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tpy or more of PM<sub>10</sub> in any moderate nonattainment area for PM<sub>10</sub>, or 70 tpy of PM<sub>10</sub> in any serious nonattainment area for PM<sub>10</sub>.
- (b) Any physical change that would occur at a stationary source not qualifying as a major stationary source under paragraph (a) of this definition, if the change would constitute a major stationary source by itself under paragraph (a).
- (c) The fugitive emissions of a stationary source shall not be included in determining whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:
  - (i) Coal cleaning plants (with thermal dryers);
  - (ii) Kraft pulp mills;
  - (iii) Portland cement plants;
  - (iv) Primary zinc smelters;
  - (v) Iron and steel mills;
  - (vi) Primary aluminum ore reduction plants;
  - (vii) Primary copper smelters;
  - (viii) Municipal incinerators capable of charging more than 50 tons of refuse per day;
  - (ix) Hydrofluoric, sulfuric, or nitric acid plants;
  - (x) Petroleum refineries;
  - (xi) Lime plants;
  - (xii) Phosphate rock processing plants;
  - (xiii) Coke oven batteries;
  - (xiv) Sulfur recovery plants;
  - (xv) Carbon black plants (furnace process);
  - (xvi) Primary lead smelters;
  - (xvii) Fuel conversion plants;
  - (xviii) Sintering plants;
  - (xix) Secondary metal production plants;
  - (xx) Chemical process plants - The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
  - (xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
  - (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
  - (xxiii) Taconite ore processing plants;
  - (xxiv) Glass fiber processing plants;
  - (xxv) Charcoal production plants;
  - (xxvi) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and

(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

*“Nonattainment pollutant”* means any regulated NSR pollutant for which the District, or portion of the District, has been designated as nonattainment, as codified in 40 CFR 81.305, as well as any precursor of such regulated NSR pollutant specified in 40 CFR 51.165(a)(1)(xxxvii)(C).

*“Permanent”* means an emission reduction which is federally enforceable for the life of a corresponding increase in emissions.

*“PM10”* means particulate matter with an aerodynamic diameter smaller than or equal to a nominal 10 microns. Gaseous emissions which condense to form PM10 shall also be counted as PM10.

*“Real”* means, as it pertains to emission reductions, emissions that were actually emitted.

*“Reviewing authority”* means the Air Pollution Control Officer (APCO).

*“Significant”* means in reference to a net emissions increase or the potential of a source to emit any regulated NSR pollutant, a rate of emissions that would equal or exceed 15 tpy of PM10.

*“Shutdown”* means the cessation of operation of any air pollution control equipment or process equipment for any purpose.

*“Startup”* means the setting into operation of any air pollution control equipment or process equipment for any purpose except routine phasing in of process equipment.

*“State Implementation Plan (SIP)”* means the State Implementation Plan approved or promulgated for the State of California under section 110 or 172 of the Clean Air Act.

*“Surplus”* means the amount of emission reductions that are, at the time of generation or use of an emission reduction credit (ERC), not otherwise required by federal, state, or local law, not required by any legal settlement or consent decree, and not relied upon to meet any requirement related to the California State Implementation Plan (SIP). However, emission reductions required by a state statute that provides that the subject emission reductions shall be considered surplus may be considered surplus for purposes of this rule if those reductions meet all other applicable requirements. Examples of federal, state, and local laws, and of SIP-related requirements, include, but are not limited to, the following:

- (i) The federally-approved California SIP;
- (ii) Other adopted state air quality laws and regulations not in the SIP, including but not limited to, any requirement, regulation, or measure that: (1) the District or the State has included on a legally required and publicly available list of measures that are scheduled for adoption by the District or the State in the future; or (2) is the subject of a public notice distributed by the District or the State regarding an intent to adopt such revision;
- (iii) Any other source or source-category specific regulatory or permitting requirement, including, but not limited to Reasonable Available Control Technology (RACT), New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), Best Available



Control Measures (BACM), Best Available Control Technology (BACT), and Lowest Achievable Emission Rate (LAER); and

- (iv) Any regulation or supporting documentation that is required by the Federal Clean Air Act, but is not contained or referenced in 40 CFR Part 52, including but not limited to: assumptions used in attainment and maintenance demonstrations (including Reasonable Further Progress demonstrations and milestone demonstrations), including any proposed control measure identified as potentially contributing to an enforceable near-term emission reduction commitment; assumptions used in conformity demonstrations; and assumptions used in emissions inventories.

*“Temporary source”* means an emission source such as a pilot plant or a portable facility which will be located outside the nonattainment area after less than a cumulative total of 90 days of operation in any 12 continuous months.

*“Tons per year (tpy)”* means annual emissions in tons.

- (c) The definitions contained in 40 CFR 51.100 shall apply, and are hereby incorporated by reference.
- (d) The definitions contained in 40 CFR 51.301 shall apply, and are hereby incorporated by reference.

### 3 APPLICATION REQUIREMENTS

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#### 3.1 APPLICATION SUBMITTAL

The owner or operator of any proposed new major stationary source or major modification required to obtain an Authority to Construct pursuant to this rule shall submit a complete application to obtain an Authority to Construct on forms provided by the APCO and include in the application submittal the information listed in Section 3.2 as well as the demonstrations listed in Sections 3.3-3.6. Designating an application complete for purposes of permit processing does not preclude the APCO from requesting or accepting any additional information.

#### 3.2 APPLICATION CONTENT

At a minimum, an application for an Authority to Construct shall contain the following information related to the proposed new major stationary source or major modification:

- (a) Identification of the applicant, including contact information.
- (b) Identification of address and location of the new or modified source.
- (c) An identification and description of all emission points, including information regarding all nonattainment pollutants emitted by all emissions units included in the new source or modification.
- (d) A process description of all activities, including design capacity, which may generate emissions of nonattainment pollutants in sufficient detail to establish the basis for the applicability of standards and fees.
- (e) A projected schedule for commencing construction and operation for all emissions units included in the new source or modification.

- (f) A projected operating schedule for each emissions unit included in the new source or modification.
- (g) A determination as to whether the new source or modification will result in any secondary emissions.
- (h) The emission rates of all nonattainment pollutants, including fugitive and secondary emission rates, if applicable. The emission rates must be described in tpy and for such shorter term rates as are necessary to establish compliance using the applicable standard reference test method or other methodology specified (i.e., grams/liter, ppmv or ppmw, lbs/MMBtu).
- (i) The calculations on which the emission rate information is based, including fuel specifications, if applicable and any other assumptions used in determining the emission rates (e.g., HHV, sulfur content of natural gas).
- (j) The calculations, pursuant to Section 1.3, used to determine applicability of this rule, including the emission calculations (increases or decreases) for each project that occurred during the contemporaneous period.
- (k) The calculations, pursuant to Section 4.3 (offset), used to determine the quantity of offsets required for the new source or modification.
- (l) Identification of existing emission reduction credits or identification of internal emission reductions, including related emission calculations and proposed permit modifications required to ensure emission reductions meet the offset integrity criteria of being real, surplus, quantifiable, permanent and federally enforceable or enforceable as a practical matter.
- (m) If applicable, a description of how performance testing will be conducted, including test methods and a general description of testing protocols.

### 3.3 LOWEST ACHIEVABLE EMISSION RATE (LAER)

The applicant shall submit an analysis demonstrating that LAER has been proposed for each emissions unit included in the new major stationary source or major modification that emits a nonattainment pollutant for which the new stationary source or modification is classified as major.

### 3.4 STATEWIDE COMPLIANCE

The applicant shall submit a certification that each existing major stationary source owned or operated by the applicant (or any entity controlling, controlled by, or under common control with the applicant) in the State is in compliance with all applicable emission limitations and standards under the CAA or is in compliance with an expeditious compliance schedule which is federally enforceable.

### 3.5 ANALYSIS OF ALTERNATIVES

The applicant shall submit an analysis of alternative sites, sizes, production processes, and environmental control techniques for the proposed source that demonstrates the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

### 3.6 SOURCES IMPACTING CLASS I AREAS

The applicant for a proposed new major source or major modification that may affect visibility of any Mandatory Class I Federal Area shall provide the APCO with an analysis of impairment to visibility that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification, as required by 40 CFR Section 51.307(b)(2).

### 3.7 APPLICATION FEES

The applicant shall pay the applicable fees specified in District Regulation III- Fees.

## 4 EMISSIONS OFFSETS

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### 4.1 OFFSET REQUIREMENTS

- (a) The emission increases of a nonattainment pollutant for which the new stationary source or modification is classified as major, shall be offset with federally enforceable ERCs or with internal emission reductions.
- (b) ERCs from one or more sources may be used, alone or in combination with internal emission reductions, in order to satisfy offset requirements.
- (c) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours may only be credited for offsets if such reductions are surplus, permanent, quantifiable, and federally enforceable; and
- (d) The shutdown or curtailment occurred after the last day of the base year for the attainment plan for the specific pollutant; or
- (e) The projected emissions inventory used to develop the attainment plan explicitly includes the emissions from such previously shutdown or curtailed emissions units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.

### 4.2 TIMING

- (a) Internal emission reductions used to satisfy an offset requirement must be federally enforceable prior to the issuance of the Authority to Construct, which relies on the emission reductions.
- (b) Except as provided by paragraph (c) of this Section, the decrease in actual emissions used to generate ERCs or internal emission reductions must occur no later than the commencement of operation of the new or modified major stationary source.
- (c) Where the new emissions unit is a replacement for an emissions unit that is being shut down in order to provide the necessary offsets, the APCO may allow up to one hundred eighty (180) calendar days for shakedown or commissioning of the new emissions unit before the existing emissions unit is required to cease operation.

### 4.3 QUANTITY

The quantity of ERCs or internal emission reductions required to satisfy offset requirements shall be determined in accordance with the following:

- (a) The unit of measure for offsets, ERCs, and internal emission reductions shall be tpy. All calculations and transactions shall use emission rate values rounded to the nearest one one-hundredth (0.01) tpy.

- (b) The quantity of ERCs or internal emission reductions required shall be calculated as the product of the amount of increased emissions, as determined in accordance with paragraph (c) of this Section, and the offset ratio, as determined in accordance with paragraph (d) of this Section.
- (c) The amount of increased emissions shall be determined as follows:
  - (i) When the offset requirement is triggered by the construction of a new major stationary source, the amount of increased emissions shall be the sum of the potential to emit of all emissions units.
  - (ii) When the offset requirement is triggered by a major modification of an existing major stationary source, the amount of increased emissions shall be the sum of the differences between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.
  - (iii) The amount of increased emissions includes fugitive emissions.
- (d) For areas with a moderate or serious PM<sub>10</sub> nonattainment designation, a 1:1 offset ratio shall be applied. The offset ratio is expressed as a ratio of emissions increases to emission reductions.

#### 4.4 EMISSION REDUCTION REQUIREMENTS

- (a) Internal emission reductions or ERCs used to satisfy an offset requirement shall be:
  - (i) Real, surplus, permanent, quantifiable, and federally enforceable; and
  - (ii) Surplus at the time of issuance of the Authority to Construct containing the offset requirements.
- (b) Permitted sources whose emission reductions are used to satisfy offset requirements must appropriately amend or cancel their Authority to Construct or Permit to Operate to reflect their newly reduced potential to emit, including practicably enforceable conditions to limit their potential to emit.
- (c) Emission reductions must be obtained from the same nonattainment area, however, the APCO may allow emission reductions from another nonattainment area if the following conditions are met:
  - (i) The other area has an equal or higher nonattainment classification than the area in which the source is located; and
  - (ii) Emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located.
- (d) The use of ERCs shall not provide:
  - (i) Authority for, or the recognition of, any pre-existing vested right to emit any regulated NSR pollutant;
  - (ii) Authority for, or the recognition of, any rights that would be contrary to applicable law; or
  - (iii) An exemption to a stationary source from any emission limitations established in accordance with federal, state, or county laws, rules, and regulations.

#### 4.5 RESTRICTIONS ON TRADING POLLUTANTS

The emission offsets obtained shall be for the same regulated NSR pollutant.

### 5 ADMINISTRATIVE REQUIREMENTS

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#### 5.1 VISIBILITY

- (a) The APCO shall provide written notice and conduct any necessary review and consultation with the Federal Land Manager regarding any proposed major stationary source or major modification that may impact visibility in any Mandatory Class I Federal Area, in accordance with the applicable requirements of 40 CFR 51.307.
- (b) The APCO may require monitoring of visibility in any Federal Class I area near the proposed new stationary source or major modification for such purposes and by such means as the APCO deems necessary and appropriate.

#### 5.2 AMBIENT AIR QUALITY STANDARDS

The APCO may require the use of an air quality model to estimate the effects of a new or modified stationary source. The analysis shall estimate the effects of the new or modified stationary source, and verify that the new or modified stationary source will not prevent or interfere with the attainment or maintenance of any ambient air quality standard. In making this determination, the APCO shall take into account the mitigation of emissions through offsets pursuant to this rule, and the impacts of transported pollutants on downwind pollutant concentrations. The APCO may impose, based on an air quality analysis, offset ratios greater than the requirements of paragraph (d) of Section 4.3.

#### 5.3 AIR QUALITY MODELS

All estimates of ambient concentrations required, pursuant to this rule, shall be based on applicable air quality models, databases, and other requirements specified in 40 CFR Part 51, Appendix W ("Guideline on Air Quality Models"). Where an air quality model specified is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis. Written approval from the EPA must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to public notification and the opportunity for public comment given.

#### 5.4 STACK HEIGHT PROCEDURES

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 40 CFR 51.118(b). For the purposes of this Section, the definitions in 40 CFR 51.100 shall apply.

- (a) Before the APCO issues an Authority to Construct under this rule to a source with a stack height that exceeds good engineering practice (GEP) stack height, the APCO shall notify the public of the availability of the demonstration study and provide opportunity for a public hearing.
- (b) Any field study or fluid model used to demonstrate GEP stack height and any determination concerning excessive concentration must be approved by the EPA and the APCO prior to any emission limit being established.

- (c) The provisions of Section 5.4 do not restrict, in any manner, the actual stack height of any stationary source or facility.

## 6 AUTHORITY TO CONSTRUCT – DECISION

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### 6.1 PRELIMINARY DECISION

Following acceptance of an application as complete, the APCO shall perform the evaluations required to determine if the proposed new major stationary source or major modification will comply with all applicable District, state and federal rules, regulations, or statutes, including but not limited to the requirements under Section 3 of this rule, and shall make a preliminary written decision as to whether an Authority to Construct should be approved, conditionally approved, or denied. The decision shall be supported by a succinct written analysis. The decision shall be based on the requirements in force on the date the application is deemed complete, except when a new federal requirement, not yet incorporated into this rule, applies to the new or modified source.

### 6.2 AUTHORITY TO CONSTRUCT – PRELIMINARY DECISION REQUIREMENTS

- (a) Prior to issuance of a preliminary written decision to issue an Authority to Construct for a new major stationary source or major modification, the APCO shall determine:
  - (i) That each emissions unit(s) that constitutes the new source or modification will not violate any applicable requirement of the District's portion of the California State Implementation Plan (SIP); and
  - (ii) That the emissions from the new or modified stationary source will not interfere with the attainment or maintenance of any applicable national ambient air quality standard; and
  - (iii) That the emission limitation for each emissions unit that constitutes the new source or modification specifies LAER for such units.

If the APCO determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an enforceable numerical emission standard infeasible, the APCO may instead prescribe a design, operational or equipment standard. In such cases, the APCO shall make its best estimate as to the emission rate that will be achieved and must specify that rate in the application review documents. Any Authority to Construct issued without an enforceable numerical emission standard must contain enforceable conditions which assure that the design characteristics or equipment will be properly maintained or that the operational conditions will be properly performed to continuously achieve the assumed degree of control. Such conditions shall be enforceable as emission limitations by private parties under section 304 of the CAA. The term "emission limitation" shall also include such design, operational, or equipment standards; and

- (iv) The quantity of ERCs or internal emission reductions required to offset the new source or modification, pursuant to Section 4.3; and
- (v) That all ERCs or internal emission reductions required for the new source or modification have been identified and have been made federally enforceable or legally and practicably enforceable; and

- (vi) That the quantity of ERCs or internal emission reductions determined under paragraph (b) of Section 4.3 will be surrendered prior to commencing operation.
- (b) Temporary sources and emissions resulting from the construction phase of a new source are exempt from paragraphs (iv), (v) and (vi) of paragraph (a) of this Section.

#### 6.3 AUTHORITY TO CONSTRUCT CONTENTS

- (a) An Authority to Construct for a new major stationary source or major modification shall contain terms and conditions:
  - (i) which ensure compliance with all applicable requirements and which are enforceable as a legal and practical matter.
  - (ii) sufficient to ensure that the major stationary source or major modification will achieve LAER in accordance with paragraphs (b) and (c) of this Section.
- (b) A new major stationary source shall achieve LAER for each nonattainment pollutant for which the source is classified as major.
- (c) A major modification shall achieve LAER for each nonattainment pollutant for which the modification would result in a significant net emissions increase. This requirement applies to each proposed emissions unit at which a net emissions increase in the nonattainment pollutant would occur as a result of a physical change, or change in the method of operation of the emissions unit.

#### 6.4 AUTHORITY TO CONSTRUCT – FINAL DECISION

- (a) Prior to making a final decision to issue an Authority to Construct for a new major stationary source or major modification, the APCO shall consider all written comments that are submitted within 30 days of public notification and all comments received at any public hearing(s) in making a final determination on the approvability of the application and the appropriate Authority to Construct conditions. The District shall make all comments available, including the District's response to the comments, for public inspection in the same locations where the District made preconstruction information relating to the proposed source or modification available.
- (b) The APCO shall deny any application for an Authority to Construct if the APCO finds the new source or modification would not comply with the standards and requirements set forth in District, state, or federal rules or regulations.
- (c) The APCO shall make a final decision whether to issue or deny the Authority to Construct after determining that the Authority to Construct will or will not ensure compliance with all applicable emission standards and requirements.
- (d) The APCO shall notify the applicant in writing of the final decision and make such notification available for public inspection at the same location where the District made preconstruction information and public comments relating to the source available.

#### 6.5 PERMIT TO OPERATE

The applicable terms and conditions of an issued Authority to Construct shall be included in any Permit to Operate subsequently issued by the APCO for the same emissions units.

## 7 SOURCE OBLIGATIONS

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### 7.1 ENFORCEMENT

Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this rule, any changes to the application as required by the APCO, or the terms of its Authority to Construct or Permit to Operate, shall be subject to enforcement action.

### 7.2 TERMINATION

Approval to construct shall terminate if construction is not commenced within eighteen months after receipt of such approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The APCO may extend the 18-month period once upon a satisfactory showing of good cause why an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen months of the projected and approved commencement date.

### 7.3 COMPLIANCE

Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the SIP and any other requirements under local, state, or federal law.

### 7.4 RELAXATION IN ENFORCEABLE LIMITATIONS

At such time that a particular stationary source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the stationary source or modification to emit a pollutant, then the requirements of this rule shall apply to the stationary source or modification as though construction had not yet commenced on the stationary source or modification.

## 8 PUBLIC PARTICIPATION

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After the APCO has made a preliminary written decision to issue or deny an Authority to Construct for a new major stationary source or major modification, as specified in Sections 6.1 and 6.2, the APCO shall:

- (a) Publish, in at least one newspaper of general circulation in the District, a notice stating the preliminary decision of the APCO, noting how pertinent information can be obtained, including how the public can access the information specified in Section 8(b), and inviting written public comment for a 30-day period following the date of publication. The notice shall include the time and place of any hearing that may be held, including a statement of procedure to request a hearing (unless a hearing has already been scheduled).
- (b) No later than the date the notice of the preliminary written determination is published, make available in at least one location in each region in which the proposed source would be constructed, a copy of all materials the applicant submitted, a copy of the preliminary decision, a copy of the proposed Authority to Construct and a copy or summary of other materials, if any, considered in making the preliminary written decision.



- (c) Send a copy of the notice of public comment to the applicant, EPA Region 9, any persons requesting such notice and any other interested parties such as: any other state or local air pollution control agencies, the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency, and any state, Federal Land Manager, or Indian governing body whose lands may be affected by emissions from the source or modification.
- (d) Provide opportunity for a public hearing for persons to appear and submit written or oral comments on the air quality impact of the source, alternatives to it, the control technology required, and other appropriate considerations, if in the APCO's judgment such a hearing is warranted. The APCO shall give notice of any public hearing at least 30 days in advance of the hearing.

## 9 PLANT-WIDE APPLICABILITY LIMITS (PAL)

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The APCO shall issue a Plant-wide Applicability Limit (PAL) permit according to the provisions contained in 40 CFR 51.165(f)(1) through (15). The provisions of 40 CFR 51.165(f)(1) through (15), are hereby incorporated by reference.

## 10 INVALIDATION

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If any provision of this rule or the application of such provision to any person or circumstance is held invalid, the remainder of this rule or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

## 11 EFFECTIVE DATE FOR REFERENCED FEDERAL REGULATIONS

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All references and citations in this rule to Title 40 of the Code of Federal Regulations (CFR) refer to the referenced federal regulation as in effect on January 6, 2022.

## REGULATION III – FEES

### RULE 300. PERMIT FEES

Adopted: 07/20/77      Revised: 06/25/79, 05/05/04, 07/10/06

#### A. FILING FEE

1. Every applicant for an authority to construct or a permit to operate any article, machine, equipment or contrivance, for which an authority to construct or permit to operate is required by (the State Law or) the Rules and Regulations of the Air Pollution Control District, shall pay a filing fee as set forth in Schedule 1 of Rule 300.

#### B. AUTHORITY TO CONSTRUCT/INITIAL PERMIT FEE

1. When the Authority to Construct Permit is issued pursuant to Rule 200-A, it shall be accompanied by a statement of fee to be paid. The applicant shall pay an Authority to Construct/Initial Permit Fee in accordance with the applicable fee schedule as set forth in Rule 301.

#### C. ANNUAL PERMIT RENEWAL FEE

1. All permits to operate shall be renewable one year after the date of issuance and every year thereafter, which will be referred to as the anniversary date. The permittee shall pay the annual permit renewal fee in accordance with the applicable fee schedule set forth in Rule 301, with adjustments as provided in Rule 300.C.2.
2. Beginning on July 1, 2004, and every July 1 through July 1, 2007, the Annual Permit Renewal Fees in the Permit Fee Schedules in Rule 301 shall be adjusted as shown below.

<u>Fiscal Year</u>	<u>Annual Permit Renewal Adjustment Factor</u>
2004/05	0.6580
2005/06	0.7567
2006/07	0.8702
2007/08	1.0000

Beginning on July 1, 2008, the Permit Fee Schedules in Rule 301 shall be adjusted annually in accordance with California Health & Safety Code Section 42311 to account for changes in the annual California Consumer Price Index.

D. NOTIFICATION OF FEES DUE

After the provisions for granting an authority to construct or Permit to Operate as set forth in Division 26 of the Health and Safety Code and these Rules and Regulations have been complied with or on the renewal date of a Permit to Operate, the applicant/permittee will be notified by mail of the fee due and payable. If the fee is not paid within 30 days after it becomes due, the fee shall be increased by one half the amount and the applicant/permittee shall be notified by mail of the increased fee. If the increased fee is not paid within 30 days after notice, the application/permit will be cancelled and the applicant/permittee will be notified by mail. A cancelled application/permit may be reinstated by payment in full of all accrued fees and fee penalties.

E. SPECIFIC FEE PROVISIONS

1. If the application for an Authority to Construct is cancelled or denied, the fees shall not be refunded nor applied to any other application.
2. If an Authority to Construct or Permit to Operate is cancelled or denied, the fees shall not be refunded nor applied to any other application.
3. If an Authority to Construct is revoked or suspended, the fee applicable to that portion of the year during which the Authority to Construct or Permit to Operate is invalid shall not be refundable nor applied to any other application.

F. CHANGE OF LOCATION OR OWNERSHIP

When an application is filed for a permit because the equipment has been moved to a new location, or ownership has been transferred from one person to another and a Permit to Operate granted for such equipment and has not been cancelled under Section (D) of this Rule, the applicant shall pay a permit fee equivalent to the annual permit renewal fee, according to the applicable fee schedule as set forth in Rule 301.

G. ALTERATIONS, ADDITIONS AND REVISIONS

1. When an application is filed exclusively involving alterations or additions resulting in a change to any existing article, machine, equipment or other contrivance holding a permit under the provisions of Rule 200 A & B of these Rules and Regulations and has not been cancelled under Section (D) of this Rule, the applicant shall pay a permit fee based upon the incremental increase according to the fee schedules as set forth in Rule 301.
2. When an application is filed for a revision of conditions on an Authority to Construct or Permit to Operate, or for an alteration or addition and there is no incremental increase, the applicant shall pay a permit fee as set forth in Schedule 2 of Rule 300.

3. The applicant shall pay a supplemental inspection fee as set forth in Schedule 3 of Rule 300 for any modification to a facility or modification to a permit condition that may require an on-site inspection to determine compliance with any District, state or federal air pollution regulation, or permit condition.

#### H. PERMIT TO OPERATE GRANTED BY HEARING BOARD

If an Authority to Construct or Permit to Operate is granted by the Hearing Board after denial by the Air Pollution Control Officer, the applicant shall pay the permit fee in accordance with the applicable fee schedule as set forth in Rule 301.

#### I. ANNUAL FEE ADJUSTMENT FOR CALIFORNIA CONSUMER PRICE INDEX

Beginning on July 10, 2006, and every July 1 thereafter, all fees listed under Rule 301, except for Annual Permit Renewal fees that are adjusted in accordance with Rule 300.C.2, shall be adjusted in accordance with California Health & Safety Code Section 42311 to account for changes in the annual California Consumer Price Index. The fees charged shall be rounded to the nearest one dollar (\$1) increment.

#### J. PERMIT FEE EXEMPTION

Fees associated with Rule 300 and Rule 301 shall be waived for permits issued for emergency back-up diesel engines less than 350 brake horsepower that are operated by local fire districts, local law enforcement or local hospitals.

#### K. ACTUAL COST DETERMINATION

The Air Pollution Control Officer shall, on an annual basis, determine the actual cost of fees imposed pursuant to Regulation III herein. The determination shall be in writing and will show how the cost was determined. The determination shall be made available to the public upon request.

Rule 300. - Schedule 1

Beginning on July 10, 2006, and every July 1 through July 1, 2010, the filing fee in Rule 300.A.1. shall be:

<u>Fiscal Year</u>	<u>Fee</u>
2006/07	57.00
2007/08	65.00
2008/09	74.00
2009/10	85.00
2010/11	97.00

Beginning on July 1, 2011, the Filing Fee shall be adjusted annually in accordance with California Health & Safety Code Section 42311 to account for changes in the annual California Consumer Price Index. The fees charged shall be rounded to the nearest one dollar (\$1) increment.

Rule 300. - Schedule 2

Beginning on July 10, 2006, and July 1, 2007, the permit fee in Rule 300.G.2. shall be:

<u>Fiscal Year</u>	<u>Fee</u>
2006/07	172.00
2007/08	197.00

Beginning on July 1, 2008, the permit fee shall be adjusted annually in accordance with California Health & Safety Code Section 42311 to account for changes in the annual California Consumer Price Index. The fees charged shall be rounded to the nearest one dollar (\$1) increment.

Rule 300. - Schedule 3

Beginning on July 10, 2006, the inspection fee in Rule 300.G.3. shall be:

<u>Fiscal Year</u>	<u>Fee</u>
2006/07	150.00
2007/08	150.00

Beginning on July 1, 2008, the inspection fee shall be adjusted annually in accordance with California Health & Safety Code Section 42311 to account for changes in the annual California Consumer Price Index. The fees charged shall be rounded to the nearest one dollar (\$1) increment.

# RULE 301. PERMIT FEE SCHEDULES

Adopted: 09/05/74      Revised: 07/06/95, 05/05/04

Each permit shall be assessed an initial permit fee or annual permit renewal fee, according to the following applicable schedule, which shall be adjusted as provided in Rule 300.C.2. It is hereby determined that the cost of issuing permits, and of inspections pertaining to such issuance exceeds the fees prescribed herein. In the event that more than one fee schedule is applicable to an initial permit fee or annual permit renewal fee, the governing schedule shall be that which results in the higher fee.

## Schedule 1

### Electric Motor Horsepower Schedule

Any article, machine, equipment or other contrivance where an electric motor is used as the power supply shall be assessed a permit fee based on the total rated motor horsepower of all such electric motors included in any such article, machine, equipment or other contrivance, in accordance with the following schedule:

<u>Horsepower</u>	Authority to Construct <u>Initial Permit Fee</u>	<u>Annual Permit Renewal Fee</u>
Up to and including 5	\$ 70.00	\$ 60.00
Greater than 5 but less than 15	135.00	120.00
15 or greater but less than 45	275.00	155.00
45 or greater but less than 65	695.00	355.00
65 or greater but less than 125	1,100.00	415.00
125 or greater but less than 200	1,455.00	505.00
200 or greater but less than 400	1,850.00	730.00
400 or greater	2,530.00	1,205.00

[Intentionally left blank.]

## Schedule 2

### Fuel Burning Equipment Schedule

Any article, machine, equipment or other contrivance in which fuel is burned, with the exception of incinerators which are covered in Schedule 4, shall be assessed a permit fee based upon the design fuel consumption of the article, machine, equipment or other contrivance expressed in thousands of British Thermal Units (BTU) per hour, using gross heating values of the fuel, in accordance with the following schedule:

<u>1000 British Thermal Units Per Hour</u>	<u>Authority to Construct Initial Permit Fee</u>	<u>Annual Permit Renewal Fee</u>
Up to and including 150	\$ 70.00	\$ 60.00
Greater than 150 but less than 400	135.00	120.00
400 or greater but less than 650	275.00	120.00
650 or greater but less than 1,500	695.00	355.00
1,500 or greater but less than 5,000	1,100.00	480.00
5,000 or greater but less than 15,000	1,455.00	725.00
15,000 or greater but less than 50,000	1,850.00	1,205.00
50,000 or greater but less than 100,000	2,645.00	2,080.00
100,000 or greater but less than 200,000	3,795.00	3,470.00
200,000 or greater	5,060.00	4,625.00

[Intentionally left blank.]

### Schedule 3

#### Electrical Energy Schedule

Any article, machine, equipment or other contrivance which uses electrical energy, with the exception of electric motors covered in Schedule 1, shall be assessed a permit fee based on the total kilovolt ampere (KVA) ratings, in accordance with the following schedule:

<u>Kilovolt Ampere</u>	Authority to Construct <u>Initial Permit Fee</u>	Annual Permit <u>Renewal Fee</u>
Up to and including 20	\$ 70.00	\$ 65.00
Greater than 20 but less than 40	135.00	120.00
40 or greater but less than 145	275.00	120.00
145 or greater but less than 450	695.00	355.00
450 or greater but less than 4,500	1,100.00	355.00
4,500 or greater but less than 14,500	1,455.00	725.00
14,500 or greater but less than 45,000	1,850.00	725.00
45,000 or greater	2,645.00	1,205.00

### Schedule 4

#### Incinerator Schedule

Any article, machine, equipment or other contrivance designed and used primarily to dispose of combustible refuse by wholly consuming the material charged leaving only the ashes or residue shall be assessed a permit fee based on the following schedule of the maximum horizontal inside cross sectional area, in square feet, of the primary combustion chamber:

<u>Area in Square Feet</u>	Authority to Construct <u>Initial Permit Fee</u>	Annual Permit <u>Renewal Fee</u>
Up to and including 3	\$ 70.00	\$ 65.00
Greater than 3 but less than 4	135.00	120.00
4 or greater but less than 7	275.00	120.00
7 or greater but less than 10	695.00	235.00
10 or greater but less than 15	1,100.00	235.00
15 or greater but less than 23	1,455.00	355.00
23 or greater but less than 40	1,850.00	355.00
40 or greater	2,645.00	480.00



### Schedule 5

#### Stationary Container Schedule

Any stationary tank, reservoir or other container shall be assessed a permit fee based on the following schedule of capacities in gallons or cubic equivalent:

<u>Gallons</u>	<u>Authority to Construct Initial Permit Fee</u>	<u>Annual Permit Renewal Fee</u>
Up to and including 4,000	\$ 70.00	\$ 65.00
Greater than 4,000 but less than 10,000	135.00	120.00
10,000 or greater but less than 40,000	275.00	120.00
40,000 or greater but less than 100,000	695.00	235.00
100,000 or greater but less than 400,000	1,100.00	355.00
400,000 or greater but less than 1,000,000	1,455.00	480.00
1,000,000 or greater but less than 1,500,000	1,850.00	725.00
1,500,000 or greater	2,645.00	960.00

### Schedule 6

#### Miscellaneous Schedule

Any article, machine, equipment or other contrivance for which a permit to operate is required and which is not included in the preceding schedules shall be assessed a permit fee as follows:

<u>Miscellaneous</u>	<u>Authority to Construct Initial Permit Fee</u>	<u>Annual Permit Renewal Fee</u>
Net Emission Increase less than 250 lb/day	\$ 600.00	\$ 345.00
Net Emission Increase greater than or Equal to 250 lb/day	1,800.00	1,045.00

[Intentionally left blank.]

### Schedule 7

#### Geothermal Development Schedule

Any stationary source of air contaminant emissions relative to the production or utilization of geothermal resources, for which an Authority to Construct or Permit to Operate is required, shall be assessed a permit fee in accordance with the following schedule:

<u>Geothermal Source</u>	Authority to Construct <u>Initial Permit Fee</u>	Annual Permit <u>Renewal Fee</u>
Geothermal Well	\$ 800.00	\$ 870.00
Geothermal Well within an RMP	1,600.00	1,745.00
Geothermal Fluid Transmission Line	1,200.00	1,395.00
Power Plant Unit	3,000.00	3,495.00
Binary Power Plant Unit	1,500.00	1,745.00

### Schedule 8

#### Commercial Building Schedule

Any secondary source consisting of a commercial building or structure shall be assessed a permit fee based on the total square footage of all such buildings or structures, in accordance with the following schedule:

<u>Commercial Building</u>	Authority to Construct <u>Initial Permit Fee</u>
Initial Fee per square foot	\$ 0.25
Minimum Fee per source	\$ 100.00
Maximum Fee per source	\$10,000.00

[Intentionally left blank.]

### Schedule 9

#### Commercial Parking Schedule

Any secondary source utilizing a commercial parking lot or structure shall be assessed a permit fee based on the number of parking spaces, in accordance with the following schedule:

<u>Commercial Parking</u>	Authority to Construct <u>Initial Permit Fee</u>
Initial Fee per parking space	\$ 30.00
Minimum Fee per source	\$ 100.00
Maximum Fee per source	\$ 10,000.00

### Schedule 10

#### Housing Unit Schedule

Any secondary source consisting of housing spaces or units greater than four family units shall be assessed a permit fee based on the number of family spaces or units, in accordance with the following schedule:

<u>Housing Unit</u>	Authority to Construct <u>Initial Permit Fee</u>
Initial Fee per unit	\$ 150.00
Minimum Fee per source	\$ 750.00
Maximum Fee per source	\$ 10,000.00

[Intentionally left blank.]

RULE 302. ANALYSIS FEES

Adopted: 02/09/81      Revised: 04/16/84, 12/19/87

Whenever the Air Pollution Control Officer finds that an analysis of the emission from any source is necessary to determine the extent and amount of pollutants being discharged into the atmosphere which cannot be determined by visual observation, he may order the collection of samples and the analysis made by qualified personnel of the Air Pollution Control District. The time required for collecting samples, making the analysis, and preparing the necessary reports, but excluding time required in going to and from such premises shall be charged against the owner or operator of said premises in a reasonable sum to be determined by the Air Pollution Control Officer, which said sum is not to exceed the actual cost of such work.

[Intentionally left blank.]

RULE 303. TECHNICAL REPORTS - CHARGES FOR

Adopted: 09/05/74

Information, circulars, reports of technical work, and other reports prepared by the Air Pollution Control Districts when supplied to other governmental agencies or individuals or group requesting copies of the same may be charged for by the district in a sum not to exceed the cost of preparation and distribution of such documents. All such monies collected shall be turned into the general funds of said district. the Air Pollution Control Officer.

[Intentionally left blank.]

RULE 304. CEQA LEAD AGENCY FEE

Adopted: 09/05/74      Revised: 07/10/06

Whenever the Great Basin Unified APCD acts as Lead Agency for an Environmental Impact Report or Negative Declaration, the Air Pollution Control Officer may charge the proponent a fee which is not to exceed the cost to the District of the work required.

The fee for work done directly by the District will be calculated on the basis of actual cost. If the Air Pollution Control Officer determines on the basis of the Initial Study, EIRs on similar projects, or in consultation with other agencies that it is necessary to hire a consultant to prepare the EIR or to advise the District on non-air-quality impacts, the consultants fee will be passed on to the proponent.

Failure to pay this fee shall incur the same penalties as failure to pay a permit fee (Rule 300D).

[Intentionally left blank.]

RULE 305. TOXICS RISK ASSESSMENT FEE

Adopted: 09/05/74      Revised: 04/17/89, 07/10/06

Whenever the Great Basin Unified Air Pollution Control District processes an Authority to Construct or Permit to Operate for a facility which emits (a) toxic substance(s), the Air Pollution Control Officer may charge the proponent an extra fee which is not to exceed the cost to the District of the work required by the District Board's Toxics Risk Assessment Policy to estimate the risks associated with the facility. A toxic substance is any substance listed by the Air Resources Board pursuant to California Health and Safety Code Section 44321

The fee for work done directly by the District will be calculated on the basis of actual cost. If the Air Pollution Control Officer determines that it is necessary to hire a consultant to prepare the risk assessment or to advise the District on impacts to health, the consultant's fee will be paid by the proponent. If the proponent objects to the particular consultant hired by the District, the proponent may appeal to the District Hearing Board.

Failure to pay this fee shall incur the same penalties as failure to pay a permit fee (Rule 300D).

[Intentionally left blank.]

RULE 306. HEARING BOARD FEES

Adopted: 04/24/91      Revised: 07/10/06

A.      FILING FEE

Any person petitioning for a hearing before the Hearing Board shall pay a filing fee of \$150. In the case of petitioner withdrawal of petition, all filing fees shall be nonrefundable.

Beginning on July 10, 2006, and every July 1 thereafter, the filing fee shall be adjusted annually in accordance with California Health & Safety Code Section 42311 to account for changes in the annual California Consumer Price Index. The actual fees charged shall be rounded to the nearest one dollar (\$1) increment.

B.      HEARING FEE

If the hearing lasts more than four hours but less than eight hours, the petitioner shall pay a hearing fee of \$150 in addition to the filing fee. If the hearing lasts eight hours or more, the petitioner shall pay a hearing fee of \$450 for the first eight hours, and \$600 for each additional eight hour period or part thereof in addition to the filing fee. The hearing fee shall be paid within 60 days after the petitioner is notified of the amount due. Failure to pay this fee shall incur the same penalties as failure to pay a permit fee (Rule 300D).

C.      FEE REFUNDS

Any petitioner qualifying under California Health and Safety Code Section 42302.1 to appeal the issuance of a permit shall have the filing fee, and hearing fee, if any, refunded if the Hearing Board either reverses the decision of the Air Pollution Control Officer to issue the permit, or substantially modifies the permit.

D.      EXCEPTIONS

This Rule shall not apply to petitions filed by the Air Pollution Control Officer.



Rule 307. CONSERVATION MANAGEMENT PRACTICES PLAN FEES

Adopted: 07/07/05

1.0 PURPOSE

The purpose of this rule is to recover the District's costs for the review and management of Conservation Management Plan (CMP) Applications and Plan required by Rule 502 (Conservation Management Practices).

2.0 APPLICABILITY

This rule applies to each owner/operator of an Agricultural Operation Site subject to Rule 502 (Conservation Management Practices).

3.0 DEFINITIONS

3.1 Agricultural Operation Site (AOS): as defined in Rule 502 (Conservation Management Practices).

3.2 Air Pollution Control Officer (APCO): as defined in Rule 502 (Conservation Management Practices).

4.0 EXEMPTIONS

The provisions of this rule do not apply to any AOS subject to the District's Permit to Operate requirements.

5.0 CMP APPLICATION AND RENEWAL FEES

5.1 Agricultural Operation Site subject to Rule 502

The owner/operator of an AOS shall pay an initial CMP Plan fee of \$150.00. This fee will cover the cost of plan review and approval as well as the cost of the first year of field inspections.

5.2 Multiple Agricultural Operation Sites subject to Rule 502

An owner/operator of multiple AOSs shall pay the applicable fee as shown in Section 5.1 for all AOSs submitted to the APCO at the same time. CMP applications for AOSs submitted at different times shall each be subject to the full fee shown in Section 5.1.

5.3 CMP Plan Renewal Fee

The owner/operator shall pay a renewal fee of \$60.00 every year for each CMP Plan that is required by Rule 502. After five years, if there has been no change in the CMP plan and no CMP plan violations, the annual renewal fee will be reduced to \$30.00.

#### 5.4 CMP Modification Fee

No additional fees are required to request a modification of a previously approved CMP Plan.

#### 5.5 CMP Fee Adjustments

Beginning on July 1, 2006, all CMP application and renewal fees shall be adjusted annually in accordance with California Health and Safety Code Section 42311 to account for changes in the annual California Consumer Price Index. The actual fees charged shall be rounded to the nearest five dollar (\$5) increment.

### 6.0 FEE NOTIFICATION

6.1 The initial CMP Plan fee shall be submitted to the District with the submittal of the plan. The submittal will be deemed to be incomplete and no processing or approval will occur until the fee is paid.

6.2 The APCO shall provide the AOS owner/operator with an invoice for the annual renewal fee annually in the month the CMP Plan was approved. CMP Plan renewal fees are due and payable within 30 days of the invoice date.

### 7.0 LATE FEES

If payment of any charges levied under this rule is not received by the APCO within 30 days of the invoice date, the charges shall be increased in accordance with the schedule provided in Rule 300 Section D. (Notification of Fees Due).

[Intentionally left blank.]

**RULE 308. PRESCRIBED BURNING FEE**

Adopted &amp; Effective: 01/16/09

**A. PURPOSE**

The purpose of this rule is to recover a portion of the District's costs to implement the smoke management program as required by Title 17, Subchapter 2 of the California Code of Regulations - Smoke Management Guidelines for Agricultural and Prescribed Burning, and District Rules 409, 410 and 411.

**B. APPLICABILITY**

These fees shall apply to any land manager or agency that conducts burn projects for the purpose of range management, forest management and wildland vegetation management on areas greater than 1 acre in size or that are estimated to produce more than one (1) ton of particulate matter.

**C. EXEMPTIONS**

1. Fees shall not apply to prescribed burns of agricultural wastes that are conducted in accordance with District Rule 408 – Open Burning in Agricultural Operations or Disease or Pest Prevention.
2. Fees shall not apply if prescribed burning is not anticipated or conducted during the calendar year for which fees would apply.

**D. FEES**

1. An annual flat fee as shown in the table below shall be billed by the District in January of each year to cover fees for all planned prescribed burning activities conducted by the land manager during that calendar year.

Land Management Agency	Inyo National Forest/ U.S. Bureau of Land Management – Bishop Field Office	Humboldt – Toiyabe National Forest	City of Los Angeles Department of Water & Power	Other Land Managers or Agencies
Annual Flat Fee	\$4,000	\$1,000	\$300	\$150

2. Except for the agencies specifically listed above, other land managers or agencies that do not pay the annual flat fee shall pay a fee of \$150 at the time a smoke management plan is submitted, or when prescribed burns are conducted. This fee shall cover all prescribed burning activities, including those addressed in subsequent smoke management plans that the land manager may conduct during the remainder of the calendar year.

3. "Other land managers or agencies" mentioned in Paragraphs D.1 and D.2, above, that plan to conduct small prescribed burning projects subject to District Rules 409, 410 and 411, which believe the \$150 annual fee would cause a financial hardship to their operations, may request that the Air Pollution Control Officer (APCO) exempt their project from the annual fee requirement. Fee exemption decisions of the APCO may be appealed to the Governing Board.

E. FEE ADJUSTMENT

On July 1 of each year, all prescribed burning fees shall be adjusted annually in accordance with California Health and Safety Code Section 42311 to account for changes in the annual California Consumer Price Index.

F. LATE FEES

If payment of charges levied under this rule are not received by the APCO within 60 days after annual billing, or after the smoke management plan is submitted, or after a prescribed burning activity is conducted, the charges may be increased by one half the amount due.

**RULE 309. ASBESTOS REMOVAL AND DEMOLITION FEES**

Adopted &amp; Effective: 01/16/09

**A. PURPOSE**

The purpose of this rule is to recover the District's costs for the review and management of asbestos removal and demolition projects as required by the National Emissions Standards for Hazardous Air Pollutants, which were adopted by reference as District Rule 1002.

**B. APPLICABILITY**

The National Emission Standards for Hazardous Air Pollutants and these fees are applicable to:

1. All demolitions whether or not asbestos is present; and
2. Renovations in which 260 linear feet, 160 square feet, or 35 cubic feet or more of regulated asbestos containing materials are disturbed.

**C. EXEMPTIONS**

Asbestos-related renovation or demolition fees will not be charged for the renovation or demolition of residences comprised of four or fewer dwelling units, unless such renovation or demolition is subject to the current National Emission Standards for Hazardous Air Pollutants established by the federal government.

**D. FEES**

Any person filing a notification for an asbestos removal or demolition project that is subject to the requirements of the National Emission Standards for Hazardous Air Pollutants (Rule 1002) shall pay the applicable fee at the time the notification is submitted to the Air Pollution Control Officer. The total fee for any project shall be the sum of the applicable fee components below, but in no case shall the fee exceed the maximum fee listed in the following fee schedule.

**ASBESTOS PLAN FEE SCHEDULE—RENOVATION AND DEMOLITION PROJECTS**

Units of Regulated Asbestos Containing Material to be Removed/Disturbed			
Linear Feet	Square Feet	Cubic Feet	Fee**
0-259*	0-159*	0-34*	\$435*
260-499	160-499	35-109	\$435
500-999	500-999	110-218	\$635
1,000-2,499	1,000-2,499	219-547	\$935
2,500-4,999	2,500-4,999	548-1,094	\$1,335
5,000-9,999	5,000-9,999	1,095-2,188	\$1,835
10,000 or more	10,000 or more	2,189 or more	\$2,335

\* This category applies to demolition projects only, whether or not asbestos is present.

\*\* If materials are in more than one category, the higher fee will apply.

E. FEE ADJUSTMENTS

Beginning on July 1, 2010, all asbestos notification fees shall be adjusted annually in accordance with California Health and Safety Code Section 42311 to account for changes in the annual California Consumer Price Index. The actual fees charged shall be rounded to the nearest five dollar (\$5) increment.

F. LATE FEES

If payments of any charges levied under this rule are not received by the APCO within 30 days of the date the Air Pollution Control Officer is required to be notified of the asbestos removal or demolition project, the charges shall be increased by one half the amount.

## REGULATION IV - PROHIBITIONS

### RULE 400. RINGELMANN CHART

Adopted: 09/05/74      Revised: 01/18/79

A person shall not discharge into the atmosphere from any single source of emission whatsoever, any air contaminant for a period or periods aggregating more than three minutes in any one hour which is:

- A. As dark or darker in shade as that designated as No. 1 on the Ringelmann Chart, as published by the United States Bureau of Mines; or
- B. Of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke described in subsection (A) of this rule.
  - 1. "An observer" is defined as either a human observer or a certified, calibrated, in-stack opacity monitoring system.

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**RULE 401. FUGITIVE DUST**

Adopted: 09/05/74      Revised: 03/10/76, 12/04/06

- A. A person shall take reasonable precautions to prevent visible particulate matter from being airborne, under normal wind conditions, beyond the property from which the emission originates. Reasonable precautions include, but are not limited to:
1. Use, where possible, of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads or the clearing of land;
  2. Application of asphalt, water, or suitable chemicals on dirt roads, material stockpiles, and other surfaces which can give rise to airborne dusts;
  3. Installation and use of hoods, fans, and fabric filters, to enclose and vent the handling of dusty materials. Adequate contaminant methods shall be employed during such handling operations;
  4. Use of water, chemicals, chuting, venting, or other precautions to prevent particulate matter from becoming airborne in handling dusty materials to open stockpiles and mobile equipment; and
  5. Maintenance of roadways in a clean condition.
- B. This rule shall not apply to emissions discharged through a stack.
- C. [Reserved]
- D. The City of Los Angeles shall implement dust control measures as ordered by the Board of the Great Basin Unified Air Pollution Control Board (Board), on any wind-blown dust source areas on the bed of Owens Lake (elevation less than 3,600 feet above mean sea level) that cause or contribute to monitored exceedances of the State PM-10 standards at residences within communities zoned for residential use in the latest Inyo County General Plan Land Use Diagrams. Acceptable dust control measures for Owens Lake shall:
1. Include Best Available Control Measures for Owens Lake as approved by the Board or any other control method that the APCO deems sufficient to reduce PM-10 impacts from the lake bed to below the state PM-10 standards within community boundaries.
  2. Be fully implemented according to a schedule ordered by the Board.

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RULE 402. NUISANCE

Adopted: 09/05/74

A person shall not discharge from any source whatsoever, such quantities of air contaminants or other materials which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health or safety of any such persons or the public or which cause or have a natural tendency to cause injury or damage to business or property.

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## RULE 403. BREAKDOWN

Adopted: 02/18/77      Revised: 01/18/79, 06/25/79

### A. DEFINITION

For the purposes of this rule, a breakdown condition means an unforeseeable failure or malfunction of: 1) any air pollution control equipment or related operating equipment which causes a violation of any emission limitation or restriction prescribed by these rules and regulations, or by State law, or 2) any in-stack continuous monitoring equipment which:

1. Is not the result of neglect or disregard of any air pollution control law or rule or regulation;
2. Is not intentional or the result of negligence;
3. Is not the result of improper maintenance;
4. Does not constitute a nuisance;
5. Is not a recurrent breakdown of the same equipment.

### B. BREAKDOWN PROCEDURES

1. The owner or operator shall notify the Air Pollution Control Officer of any occurrence which constitutes a breakdown condition; such notification shall identify the time, specific location, equipment involved, and, to the extent known, the causes of the occurrence, and shall be given as soon as reasonably possible, but no later than one (1) hour after its detection, unless the owner or operator can demonstrate that a longer reporting period is necessary.
2. The Air Pollution Control Officer shall establish written procedures and guidelines, including appropriate forms for logging of initial reports, investigation, and enforcement follow-up, to ensure that all reported breakdown occurrences are handled uniformly to final disposition.
3. Upon receipt of notification pursuant to subparagraph B(1), the Air Pollution Control Officer shall promptly investigate and determine whether the occurrence constitutes a breakdown condition. If the Air Pollution Control Officer determines that the occurrence does not constitute a breakdown condition, the Air Pollution Control Officer may take appropriate enforcement action including, but not limited to, seeking fines, an abatement order, or an injunction against further operation.

### C. DISPOSITION OF SHORT-TERM BREAKDOWN CONDITIONS

1. An occurrence which constitutes a breakdown condition, and which persists only until the end of the production run or 24-hours, whichever is sooner (except for continuous monitoring equipment, for which the period shall be ninety-six (96) hours), shall constitute a violation of any applicable emission limitation or restriction prescribed by these rules and regulations; however, the Air Pollution Control Officer may elect to take no enforcement action if the owner or operator

demonstrates to his satisfaction that a breakdown condition exists and the following conditions are met:

- a. The owner or operator submits the notification required by subparagraph B(1); and
  - b. The owner or operator immediately undertakes appropriate corrective measures and comes into compliance, or elects to shut down for corrective measures before commencement of the next production run or within 24-hours, whichever is sooner (except for continuous monitoring equipment for which the period shall be ninety-six (96) hours). If the owner or operator elects to shut down rather than come into immediate compliance, the owner or operator must nonetheless take whatever steps are possible to minimize the impact of the breakdown within the 24-hour period; and
  - c. The breakdown does not interfere with the attainment and maintenance of any national ambient air quality standard.
2. An occurrence which constitutes a breakdown condition shall not persist longer than the end of the production run or 24-hours, whichever is sooner (except for continuous monitoring equipment, for which the period shall be ninety-six (96) hours), unless the owner or operator has obtained an emergency variance pursuant to Rule 617 (Emergency Variance).

#### D. REPORTING REQUIREMENTS

Within one week after a breakdown occurrence has been corrected, the owner or operator shall submit a written report to the Air Pollution Control Officer which includes:

1. A statement that the occurrence has been corrected, together with the date of correction and proof of compliance;
2. A specific statement of the reasons or causes for the occurrence sufficient to determine whether the occurrence was a breakdown condition.
3. A description of the corrective measures undertaken and/or to be undertaken to avoid such an occurrence in the future (the Air Pollution Control Officer may, at the request of the owner or operator, for good cause, extend up to 30 days the deadline for submitting the description required by this subparagraph);
4. An estimate of the emissions caused by the occurrence; and
5. Pictures of the equipment or controls which failed, if available.

#### E. BURDEN OF PROOF

The burden shall be on the owner or operator of the source to provide sufficient information to demonstrate that a breakdown did occur. If the owner or operator fails to provide sufficient information, the Air Pollution Control Officer shall undertake appropriate enforcement action.

F. FAILURE TO COMPLY WITH REPORTING REQUIREMENTS

Any failure to comply, or comply in a timely manner, with the reporting requirements established in subparagraphs B(1) and D(1) through D(5) of this rule shall constitute a separate violation of this rule.

G. FALSE CLAIMING OF BREAKDOWN OCCURRENCE

It shall constitute a separate violation of this rule for any person to file with the Air Pollution Control Officer a report which falsely, or without probable cause, claims that an occurrence is a breakdown occurrence.

H. HEARING BOARD STANDARDS AND GUIDELINES

The hearing board shall adopt standards and guidelines consistent with this rule to assist the chairperson or other designated members of the hearing board in determining whether to grant or deny an emergency variance and to assist the Air Pollution Control Officer in the enforcement of this rule.

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# RULE 404-A - PARTICULATE MATTER

Adopted: 09/05/74      Revised: 02/09/81

## 1. Concentration

A person shall not discharge from any source whatsoever, particulate matter in excess of 0.3 grain per standard dry cubic foot of exhaust gas.

## 2. Process Weight

A person shall not discharge in any one hour from any source whatsoever, particulate matter in excess of the amount shown in Table II.

## 3. Geothermal Well Drilling

A person shall not discharge particulates into the atmosphere from any geothermal steam source in excess of the quantity established by the following formula:

$$y = .00069X + 1.4$$

where:

y = is the particulate emission rate limitation in kilograms per hour (averaged over one hour) and X is the steam rate in kilograms per hour passing through a geothermal well drilling operation or an geothermal well being vented for clean out.

TABLE II			
MAXIMUM ALLOWABLE EMISSION RATE BASED ON PROCESS WEIGHT RATE			
Process Weight Rate (lb/hr)	Maximum Allowable Solid Particulate Emission Rate *(lb/hr)	Process Weight Rate (lb/hr)	Maximum All Solid Particulate Emission Rate (lb/hr)
50	.24	3400	5.44
100	.46	3500	5.52
150	.66	3600	5.61
200	.85	3700	5.69
250	1.03	3800	5.77
300	1.20	3900	5.85
350	1.35	4000	5.93
400	1.50	4100	6.01
450	1.63	4200	6.08
500	1.77	4300	6.15
550	1.89	4400	6.22
600	2.01	4500	6.30
650	2.12	4600	6.37
700	2.24	4700	6.45
750	2.30	4800	6.52
800	2.43	4900	6.60

TABLE II – Continued			
MAXIMUM ALLOWABLE EMISSION RATE BASED ON PROCESS WEIGHT RATE			
Process Weight Rate (lb/hr)	Maximum Allowable Solid Particulate Emission Rate *(lb/hr)	Process Weight Rate (lb/hr)	Maximum All Solid Particulate Emission Rate (lb/hr)
850	2.53	5000	6.67
900	2.62	5500	7.03
950	2.72	6000	7.37
1000	2.80	6500	7.71
1100	2.97	7000	8.05
1200	3.12	7500	8.39
1300	3.26	8000	8.71
1400	3.40	8500	9.03
1500	3.54	9000	9.36
1600	3.66	9500	9.67
1700	3.79	10000	10.0
1800	3.91	11000	10.63
1900	4.03	12000	11.28
2000	4.14	13000	11.89
2100	4.24	14000	12.50
2200	4.34	15000	13.13
2300	4.44	16000	13.74
2400	4.55	17000	14.36
2500	4.64	18000	14.97
2600	4.74	19000	15.58
2700	4.84	20000	16.19
2800	4.92	30000	22.22
2900	5.02	40000	28.3
3000	5.10	50000	34.3
3100	5.18	60000	40.0
3200	5.27	or more	

\*Sum of emissions from all emission points of process

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RULE 404-B. OXIDES OF NITROGEN

Adopted: 09/05/74      Revised: 05/08/96

1.      Fuel Burning Equipment

A person shall not discharge from fuel burning equipment having a maximum heat input rate of more than 1 1/2 billion BTU per hour (gross), flue gas having a concentration of nitrogen oxides calculated as nitrogen dioxide (NO<sub>2</sub>) in parts per million parts of flue gas (ppm) by volume at 3 percent oxygen: 125 ppm with natural gas fuel, or 225 ppm with liquid or solid fuel.

2.      Sources other than Combustion Sources

A person shall not discharge from sources other than combustion sources, nitrogen oxides, calculated as nitrogen dioxide (NO<sub>2</sub>): 250 part per million by volume.

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RULE 405. EXCEPTIONS

Adopted: 09/05/74      Revised: 03/10/76, 05/08/96, 11/07/01, 07/7/05

Rules 400, 404-A and 404-B do not apply to:

- A. Fire set by or permitted by a public officer if such fire is set or permission given in the performance of an official duty of such officer, and such fire, in the opinion of such officer, is necessary:
  - 1. For the purpose of the prevention of a fire hazard which cannot be abated by other means, or
  - 2. The instruction of public employees in the methods of fighting fire.
- B. Fires set pursuant to a permit on property used for industrial purposes for the purpose of instruction of employees in methods of fighting fire.
- C. [Deleted: 07/07/05]
- D. The use of an orchard, field crop, or citrus grove heater which does not produce unconsumed, solid carbonaceous matter at a rate in excess of that allowed by State law.
- E. [Deleted: 07/07/05]
- F. The treatment of waste propellants, explosives and pyrotechnics (PEP) in open burn/open detonation operations on military bases for operations approved in accordance with a burn plan as required in Rule 432.
- G. Burning of materials for the purpose of creating special effects during production of commercial or educational films, videos or photographs.
- H. Disposal of contraband (confiscated controlled substances) by burning.
- I. Recreational or ceremonial fires contained in a fireplace, barbeque, or fire pit.
- J. A fire set for the purpose of eliminating a public health hazard that cannot be abated by any other practical means.

[Intentionally left blank.]



RULE 406. OPEN OUTDOOR FIRES

Adopted: 01/21/76      Revised: 10/01/76, 11/04/92, 11/07/01, 09/24/03

A person shall not burn any combustible refuse or waste in any open outdoor fire within the boundaries of the Great Basin Unified Air Pollution Control District, except:

- A. When such fire is set or permission for such fire is given in the performance of the official duty of any public officer, and such fire in the opinion of such officer is necessary:
  - 1. For the purpose of the prevention of a fire hazard which cannot be abated by other means, or
  - 2. The instruction of public employees, or public volunteers under the supervision of a public officer, in the methods of fighting fire.
- B. When such fire is set pursuant to permit on property used for industrial purposes for the purpose of instruction of employees in methods of fighting fires.
- C. Agricultural fires necessary to maintain and continue an agricultural operation set or permitted by a fire official having jurisdiction in the performance of official duty for the purposes of:
  - 1. Control and disposal of agricultural wastes.
  - 2. Range improvement burning.
  - 3. Forest management burning.
  - 4. Fires set in the course of any agricultural operation in the growing of crops, or raising of fowls or animals.
  - 5. Abatement of an immediate health hazard.
  - 6. Wildland vegetation management burning.
- D. On burn days as declared by the State Air Resources Board and pursuant to a valid burn permit as authorized by the Great Basin Unified Air Pollution Control District, fires for the disposal of the following material in the described manner originating from a single or two family dwelling on its premises:
  - 1. Dry non-glossy paper and cardboard, ignited using an approved ignition device, in geographic areas granted a temporary exemption pursuant to Title 17, § 93113(e) of the California Code of Regulations.
  - 2. Dry natural vegetation waste reasonably free of dirt, soil and visible surface moisture by ignition using an approved ignition device.
- E. Fires used only for the cooking of food for human beings or for recreational purposes.

- F. Fires, on burn days as declared by the State Air Resources Board and pursuant to a valid burn permit as authorized by the Great Basin Unified Air Pollution Control District, for the clearing of rights-of-way by a public entity or public utility where access by chipping equipment is not available by existing means or for reservoir maintenance.
- G. Except in case of emergency, permits for the setting of a fire or fires permitted by this rule shall be granted by the Air Pollution Control Officer, or by the public fire official having jurisdiction over the proposed burn location.
- H. When such fire is set for the purpose of burning non-industrial wood waste pursuant to a valid permit as authorized by the Great Basin Unified Air Pollution Control District under District Rule 412.
- I. Burning of materials for the purpose of creating special effects during production of commercial or educational films, videos or photographs. Such burn events cannot pose a public nuisance or health threat, or cause an exceedance of National or State ambient air quality standards.
  - 1. Any person seeking to set fires under this provision shall obtain a valid burn permit from the local fire protection agency.
  - 2. To gain an exemption, the following information shall be submitted to the District in writing at least 10 days in advance of the burn:
    - a. Location of proposed burn,
    - b. Date and approximate time of proposed burn,
    - c. Type and volume of material to be burned, and
    - d. Expected duration of proposed burn.
  - 3. The burner shall notify the APCO the day before each burn.
  - 4. Permission to burn on other than a permissive burn day shall be subject to written approval by the APCO. If the APCO grants written approval, such approval shall be available at the burn location for inspection by District personnel.
- J. Disposal of contraband (confiscated controlled substances) by burning. Such fire must be set and tended by official law enforcement personnel and must have been deemed not disposable by any other means by such officials. Prior to such burns, the District shall be informed of the place, date and time of the burn, and type and quantity of contraband to be disposed.
  - 1. Any person seeking to set fires under this provision shall obtain a valid burn permit from the local fire protection agency.
  - 2. The burner shall notify the APCO the day before each burn.
  - 3. Permission to burn on other than a permissive burn day shall be subject to written approval by the APCO. If the APCO grants written approval, such

approval shall be available at the burn location for inspection by District personnel.

- K. Recreational or ceremonial fires contained in a fireplace, barbeque, or fire pit, provided material burned is free of household, municipal, and industrial waste, such as: tires, tar, plastics and wet wood.
- L. A fire set for the purpose of eliminating a public health hazard that cannot be abated by any other practical means.
  - 1. Any person seeking to set fires under this provision shall obtain a valid burn permit from the local fire protection agency.
  - 2. To gain an exemption, the following information shall be submitted to the District in writing at least 10 days in advance of the burn:
    - a. Written recommendation for such fire by a public health officer,
    - b. Location of proposed burn,
    - c. Date and approximate time of proposed burn,
    - d. Type and volume of material to be burned, and
    - e. Expected duration of proposed burn.
  - 3. The burner shall notify the APCO the day before each burn.
  - 4. Permission to burn on other than a permissive burn day shall be subject to written approval by the APCO. If the APCO grants written approval, such approval shall be available at the burn location for inspection by District personnel.

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**RULE 407. INCINERATOR AND BURN BARREL BURNING**

Adopted: 09/05/74      Revised: 09/24/03

- A. A person shall not burn any combustible refuse or waste in any incinerator, except in a multiple-chamber incinerator or in equipment found by the Air Pollution Control Officer in advance of such use to be equally effective for the purpose of air pollution control as an approved multiple-chamber incinerator. This paragraph shall not apply to incinerators or burn barrels used in accordance with paragraph B of this rule.
- B. A person shall not dispose of any household rubbish or waste originating from a single or two-family dwelling on its premises in an incinerator or burn barrel, except when it is used to burn only dry natural vegetation, non-glossy paper or cardboard in those geographic areas granted a temporary exemption pursuant to Title 17, § 93113(e) of the California Code of Regulations, and the activity takes place on a burn day as declared by the State Air Resources Board pursuant to a valid burn permit as authorized by the Great Basin Unified Air Pollution Control District.

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RULE 408. OPEN BURNING IN AGRICULTURAL OPERATIONS OR DISEASE OR PEST PREVENTION

Adopted: 09/05/74      Revised: 03/10/76, 06/25/79, 07/01/92, 11/04/92, 11/07/01

- A. No person shall burn agricultural wastes on "no burn" days as announced by the State Air Resources Board for the Counties of Inyo, Mono, and Alpine or when prohibited by the Air Pollution Control Officer.
- B. Such burning when authorized shall conform to the following criteria:
  - 1. Material to be burned shall be as dry as feasible prior to burning, and shall be free from combustible impurities such as tires, tar paper, rubbish, plastics, demolition or construction debris, and shall be reasonably free of dirt, soil, and visible surface moisture.
  - 2. Trees and branches over two inches in diameter shall have been dried for at least 10 days prior to burning.
  - 3. Branches under two inches in diameter and prunings shall have been dried for at least 1 week prior to burning.
  - 4. Wastes from field crops that are cut in a green condition shall have been dried for at least 1 week prior to burning.
  - 5. Exceptions to the foregoing may be made by the fire authority which issues the permits to burn, after notification to the Air Pollution Control Officer, and if the material to be burned is diseased or insect infested and there would be irreparable damage if the foregoing standards were rigidly enforced.
  - 6. Material to be burned shall be so arranged as to burn with a minimum of smoke.
  - 7. All burning shall conform to the applicable jurisdictional fire code(s).
  - 8. Rice, barley, oat, and wheat straw shall be ignited only by stripfiring into the wind or by backfiring, except under a special permit of the district issued when and where extreme fire hazards are declared by a public fire protection agency to exist, or where crops are determined by the district not to lend themselves to these techniques.
- C. The use of oil or tires in connection with the ignition or burning of agricultural wastes, roadsides, ditch banks, or patches of vegetation is prohibited.
- D. No agricultural wastes shall be burned without a permit issued by a fire protection authority having jurisdiction over the proposed burn location. As a condition to the issuance of a permit, each applicant shall provide the information required by the issuing agency on forms prepared jointly by said agency and the District. The permit may place a limit upon the amount of materials to be burned in any one day and the hours of the day during which time the material may be burned. Further, the form of this permit shall contain the following words or words of similar import: 'This permit is valid only on those days during which agricultural burning is not prohibited by the State Air Resources Board

or by the Air Pollution Control Officer pursuant to Section 41855 of the Health and Safety Code.'

- E. Burning shall be curtailed when smoke is drifting into a populated area or creating a public nuisance.
- F. Burning hours shall be set so that no field crop burning shall commence before 10:00 a.m. or after 5:00 p.m. of any day, unless the Air Pollution Control Officer determines that local conditions indicate that other hours are appropriate.

[Intentionally left blank.]

**RULE 409. RANGE IMPROVEMENT BURNING**

Adopted: 03/10/76      Revised: 10/01/76, 07/01/92, 11/07/01

- A. No range improvement burning may be done without first having obtained a permit from the California Department of Forestry and Fire Protection or other designated agency having jurisdiction over the proposed burn location. The form of this permit shall contain the following words or words of similar import: 'This permit is valid only on those days during which agricultural burning is not prohibited by the State Air Resources Board or by the Air Pollution Control Officer pursuant to Section 41855 of the Health and Safety Code.'
- B. Range improvement burning, when permitted, shall comply with all the provisions of this rule and all the provisions for wildland vegetation management burning in wildland and wildland/urban interface areas under District Rule 411.
- C. Range improvement burning when permitted shall conform to the following criteria:
  - 1. Where economically and technically feasible, brush shall be treated by chemical or mechanical means at least 6 months prior to a proposed burn, to kill or uproot the brush in order to insure rapid combustion.
  - 2. Unwanted trees over 6" in diameter in the burn area or those not effectively treated at the time of the brush treatment shall be felled at least 3 months prior to the burn, but a longer time may be required where conditions warrant.

[Intentionally left blank.]

**RULE 410. FOREST MANAGEMENT BURNING**

Adopted: 09/05/74      Revised: 03/10/76, 07/01/92, 11/07/01

- A. No forest management burning may be done without first having obtained a permit from the California Department of Forestry and Fire Protection or other designated agency having jurisdiction over the proposed burn locations. The form of this permit shall contain the following words or words of similar import: 'This permit is valid only on those days during which agricultural burning is not prohibited by the State Air Resources Board or by the Air Pollution Control Officer pursuant to Section 41855 of the Health and Safety Code.'
- B. Forest management burning, when permitted, shall comply with all the provisions of this rule and all the provisions for wildland vegetation management burning in wildland and wildland/urban interface areas under District Rule 411.
- C. Forest management burning, when permitted, shall conform to the following criteria:
  - 1. Waste shall be dried sufficiently to insure rapid combustion.
  - 2. Where possible, unless good management dictates otherwise, waste to be burned shall be windrowed or piled so as to burn with a minimum of smoke.

[Intentionally left blank.]



## RULE 411. WILDLAND VEGETATION MANAGEMENT BURNING

Adopted: 09/05/74      Revised: 03/10/76, 07/01/92, 11/07/01, 03/05/20

- A. No wildland vegetation management burning may be done without first having obtained a permit from the California Department of Forestry and Fire Protection or other designated agency having jurisdiction over the proposed burn locations. The form of this permit shall contain the following words or words of similar import: 'This permit is valid only on those days during which agricultural or prescribed burning is not prohibited by the State Air Resources Board or by the Air Pollution Control Officer pursuant to Section 41855 of the Health and Safety Code.'
- B. No person shall conduct wildland vegetation management burning on "no-burn" days as announced by the California Air Resources Board (ARB) for the Inyo, Mono and Alpine Counties or when such burning is prohibited by the Air Pollution Control Officer except when the Air Pollution Control Officer has authorized by special permit pursuant to Section 80120 of Title 17 of the California Code of Regulations agricultural or prescribed burning on days designated by the State Air Resources Board as no-burn days because the denial of such permit would threaten imminent and substantial economic loss. In authorizing such burning the Air Pollution Control Officer may limit the amount of acreage which can be burned in any one day and only authorize burning that is not forecasted to cause or significantly contribute to exceedances of the ambient air quality standards. Every applicant for a permit to burn on a no-burn day pursuant to this section shall provide information in writing to the Air Pollution Control Officer for evaluation, stating why the denial of such a permit would threaten imminent and substantial economic loss.
- C. Wildland vegetation management burning, when permitted, shall conform to the following criteria:
  - 1. The land manager, or their designee, shall annually or seasonally submit a potential list of burn projects to the Air Pollution Control Officer, including areas considered for potential naturally-ignited wildland fires managed for resource benefits, with updates as they occur.
  - 2. A Smoke Management Plan shall be submitted for all burn projects greater than 1 acre in size or estimated to produce more than 1 ton of particulate matter. The land manager, or their designee, shall submit the smoke management plan to the Air Pollution Control Officer for review and approval at least 30 days in advance of the proposed burn project, containing at a minimum, the following information:
    - a. Location, types, and amounts of material to be burned;
    - b. Expected duration of the fire from ignition to extinction;
    - c. Identification of responsible personnel, including contact information;
    - d. Identification and location of all smoke sensitive areas; and
    - e. Procedures for public notification and education, including public outreach, appropriate signage at burn sites, and for reporting of public smoke complaints.

3. For burn projects greater than 100 acres in size or estimated to produce more than 10 tons of particulate matter the land manager, or their designee, shall submit a smoke management plan to the Air Pollution Control Officer for review and approval at least 30 days in advance of the proposed burn project, containing all the information in subsection 2 and at a minimum the following additional information:
  - a. Identification of meteorological conditions necessary for burning. The plan should include projections of where the smoke from burns is expected to travel.
  - b. The smoke management criteria the land manager or their designee will use for making burn ignition decisions.
  - c. Discussion of the actions that will be taken to minimize smoke impacts.
  - d. Specific mitigations and contingency actions (such as fire suppression or containment) that will be taken when identified thresholds or management action points occur or meteorological conditions deviate from those specified in the smoke management plan.
  - e. An evaluation of considered alternatives to burning.
  - f. Public notification procedures and methods.
4. If smoke may impact smoke sensitive areas, the land manager, or their designee, shall include in the smoke management plan; public outreach and messaging, smoke forecasting, visual monitoring, ambient particulate matter monitoring or other monitoring or mitigation measures approved by the District, as required by the Air Pollution Control Officer for the following burn projects:
  - a. Projects greater than 250 acres;
  - b. Projects that will continue burning or producing smoke overnight;
  - c. Projects conducted near smoke sensitive areas; or
  - d. As otherwise required by the Air Pollution Control Officer.
5. Daily burn authorization from the District is required for all burn projects requiring a Smoke Management Plan to minimize smoke impacts to smoke sensitive areas and avoid cumulative smoke impacts. The land manager shall request burn authorization via a method approved by the District at least 3 days in advance of the planned burn and shall specify the amount, timing and location of the burning to be completed. The District will issue daily burn authorizations at least 24-hours prior to the burn. The District's burn authorization may be contingent upon, or subject to change based on ARB burn day determination, air quality conditions, meteorological conditions, or other conditions affecting smoke dispersion. The District shall consider the following factors in reviewing a daily burn request:
  - a. ARB burn day determination or forecast;
  - b. Current and forecasted ambient air quality conditions;

- c. Forecasted meteorological conditions, including wind speeds and directions at the surface and aloft, and atmospheric stability;
  - d. Types and amounts of materials to be burned;
  - e. Location and timing of materials to be burned;
  - f. Locations of smoke sensitive areas; and
  - g. Smoke from all burning activities, including burning in neighboring air districts or regions which may affect the District or region.
6. For any burns which may impact smoke sensitive areas, the land manager or their designee, shall coordinate with and provide notification to the District and the ARB to affirm that the burn project remains within the conditions specified in the smoke management plan, or to determine whether contingency actions are necessary.
7. For any natural ignition that occurs on a no-burn day, the initial “go/no-go” decision to manage the fire for resource benefit will be a “no-go” unless:
- a. After consultation with the District, the District decides, for smoke management purposes, that the burn can be managed for resource benefit; or
  - b. For periods of less than 24 hours, a reasonable effort has been made to contact the District, or if the District is not available, the ARB;
  - c. After 24 hours, the District has been contacted, or if the District is not available, the ARB has been contacted and concurs that the burn can be managed for resource benefit.

A “no-go” decision does not necessarily mean that the fire must be extinguished, but that the fire cannot be considered as a prescribed fire.

8. For any unplanned or naturally-ignited wildland fire managed for resource benefits that are expected to exceed 10 acres in size, the land manager or their designee, shall submit a smoke management plan to the District for review and approval within 72 hours of the start of a fire. In addition to the requirements for a planned ignition, Smoke management plans for unplanned or naturally-ignited wildland fire managed for resource benefits shall include:
- a. Incorporation of air quality management considerations in fire management documents and decisions.
  - b. Adaptive management based on forecasted and monitored smoke concentrations to match emissions to dispersion opportunities. The District may require limiting or postponing ignitions to avoid cumulative smoke impacts, prevent public nuisance, and prevent violations of the ambient air quality standards.
  - c. Public notification and messaging methods.
  - d. Additional forecasting, monitoring, and mitigation measures as appropriate

9. The land manager or their designee shall ensure that all conditions and requirements stated in the smoke management plan are met on the day of the burn event and prior to ignition.
  10. For burn projects greater than 250 acres, the land manager or their designee shall perform a post-burn smoke management evaluation.
  11. Vegetation shall be in a condition that will minimize the smoke emitted during combustion when feasible, considering fire safety and other factors.
  12. Material to be burned should be piled where possible unless good silvicultural practices or ecological goals dictate otherwise. Piled material shall be prepared so that it will burn with a minimum of smoke.
  13. If the burn is to be done primarily for improvement of land for wildlife and game habitat, the burn plan applicant shall file with the District a statement from the Department of Fish and Game certifying that the burn is desirable and proper. The Department of Fish and Game may specify the amount of brush treatment required, along with any other conditions it deems appropriate.
  14. Burn plans shall limit or postpone burning, or require mitigation, when the meteorological conditions and smoke impacts may cause or contribute to an exceedance of a state or federal ambient air quality standard or cause a public nuisance.
  15. Vegetation to be burned shall be free of tires, rubbish, tar paper or construction debris, and reasonably free of dirt and soil.
  16. The material to be burned shall be ignited only by devices approved by the California Department of Forestry and Fire Protection, or the local fire protection agency, and ignition shall be as rapid as practicable within applicable fire control restrictions.
  17. All burning shall conform to the applicable jurisdictional fire code(s).
  18. Burning shall be managed to minimize smoke impacts to smoke sensitive areas.
- D. The total amount of material burned in any one day may be limited or postponed by the District, taking into consideration matters which would affect the ambient air quality of the District including current and forecasted air quality conditions; meteorological conditions; the types and amounts of material to be burned; the location and timing of material to be burned; the location of smoke sensitive areas; and the cumulative smoke impacts from all burning activities within and outside the District.

RULE 412. OPEN BURNING OF NON-INDUSTRIAL WOOD WASTE AT CITY OR COUNTY DISPOSAL SITES

Adopted: 09/05/74      Revised: 02/09/81, 11/04/92

- A. No person shall burn non-industrial wood waste on "no-burn" days as announced by the State Air Resources Board for the Counties of Inyo, Mono, and Alpine or when prohibited by the Air Pollution Control Officer.
- B. Burning of non-industrial wood waste at city or county disposal sites shall be restricted to sites above 1,500 feet (above mean sea level), that have been approved for such burning by the Air Pollution Control Officer (APCO) and the California Air Resources Board. Approval shall be based upon the submittal of written documentation for each site which shall include:
  - 1. A copy of the resolution by the applicable city council or county board of supervisors declaring their intention to allow burning at designated sites.
  - 2. The estimated tonnage and type of material to be burned at each site with the estimated criteria pollutant emissions, broken down by month for a one year period and an analysis of air quality trends showing that the proposed burns will not prevent the achievement or maintenance of the ambient air quality standards.
  - 3. Location and elevation of the sites to be used for burning.
  - 4. A copy of a written statement by the owner of the land on which the disposal site is located approving the burn on such land.
  - 5. Written approval of the fire protection agency having authority over the proposed burn site.
  - 6. A statement explaining why burning at the disposal site will not create a nuisance. This shall include consideration for the site's proximity to population centers and the prevailing wind pattern.
  - 7. A statement indicating who is responsible to verify that only non-industrial wood waste is burned and how often inspections shall be made at each site.
- C. Such burning when authorized shall conform to the following criteria:
  - 1. Material to be burned shall be as dry as feasible prior to burning, and shall be free from combustible impurities such as tires, tar paper, rubbish, plastics, demolition or construction debris, and shall be reasonably free of dirt, soil, and visible surface moisture.
  - 2. Trees and branches over two inches in diameter shall have been dried for at least 10 days prior to burning.
  - 3. Branches under two inches in diameter and prunings shall have been dried for at least 1 week prior to burning.

4. Exceptions to the foregoing may be made by the fire authority which issues the permits to burn, after notification to the Air Pollution Control Officer, and if the material to be burned is diseased or insect infested and there would be irreparable damage if the foregoing standards were rigidly enforced.
  5. Material to be burned shall be so arranged as to burn with a minimum of smoke.
  6. All burning shall conform to the applicable jurisdictional fire code(s).
- D. The use of oil or tires in connection with the ignition or burning of non-industrial wood wastes is prohibited.
- E. No non-industrial wood waste shall be burned without a permit issued by a fire protection authority having jurisdiction over the proposed burn location. As a condition to the issuance of a permit, each applicant shall provide the information required by the issuing agency on forms prepared jointly by said agency and the District. The permit may place a limit upon the amount of materials to be burned in any one day and the hours of the day during which time the material may be burned. Further, the form of this permit shall contain the following words or words of similar import: 'This permit is valid only on those days during which agricultural burning is not prohibited by the State Air Resources Board or by the Air Pollution Control Officer pursuant to Section 41855 of the Health and Safety Code.'
- F. Burning shall be curtailed when smoke is drifting into a populated area or creating a public nuisance. If smoke from a particular site repeatedly drifts into a populated area or causes a nuisance, the APCO will revoke approval for that site.
- G. The total amount of material burned in any one day, may be limited by the District, taking into consideration matters which would affect the ambient air quality of the District.

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**RULE 413. REDUCTION OF ANIMAL MATTER**

Adopted: 09/05/74      Revised: 11/04/92

- A. A person shall not operate or use any article, machine, equipment or other contrivance for the reduction of animal matter unless all gases, vapors and gas-entrained effluents from such an article, machine, equipment or other contrivance are:
  - 1. Incinerated at temperatures of not less than 1200 degrees Fahrenheit for a period of not less than 0.3 seconds; or
  - 2. Processed in such a manner determined by the Air Pollution Control Officer to be equally, or more effective for the purpose of air pollution control than (A) above.
- B. A person incinerating or processing gases, vapors or gas-entrained effluent pursuant to this rule shall provide, properly install and maintain in calibration, in good working order and in operation, devices, as specified in the Authority to Construct or Permit to Operate or as specified by the Air Pollution Control Officer, for recording temperature pressure or other operating conditions.
- C. The provisions of this rule shall not apply to any article, machine, equipment or other contrivance used exclusively for the processing of food for human consumption.

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RULE 416. SULFUR COMPOUNDS AND NITROGEN OXIDES

Adopted: 09/05/74      Revised 11/04/92

A person shall not discharge from any single source whatsoever any one or more of the following contaminants in any state or combination thereof, exceeding in concentration or amount at the point of discharge to the atmosphere:

1. Sulfur compounds calculated as sulfur dioxide: 0.2% by volume.
2. Nitrogen oxides, calculated as nitrogen dioxide (NO<sub>2</sub>): 140 pounds per hour from any new or expanded boiler, furnace, jet engine, or similar fuel burning equipment used for the production of power or heat.

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**RULE 417. ORGANIC SOLVENTS**

Adopted: 09/05/74

- A. A person shall not discharge more than 15 pounds of organic materials into the atmosphere in any one day, nor more than 3 pounds in any one hour, from any article, machine, equipment or other contrivance in which any organic solvent or any material containing organic solvent comes into contact with flame or is baked, heatcured or heat-polmerized, in the presence of oxygen, unless said discharge has been reduced by at least 85 percent. Those portions of any series of articles, machines, equipment or other contrivances designed for processing a continuous web, strip or wire which emit organic materials and use continuous operations described in this section shall be collectively subject to compliance with this section.
- B. A person shall not discharge more than 40 pounds of organic materials into the atmosphere in any one day, nor more than 8 pounds in any one hour, from any article, machine, equipment or other contrivance used under conditions other than described in section (A), for employing or applying, any photochemically reactive solvent, as defined in section (J), or material containing such photochemically reactive solvent, unless said discharge has been reduced by at least 85 percent. Emissions of organic materials into the atmosphere resulting from air or heating drying of products for the first 12 hours after their removal from any article, machine, equipment, or other contrivance described in this section shall be included in determining compliance with this section. Emissions resulting from baking, heat curing or heat-polymerizing as described in section (A) shall be excluded from determination of compliance with this section. Those portions of any series of articles, machines, equipment or other contrivances designed for processing a continuous web, strip or wire which emit organic materials and use operations described in this section shall be collectively subject to compliance with this section.
- C. A person shall not discharge into the atmosphere more than 3,000 pounds of organic materials in any one day, nor more than 450 pounds in any one hour, from any article, machine, equipment or other contrivance in which any non-photochemically reactive organic solvent or any material containing such solvent is employed or applied, unless said discharge has been reduced by at least 85 per-cent. Emissions of organic materials into the atmosphere resulting from air or heated drying of products for the first 12 hours after their removal from any article, machine, equipment, or other contrivance described in this section shall be included in determining compliance with this section. Emissions resulting from baking, heat-curing, or heat polymerizing as described in section (A) shall be excluded from determination of compliance with this section. Those portions of any series of articles, machines, equipment or other contrivances designed for processing a continuous web, strip or wire which emit organic materials and use operations described in this section shall be collectively subject to compliance with this section.
- D. Emissions of organic materials to the atmosphere from the cleanup with photochemically reactive solvent, as defined in section (J), of any article, machine, equipment or other contrivance described in sections (A), (B), or (C) shall be included with the other emissions or organic materials from that article, machine, equipment or other contrivance for determining compliance with this rule.

- E. Emissions of organic materials into the atmosphere required to be controlled by sections (A), (B), or (C) shall be reduced by:
1. Incineration, provided that 90 percent or more of the carbon in the organic material being incinerated is oxidized to carbon dioxide, or
  2. Adsorption, or
  3. Processing in a manner determined by the Air Pollution Control Officer to be not less effective than (1) or (2) above.
- F. A person incinerating, adsorbing or otherwise processing organic materials pursuant to this rule shall provide, properly install and maintain in calibration, in good working order and in operation, devices as specified in the authority to construct or the permit to operate, or as specified by the Air Pollution Control Officer, for indicating and recording temperatures, pressures, rates of flow or other operating conditions necessary to determine the degree and effectiveness of air pollution control.
- G. Any person using organic solvents or any materials containing organic solvents shall supply the Air Pollution Control Officer, upon request and in the manner and form prescribed by him, written evidence of the chemical compositions, physical properties and amount consumed for each organic solvent used.
- H. The provisions of this rule shall not apply to:
1. The manufacture of organic solvents, or the transport or storage of organic solvents or materials containing organic solvents.
  2. The use of equipment for which other requirements are specified by Rules 417, 418, 419 and 420 or which are exempt from air pollution control requirements by said rules.
  3. The spraying or other employment of insecticides, pesticides or herbicides.
  4. The employment, application, evaporation or drying of saturated halogenated hydrocarbons or perchloroethylene.
  5. The use of any material, in any article, machine, equipment or other contrivance described in sections (A), (B), (C) or (D), if:
    - (i) the volatile content of such material consists only of water and organic solvents, and
    - (ii) the organic solvents comprise not more than 20 percent of said volatile content, and
    - (iii) the volatile content is not photochemically reactive as defined in section (J), and
    - (iv) the organic solvent or any material containing organic solvent does not come into contact with flame.

6. The use of any material, in any article, machine, equipment or other contrivance described in sections (A), (B), (C) or (D), if:
  - (i) the organic solvent content of such material does not exceed 20 percent by volume of said materials and
  - (ii) the volatile content is not photochemically reactive as defined in section (J), and
  - (iii) more than 50 percent by volume of such volatile material is evaporated before entering a chamber heated above ambient application temperature and
  - (iv) the organic solvent or any material containing organic solvent does not come into contact with flame.
7. The use of any material, in any article, machine, equipment or other contrivance described in sections (A), (B), (C) or (D), if:
  - (i) the organic solvent content of such material does not exceed 5 percent by volume of said material and
  - (ii) the volatile content is not photochemically reactive as defined in section (J) and
  - (iii) the organic solvent or any material containing organic solvent does not come into contact with flame.
- I. For the purposes of this rule, organic solvents include diluents and thinners and are defined as organic materials which are liquids at standard conditions and which are used as dissolvers, viscosity reducers or cleaning agents, except that such materials which exhibit a boiling point higher than 220 F. at 0.5 millimeter mercury absolute pressure or have an equivalent vapor pressure shall not be considered to be solvents unless exposed to temperatures exceeding 220 F.
- J. For the purposes of this rule, photochemically reactive solvent is any solvent with an aggregate of more than 20 percent of its total volume composed of the chemical compounds classified below or which exceeds any of the following individual percentage composition limitations, referred to the total volume of solvent:
  1. A combination of hydrocarbons, alcohols, aldehydes, esters, ethers, or ketons having an olefinic or cyclo-olefinic type of unsaturation: 5 percent;
  2. A combination of aromatic compounds with eight or more carbon atoms to the molecule except ethylbenzene: 8 percent;
  3. A combination of ethylbenzene, ketons having branched hydrocarbon structures, trichloroethylene or toluene: 20 percent.

Whenever any organic solvent or any constituent of an organic solvent may be classified from its chemical structure into more than one of the above groups or organic compounds, it shall be considered as a member of the most reactive chemical group that is, that group having the least allowable percentage of the total volume of solvents.

- K. For the purposes of this rule, organic materials are defined as chemical compounds of carbon excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, metallic carbonates and ammonium carbonate.

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**RULE 419. GASOLINE LOADING INTO STATIONARY TANKS**

Adopted: 01/21/76      Revised: 10/31/77, 07/13/78, 06/25/79

- A. A person shall not load or permit the loading of gasoline into any stationary tank installed after December 31, 1970, with a capacity of 250 gallons or more from any tank, truck or trailer, except through a submerged fill pipe, unless such tank is equipped with a vapor control system certified by the California Air Resources Board for that use.
1. For the purpose of this rule, the term "gasoline" is defined as any petroleum distillate having a Reid vapor pressure of four pounds or greater.
  2. For the purpose of this rule, the term "submerged fill pipe" is defined as any fill pipe, the discharge opening of which is entirely submerged when the liquid level is six inches above the bottom of the tank, "submerged fill pipe" when applied to a tank which is loaded from the side is defined as any fill pipe, the discharge opening of which is entirely submerged when the liquid is 18 inches above the bottom of the tank.
  3. Permit fee assessment shall be in accordance with Regulation III, Schedule 5 with the exception of any non-retail tank installed prior to July 13, 1978, having both a capacity of less than 2000 gallons and an annual throughput of less than 8000 gallons per year.
  4. Any non-retail tank installed prior to July 13, 1978, with a capacity of less than 2000 gallons and an annual throughput of less than 8000 gallons shall be assessed a permit fee of \$10.00 for the issuance of a lifetime permit.

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## RULE 420 - ORGANIC LIQUID LOADING

Adopted: 09/05/74

- A. A person shall not load organic liquids having a vapor pressure of 1.5 pounds per square inch absolute or greater under actual loading conditions into any tank truck, trailer or railroad tank car from any loading facility unless the loading facility is equipped with a vapor collection and disposal system or its equivalent approved by the Air Pollution Control Officer.

Loading shall be accomplished in such a manner that all displaced vapor and air will be vented only to the vapor collection system. Measures shall be taken to prevent liquid drainage from the loading device when it is not in use or to accomplish complete drainage before the loading device is disconnected.

The vapor disposal portion of the vapor collection and disposal system shall consist of one of the following:

1. An absorber system or condensation system which processes all vapor and recovers at least 90 percent by weight of the organic vapors and gases from the equipment being controlled.
2. A vapor handling system which directs all vapors to a fuel gas system.
3. Other equipment of an efficiency equal to or greater than (1) or (2) if approved by the Air Pollution Control Officer.

This rule shall apply only to the loading of organic liquids having a vapor pressure of 1.5 pounds per square inch absolute or greater than actual loading conditions at a facility from which greater than 20,000 gallons of such organic liquids are loaded in any one day.

"Loading Facility", for the purpose of this rule, shall mean any aggregation or combination of organic liquid loading equipment which is both (a) possessed by one person, and (b) so located so that all organic liquid loading outlets for such aggregation or combination of loading equipment can be encompassed within any circle of 300 feet in diameter.

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RULE 421. INTENDED APPLICATION OF RULES AND REGULATIONS

Adopted: 09/05/74

Nothing in these Regulations is intended to permit any practice which is a violation of any Federal, State or local statute, ordinance, law, rule or regulation.

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# RULE 423 - RESEARCH OPERATIONS

Adopted: 07/20/77      Revised: 02/09/81

The provisions of Regulation IV except Rule 402 shall not apply to experimental research operations when the following requirements are met:

- (a)    The purpose of the operation is to permit investigation, experiment or research to advance the state of the art; and
- (b)    The Air Pollution Control Officer has given written prior approval which shall include limitation of time; and
- (c)    Sufficient information is provided to satisfy the Air Pollution Control Officer that such an operation will not cause or contribute to a violation of State or National Ambient Air Quality Standards.

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## RULE 424. GEOTHERMAL EMISSIONS STANDARDS

Adopted: 09/05/74      Revised: 02/09/81, 07/06/95

- A. No person shall discharge into the atmosphere from any geothermal operation, sulfur compounds, calculated as sulfur dioxide (SO<sub>2</sub>), in excess of 1,000 ppm.
- B. No person shall discharge into the atmosphere from any geothermal power plant more than 100 grams/MwHr of hydrogen sulfide, H<sub>2</sub>S.
- C. No person shall discharge into the atmosphere from any geothermal well, including well drillings, well reworking and well testing, more than 2.5 kg/hr/well of hydrogen sulfide H<sub>2</sub>S.
- D. No person shall discharge into the atmosphere from any miscellaneous steam supply operation more than 2.5 kg/hr/ source of hydrogen sulfide H<sub>2</sub>S.
- E. Upon an unscheduled outage, an operator shall, within four (4) hours or less, reduce H<sub>2</sub>S emissions: (1) by 90% or more for dual units or, (2) by 65% or more for single units or when both units of a dual unit system have a simultaneous outage or, (3) to not more than 15 kg/hr. For scheduled outages, the same emissions standards shall be met within one (1) hour or less.
- F. A summary of the data required to determine compliance with applicable provisions of this rule shall be submitted to the Air Pollution Control Officer. This summary shall be presented in the manner, frequency and form as prescribed by the Air Pollution Control Officer.
- G. DEFINITIONS
  - 1. Gross Megawatt Hour (MwHr) means the gross amount of electrical generating capacity of a power plant as guaranteed by the turbine generator manufacturer, prior to internal plant requirements, expressed in megawatt hours.
  - 2. Miscellaneous Steam Supply Operation means any operation associated with providing steam for a geothermal power plant, excluding well drilling, well reworking, and well testing.
  - 3. Active Developer means any entity with one or more valid Permit(s) to Operate for a geothermal well utilized for electrical power generation within the KGRA.
- H. Notwithstanding the provisions of Sections A and C, the active developers in a KGRA may jointly petition the Air Pollution Control Officer to establish a Real-time Monitoring Program (RMP) to determine allowable H<sub>2</sub>S emissions from well drilling, testing, return to production and clean-out. This petition must include an agreement signed by all the active developers in the KGRA to comply with the RMP requirements. The agreement must include a method of assigning responsibility if any requirement of the RMP is violated, and acceptance of the higher well authority to construct and permit renewal fees as outlined in Rule 301. Schedule of Permit Fees, Schedule 7.

The RMP shall be developed and implemented by the active developers in a KGRA, and shall include the following enforceable provisions:

1. All active developers shall continuously record well venting to determine the H<sub>2</sub>S emission rate and venting duration from all wells subject to the program.
2. All active developers shall continuously record meteorological data sufficient to estimate H<sub>2</sub>S ambient impacts through dispersion modeling techniques.
3. All active developers shall continuously record ambient H<sub>2</sub>S concentrations through ambient monitoring techniques to help monitor program compliance.
4. All active developers shall stay below venting limits for the subject wells under:
  - a. a routine venting plan based on an acceptable range of H<sub>2</sub>S venting rates from all sources and meteorological conditions that can be used routinely without causing ambient impacts to exceed 15 parts per billion by volume (ppbv) H<sub>2</sub>S in any area where the public has access, and/or
  - b. a non-routine venting plan that utilizes real-time meteorology and venting rates from all sources in a dispersion model to ensure that ambient impacts will not exceed 15 ppbv H<sub>2</sub>S in any area where the public has access.
5. In the Coso KGRA, during Naval Air Weapons Station approved Native American visits all active developers will utilize real-time meteorology and venting rates from all sources in a dispersion model to ensure that ambient impacts will not exceed 15 ppbv H<sub>2</sub>S at the upwind boundary of the visitation area.
6. All active developers shall monitor and control worker exposure to H<sub>2</sub>S so that it does not exceed the permissible exposure limits established by Cal-OSHA.
7. If hourly average H<sub>2</sub>S readings at any RMP-designated ambient monitor site;
  - a. exceeds an average of 15 ppbv for any one hour period, all active developers shall reduce well venting so that the one-hour average reading is reduced to less than 15 ppbv within one hour, or
  - b. exceeds an average of 18 ppbv for any one hour period, all active developers shall suspend well venting until the hourly average ambient H<sub>2</sub>S reading is reduced to less than 15 ppbv.

If the APCO grants the petition for an RMP, all the terms of the RMP automatically become permit conditions of all existing well authorities to construct and permits to operate held by active developers in that KGRA. If wells are to be added later, the developer of the well must submit with the application for authority to construct an updated venting plan using worst-case assumptions for the new well emissions.

The RMP will be revoked if any active developer withdraws from the agreement, or if a new active developer does not wish to join the agreement. The APCO can, upon 30 days notice to all developers, withdraw permission for the RMP for any reasonable cause.

RULE 425. GASOLINE VAPOR RECOVERY

Adopted: 12/14/88      Revised: 11/10/93

A. PURPOSE

To comply with the Air Resources Board's airborne toxic control measure for emissions of benzene from retail service stations as required by California Health and Safety Code Section 39666. This Rule does not apply to service stations with an annual gasoline throughput of less than 120,000 gallons.

B. DEFINITIONS

For the purposes of this rule, the following definitions shall apply:

1. "ARB-certified vapor recovery system" means a vapor recovery system which has been certified by the state board pursuant to Section 41954 of the Health and Safety Code.
2. "Excavation" means exposure to view by digging.
3. "Gasoline" means any organic liquid (including petroleum distillates and methanol) having a Reid vapor pressure of four pounds or greater and used as a motor vehicle fuel or any fuel which is commonly or commercially known or sold as gasoline.
4. "Motor vehicle" has the same meaning as defined in Section 415 of the Vehicle Code.
5. "Owner or operator" means an owner or operator of a retail service station.
6. "Phase I vapor recovery system" means a gasoline vapor recovery system which recovers vapors during the transfer of gasoline from delivery tanks into stationary storage tanks.
7. "Phase II vapor recovery system" means a gasoline vapor recovery system which recovers vapors during the fueling of motor vehicles from stationary storage tanks.
8. "Retail service station" means any new or existing motor vehicle fueling service station subject to payment of California sales tax on gasoline sales.
9. "Existing retail service station" means any retail service station operating, constructed, or under construction as of December 14, 1988.
10. "New retail service station" means any retail service station which is not constructed or under construction as of December 14, 1988.
11. "Tank replacement" means replacement of one or more stationary storage tanks at an existing retail service station or excavation of 50 percent or more of an existing retail service station's total underground liquid piping from the stationary storage tanks to the gasoline dispensers.

12. "Throughput" means the volume of gasoline dispensed at a retail service station.

C. PHASE I - GASOLINE LOADING INTO STATIONARY TANKS

1. Requirements

No owner or operator shall transfer, permit the transfer, or provide equipment for the transfer of gasoline, and no other person shall transfer gasoline from a gasoline delivery tank equipped with a vapor recovery system into a stationary storage tank at a retail service station unless an ARB-certified Phase I vapor recovery system is installed on the stationary storage tank and used during the transfer.

2. Exemptions

- a. A transfer to a stationary storage tank with a capacity of less than 260 gallons.
- b. A transfer to a stationary storage tank used the majority of the time for the fueling of implements of husbandry as defined in Division 16, Chapter 1, of the Vehicle Code.
- c. A transfer to a stationary storage tank used exclusively to fuel motor vehicles with a fuel capacity of five gallons or less.
- d. A transfer to a stationary storage tank at an existing retail service station which receives gasoline exclusively from delivery tanks that are not required to be equipped with vapor recovery systems.
- e. An existing retail service station with an annual station gasoline throughput from tanks other than those described above of 450,000 or fewer gallons during 1987. If during any calendar year thereafter the gasoline throughput from such tanks at the existing retail service station exceeds 450,000 gallons, this exemption shall cease to apply, commencing with the first day of the following calendar year. However, at the time of tank replacement at an existing retail service station with an annual station gasoline throughput of 120,000 gallons or more, ARB-certified Phase I vapor recovery systems shall be installed and used thereafter on all of the station facilities that are not exempt under Sections 2 (a), (b), (c), or (d).

3. Permit Fee

All retail service stations subject to this rule shall obtain an Authority to Construct/Permit to Operate at the time of installation of Phase I equipment, and shall pay a fee in accordance with Regulation III, Schedule 5.

D. PHASE II - TRANSFER OF GASOLINE INTO VEHICLE FUEL TANKS

1. Requirements

No owner or operator shall transfer, permit the transfer or provide equipment for the transfer of gasoline from a stationary storage tank at a retail service station into a motor vehicle fuel tank unless an ARB-certified Phase II vapor recovery system is installed and used during the transfer.

2. Exemptions

An owner/operator seeking an exemption from any section of this rule must supply the APCO with all information necessary for the APCO to determine whether such an exemption should be granted. A photo copy of the owner's/operator's Franchise Tax Board report will be sufficient to meet this requirement. Owners/Operators seeking exemption on throughput criteria must petition annually to renew such exemptions. All information must be certified to be correct under penalty of perjury by the applicant and should be supplied to the District within 60 days of the start of each calendar year.

- a. A transfer of gasoline from a stationary storage tank which is exempt from Phase I requirements under Sections C. 2 (a), (b), or (c).
- b. An existing retail service station which is exempt from Phase I requirements under Section C. 2 e.

3. Correction of Defects

No owner or operator shall use or permit the use of any Phase II system or any component thereof containing a defect identified in Title 17, California Administrative Code, Section 94006, Part III, Chapter 1, Subchapter 8:

- a. Absence or disconnection of any component required to be used in the system as certified by the California Air Resources Board;
- b. A nozzle hose which is crimped or flattened such that the vapor passage is blocked;
- c. A nozzle boot which is torn in one or more of the following manners:
  - 1. Triangular-shaped or similar tear 1/2-inch or greater to a side, or hole 1/2-inch or greater in diameter or,
  - 2. Slit 1-inch or greater in length.
- d. Faceplate or flexible cone which is damaged in the following manner:
  - 1. For balance nozzles and for aspirator assist type nozzles, tears or separation resulting in improper interface seal for an additive 1/4 of the circumference of the Faceplate;

2. For vacuum assist type nozzles, greater than 1/4 of the flexible cone missing;
- e. Nozzle shutoff mechanisms which malfunction in any manner;
- f. Vapor return lines, including such components as swivels anti-recirculation valves and underground piping, which malfunction or are blocked;
- g. Vapor processing device which is inoperative or severely malfunctioning;
- h. Vacuum producing device which is inoperative or severely malfunctioning;
- i. Pressure/vacuum relief valves, vapor check valves, or dry breaks which are inoperative;
- j. Any equipment defect which is identified in a California Air Resources Board system certification as substantially impairing the effectiveness of the system in reducing air contaminants;
- k. Any improper or non California Air Resources Board certified equipment or components.

#### 4. Prohibition of Use

Whenever the Air Pollution Control Officer (APCO) determines that a Phase II vapor recovery system, or any component thereof, contains a defect specified by the California Air Resources Board pursuant to Section 41960.2 (c) of the Health and Safety Code or specified in Section 3 of this rule the APCO or his delegate shall mark such system or component "Out of Order". No person shall use or permit the use of such marked component or system until it has been repaired, replaced or adjusted, as required to permit proper operation, and the APCO or his delegate has reinspected it or has authorized its use pending reinspection.

#### 5. Posting of Operating Instructions

The owner or operator of each gasoline dispensing facility requiring a Phase II vapor recovery system shall conspicuously post in the gasoline dispensing area operating instructions for the system and the District's or the Air Resource Board's telephone number for complaints. The instructions shall clearly describe how to fuel vehicles correctly with the vapor recovery nozzles, and shall include a warning that topping off may result in spillage or recirculation of gasoline.

#### 6. Compliance Schedule

For the purposes of the Rule, the following compliance schedule shall apply:

- a. The owner or operator of any new retail service station subject to this rule shall comply with the provisions of this rule at the time gasoline is first sold from the station.

- b. The owner or operator of any existing retail service station without ARB-certified Phase I and II vapor recovery systems shall notify the air pollution control officer in writing in advance of an intended tank replacement and shall secure all necessary permits and other approvals for the installation of Phase I and II vapor recovery systems. The owner or operator of an existing retail service station shall comply with the provisions of this section upon completion of the tank replacement.
- c. The owner or operator of an existing retail service station subject to this rule, who has not earlier complied in accordance with (6) (b), shall by March 14, 1990 secure all permits and other approvals necessary for installation of the equipment required by this rule. The owner or operator shall comply with the provisions of this rule by December 14, 1990.
- d. Excluding those existing retail service stations subject to this rule as a result of tank replacement, the owner or operator of a previously exempt stationary storage tank or retail service station where the operation or annual throughput has changed such that the exemption from either the Phase I or II requirements or both is no longer applicable, shall within 15 months after loss of exemption secure all permits and other approvals necessary for installation of the equipment required by this rule. The owner or operator shall comply with the provisions of this rule within 24 months after loss of exemption.

7. Permit Fee

All retail service stations subject to this rule shall obtain an Authority to Construct/Permit to Operate at the time of installation of Phase II equipment, and shall pay a fee in accordance with Regulation III, Schedule 5.

RULE 426. CHROME PLATING AND CHROMIC ACID ANODIZING

Adopted: 09/05/74

A. PURPOSE

To comply with the Air Resource Board's Hexavalent Chromium Airborne Toxic Control Measure for Decorative and Hard Chrome Plating and Chromic Acid Anodizing Facilities, as required by California Health and Safety Code Section 39666.

B. DEFINITIONS

For the purposes of this rule, the following definitions shall apply:

1. "Ampere-hours" means the integral of electrical current applied to a plating tank (amperes) over a period of time (hours).
2. "Anti-mist additive" means a chemical which reduces the emission rate from the tank when added to and maintained in the plating tank.
3. "Chrome" means metallic chrome.
4. "Chrome plating" means either hard or decorative chrome plating.
5. "Chromic acid" means an aqueous solution of chromium trioxide ( $\text{CrO}_3$ ) or a commercial solution contain in chromic acid, dichromic acid ( $\text{H}_2\text{CrO}_7$ ) or trichomic acid ( $\text{H}_2\text{Cr}_3\text{O}_{10}$ ).
6. "Chromic acid anodizing" means the electrolytic process by which a metal surface is converted to an oxide surface coating in a solution containing chromic acid.
7. "Chromium" means hexavalent chromium.
8. "Control equipment" means any device which reduces emissions from the emissions collection system.
9. "Decorative chrome plating" means the process by which chromium is electrodeposited from a solution containing compounds of chromium onto an object resulting in a chrome layer 1 micron (0.04 mil) thick or less.
10. "Emission factor" means the mass of chromium emitted during a test conducted in the emissions collection system in accordance with ARB Test Method 425, divided by the ampere-hours consumed by the tanks in the tested emissions collection system, expressed as the mass of chromium emitted per ampere-hour of electrical current consumed.
11. "Emissions collection system" means a device or apparatus used to gather chromium emissions from the surface of a chrome plating or chromic acid anodizing tank or tanks.



12. "Facility" means a business or businesses engaged in chrome plating or chromic acid anodizing which are owned or operated by the same person or persons and are located on the same parcel or on contiguous parcels.
13. "Facilitywide emissions from hard chrome plating or chromic acid anodizing" means the total emissions from all hard chrome plating or chromic acid anodizing at the facility over a calendar year. Emissions shall be calculated as the sum of emissions from the emissions collection system at the facility. The emissions from an emissions collection system shall be calculated by multiplying the emission factor for that emissions collection system by the sum of ampere-hours consumed during that year for all of the tanks served by the emissions collection system.
14. "Hard chrome plating" means the process by which chromium is electrodeposited from a solution containing compounds of chromium onto an object resulting in a chrome layer thicker than 1 micron (0.04 mil).
15. "Plating tank" means any container used to hold a chromium or chromic acid solution for the purposes of chrome plating or chromic acid anodizing.
16. "Uncontrolled chromium emissions from the hard chrome plating or chromic acid anodizing facility" means the chromium emissions from the emissions collection systems at the facility calculated as if no control equipment is in use. For the purpose of determining compliance with this rule, the uncontrolled chromium emissions shall be calculated using an emission factor based on tests conducted in accordance with ARB Test Method 425 or 14 mg/ampere-hour, whichever is less.

C. REQUIREMENTS FOR DECORATIVE CHROME PLATING FACILITIES

1. No person shall operate a decorative chrome plating tank unless an anti-mist additive is continuously maintained in the plating tank, or control equipment is installed and used, in a manner which has been demonstrated to and approved by the Air Pollution Control Officer as reducing chromium emissions by 95 percent or more relative to chromium emissions when an anti-mist additive is not maintained, or control equipment is not installed and used.

D. REQUIREMENTS FOR HARD CHROME PLATING AND CHROMIC ACID ANODIZING FACILITIES

1. The owners or operators of all hard chrome plating and chromic acid anodizing facilities shall maintain a continuous record of current integrated over time (ampere-hours) for all plating tanks for each collection system used in the hard chrome plating or chromic acid anodizing operations and shall, by December 19, 1989, and upon request thereafter, submit the information to the Air Pollution Control Officer.
2. No person shall operate a plating tank for hard chrome plating or chromic acid anodizing unless the tank has an emissions collection system.

3. No person shall operate a hard chrome plating or chromic acid anodizing tank unless:
  - a. the chromium emissions from the emissions collection system serving the plating tank have been reduced by 95 percent or more of the uncontrolled chromium emissions or
  - b. the chromium emissions from the emissions collection system serving the plating tank have been reduced to less than 0.15 milligrams (mg) of chromium per ampere-hour of electrical charge applied to the plating tank.
4. No person shall operate a hard chrome plating tank or chromic acid anodizing tank at a facility if facilitywide chromium emissions from hard chrome plating or chromic acid anodizing are greater than 2 pounds per year, but less than 10 pounds per year, unless:
  - a. the chromium emissions from the emissions collection systems serving the plating tanks have been reduced by at least 99 percent of the uncontrolled chromium emissions from the hard chrome plating or chromic acid anodizing facility or
  - b. the chromium emissions from the emissions collection systems are reduced to less than 0.03 mg of chromium per ampere-hour of electrical charge applied to the tanks.
5. No person shall operate a hard chrome plating or chromic acid anodizing tank at a facility if facilitywide chromium emissions from hard chrome plating or chromic acid anodizing are 10 pounds per year or greater, unless:
  - a. the chromium emissions from the emissions collection systems serving the plating tanks have been reduced by at least 99.8 percent of the uncontrolled chromium emissions from the hard chrome plating or chromic acid anodizing facility or
  - b. the chromium emissions from the emissions collection systems are reduced to less than 0.006 mg of chromium per ampere-hour electrical charge applied to the tanks.

E. COMPLIANCE SCHEDULE - DECORATIVE CHROME PLATING FACILITIES

1. No later than December 19, 1989, the owners or operators of decorative chrome plating tanks must comply with the provisions of C (1).

F. COMPLIANCE SCHEDULE - HARD CHROME PLATING AND CHROMIC ACID ANODIZING FACILITIES

1. No later than June 19, 1990, the owner or operator of a hard chrome plating or chromic acid anodizing facility subject to Sections D (3) or D (5) shall submit to the Air Pollution Control Officer an application for an Authority to Construct the equipment necessary to meet the requirements of D (2) and D (3) and no later

than December 19, 1990, the facility shall be in compliance with the requirements of D (2) and D (3).

2. No later than December 19, 1990, the owner or operator of a hard chrome plating or chromic acid anodizing facility subject to D (4) shall submit to the Air Pollution Control Officer an application for an Authority to Construct the equipment necessary to meet the requirements of D (2) and D (4) and no later than June 19, 1991 the facility shall be in compliance with the requirements of D (2) and D (4).
3. No later than December 19, 1991 the owner or operator of a hard chrome plating or chromic acid anodizing facility subject to D (5) shall submit to the Air Pollution Control Officer an application for an Authority to Construct the equipment necessary to meet the requirements of D (5) and no later than June 19, 1993 the facility shall be in compliance with the requirements of D (5).

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RULE 427. CHROMATE TREATED COOLING TOWERS

Adopted: 12/12/90

A. PURPOSE

To comply with the Air Resources Board's Hexavalent Chromium Airborne Toxic Control Measure for Chromate Treated Cooling Towers, as required by California Health and Safety Code Section 39666.

B. DEFINITIONS

For the purposes of this rule, the following definitions shall apply:

1. "Chromium": Hexavalent chromium.
2. "Cooling tower": A device which evaporates circulating water to remove heat from a process, building, or refrigerator and transfers the heat to the ambient air.
3. "Water treatment chemicals": Any combination of chemicals which are added to cooling tower water including, but not limited to, corrosion inhibitors, antiscalants, tracers, dispersants and biocides.
4. "Wooden cooling tower": A cooling tower containing wood components which are exposed to the circulating water.

C. REQUIREMENTS

The requirements of this rule shall apply to any cooling tower in which the circulating water is exposed to the ambient air. A person shall not operate any cooling tower unless the following requirements are met:

1. No chromium containing compounds shall be added to the cooling tower circulating water;
2. The concentration of chromium in the cooling tower circulating water shall not exceed:
  - a. 0.15 milligrams per liter (mg/l) in any non-wooden cooling tower, effective June 12, 1991;
  - b. 8.0 mg/l, effective June 12, 1991, and 0.15 mg/l, effective December 12, 1991, in any wooden cooling tower. Between June 12, 1991 and December 12, 1991, the measured concentrations must decrease each month.
3. Compliance shall be determined by testing the concentration of chromium in the circulating water every six months in non-wooden cooling towers and monthly in wooden cooling towers. Testing may be discontinued if two required consecutive tests show chromium concentrations less than 0.15 mg/l. The Air Pollution Control District (APCD) may require testing of

the circulating water at any time, to confirm that the water does not contain chromium in excess of 0.15 mg/l;

4. A compliance plan, as defined in Section D, shall be submitted to the APCD by March 12, 1991 or 90 days prior to placing a new cooling tower in operation.

#### D. COMPLIANCE PLAN

Owners or operators of cooling towers located at separate stationary sources shall submit a separate compliance plan for each stationary source. A compliance plan shall be accompanied by the fee specified and shall contain the following:

1. The name, address, and phone number of the cooling tower operator and owner;
2. The cooling tower location including the address and the site specific location;
3. The cooling tower specifications including type of construction and materials of construction.
4. The trade and chemical names of the water treatment additives currently in use, the Material Safety Data Sheets for these additives, and the name and address of the manufacturer and supplier;
5. The date when the addition of chromium containing compounds to the circulating water ceased, or will cease.

#### E. EXEMPTIONS

1. If chromium containing compounds have not been added to the circulating water in a cooling tower since June 12, 1990, or have never been added, the APCD may waive the requirements of subsections C.3 and C.4. A person seeking an exemption pursuant to this subsection shall submit to the APCD written certification, signed by a company officer, stating that chromium containing compounds have not been added to the cooling tower circulating water since June 12, 1990, or have never been added. In addition, the written certification shall contain the information specified in subsections D.1, D.2, and D.4. The APCD may require the testing of the circulating water at any time, to confirm that the circulating water does not contain chromium in excess of 0.15 mg/l.
2. Any cooling tower in which the circulating water is completely contained and is not exposed to the ambient air is exempt from the provisions of this rule.

F. RECORDKEEPING REQUIREMENTS

Any person subject to the requirements of subsection C.3 shall maintain records of all circulating water tests performed pursuant to subsection C.3. The records shall be retained for at least two years and shall be made available to the APCD upon request.

G. REPORTING REQUIREMENTS

By January 12, 1992 and annually thereafter, any person subject to the requirements of subsection C.3 shall submit to the APCD the results of all circulating water tests performed pursuant to subsection C.3. In addition, the submitted test results shall include the date the test was performed, and the name and address of the laboratory performing the test.

H. TEST METHODS

Compliance with the chromium concentration limits in sub section C.2, shall be determined by American Public Health Association Method 312B.

I. COMPLIANCE SCHEDULE

Any person subject to the provisions of Section C shall meet the following compliance schedule:

1. Achieve compliance with the requirements of subsection C.1 by April 12, 1991;
2. Begin testing pursuant to the requirements of subsection C.3, by July 12, 1991.

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RULE 428. STERILIZERS AND AERATORS USING ETHYLENE OXIDE

Adopted: 11/06/91

A. PURPOSE

To comply with the Air Resources Board's Ethylene Oxide Toxic Control Measure for Sterilizers and Aerators, as required by California Health and Safety Code Section 39666.

B. DEFINITIONS

For the purposes of this section, the following definitions shall apply:

1. "Acute care facility" means any facility currently licensed by the California Department of Health Services as a general acute care hospital (as defined in Title 22, CCR, Section 70005), or any military hospital.
2. "Aeration" is the process during which residual ethylene oxide dissipates, whether under forced air flow, natural or mechanically assisted convection, or other means, from previously sterilized materials after the sterilizer cycle is complete.
3. "Aeration-only facility" means a facility which performs aeration on materials which have been sterilized with ethylene oxide at another facility.
4. "Aerator" means any equipment or space in which materials previously sterilized with ethylene oxide are placed or remain for the purpose of aeration. An aerator is not any equipment or space in which materials that have previously undergone ethylene oxide sterilization and aeration can be handled, stored, and transported in the same manner as similar materials that have not been sterilized with ethylene oxide.
5. "Aerator exhaust stream" means all ethylene oxide contaminated air which is emitted from an aerator.
6. "Back-draft valve exhaust stream" is the air stream which results from collection of ethylene oxide-contaminated air which may be removed from the sterilizer through a back-draft valve or rear chamber exhaust system during unloading of the sterilized materials.
7. "Control device" means an article, machine, equipment, or contrivance which reduces the amount of ethylene oxide between its inlet and outlet and which is sized, installed, operated, and maintained according to good engineering practices, as determined by the district.

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8. "Control efficiency" is the ethylene oxide (EtO) mass or concentration reduction efficiency of a control device, as measured with ARB Test Method 431 (Title 17, CCR, Section 94143) according to the source testing requirements herein, and expressed as a percentage calculated across the control device as follows:

$$\frac{\text{EtO in} - \text{EtO out}}{\text{EtO in}} \times 100 = \% \text{ Control Efficiency}$$

9. "Ethylene oxide (EtO)" is the substance identified as a toxic air contaminant by the Air Resources Board in 17 CCR, Section 93000.
10. "Facility" means any entity or entities which: own or operate a sterilizer or aerator, are owned or operated by the same person or persons, and are located on the same parcel or contiguous parcels.
11. "Facility-wide pounds of ethylene oxide used per year" is the total pounds of ethylene oxide used in all of the sterilizers at the facility during a one-year period.
12. "Leak-free" refers to that state which exists when the concentration of sterilant gas measured 1 cm. away from any portion of the exhaust system of a sterilizer or aerator, during conditions of maximum sterilant gas mass flow, is less than:
- 30 ppm for sterilant gas composed of 12% ethylene oxide/88% chlorofluorocarbon-12 by weight, and
  - 10 ppm for other compositions of sterilant gas, as determined by ARB Test Method 21 (Title 17, CCR, Section 94124) using a portable flame ionization detector, or a non-dispersive infrared analyzer, calibrated with methane, or an acceptable alternative method or analytical instrument approved by the district. A chlorofluorocarbon-12 specific audible detector using a metal oxide semiconductor sensor shall be considered an acceptable alternative for exhaust systems carrying a sterilant gas mixture of ethylene oxide and chlorofluorocarbon-12.
13. "Local medical emergency" means an unexpected occurrence in the area served by the acute care facility resulting in a sudden increase in the amount of medical treatments which require a significant increase in the operation of a sterilizer or aerator.
14. "Sterilant gas" means ethylene oxide or any combination of ethylene oxide and (an)other gas(es) used in a sterilizer.
15. "Sterilizer" means any equipment in which ethylene oxide is used as a biocide to destroy bacteria, viruses, fungi, and other unwanted organisms on materials. Equipment in which ethylene oxide is used to fumigate foodstuffs is considered a sterilizer.
16. "Sterilizer cycle" means the process which begins when ethylene oxide is introduced into the sterilizer, includes the initial purge or evacuation after



sterilization and subsequent air washes, and ends after evacuation of the final air wash.

17. "Sterilizer door hood exhaust stream" is the air stream which results from collection of fugitive ethylene oxide emissions, by means of an existing hood over the sterilizer door, during the time that the sterilizer door is open after the sterilizer cycle has been completed.
18. "Sterilizer exhaust stream" is all ethylene oxide-contaminated air which is intentionally removed from the sterilizer during the sterilizer cycle.
19. "Sterilizer exhaust vacuum pump" means a device used to evacuate the sterilant gas during the sterilizer cycle, including any associated heat exchanger. A sterilizer exhaust vacuum pump is not a device used solely to evacuate a sterilizer prior to the introduction of ethylene oxide.

#### C. APPLICABILITY

Any person who owns or operates a sterilizer or an aerator must comply with this regulation.

#### D. NOTIFICATION

Any person subject to this regulation must provide the District with the following information, in writing, by December 6, 1991:

1. the name(s) of the owner and operator of the facility, and
2. the location of the facility, and
3. the number of sterilizers and aerators at the facility, and
4. an estimate of the total pounds of ethylene oxide and sterilant gas used by the facility, in all sterilizers, during the previous calendar year, as determined by a method approved by the district.

#### E. REPORTING

Any person who owns or operates a sterilizer shall furnish a written report to the District annually in December. This report shall include the total pounds of sterilant gas and the total pounds of ethylene oxide purchased, used, and returned in the previous calendar year, as shown on invoices.

#### F. REQUIREMENTS

No person shall operate a sterilizer or aerator after the applicable date shown in column (d), Table I, unless all of the following requirements are satisfied:

1. there is no discharge of sterilizer exhaust vacuum pump working fluid to wastewater streams, and

2. the exhaust systems including, but not limited to, any piping, ducting, fittings, valves, or flanges, through which ethylene oxide-contaminated air is conveyed from the sterilizer and aerator to the outlet of the control device are leak-free, and
3. all of the control requirements shown in Table I below for the applicable control category are met; and
4. for facilities using more than 600 pounds of ethylene oxide per year, the back-draft valve is ducted to the control device used to control the sterilizer exhaust stream or the aerator exhaust stream; and
5. for facilities using more than 5,000 pounds of ethylene oxide per year, the sterilizer door hood exhaust stream is ducted to the control device used to control the aerator exhaust stream.

#### G. EXEMPTIONS

1. The requirements set forth in subsection F above, do not apply to any facility which treats materials in a sterilizer and which uses a total of 25 pounds or less of ethylene oxide per calendar year.
2. The District Hearing Board may grant an emergency variance from items (a) and (c) in Table I of subsection F, Requirements, to a person who owns or operates an acute facility if response to a local medical emergency requires increased operation of a sterilizer or aerator such that the requirements cannot be met.
3. The demonstrated need for such increased operation shall constitute "good cause" pursuant to Health and Safety Code Section 42359.5. The emergency variance shall be granted in accordance with this section and any applicable district rule regarding the issuance of emergency variances for such occurrences, including the requirement that the emergency variance shall not remain in effect longer than 30 days; however, the emergency variance shall be granted only for the period of time during which increased operation of a sterilizer or aerator is necessary to respond to the local medical emergency.

#### H. COMPLIANCE

The facility shall be in compliance with all provisions specified in subsection F, Requirements, no later than the date specified in column (d) of Table I.

1. For the purpose of determining compliance with the control efficiency requirement shown in column (c) of Table I, subsection F, if a reduction in the amount of ethylene oxide across the control device is demonstrated, but the control efficiency cannot be affirmatively demonstrated because the concentration of ethylene oxide measured in the outlet of the control device is below 0.2 parts per million ethylene oxide, the facility shall be considered to be in compliance with this requirement.

# I. ALTERNATE COMPLIANCE DATE

The owner or operator of any facility which uses more than 600 pounds of ethylene oxide per year may choose this alternate compliance option which addresses the date for compliance with the requirements of subsection F. If this compliance option is chosen, the owner or operator shall:

1. by February 6, 1992, comply with the requirements shown in subsection F.1 and F.2, and demonstrate a control efficiency of 99.9% for the sterilizer exhaust stream, in accordance with the source testing requirements set forth in subsection J; and
2. by May 6, 1992, submit to the District a plan to discontinue operation of all sterilizers and aerators or comply with the district requirements to submit a plan to comply with the requirements of subsections F.3, F.4, and F.5; and
3. by May 6, 1993, do one of the following:
  - a. demonstrate to the satisfaction of the District that operating of all sterilizers and aerators at the facility has been permanently discontinued; or
  - b. demonstrate compliance with the requirements of subsections F.3, F.4, and F.5, in accordance with the source testing provisions set forth in subsection J, below.

TABLE I  
CONTROL AND COMPLIANCE REQUIREMENTS

CONTROL CATEGORY	REQUIREMENTS			
	(a)	(b)	(c)	(d)
Facility-wide Pounds of Ethylene Oxide Used per Year	Exhaust Streams to be Controlled	Control to be Tested	Efficiency (%)	Date of Compliance Months
less than or equal to 25	None	None	None	
more than 25 and less than or equal to 600	Sterilizer	Sterilizer	99.0	24
more than 600 and less than or equal to 5,000	Sterilizer	Sterilizer	99.0	18
	Aerator	Aerator	95.0	
	Back-draft Valve		N/A*	
more than 5,000	Sterilizer	Sterilizer	99.9	12
	Aerator & Sterilizer Door Hood	Aerator	99.0 N/A*	
	Back-draft Valve		N/A*	
Aeration-Only Facilities	Aerator	Aerator	95.0	18

\* Not Applicable

## J. SOURCE TESTING

Source testing shall be conducted according to ARB Test Method 431 (Title 17, CCR, Section 95143) and the method evaluations cited therein or an acceptable source test method approved by the Executive Officer of the Air Resources Board. Specific requirements for application are given below:

1. The test on a control device for a sterilizer exhaust stream shall be run with a typical load, as approved by the district, in the sterilizer.
2. The test on a control device for an aerator exhaust stream shall be run with a typical load, as approved by the district, in the aerator.
3. The inlet and outlet of the control device shall be sampled simultaneously during testing to measure the control efficiency.
4. The efficiency of each control device shall be determined under conditions of maximum ethylene oxide mass flow to the device, under normal operating conditions. To measure the control efficiency of the control device on the sterilizer exhaust stream, sampling shall be done during the entire duration of the first sterilizer evacuation after ethylene oxide has been introduced. To measure the control efficiency of the control device on an aerator exhaust stream with a constant air flow, sampling shall be done during a period of at least 60 minutes, starting 15 minutes after aeration begins. To measure the control efficiency of the control device on an aerator exhaust stream with a non-constant air flow, sampling shall be done during the entire duration of the first aerator evacuation after aeration begins.
5. There shall be no dilution of the air stream between the inlet and outlet test points during testing.

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RULE 429. MEDICAL WASTE INCINERATORS

Adopted: 11/06/91

A. PURPOSE

To comply with the Air Resources Board's Dioxins Toxic Control Measure for Medical Waste Incinerators as required by California Health and Safety Code Section 39666.

B. DEFINITIONS

For purposes of this section, the following definitions shall apply:

1. "ARB": The State of California Air Resources Board.
2. "ARB Test Method 2": The test method specified in Title 17, California Code of Regulations, Section 94102.
3. "ARB Test Method 428": The test method specified in Title 17, California Code of Regulations, Section 94139.
4. "Control equipment": Any device which reduces emissions from medical waste incinerators.
5. "Dioxins": Dibenzo-p-dioxins and dibenzofurans chlorinated in the 2,3,7, and 8 positions and containing 4,5,6, or 7 chlorine atoms, which is expressed as 2,3,7,8,tetrachlorinated dibenzo-para-dioxin equivalents using current California Department of Health Services toxic equivalency factors.
6. "Facility": Every building, structure, appurtenance, installation, or improvement located on land which is under the same or common ownership or operation, and is on one or more contiguous or adjacent properties.
7. "Medical facilities": All unlicensed and licensed medical facilities, medical and dental offices, clinics and hospitals, skilled nursing facilities, research facilities, research laboratories, clinical laboratories, surgery centers, diagnostic laboratories, and other providers of health care.
8. "Medical waste incinerator": All of the furnaces or other closed fire chambers that are located at a facility and used to dispose of waste generate at medical facilities by burning.
9. "Uncontrolled emissions": The dioxins emissions measured from the incinerator at a location downstream of the last combustion chamber, but prior to the air pollution control equipment.
10. "Waste": All discarded putrescible and nonputrescible solid, semisolid, and liquid materials, including garbage, trash, refuse, paper, rubbish, food, ashes, plastics, industrial wastes, demolition and construction wastes, equipment, instruments, utensils, appliances, manure, and human or animal solid and semisolid wastes.

C. REQUIREMENTS FOR MEDICAL WASTE INCINERATORS THAT INCINERATE MORE THAN 25 TONS OF WASTE PER YEAR

1. No person shall operate a medical waste incinerator unless:
  - a. The dioxins emissions have been reduced by 99 percent or more of the uncontrolled emissions; or
  - b. The dioxins emissions have been reduced to 10 nanograms or less per kilogram of waste burned.
2. No person shall operate a medical waste incinerator unless the control equipment is installed and used in a manner which has been demonstrated to and approved by the Air Pollution Control Officer to meet the following requirements:
  - a. The flue gas temperature at the outlet of the control equipment shall not exceed 300 degrees Fahrenheit, unless it has been demonstrated to, and approved in writing by, both the ARB and the Air Pollution Control Officer that lower emissions are achieved at a higher outlet temperature; and
  - b. For a single chamber incinerator, the combustion chamber shall be maintained at no less than 1800 degrees ( $\pm 200$  degrees) Fahrenheit. For a multiple chamber incinerator, the primary combustion chamber shall be maintained at no less than 1400 degrees Fahrenheit, and the secondary chamber shall be maintained at no less than 1800 degrees ( $\pm 200$  degrees) Fahrenheit. The furnace design shall provide for a residence time for combustion gas of at least one second. Residence time shall be calculated using the following equation:

$$\text{Residence Time} = \frac{V}{Q_c}$$

where:

- V: volume, as expressed in cubic feet, from the point in the incinerator where maximum temperature has been reached until the maximum temperature has dropped to 1600 degrees Fahrenheit
- Q<sub>c</sub>: the combustion gas flow through V expressed in actual cubic feet per second, which is measured according to ARB method 2, after adjusting the measured flow rate to the maximum combustion chamber temperature (T<sub>c</sub>) by using T<sub>c</sub> instead of T<sub>std</sub> in the Method 2 calculation for Q<sub>c</sub>.

The volumetric flow rate measured at the sampling points must be adjusted to chamber pressures.

Alternative methods may be used if conditions for determining the combustion gas flow rate by method 2 are unacceptable. The

determination shall be within the guidelines of Method 2 and at the discretion of the Air Pollution Control Officer.

3. No person shall operate a medical waste incinerator unless the bottom ash, fly ash and scrubber residuals are handled and stored in a manner that prevents entrainment into ambient air.
4. The owner or operator of a medical waste incinerator shall maintain the following:
  - a. A continuous data recording system which provides for each day of operation continuous recording of the primary and secondary combustion chamber temperatures; carbon monoxide emissions; the key operating parameters of the air pollution control equipment, as specified by the Air Pollution Control Officer; the hourly waste charging rates; and the opacity of stack emissions or other indicator of particulate matter which is approved by the Air Pollution Control Officer;
  - b. Maintenance records for the incinerator, control equipment, and monitoring equipment; and calibration records for the monitoring equipment; and
  - c. Equipment for determining and recording the weight of waste charged to the incinerator.
5. For purposes of demonstrating compliance with subsection C.1. of this rule the owner or operator of a medical waste incinerator shall conduct a minimum of two annual source tests for the dioxins stack emissions using the high resolution mass spectrometry option of ARB Test Method 428. Annual source tests shall be conducted until at least two consecutive tests demonstrate compliance, at which time the frequency of future source tests is at the discretion of the Air Pollution Control Officer. For purposes of determining compliance with subsection C.1.a. of this rule, emissions shall be sampled simultaneously from the flue at a location downstream of the last combustion chamber, but prior to the control equipment, and from the stack during source testing. For purposes of determining compliance with subsection C.1.b. of this rule, the source testing shall be conducted at the stack. The information regarding the composition (moisture content, and amount of total weight that is infectious, pathological, hazardous, or radioactive) and feed rate of the fuel charged during the source test shall be provided with the test results. The Air Pollution Control Officer can require additional necessary information regarding the composition of the waste. Source testing shall be conducted at maximum waste firing capacity ( $\pm 10$  percent) allowed by the permit to operate. A copy of all source test results conducted for purposes of demonstrating compliance with this rule shall be provided to the ARB at the time that it is provided to the Air Pollution Control District.
6. Any violation, malfunction, or upset condition on the incinerator, the air pollution control equipment, or the continuous data recording system shall be reported to the District within 1 hour of occurrence or by 9 a.m. the next business day if the malfunction occurs outside of normal business hours and the District does not maintain a radio room or an answering machine.

7. No person shall operate a medical waste incinerator unless each individual who operates or maintains the incinerator obtains either a certificate of training in medical waste incineration issued by the American Society of Mechanical Engineers within nine months of the commencement of the training program, or equivalent training as determined by the Air Pollution Control Officer. Copies of the training certificates for the operators and maintenance engineers shall be submitted to the District and the original certificates shall be available for inspection at the facility with the permit to operate.

D. REQUIREMENTS FOR MEDICAL WASTE INCINERATORS THAT INCINERATE 25 TONS OR LESS OF WASTE PER YEAR

1. No person shall operate a medical waste incinerator that incinerates 25 tons or less of waste per year unless requirements specified in subsections C.3., C.4.c. and C.7. are met.
2. The owner or operator of a medical waste incinerator that incinerates more than 10 but less than 25 tons of waste per year shall conduct one initial source test at the incinerator stack as specified in subsection C.5.

E. COMPLIANCE SCHEDULE

1. No later than February 6, 1992, the owner or operator of a medical waste incinerator that incinerates more than 25 tons of waste per year shall submit to the Air Pollution Control Officer an application for an authority to construct the equipment necessary to meet the requirements of the sections C.1. or C.2., and no later than February 6, 1993, the owner or operator of a medical waste incinerator shall be in compliance with this rule.
2. The owner or operator of a medical waste incinerator who intends to permanently shut down operation of the incinerator shall notify the District of the shutdown date by February 6, 1992. The shutdown date shall be no later than May 6, 1992.
3. The owner or operator of a medical waste incinerator that incinerates 25 tons or less of waste per year who intends to remain in operation shall notify the District by February 6, 1992. The owner or operator of a medical waste incinerator shall be in compliance with this rule no later than February 6, 1993.

F. EXEMPTIONS

This rule shall not apply to those incinerators which are exclusively crematoria of human or animal remains.

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RULE 430. ASBESTOS-CONTAINING SERPENTINE MATERIAL

Adopted: 11/06/91

A. PURPOSE

To comply with the Air Resources Board's Asbestos-Containing Serpentine Material Airborne Toxic Control Measure, as required by California Health and Safety Code Section 39666.

B. DEFINITIONS

For the purposes of this section, the following definitions shall apply:

1. "Aggregate": A mixture of mineral fragments, sand, gravel, rocks, or similar materials.
2. "Alluvial deposit": Any deposit of sediments laid down by running water including but not limited to streams and rivers.
3. "ARB Test Method 435": The test method specified in Title 17, California Code of Regulations, Section 94147.
4. "Asbestos": Asbestiforms of the following hydrated minerals: chrysotile (fibrous serpentine), crocidolite (fibrous riebeckite), amosite (fibrous cummingtonite--grunerite), fibrous tremolite, fibrous actinolite, and fibrous anthophyllite.
5. "Asbestos-containing serpentine material": Serpentine material that has an asbestos content greater than five percent (5.0%) as determined by ARB Test Method 435.
6. "Receipt": Any written acknowledgement that a specified amount of serpentine material was received, delivered, or purchased. Receipts include, but are not limited to, bills of sale, bills of lading, and notices of transfer.
7. "Road surface": The traveled way of a road and any shoulder which extends up to 10 feet from the edge of the traveled way.
8. "Sand and gravel operation": Any aggregate-producing facility operating in alluvial deposits.
9. "Serpentine": Any form of hydrous magnesium silicate minerals -including, but not limited to, antigorite, lizardite, and chrysotile.
10. "Serpentine material": Any material that contains at least ten percent (10%) serpentine as determined by a registered geologist. The registered geologist must document precisely how the serpentine content of the material in question was determined.
11. "Surfacing": The act of covering any surface used for purposes of pedestrian, vehicular, or nonvehicular travel including, but not limited to, roads, road

shoulders, streets, alleys, lanes, driveways, parking lots, playgrounds, trails, squares, plazas, and fairgrounds.

C. REQUIREMENTS FOR USE OR SALE OF ASBESTOS-CONTAINING SERPENTINE MATERIAL

1. No person shall use or apply serpentine material for surfacing in California unless the material has been tested using ARB Test Method 435 and determined to have an asbestos content of five percent (5.0%) or less. A written receipt or other record documenting the asbestos content shall be retained by any person who uses or applies serpentine material, for a period of at least seven years from the date of use or application, and shall be provided to the Air Pollution Control Officer or his designee for review upon request.
2. Any person who sells, supplies, or offers for sale serpentine material in California shall provide with each sale or supply a written receipt containing the following statement: "Serpentine material may have an asbestos content greater than five percent (5.0%). It is unlawful to use serpentine material for surfacing unless the material has been tested and found to contain less than or equal to five percent (5.0%) asbestos. All tests for asbestos content must use California Air Resources Board Test Method 435, and a written record documenting the test results must be retained for at least seven years if the material is used for surfacing."
3. No person shall sell, supply, or offer for sale serpentine material for surfacing in California unless the serpentine material has been tested using ARB Test Method 435 and determined to have an asbestos content of five percent (5.0%) or less. Any person who sells, supplies, or offers for sale serpentine material that he or she represents, either orally or in writing, to be suitable for surfacing or to have an asbestos content that is five percent (5.0%) or less, shall provide to each purchaser or person receiving the serpentine material a written receipt which specifies the following information: The amount of serpentine material sold or supplied; the dates that the serpentine material was produced, sampled, tested, and supplied or sold; and the asbestos content of the serpentine material as measured by ARB Test Method 435. A copy of the receipt must, at all times, remain with the serpentine material during transit and surfacing.
4. Any person who sells, supplies, or offers for sale serpentine material, shall retain for a period of at least seven years from the date of the sale or supply, copies of all receipts and copies of any analytical test results from asbestos testing of the serpentine material. All receipts and test results shall be provided to the Air Pollution Control Officer or his designee for review upon request.
5. If ARB Test Method 435 has been used to perform two or more tests on any one volume of serpentine material, whether by the same or a different person, the arithmetic average of these test results shall be used to determine the asbestos content of the serpentine material.

D. EXEMPTIONS

1. The provisions of subdivision C.2. through C.5. shall not apply to sand and gravel operations.

2. The provisions of subdivision C.1. shall not apply to roads located at serpentine quarries, asbestos mines, or mines located in serpentine deposits.
3. The provisions of subdivision C.1. shall not apply to maintenance operations on any existing road surfaces, or to the construction of new roads in serpentine deposits, as long as no additional asbestos-containing serpentine material is applied to the road surface.
4. Emergency Road Repairs. The Air Pollution Control Officer may issue a temporary exemption from the requirements of subdivision C.1. to an applicant who demonstrates that a road repair is necessary due to a landslide, flood, or other emergency and that the use of material other than serpentine is not feasible for this repair. The Air Pollution Control Officer shall specify the time during which such exemption shall be effective, provided that no exemption shall remain in effect longer than six (6) months.
5. Bituminous and Concrete Materials. The provisions of subdivision C. shall not apply to serpentine material that is an integral part of bituminous concrete, portland cement concrete, bituminous surface, or other similar cemented materials.
6. The provisions of subdivision C.1. shall not apply to landfill operations other than the surfacing of public-access roads dedicated to use by vehicular traffic.

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## **RULE 431. PARTICULATE EMISSIONS**

Adopted: 12/07/90    Revised: 11/06/91, 12/04/06, 05/05/14

### **A. PURPOSE**

The purpose of this rule is to improve and maintain the level of air quality of the Town of Mammoth Lakes (Town) and other communities in the Great Basin Unified Air Pollution Control District (District) so as to protect and enhance the health of its citizens by controlling the emissions of particulate matter.

### **B. DEFINITIONS**

1. "EPA" shall mean the United States Environmental Protection Agency.
2. "EPA-Certified Appliance" means any wood or other solid fuel burning appliance utilized for space or water heating or cooking that meets the performance and emission standards as set forth in Part 60, Title 40, Subpart AAA Code of Federal Regulations, February 26, 1988. Phase I appliances must meet the emission requirements of no more than 5.5 grams per hour particulate matter emissions for catalytic and 8.5 grams per hour for non-catalytic appliances. Phase II requirements are 4.1 and 7.5 grams per hour respectively. Pellet fueled wood heaters shall be considered as meeting Phase II requirements. For existing appliances, Oregon Department of Environmental Quality (DEQ) certification shall be equivalent to EPA certification. All other solid fuel appliances, including fireplaces, shall be considered non-certified.
3. "High Road Dust Areas" means those communities where the Board of the Great Basin Unified Air Pollution Control District has determined that re-entrained dust from winter-time sand or cinders on paved roads contributes to monitored exceedances of the state or federal 24-hour PM 2.5 or PM 10 standards.
4. "HRDA agency" means the governmental or public agency having jurisdiction over a community or area designated as a High Road Dust Area.
5. "High Wood Smoke Areas" means those communities where the Board of the Great Basin Unified Air Pollution Control District has determined that residential wood combustion contributes to monitored exceedances of the state or federal 24-hour PM 2.5 or PM 10 standards.
6. "HWSA agency" means the governmental or public agency having jurisdiction over a community or area designated as a High Wood Smoke Area.
7. "Pellet Fueled Wood Heater" means any wood heater designed to heat the interior of a building that operates on pelletized wood and has an automatic feed.
8. "Permanently Inoperable" means modified in such a way that the appliance can no longer function as a solid fuel heater or easily be remodified to function as a solid fuel heater. Conversion to other fuels, such as gas, is permitted.
9. "Solid Fuel Burning Appliance, Heater, or Device" means any fireplace, wood heater, or coal stove or structure that burns wood, coal, or any other nongaseous

or nonliquid fuels, or any similar device burning any solid fuel used for aesthetic, water heating, or space heating purposes. Pellet stoves are not a part of or included herein.

C. STANDARDS FOR REGULATION OF SOLID FUEL APPLIANCES

1. After December 7, 1990 (the effective date of this ordinance), no solid fuel burning appliance shall be permitted to be installed within the Town of Mammoth Lakes unless said device is certified as meeting the emission requirements of the U.S. Environmental Protection Agency (EPA) for Phase II certification.
2. After January 1, 2007, no solid fuel burning appliance shall be permitted to be sold or installed within District boundaries unless said device is certified as meeting the emission requirements of the U.S. Environmental Protection Agency (EPA) for Phase II certification.
3. The restrictions of this rule shall apply to all solid fuel devices including unregulated fireplaces.
4. For the purposes of enforcing this rule, the Town shall keep a record of all certified appliances installed in Mammoth Lakes in accordance with this rule and of properties which have been determined to conform to the requirements of this rule.
5. For the purposes of enforcing this rule, after the Board of the Great Basin Unified Air Pollution Control District has determined that a community is a high wood smoke area, the HWSA agency shall keep a record of all certified appliances installed in their HWSA community in accordance with this rule and of properties which have been determined to conform to the requirements of this rule.

D. DENSITY LIMITATIONS – TOWN OF MAMMOTH LAKES and HIGH WOOD SMOKE AREAS

1. No more than one solid fuel appliance may be installed in any new dwelling or nonresidential property. Existing properties with one or more existing solid fuel appliances may not install additional solid fuel appliances. One pellet fueled wood heater per dwelling shall be excepted from the provisions of this paragraph.
2. Solid fuel appliances shall not be considered to be the primary form of heat in any new construction.
3. Within the Town of Mammoth Lakes, all new and replacement solid fuel burning appliances shall not be installed without first obtaining a building permit from the Town of Mammoth Lakes. All installations shall require an inspection and approval by the Building Division prior to operation.
4. Within all High Wood Smoke Areas, all new and replacement solid fuel burning appliances shall not be installed without first obtaining a building permit from the HWSA agency. All installations shall require an inspection and approval by the HWSA agency prior to operation.

5. Verification of compliance may be certified by an inspector of the Mammoth Lakes Building Division, by an inspection of the HWSA agency, or, within an HWSA other than the Town, by an individual certified by the Wood Heating Education and Research Foundation for the installation of solid fuel appliances, by individuals approved in writing by the District, or by individuals possessing equivalent certification. The inspector of record shall verify in writing that the appliance complies with the required emissions standards and shall file said certification with the HWSA agency. Inspectors independent of the HWSA agency, shall verify their qualifications with the or HWSA agency before appliance certification will be accepted by the HWSA agency.
6. Within the Town of Mammoth Lakes no solid fuel burning appliance shall be installed in any new commercial or lodging development or in any new multi-unit residential development; however, one pellet fueled wood heater per dwelling may be installed in a multi-unit residential development project.

E. REPLACEMENT OF NON-CERTIFIED APPLIANCES UPON SALE OF PROPERTY – TOWN OF MAMMOTH LAKES and HIGH WOOD SMOKE AREAS

1. Prior to the completion of the sale or transfer of a majority interest in any real property within the Town of Mammoth Lakes or in High Wood Smoke Areas, all existing non-certified solid fuel appliances shall be replaced, removed, or rendered permanently inoperable. If the buyer assumes responsibility, in writing on a form approved by the Town or HWSA agency respectively, for appliance replacement or removal, the deadline for such action shall be extended to 60 calendar days from the date of completion of the sale or transfer. The buyer shall contact the building division no later than 60 calendar days from the date of completion of sale to schedule an inspection. The Town Building Division, HWSA agency, or a qualified inspector as designated by the HWSA agency, shall inspect the appliance(s) in question to assure that they meet the requirements of this rule. Within five working days from the date of the inspection, the Town Building Division or HWSA agency, shall issue a written certification of compliance or non-compliance for the affected property. If the inspection reveals that the subject property does not comply with the requirements of this rule, all non-complying solid fuel appliances shall be replaced, removed, or rendered permanently inoperable. In this event re-inspection shall be required prior to certification of compliance.
2. If real property is to be sold which does not contain a solid fuel burning appliance, a form approved by the Town Building Division, District or HWSA agency, containing the notarized signatures of the seller, the buyer, and the listing real estate agent attesting to the absence of any solid fuel device, may be accepted in lieu of an inspection. A written exemption shall be issued by the Town Building Division or HWSA agency.
3. No solid fuel burning appliances removed under the provisions of this Section may be replaced except as provided by this rule.
4. This section shall not be applicable to National Forest permittees located west of Old Mammoth Rd. in sections 4 and 9 of Township 4 S., Range 27 E., MDBM, or National Forest permittees located above 8500 feet elevation above sea level.

F. Reserved

G. OPACITY LIMITS

No person shall cause or permit emissions from a solid fuel appliance to be readily visible, for a period or periods aggregating more than three minutes in any one hour period. Emissions created during a 15 minute start-up period are exempt from this regulation. Readily visible may be equated with an opacity limit of 20% or greater as designated by the shade number one on the Ringelmann Chart.

H. PERMITTED FUELS

Burning of any fuels or materials other than the following fuels within the Town of Mammoth Lakes shall be in violation of this ordinance:

1. Untreated wood
2. Uncolored paper
3. Manufactured logs, pellets, and similar manufactured fuels

I. MANDATORY CURTAILMENT – TOWN OF MAMMOTH LAKES and HIGH WOOD SMOKE AREAS

1. The Town of Mammoth Lakes shall appoint an Air Quality Manager. The duty of the Air Quality Manager shall be to determine when curtailment of solid fuel combustion in the Town of Mammoth Lakes is necessary, to notify the community that curtailment is required, and to make such other determinations as are necessary to carry out the objectives of this rule.
2. Communities designated as High Wood Smoke Areas shall appoint a member from their respective governing body to determine when curtailment of solid fuel combustion in the area is necessary, to notify the community that curtailment is required, and to make such other determinations as are necessary to carry out the objectives of this rule.
3. Determination that curtailment is required shall be made when PM-10 levels have reached 130 micrograms/m<sup>3</sup> or when adverse meteorological conditions are predicted to persist. Should it be determined that 130 micrograms/m<sup>3</sup> is not a low enough threshold to prevent the Town of Mammoth Lakes or High Wood Smoke Areas from violating the state or National Ambient Air Quality Standard for particulate matter, that threshold may be lowered by resolution of the Town Council of the Town of Mammoth Lakes or by the governing body of High Wood Smoke Areas.
4. Upon the determination that curtailment is required, the Town of Mammoth Lakes Air Quality Manager or the Designee of a HWSA agency, shall contact all radio stations and television stations in Mammoth Lakes or High Wood Smoke Areas and have them broadcast that it is required that there be no wood or other solid fuel burning. The Air Quality Manager or Designee of a HWSA agency shall also

record a notice on a telephone line dedicated to this purpose and post a notice in the Town Offices or other appropriate governmental office. Upon such notice, all wood and other solid fuel combustion shall cease.

5. All dwelling units being rented on a transient basis which contain a non-certified solid fuel burning appliance shall post, in a conspicuous location near said appliance, a notice indicating that no-burn days may be called and informing the tenants about sources of information on no-burn days.
6. All persons renting units with solid fuel burning appliances shall inform their tenants that solid fuel burning may be prohibited on certain days and that the person signing the rental agreement shall be responsible for assuring that the no-burn requirements are obeyed during the rental period identified on the rental agreement.
7. For residences where a solid fuel burning appliance is the sole means of heat, these curtailment regulations do not apply. For a residence to be considered as having solid fuel as its sole source of heat, the owner must apply to the Town of Mammoth Lakes or the HWSA agency for an exemption and the respective governing authority must inspect the residence and certify that, in fact, no other adequate source of heat is available to the structure. Adequate source shall mean that the alternate source of heat cannot produce sufficient heat for the residence without causing a hazard. A written exemption will then be granted. Where an adequate alternate source of heat is determined to have been removed from the structure in violation of building codes, a sole source exemption shall not be issued. Sole source exemptions shall not be granted for non-residential uses. The owner's sole source exemption shall expire one year from the date of initial issuance.
8. Households with very low income levels as defined by the Department of Housing and Urban Development may apply to the HWSA agency Designee for exemption from no-burn days.

#### J. VOLUNTARY CURTAILMENT – HIGH WOOD SMOKE AREAS

1. Communities designated as High Wood Smoke Areas shall appoint a member from their respective governing body to determine when voluntary curtailment of solid fuel combustion in the area is necessary, to notify the community that curtailment is recommended, and to make such other determinations as are necessary to carry out the objectives of this rule.
2. Determination that voluntary curtailment is recommended shall be made when PM-10 levels have reached 100 micrograms/m<sup>3</sup> or when adverse meteorological conditions are predicted to persist. Should it be determined that 100 micrograms/m<sup>3</sup> is not a low enough threshold to prevent the High Wood Smoke Areas from potentially violating the state or National Ambient Air Quality Standard for particulate matter, that threshold may be lowered by resolution of the governing body of High Wood Smoke Areas.
3. Upon the determination that curtailment is recommended, the Designee of a HWSA agency, shall contact all radio stations and television stations in High



Wood Smoke Areas and have them broadcast that it is recommended that there be no wood or other solid fuel burning. The Designee of a HWSA agency shall also record a notice on a telephone line dedicated to this purpose and post a notice in the appropriate governmental office.

4. All dwelling units being rented on a transient basis which contain a non-certified solid fuel burning appliance shall post, in a conspicuous location near said appliance, a notice indicating that recommended no-burn days may be called and informing the tenants about sources of information on no-burn days.
5. All persons renting units with solid fuel burning appliances shall inform their tenants that solid fuel burning may not be recommended on certain days and that the person signing the rental agreement shall be responsible for assuring that the no-burn requirements are considered during the rental period identified on the rental agreement.

#### K. POLLUTION REDUCTION EDUCATION PROGRAMS

The APCO (or Town designee for the Town of Mammoth Lakes) is hereby directed to undertake such public education programs as are reasonably calculated to reduce particulate air pollution within the District (or the Town of Mammoth Lakes, respectively) including particulate emissions from sources other than solid fuel burning devices. In addition to the notification measures listed in Section I.4, the public education programs shall include additional measures to inform the public of burning curtailment requirements.

#### L. PAVED ROAD DUST REDUCTION MEASURES

1. The Town of Mammoth Lakes and each city, town, county or state agency with primary responsibility for any existing paved road within a community that has been determined by the Board of the Great Basin Unified Air Pollution Control District (Board) to be a High Road Dust Area due to exceedances of State or federal ambient particulate matter standards caused by winter-time re-entrained road dust from paved roads shall take the following actions:
  - a. Undertake a vacuum street sweeping program to reduce particulate matter emissions resulting from excessive accumulations of winter-time cinders, sand and dirt from paved roads and to remove the material from the entire road surface, including travel lanes as soon as practicable.
  - b. Effective January 1, 2007 for the Town of Mammoth Lakes, or the date that the Board determines a community is a High Road Dust Area, all purchases of street sweeper equipment by the HRDA agency or their contractor(s) shall be only PM10-efficient street sweepers that are certified under Rule 1186 of the South Coast Air Quality Management District.
  - c. All PM10-efficient street sweepers shall be operated and maintained according to manufacturer specifications.

2. The Town of Mammoth Lakes (Town) shall, in its review of proposed development projects, incorporate such measures which reduce projected total vehicle miles traveled. Examples of such measures include, but are not limited to, circulation system improvements, mass transit facilities, private shuttles, and design and location of facilities to encourage pedestrian circulation. The goal of the Town's review shall be to limit projected peak vehicle miles traveled to 179,708 on any given day on the roadway segments evaluated in the Mammoth Lakes Vehicle Miles Traveled Analysis (LSC, August 2012).

M. FEES

1. A fee shall be charged for the inspection and permitting services of the Town of Mammoth Lakes. Said fee shall be established in the Town Master Fee Schedule.
2. A fee for inspections and permitting services may be imposed by the HWSA agencies for the purpose of implementing the solid fuel burning appliance requirements of this rule.

N. PENALTIES FOR VIOLATIONS IN THE TOWN OF MAMMOTH LAKES

1. It is illegal to violate any requirements of this rule. Any owner of any property which is in violation of the requirements of this rule shall be guilty of an infraction. Any person operating a solid fuel appliance in violation of this rule is guilty of an infraction. The third violation by the same person within a 12 month period shall constitute a misdemeanor. Prosecution of any violation of Subsection I.6 may be against the property owner, the occupant, or both.
2. Violation of any portion of this rule may result in assessment of civil penalties against the property and against an individual person or persons in accordance with Chapter 1.12, "General Penalty" of the Municipal Code of the Town of Mammoth Lakes.
3. Each and every day a violation exists is a new and separate violation. Right of appeal, hearings, and collection of civil penalties shall be pursuant to the procedures set forth in Chapter 8.20, "Nuisances," of the Municipal Code of the Town of Mammoth Lakes.
4. Nothing in this section shall prevent the Town from pursuing criminal penalties or using any other means legally available to it in addressing violations of this rule.
5. Whenever necessary to make an inspection to enforce any of the provisions of this rule, or whenever the Air Quality Manager or his/her authorized representative has reasonable cause to believe that there exists in any building or upon any premises any condition which violates the provisions of this rule, the Air Quality Manager or authorized representative may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the Air Quality Manager by this rule, provided that if such building or premises be occupied, he/she shall first present proper credentials and request entry; and if such building or premises be unoccupied, he/she shall first make a reasonable effort to locate the owner or other persons having charge or

control of the building or premises and request entry. If such entry is refused, or if the owner or person having charge or control of the building or premises cannot be contacted, the Air Quality Manager or authorized representative shall have recourse to every remedy provided by law to secure entry.

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RULE 432. OPEN BURN/OPEN DETONATION OPERATIONS ON MILITARY BASES

Adopted: 05/08/96

- A. No open burn/open detonation (OB/OD) operation may be done without prior approval from the Air Pollution Control Officer (APCO) through the approval of an OB/OD burn plan. The burn plan approval shall not be valid for longer than one year, but may be renewed annually based on the approval of the APCO.
- B. No person shall conduct OB/OD operations on "no burn" days as announced daily by the State Air Resources Board for Inyo, Mono and Alpine Counties or when such burning is prohibited by the Air Pollution Control Officer.
- C. Open burn/open detonation operations, when allowed, shall conform to the following criteria:
  - 1. Before an OB/OD operation takes place, a plan for the OB/OD operation shall be submitted by the Base Commanding Officer or the Commanding Officer's designated representative for the military base, to the Air Pollution Control Officer, and other designated agencies having jurisdiction over the proposed OB/OD operation. The plan shall be approved by the Air Pollution Control Officer in advance of the proposed OB/OD operations. This plan shall:
    - a. Specify methods that will be used to achieve detonation or combustion.
    - b. Limit the category and amount of waste propellants, explosives, and pyrotechnics that may be disposed of each year to an amount with a projected lifetime toxic cancer risk less than one-in-one million ( $1 \times 10^{-6}$ ). Treatment amounts shall not cause impacts above the chronic or acute toxic effect thresholds contained in the most current guidance issued by the California Air Resources Board for toxic risk management. The toxic risk shall be demonstrated with modeling approved by the Air Pollution Control Officer.
    - c. Limit open burn/open detonation operations or require mitigation when the meteorological conditions could otherwise cause smoke to create or contribute to an exceedance of a state or federal ambient air quality standard or cause a public nuisance.
    - d. Require the waste propellants, explosives, and pyrotechnics (PEP) disposed of be free of non-PEP hazardous wastes.
    - e. Require the waste propellants, explosives, and pyrotechnics to be in a condition which will facilitate combustion and minimize the amount of smoke emitted during combustion.
    - f. Include the following information:
      - i. location of the burn project,
      - ii. category and amount of waste propellants, explosives, and pyrotechnics to be disposed of,

- iii. directions and distances to nearby sensitive receptor areas,
  - iv. an air quality analysis showing the expected ambient impacts with respect to State and Federal Ambient Air Quality Standards,
  - v. a risk assessment for acute and chronic health effects,
  - vi. meteorological prescription elements developed for the project,
  - vii. projected schedule or frequency of OB/OD events,
  - viii. specifications for monitoring and recording of critical project parameters, and
  - ix. specifications for reporting and disseminating project information.
- 2. The material to be disposed of shall be limited to the treatment of PEP generated from operations at the military base where the OB/OD operation is to take place.
- 3. Open burn/open detonation operations shall not be allowed on Sundays or legal holidays.
- 4. All open burn/open detonation operations shall conform to the applicable jurisdictional fire code(s).
- 5. Open burn/open detonation operations shall not be initiated if smoke may drift into a populated area or create a public nuisance.
- 6. Open burn/ open detonation operations shall comply with applicable requirements under the California Hazardous Waste Control Act for the treatment, storage, and disposal of hazardous waste (Title 22, California Code of Regulations).
- D. The total amount of material treated in any one day, may be limited by the District, taking into consideration matters which would affect the ambient air quality.
- E. Records shall be maintained for the type and amount of PEP for each open burn/open detonation operation and shall be submitted to the District sixty (60) days prior to the end of the burn plan approval period. Records shall be maintained for five years.
- F. District staff shall be permitted:
  - 1. To enter the premises where the source is located or in which any records are required to be kept under requirements of the burn plan.
  - 2. To inspect any equipment, operation, or method required by the burn plan.
  - 3. To require emission samples from the source.

- G. A summary of the data required to determine compliance with applicable provisions of this rule shall be submitted to the Air Pollution Control Officer. This summary shall be presented in the manner, frequency and form as prescribed by the Air Pollution Control Officer.

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## **RULE 433. CONTROL OF PARTICULATE EMISSIONS AT OWENS LAKE**

Adopted: 04/13/2016

The purpose of this regulation is to effectuate a regulatory mechanism under the federal Clean Air Act to attain the National Ambient Air Quality Standards (“NAAQS”) and to implement the Stipulated Judgment between the Great Basin Unified Air Pollution Control District (“District”) and the City of Los Angeles (“City”) dated December 30, 2014 and entered by the Superior Court of the State of California, County of Sacramento. This regulation does not alter or supersede any provision in the Stipulated Judgment, nor does it relieve any party from full compliance with the requirements of the Stipulated Judgment. This regulation sets the basic requirements for the Best Available Control Measures (“BACM”) and defines the areal extent of these controls at Owens Lake, California required in order to meet the NAAQS. This regulation does not preclude the City or the District from implementing more stringent or additional mitigation pursuant to the Stipulated Judgment.

### **A. DEFINITIONS**

1. “BACM PM<sub>10</sub> Control Areas” are areas on the dried bed of Owens Lake at or below the Regulatory Shoreline elevation of 3,600 feet and at or above Owens Lake’s ordinary high water elevation of 3,553.55 feet on which BACM PM<sub>10</sub> Control Measures shall be implemented, and

BACM PM<sub>10</sub> Control Areas are:

- a. Areas, as shown on the map in Exhibit 1 – Dust Control Area Map, including:
    - i. 29.8 square miles of the Owens Lake Bed with approved BACM PM<sub>10</sub> Control Measures (“2003 Dust Control Area”);
    - ii. 13.2 square miles of the Owens Lake Bed with approved BACM PM<sub>10</sub> Control Measures, except for Eligible Cultural Resource Areas where PM<sub>10</sub> BACM selection and implementation dates will be deferred as set forth in Paragraph C.3. (“2006 Dust Control Area” and “Channel Area”);
    - iii. 2.0 square miles of the Owens Lake Bed with approved BACM PM<sub>10</sub> Control Measures (“Phase 8 Area”);
    - iv. 3.62 square miles of the Owens Lake Bed with approved BACM PM<sub>10</sub> Control Measures to be installed by December 31, 2017, except for Eligible Cultural Resource Areas, where PM<sub>10</sub> BACM selection and implementation dates will be deferred as set forth in Paragraph C.3. (“Phase 9/10 Area”); and
  - b. Additional areas as designated pursuant to Section C., “CONTINGENCY MEASURES” of this rule.
2. “BACM PM<sub>10</sub> Control Measures” are best available control measures designed to reduce PM<sub>10</sub> emissions to Control Efficiency (“CE”) levels specified below through compliance with performance standards specified in Attachment A or in specific control measure definitions below. The following BACM PM<sub>10</sub> Control Measures are approved to be used.

- a. "BACM Shallow Flooding" means the application of water to the surface of the lake bed in accordance with the performance standards for shallow flooding in Attachment A, Section I - Performance Requirements for BACM Shallow Flooding. Water shall be applied in amounts and by means sufficient to meet a CE level of 99% or CE targets for Minimum Dust Control Efficiency Areas.
- b. "Tillage with BACM (Shallow Flood) Backup or TWB<sup>2</sup>" means the roughening of a soil surface using mechanical methods in accordance with the specifications in Attachment A, Section IV – Performance Requirements for Tillage with BACM Backup, and to utilize BACM shallow flooding as a back-up control method in order to prevent NAAQS violations. BACM Shallow Flooding must be implemented in TWB<sup>2</sup> areas if the erosion threshold as defined in Paragraph A.2.h is exceeded. Water shall be applied in amounts and by means sufficient to meet the CE level of 99% or CE targets for Minimum Dust Control Efficiency areas.
- c. "Brine BACM" means the application of brine and the creation of wet and/or non-emissive salt deposits sufficient to meet the CE level of 99% as described in Attachment A, Section V – Performance Requirements for Brine BACM. BACM Shallow Flooding must be implemented in Brine BACM areas if the erosion threshold as defined in Paragraph A.2.h is exceeded.
- d. "BACM Managed Vegetation" means planting surfaces of the BACM PM<sub>10</sub> Control Areas with protective vegetation to meet the CE level of 99% by maintaining overall average vegetation cover of at least 37% for each contiguous Managed Vegetation area and an areal distribution based on vegetation cover thresholds and grid size.
- e. "BACM Gravel Blanket" means the application of a layer of gravel sufficient to meet the CE level of 100% by covering the control area with
- a layer of gravel at least four inches thick with gravel screened to a size greater than ½ inch in diameter, or
  - a layer of gravel at least two inches thick with gravel screened to ½ inch in diameter underlain with a permanent permeable geotextile fabric.
- e. "Dynamic Water Management or DWM" is a BACM Shallow Flooding operational modification that allows delayed start dates and/or earlier end dates required for shallow flooding in specific areas that have historically had low PM<sub>10</sub> emissions within the modified time periods. The truncated dust control periods allows for water savings while achieving the required CE level. Areas eligible for the DWM program and their modified start and/or end dates for shallow flooding are identified in Attachment A, Section VI – Performance Requirements for Dynamic Water Management. If any DWM area becomes susceptible to wind erosion outside of the modified dust control period the area will be required to be flooded to meet the required CE for that area. BACM Shallow Flooding must be implemented in DWM areas if the erosion threshold as defined in Paragraph A.2.h is exceeded.
- g. "Minimum Dust Control Efficiency or MDCE" BACM is a dust control measure for which the control efficiency target is adjusted to match the required control level based on air quality modeling for the 2006 dust control areas as shown on the map in Exhibit 2 – Dust Control Efficiency Requirements. The control efficiency targets may be less than 99%, but the level of control in all areas is intended to prevent exceedances of the NAAQS. MDCE BACM includes:



- i. Shallow flood areas where the wetness cover is adjusted following the curve in Exhibit 3 - Shallow Flood Control Efficiency and Wetness Cover Curve,
  - ii. Channel Area - a state-regulated wetland area as shown in Exhibits 1 and 2 where vegetation cover is enhanced by irrigation and seeding with native plants in a manner sufficient to prevent windblown dust from causing exceedances of the NAAQS, and
  - iii. Sand Fence Area – an area as shown in Exhibits 1 and 2 located in area T1A-1 where sand fences, vegetation and natural water runoff combine to provide sufficient protection to prevent windblown dust from causing exceedances of the NAAQS.
- h. “Erosion Threshold” is applicable to TWB<sup>2</sup>, DWM, and Brine BACM to trigger BACM Shallow Flooding which must be implemented to comply with the shallow flood CE target for that area. The erosion threshold is determined from sand flux measurements or the Induced Particulate Erosion Test (IPET) test method as described in Attachment A, Paragraphs IV.C.2 and IV.C.4. BACM Shallow Flooding must be implemented in TWB<sup>2</sup>, DWM or Brine BACM areas if any of the following thresholds are exceeded as determined using the methods described in Attachment A:
- i. Sand flux measured at 15 cm above the surface exceeds 5.0 grams per square centimeter per day on DWM or Brine BACM areas or 1.0 gram per square centimeter per day on TWB<sup>2</sup> areas, or
  - ii. Induced Particulate Erosion Test method shows visible dust emissions when operated at the reference test height.
- i. “Approved BACM” includes the control measures specified above and other measures approved by the APCO and the US Environmental Protection Agency as equivalent to these methods.
3. “Eligible Cultural Resource Area or ECR Area” is an area or areas where dust control measures will be implemented on a deferred schedule due to the presence of significant cultural resources that make the areas eligible for listing under the California Register of Historic Resources.

## B. REQUIREMENTS

1. For the 2003 Dust Control Area the City shall continuously operate and maintain any mix of approved BACM PM<sub>10</sub> Control Measures as defined above in Section A to meet the 99% efficient CE level. Selection of the type and location of BACM PM<sub>10</sub> Control Measures within the area is solely the responsibility of the City.
2. For the 2006 Dust Control Area the City shall continuously operate and maintain approved BACM PM<sub>10</sub> Control Measures defined above in Section A to meet the CE target specified in Exhibit 2, except for ECR Areas where BACM PM<sub>10</sub> Control Measure selection and implementation dates will be deferred as set forth in Paragraph C.3., and any areas of BACM Managed Vegetation, for which the City shall comply with the

minimum 37% average vegetation cover target and areal distribution requirements by December 31, 2017.

3. For the Phase 8 Area consisting of 2.0 square miles the City shall continue to operate and maintain BACM Gravel Blanket.
4. For the Phase 9/10 Project Area consisting of 3.62 square miles the City shall select and install BACM PM<sub>10</sub> Control Measures by December 31, 2017, except for ECR Areas, where PM<sub>10</sub> BACM selection and implementation dates will be deferred as set forth in Paragraph C.3.
5. In areas containing infrastructure capable of achieving and maintaining compliant BACM Shallow Flooding the City may implement TWB<sup>2</sup>, Brine Shallow Flooding or Dynamic Water Management as alternatives to BACM Shallow Flooding or MDCE BACM shallow flooding.

#### C. CONTINGENCY MEASURES

1. At least once each calendar year, the District shall determine whether additional areas of the lake bed require BACM PM<sub>10</sub> Control Measures in order to attain or maintain the PM<sub>10</sub> NAAQS.
2. If the District has not demonstrated attainment with the PM<sub>10</sub> NAAQS on or before December 31, 2017, or has not met reasonable further progress milestones, the District shall order the City to apply one or more BACM PM<sub>10</sub> Control Measures as set forth in Paragraphs A.2 and C.4 on those areas of the Owens Lake bed that cause or contribute to exceedances of the PM<sub>10</sub> NAAQS.
3. If monitoring and/or modeling demonstrates BACM PM<sub>10</sub> Control Measures are needed in an ECR Area(s) to attain or maintain the PM<sub>10</sub> NAAQS after BACM PM<sub>10</sub> Control Measures are implemented in adjacent areas, the District shall order the City to select and implement BACM PM<sub>10</sub> Control Measures set forth in Paragraph A.2.
4. The District may order the City to implement, operate and maintain a total of up to 53.4 square miles of waterless or water-neutral BACM PM<sub>10</sub> Control Measures on the Owens Lake bed below the Regulatory Shoreline (elev. 3,600 feet) and above the ordinary high water level of Owens Lake (elev. 3,553.55 feet).
5. As expeditiously as practicable and not more than three years after any such order for additional BACM PM<sub>10</sub> Control Measures, the City shall install, operate and maintain BACM PM<sub>10</sub> Control Measures that achieve a control efficiency of 99%. If BACM Managed Vegetation is chosen up to two additional years for vegetation growth is allowed to achieve the 37% vegetation cover requirement.

EXHIBIT 1 – Dust Control Area Map

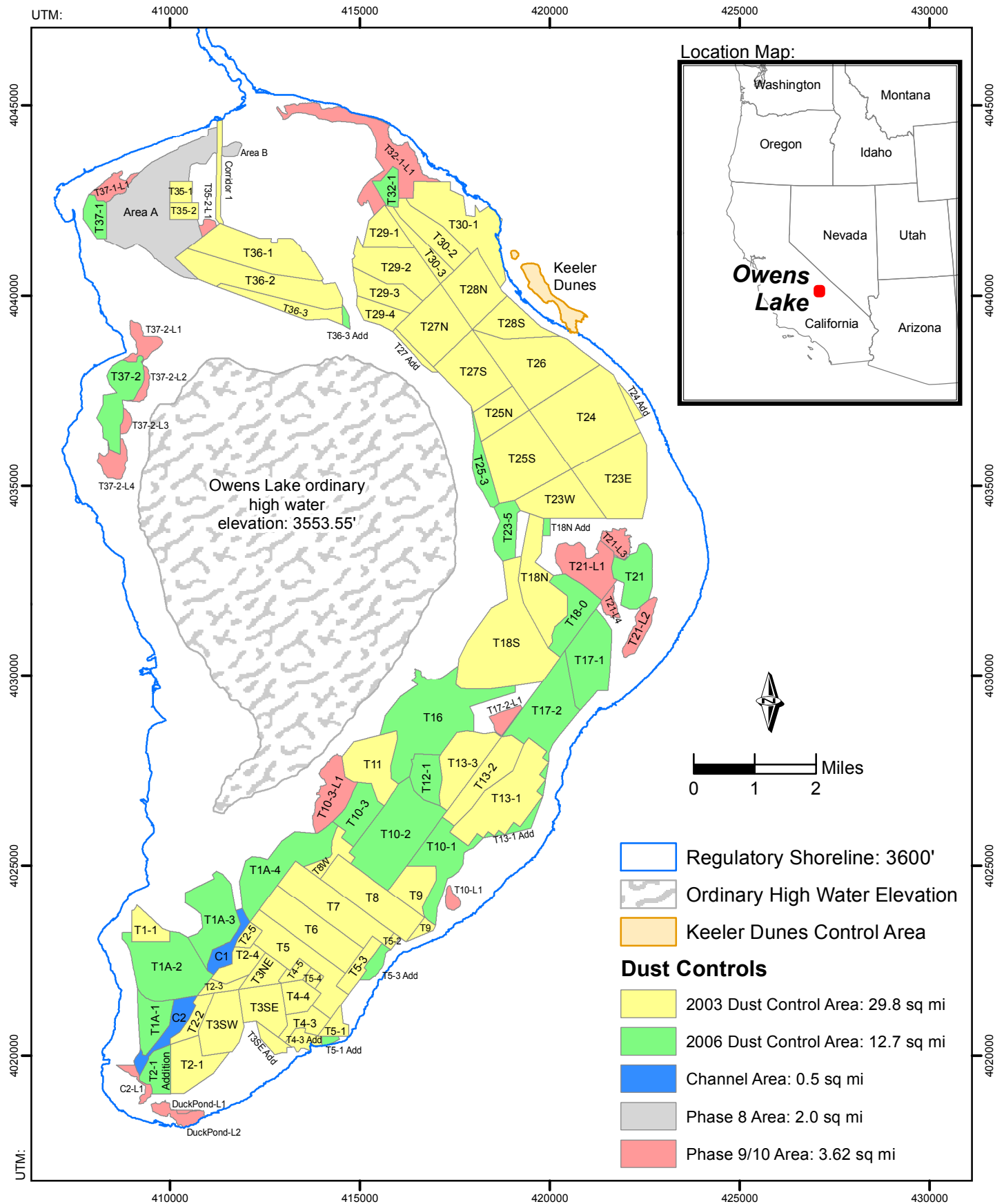
EXHIBIT 2 – Dust Control Efficiency Requirements

EXHIBIT 3 – Shallow Flood Control Efficiency and Wetness Cover Curve

ATTACHMENT A – Performance Requirements for BACM

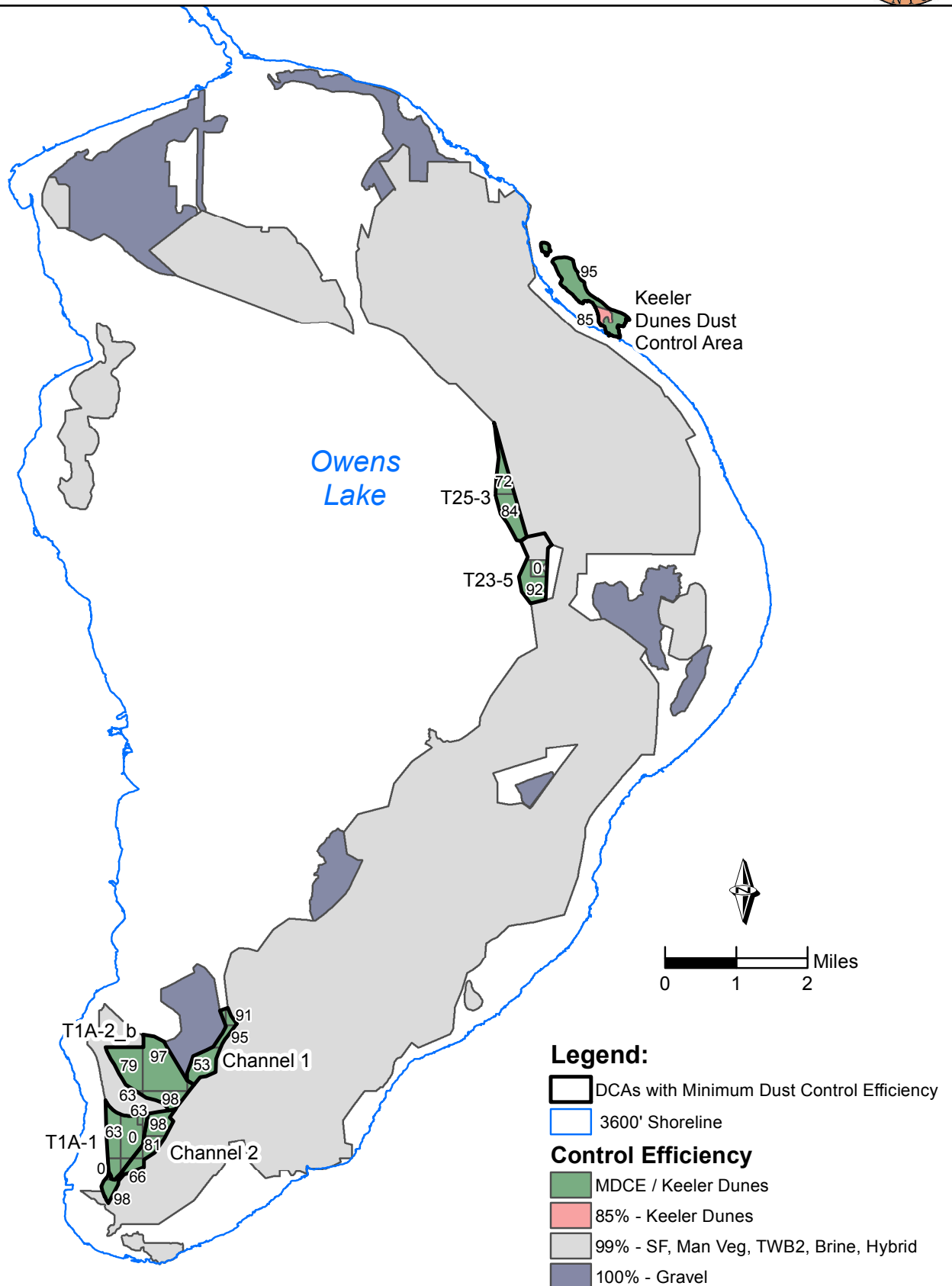


# Exhibit 1 - PM10 Dust Control Areas

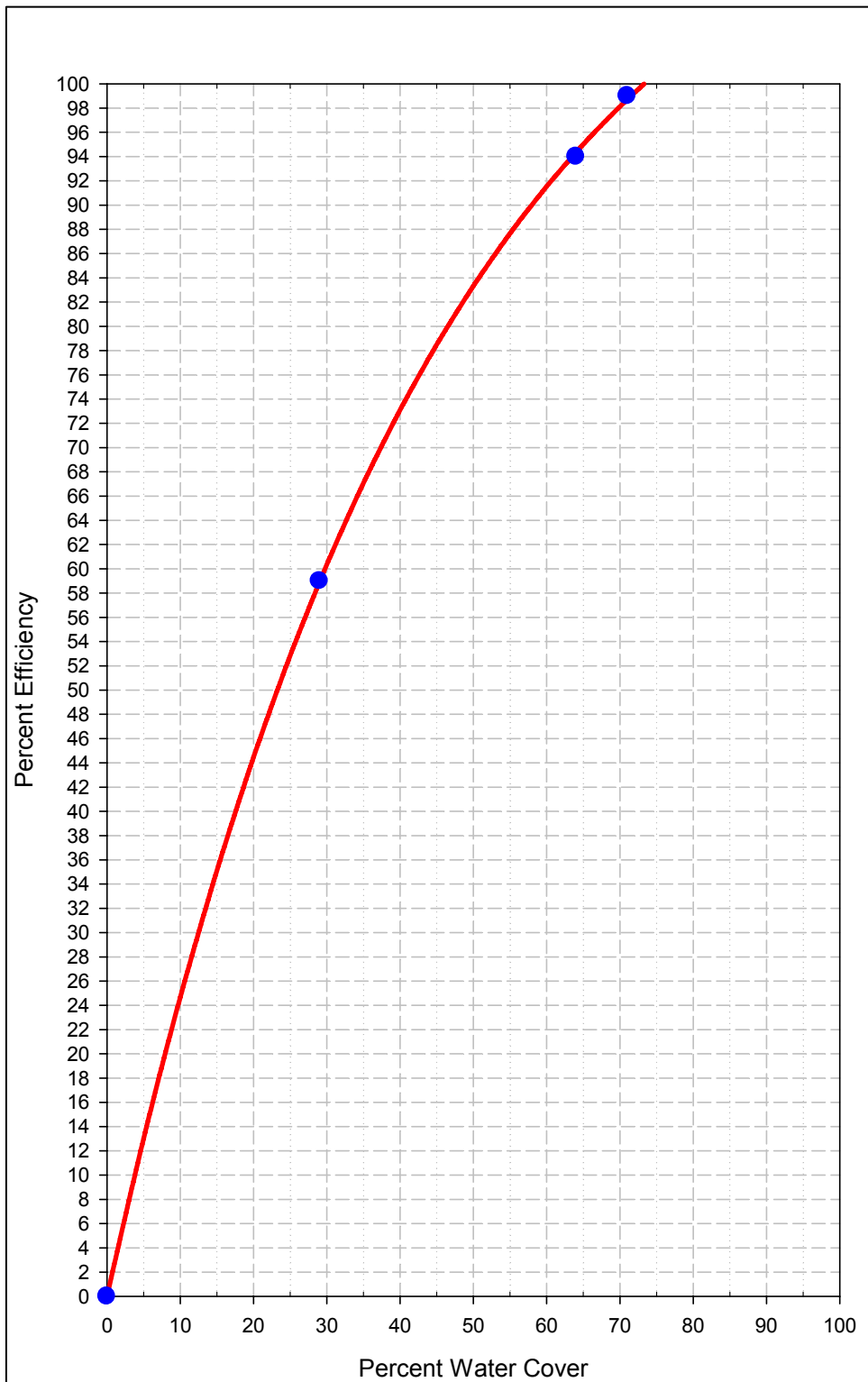




## Exhibit 2 - Dust Control Efficiency Map



## Exhibit 3 - Shallow Flood control efficiency curve



**Rule 433 – Attachment A**  
**Performance Requirements for BACM**

**I. BACM Shallow Flooding**

- A. The “BACM Shallow Flooding” PM<sub>10</sub> control measure will apply water to the surface of those areas of the lake bed where shallow flooding is used as a PM<sub>10</sub> control measure. Water shall be applied in amounts and by means sufficient to achieve the performance standards set forth in Paragraphs I.B and I.C of this attachment. The dates by which BACM Shallow Flooding areas are to comply with these performance standards may be modified by the Dynamic Water Management provisions set forth in Rule 433.A.2.f and Paragraph VI.B.
- B. For all BACM Shallow Flooding areas except those within the 2006 DCA:
1. At least 75 percent of each square mile designated as BACM Shallow Flooding areas shall continuously consist of standing water or surface-saturated soil, substantially evenly distributed for the period commencing on October 16 of each year, and ending on May 15 of the next year. For these BACM Shallow Flood dust control areas, 75 percent of each entire contiguous area shall consist of substantially evenly distributed standing water or surface- saturated soil.
  2. Beginning May 16 and through May 31 of every year, shallow flooding areal wetness cover may be reduced to a minimum of 70 percent.
  3. Beginning June 1 and through June 15 of every year, shallow flooding areal wetness cover may be reduced to a minimum of 65 percent.
  4. Beginning June 16 and through June 30 of every year, shallow flooding areal wetness cover may be reduced to a minimum of 60 percent.
- C. For BACM Shallow Flooding areas within the 12.7 square-mile 2006 DCA:
1. The percentage of each area that must have substantially evenly distributed standing water or surface-saturated soil shall be based on the Shallow Flood Control Efficiency Curve (Exhibit 3) to achieve the control efficiency levels in the Minimum Dust Control Efficiency (MDCE) Map (Exhibit 2).
  2. For only those BACM Shallow Flooding areas with control efficiencies of 99 percent or more:
    - a. Beginning May 16 and through May 31 of every year, shallow flooding areal wetness cover may be reduced to a minimum of 70 percent.

- b. Beginning June 1 and through June 15 of every year, shallow flooding areal wetness cover may be reduced to a minimum of 65 percent.
- c. Beginning June 16 and through June 30 of every year, shallow flooding areal wetness cover may be reduced to a minimum of 60 percent.

## II. BACM Managed Vegetation

The “BACM Managed Vegetation” PM<sub>10</sub> control measure requires planting surfaces of the BACM PM<sub>10</sub> control areas with protective vegetation to meet the control efficiency level of 99% by maintaining an overall average vegetation cover of 37% for each contiguous managed vegetation area.

## III. BACM Gravel Blanket

The BACM Gravel Blanket” PM<sub>10</sub> control measure requires the application of a layer of gravel sufficient to meet the control efficiency level of 100% by one of the following means:

- covering 100% of the control area with a layer of gravel at least four inches thick with gravel screened to a size greater than ½ inch in diameter, or
- covering 100% of the control area with a layer of gravel at least two inches thick with gravel screened to ½ inch in diameter underlain with a permanent permeable geotextile fabric.

## IV. Tillage with BACM (Shallow Flood) Backup (or TWB<sup>2</sup>)

A. The City of Los Angeles (“City”) may implement or transition BACM Shallow Flood areas to “Tillage with BACM (Shallow Flood) Back-up (TWB<sup>2</sup>),” which shall consist of (1) soil tilling within all or portions of BACM Shallow Flood PM<sub>10</sub> control areas (TWB<sup>2</sup> Areas), and (2) the installation of all necessary shallow flood infrastructure so that the TWB<sup>2</sup> Areas can be shallow-flooded if the erosion threshold is exceeded or the performance criteria are not met.

### B. Construction of TWB<sup>2</sup> Areas

1. Tillage shall create rows and furrows in roughly east to west directions in order to create maximum surface roughness for winds from the north and south. Additional roughness to protect surfaces from west winds shall be created in tilled areas

sufficient to prevent emissions from east and west winds.

2. The tilled surfaces will also be armored with soil clods of 1/2 inch diameter or larger covering 60 percent or more of the tilled surface.
3. TWB<sup>2</sup> areas shall be constructed with ridge heights (RH) averaged on 40-acre blocks at or above 1.25 feet (furrow depth to ridge top difference at least 2.5 feet) and row spacing (RS) sufficient to provide a ratio of the row spacing to ridge height (RS/RH) below 10, e.g. distance between rows is 12.5 feet with average ridge height greater than 1.25 feet.

#### C. Monitoring and Maintenance

##### 1. Surface Roughness

- a. Lidar, aerial photography or other field measurement methods with equivalent accuracies will be used by the City to measure RS/RH ratio and ridge height. Roughness measurements will be made in the north-to-south direction --- the direction of the primary dust producing winds. Roughness measurements may also be made in other directions. Roughness measurements will be reported to the APCO within 30 days of measurement.
- b. The RS/RH ratio and ridge height measurements will be made at 6 month, or more frequent, intervals. Inverse roughness and ridge height for a TwB<sup>2</sup> Area will be tracked and plotted as a function of time. Where feasible, field measurements may also be taken to confirm Lidar or other remotely sensed results. The City will conduct roughness measurements at least once every 6 months and report the measurements within 30 days to the APCO. The District reserves the right to conduct its own roughness measurements at any time.
- c. Assuming that degradation of the tilled ridges may occur over time, tillage maintenance will be performed by the City if the average RS/RH roughness ratio is between 10.1 and 12.0 or if the average ridge height is less than 1.1 feet in a tilled area.
- d. The City shall re-flood a TWB<sup>2</sup> area to comply with the required BACM Shallow Flood control efficiency for the area if the RS/RH ratio is greater than 12.0 (12/1) or the ridge height falls below 1.0 feet for any defined 40-acre averaging area.
- e. The City shall measure clod coverage using the point-intercept method (U.S. Bureau of Land Management, Sampling Vegetation Attributes, Method G,



Technical Reference BLM/RS/ST-96/002+1730) or other field measurement methods with equivalent accuracy. Clod cover will be measured concurrently with surface roughness at least once every 6 months and reported to the APCO within 30 days of measurement.

## 2. Sand Flux

- a. The City shall monitor each TWB<sup>2</sup> area with at least four Sensits and Cox sand catchers (CSCs) with inlets set at 15 cm above untilled surfaces (circular pads with 3 m radius) in the general northern, southern, eastern and western portions of a tillage. In TWB<sup>2</sup> areas greater than 320 acres the City shall install one Sensitive and CSC pair per 80 acres.
- b. The City will pair CSCs with Sensits, radio equipment and dataloggers programmed to record 5-minute sand motion data. All Sensitive data will be reported daily to the District. Sand motion data from the CSCs and Sensits will be processed to track sand flux at each site.
- c. All sand flux monitoring equipment will be installed prior to the start of tillage activities.
- d. High sand flux values recorded during maintenance activities or from non-tillage sand flux sources shall be excluded from the sand flux data. Maintenance activities and non-tillage sand flux sources may include, but are not limited to, rain-splatters, bugs, adjacent grading and road construction activities, as well as vehicle traffic. Sensits should be placed so as to minimize impacts from non-tillage sand flux sources.
- e. When (other than during maintenance activities taking place in the “tillage area” which is defined as the tilled portion of the TWB<sup>2</sup> area) the sand flux exceeds 0.50 g/cm<sup>2</sup>/day, the City will perform maintenance in the tillage area, which may include surface wetting, re-establishment of the surface roughness, or full or partial reflooding of a TWB<sup>2</sup>.

## 3. PM<sub>10</sub> Monitoring

- a. Each TWB<sup>2</sup> area will be assigned upwind and downwind PM<sub>10</sub> monitors (not necessarily at the TwB<sup>2</sup> Area boundary) to monitor PM<sub>10</sub> emissions from the tillage area. For a given wind direction, the downwind monitors shall be within

22 degrees ( $\pm 11.5^\circ$ ) of the upwind monitors. Upwind/downwind monitor assignments will be requested by the City and approved by the APCO. Existing monitors operated by the District may be used as upwind/downwind monitors. Additional EPA reference and equivalent method PM<sub>10</sub> monitors (40 CFR Part 53) shall be operated by the City, unless mutually agreed otherwise.

- b. If a monitor is operated by the City, its operation and maintenance must follow District procedures and data collection must be incorporated into the District communications network. The District reserves the right to audit monitors and monitoring data collected by the City. The District also reserves the right to install and operate or require the City to install and operate additional PM<sub>10</sub> monitors to adequately monitor the PM<sub>10</sub> emissions coming from tilled areas.
  - c. All PM<sub>10</sub> monitoring equipment will be in place as soon as practicable as shallow flood areas dry, but no later than the start of tillage activities.
  - d. Impacts caused by maintenance activities and non-tillage sources shall be excluded from the PM<sub>10</sub> data. Maintenance activities and non-tillage PM<sub>10</sub> sources may include, but are not limited to, adjacent grading and road construction activities, as well as vehicle traffic. PM<sub>10</sub> monitors should be placed so as to minimize impacts from non-tillage sources.
  - e. When the daily downwind to upwind PM<sub>10</sub> concentration difference for any dust event (other than during maintenance activities in the tillage area) exceeds 50  $\mu\text{g}/\text{m}^3$  and there is no evidence to show that the additional downwind PM<sub>10</sub> did not come from the TWB<sup>2</sup> Area, maintenance will be performed in the tillage area.
4. Induced Particulate Erosion Test
- a. The Induced Particulate Erosion Test (IPET) method will be used to determine if tilled area surfaces are starting to become emissive. The IPET method uses a small radio-controlled helicopter-type craft (Radio-Controlled Wind Induction Device or RCWInD) to create wind on the surface. Each RCWInD craft shall be pre-tested to determine the test height above the surface ( $H_t$ ) at which the craft creates a target maximum horizontal wind speed (TWS) measured at 1 centimeter ( $U_{0.01}$ ) above a flat surface equal to 11.3 meters per second (m/s). If the payload on a craft is changed, e.g. a different camera is used, then  $H_t$  must be re-

determined for the new payload since it will affect the amount of thrust needed to keep the RCWInD aloft.

- b. Testing to determine  $H_t$  and TWS will be done on a smooth flat surface, e.g. concrete or asphalt pavement or plywood test platform with calm ambient winds ( $< 2$  m/s).  $H_t$  is measured from the bottom of the rotor blade to the surface. The maximum wind speed for any flight height is taken at a height one centimeter above the surface at a point that is one rotor blade length away from the point beneath the center of the fastest rotor blade taken on a line extending outward from the rotor arm. The wind speed measurement is taken with a pitot tube pointing toward the center of the rotor blade. The RCWInD must be flown in a stationary position to get a sustained wind speed measurement.
  - c. When the craft is flown over a ridged surface  $H_t$  is measured from the bottom of the craft's rotor blades to the highest surface projection anywhere directly below the craft.
  - d. Three erosion alert levels are set using the IPET method: 1) an early warning of possible clod and surface stability deterioration, 2) a warning level to alert the City of a potential breakdown of the surface stability and to advise voluntary maintenance efforts, and 3) a mitigation action level to require re-tilling and/or re-flooding of all or part of a TWB<sup>2</sup>, DWM or Brine BACM Area.
  - e. The IPET method will be used to determine erosion alert levels as follows:
    - Level 1 – An erosion early warning is indicated when any visible dust is observed to be emitted from a surface or particles are dislodged when the RCWInD is flown at a height below one half of  $H_t$ . Voluntary mitigation may be appropriate to prevent further surface degradation.
    - Level 2 – An erosion warning is indicated when any visible dust is observed to be emitted from a surface when the RCWInD is flown at a height below  $H_t$  and above one half of  $H_t$ . Voluntary mitigation is advised to prevent further surface degradation.
    - Level 3 – Mitigation action is required if visible dust is observed to be emitted from a surface when the RCWInD is flown at a height of  $H_t$  or higher.
- D. The City shall re-flood TwB<sup>2</sup> areas to comply with the BACM Shallow Flood control

efficiency target for that area, if either of the following erosion thresholds are exceeded as determined using the sand flux and IPET measurements described in Paragraphs IV.C.2 and IV.C.4.

1. Sand flux measured at 15 cm above the surface exceeds 1.0 gram per square centimeter per day, or
2. Induced Particulate Erosion Test method shows visible dust emissions when operated at the reference test height,  $H_t$ .

## V. Brine BACM

A. Stable surfaces for Brine BACM shall be defined as consisting of standing water, evaporite salt deposit, and capillary brine salt crust as follows:

1. Water: Standing water or hydrologically saturated surface as defined by BACM Shallow Flooding, regardless of salinity level.
2. Evaporite Salt Deposit: A crystalline deposit of salt minerals precipitated on the surface of the lakebed from evaporation of Owens Lake brine. The evaporite salt deposit does not include the development of salt crust by upward capillary movement of saline fluids through the soil column. The evaporite salt deposit must have an average thickness of 1.5 centimeters or greater and may be either wet or dry.
3. Capillary Brine Salt Crust: A crust enriched in salt minerals formed at the soil surface by upward capillary movement of water through the soil. The capillary brine crust typically consists of a mix of salt minerals and soil particles in various proportions, and must meet the following three conditions:
  - a. The capillary brine salt crust within a Brine BACM area must have an average thickness of 10 centimeters or greater and may be either wet or dry,
  - b. a capillary brine salt crust must be accompanied by either water and/or an evaporite salt deposit, and
  - c. the proportion of qualifying capillary brine crust within a Brine BACM area cannot exceed one-third of the required total compliant cover within a Brine BACM area.

B. Each Brine BACM area shall be operated such that the total areal extent of the surface cover of the qualifying surfaces are maintained such that they meet or exceed those as

defined by the Shallow Flooding Control Efficiency Curve in Exhibit 3. The combined mosaic of stable Brine BACM surfaces shall cover the entire dust control area.

- C. Brine BACM can be used by the City of Los Angeles (City) throughout the Owens Lake bed where backup BACM Shallow Flood infrastructure exists and can be implemented, as set forth in this protocol, to ensure that Brine BACM areas do not cause or contribute to exceedance of the NAAQS for PM<sub>10</sub>.
- D. The boundaries for each Brine BACM area will be pre-defined by the City prior to implementation. Each Brine BACM area will be monitored separately to determine compliance with required surface cover conditions.
- E. The City will monitor each Brine BACM area with at least one sand flux monitor (SFM) site instrumented with paired Cox Sand Catchers (CSCs) and Sensits with inlets positioned 15 cm above the surface, radio equipment, and dataloggers programmed to record 5-minute sand motion data. SFM sites will primarily be located in portions of Brine BACM areas covered with a capillary crust. All Sensit data will be reported daily to the District. Sand motion data from the CSCs and Sensits will be processed to track sand flux at each site.
- F. Brine BACM areas will be monitored using the IPET method following the procedures used for Tillage with BACM Back-up areas in Paragraph IV.C.4.
- G. The City shall re-flood Brine BACM areas to comply with the BACM Shallow Flood control efficiency target for that area, if either of the following erosion thresholds are exceeded as determined using the sand flux and IPET measurements described in Paragraphs IV.C.2 and IV.C.4.
  - 1. Sand flux measured at 15 cm above the surface exceeds 5.0 grams per square centimeter per day, or
  - 2. Induced Particulate Erosion Test method shows visible dust emissions when operated at the reference test height, H<sub>t</sub>.

## VI. Dynamic Water Management

- A. Areas that are eligible for Dynamic Water Management (DWM) must meet the following sand flux history criteria:
  - 1. 5 years or more of sand flux data from before dust control implementation,
  - and

2. The frequency of significant sand flux ( $\geq 5$  g/cm<sup>2</sup>/day) taking place outside of the modified shallow flood dust control period did not occur in more than one calendar year over any continuous six year period.
- B. The modified dust seasons for DWM have three different start dates in the beginning of the season that reflect the delayed start of source area activity across the lakebed. The modified start dates are applicable to certain dust control areas based on the sand flux history as evaluated in Paragraph VI.A and the method of shallow flooding using conventional flooding or sprinkler irrigation.
1. For areas shallow flooded by methods other than sprinkler irrigation, the standard and modified dust control periods are:  
**Standard Dust Season**  
October 16 to June 30 (with ramping of 99% control areas after May 15)  
**Modified Dust Seasons for Dynamic Water Management**  
October 16 – April 30  
December 1 – April 30  
January 16 – April 30
  2. For eligible areas that are shallow flooded with sprinkler irrigation, the modified DWM seasons shall be adjusted to provide water two weeks earlier in the beginning of the dust season to simulate ramp up as applied in conventional BACM Shallow Flood areas and one month later at the end of the dust season due to the lack of wetness during the dry down period with conventional BACM Shallow Flood areas. The adjustments to the DWM seasons for sprinkler irrigated shallow flooding areas are provided below.  
**Modified Dust Seasons Adjusted for Sprinkler Irrigated Shallow Flooding Areas**  
October 16 – May 31  
November 16 – May 31  
January 1 – May 31
  3. In areas approved for DWM, the City of Los Angeles (City) shall meet the shallow flood control efficiency and wetness targets indicated in Exhibits 2 and 3 by or before the applicable start dates in Paragraph VI.B and water may be shut off with no spring ramping at the end of the modified season.
- C. Each DWM area will be instrumented by the City with sand flux monitoring (SFM) sites

using paired Sensits and Cox Sand Catchers (CSCs) during the modified start and end periods. The locations of SFM sites shall be determined by the City in coordination with the District.

1. The number of SFM sites at the modified start of the dust season will be proportional to the areal extent of the DWM area. All DWM areas will require at least one SFM site however; the APCO may require proportionally more SFM sites for DWM areas greater than 320 acres such that there is approximately one SFM site per 160 acres of DWM area.
2. During the modified end period of the dust season, the LADWP shall install SFM sites incrementally in stages as a DWM area dries. The number of SFM sites is provided in Table 1 below.

**Table 1.** Number of SFM sites required per DWM area during the modified end of the dust season.

Drying Stage	Exposed Lakebed	Number of SFM sites
1	Less than 50 acres	0
2	50 – 160 acres	1
3	>160 acres	1 per every 160 acres

3. The City will pair CSCs with Sensits with inlets positioned at 15 cm above the surface, radio equipment and dataloggers programmed to record 5-minute sand motion data. All Sensit data will be reported daily to the District. Sand motion data from the CSCs and Sensits will be processed to track sand flux at each site.
4. During the modified start of the dust season all sand flux monitoring equipment will be placed by the City no later than October 16. During the modified end of the dust season all SFM sites will be placed by the City within 7 calendar days of reaching each drying stage. The City shall inform the District of all SFM site installations within 7 days of installation.
5. SFM sites installed for monitoring in the modified beginning dust season may be removed from a DWM area once the modified dust season has started for each DWM area or once the site location is endanger of getting flooded. The City shall inform the District of all SFM site removals within 7 calendar days of their removal

date. SFM sites installed for monitoring of the modified end of the dust season may be removed from a DWM area after June 30.

- D. DWM areas will be monitored using the IPET method following the procedures used for Tillage with BACM Back-up areas in Paragraph IV.C.4.
- E. The City shall re-flood a DWM area or sub-area as indicated by the available information to comply with the BACM Shallow Flood control efficiency target for that area, if either of the following erosion thresholds are exceeded as determined using the sand flux and IPET measurements described in Paragraphs IV.C.2 and IV.C.4.
  - 1. Sand flux measured at 15 cm above the surface exceeds 5.0 grams per square centimeter per day, or
  - 2. Induced Particulate Erosion Test method shows visible dust emissions when operated at the reference test height,  $H_t$ .
- F. If any DWM area exceeds either erosion threshold in Paragraph VI.E in more than one calendar year over any continuous six-year period, that area will revert to the standard BACM Shallow Flood dust season as shown in Paragraph VI.B.1 since the area will no longer meet the DWM criteria in Paragraph VI.A.



## REGULATION V – AGRICULTURAL OPERATIONS

### RULE 500. DEFINITION

Adopted: 09/05/74

"Orchard Heater" means any article, machine, equipment or other contrivance burning any type of fuel, or a solid fuel block composed of petroleum coke burned by an open flame, used or capable of being used for the purpose of giving protection from frost damage. For the purpose of this Regulation, "Orchard Heater" shall include heaters used for frost protection for orchards, vineyards, truck crops, and field crops. The contrivance commonly known as a wind machine is not included.

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RULE 501. ORCHARD AND CITRUS HEATERS

Adopted: 09/05/74      Revised: 03/10/76

No person shall use any orchard or citrus grove heater unless it has been approved by the State Air Resources Board and the Air Pollution Control Officer and unless it produces less than one gram per minute of unconsumed solid carbonaceous material.

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## RULE 502. CONSERVATION MANAGEMENT PRACTICES

Adopted: 07/7/05

### 1.0 PURPOSE

The purpose of this rule is to limit fugitive dust emissions from agricultural operation sites within the Great Basin Unified Air Pollution Control District (Alpine, Inyo and Mono Counties).

### 2.0 APPLICABILITY

This rule applies to agricultural operation sites located within the Great Basin Unified Air Pollution Control District.

### 3.0 DEFINITIONS

3.1 Administrative change: a change to a Conservation Management Practice (CMP) Plan that:

3.1.1 Corrects typographical errors: or

3.1.2 Identifies a change in the name, address, or phone number of any person identified in the CMP Plan, or provides a similar minor administrative change which has no effect on the selected CMPs and does not change any information that could be used to determine emissions reduction; or

3.1.3 Allows for the change of ownership or operational control of an agricultural operation site or agricultural parcel.

3.2 Agricultural Operations: the growing and harvesting of crops or the raising of livestock, fowl or other animals, for the primary purpose of earning a living, or of conducting agricultural research or instruction by an educational institution.

3.3 Agricultural Operation Site: one (1) or more agricultural parcels that meet the following:

3.3.1 Are under the same or common ownership or operation (including leases and allotments), or which are owned or operated by entities which are under common control; and

3.3.2 Are located on one (1) or more contiguous or adjacent properties wholly within the Great Basin Unified Air Pollution Control District.

3.4 Agricultural Parcel: a portion of real property, including, but not limited to, cropland, grazing land and animal feeding operation (AFO) used by an owner/operator for carrying out a specific agricultural operation. Roads, vehicle/equipment traffic areas, and facilities, on or adjacent to the cropland or AFO are part of the agricultural parcel.

3.5 Air Pollution Control Officer (APCO): the Air Pollution Control Officer of the Great Basin Unified Air Pollution Control District.

- 3.6 Animal Feeding Operation (AFO): a lot or facility where animals have been, are, or will be gathered, fed, stabled, for a total of 45 days or more in any 12 month period and where crops, vegetation, forage growth, or post-harvest residues are not sustained over any portion of the lot or facility (as defined in 40 CFR 122.23 (b)(1)).
- 3.7 Board: as defined in Rule 101 (Definitions).
- 3.8 Conservation Management Practice (CMP): an activity or procedure that reduces air pollutants normally emitted by, or associated with, an agricultural operation. The District's list of CMPs shall constitute the best available control measures (BACM) and best available retrofit control technology (BARCT) for agricultural practices at agricultural sources of air pollution in the District.
- 3.9 Conservation Management Practice Application (CMP Application): a document prepared and submitted by the owner/operator of an agricultural operation site that lists the selected CMPs for implementation. The CMP application also contains, but is not limited to, contact information for the owner/operator, and a site plan or map describing the agricultural operation site and locations of agricultural parcels where CMPs will be implemented and other information describing the extent, duration of CMP implementation and other information needed by the District to calculate emission reductions.
- 3.10 Conservation Management Practice Category (CMP Category): a grouping, including, but not limited to, agricultural activities related to land preparation, harvesting, handling and raising of fowl or animals, and the use of agricultural unpaved roads, and unpaved vehicle/equipment traffic areas. The CMP category "other" includes CMPs to reduce windblown emissions and agricultural burning emissions.
- 3.11 Conservation Management Practice List (CMP List): the list of CMPs by CMP categories as approved by the District Board.
- 3.12 Conservation Management Practice Plan (CMP Plan): A CMP Application approved by the APCO.
- 3.13 Conservation Management Practice Program (CMP Program): a District program with the purpose of reducing air pollutants from agricultural operation sites.
- 3.14 Contiguous or Adjacent Property: a property consisting of two (2) or more parcels of land with a common point or boundary, or separated solely by a public roadway or other public right-of-way.
- 3.15 District: the Great Basin Unified Air Pollution Control District including all of Alpine, Inyo and Mono Counties.
- 3.16 Fugitive Dust: any solid particulate matter entrained in the ambient air, caused by anthropogenic or natural activities, that is emitted into the air without first passing through a stack or duct designed to control flow, including, but not limited to, emissions caused by movement of soil, vehicles, equipment, and windblown

dust. This excludes particulate matter emitted directly in the exhaust of motor vehicles, from other fuel combustion devices, portable brazing, soldering, or welding equipment, and from pile drivers.

- 3.17 Grazing Land: (1) a collective term for rangeland, pastureland, grazing forest land, native and naturalized pasture, hayland, and grazed cropland. (2) land is used primarily for production of forage plants maintained or manipulated primarily through grazing management. Includes all land having plants harvestable by grazing without reference to land tenure, other land uses or management practices.
- 3.18 NRCS: The United States Department of Agriculture Natural Resource Conservation Service.
- 3.19 Owner/Operator: includes, but is not limited to, any person who leases, rents, supervises, or operates equipment, or owns/operates a fugitive dust source, in addition to the normal meaning of owner or operator.
- 3.20 Particulate Matter: as defined in Rule 101 (Definitions).
- 3.21 Paved Road: any road that is covered by concrete, asphaltic concrete or asphalt that provides structural support for vehicles.
- 3.22 PM<sub>10</sub>: as defined under "Particulate Matter" in Rule 101 (Definitions).
- 3.23 Road: any paved or unpaved road or street, highway, freeway, alley, way, access easement or driveway.
- 3.24 Unpaved Road: any road that is not covered by one of the materials described in the paved road definition.
- 3.25 Vehicle: A device by which any person or property may be propelled, moved, or drawn, including mobile equipment, excepting aircraft or watercraft or devices moved exclusively by human or animal power or used exclusively upon rails or tracks.

#### 4.0 EXEMPTIONS

- 4.1 With the exception of AFOs, the provisions of this rule, except for the recordkeeping provisions of Section 6.5.2, shall not apply to any of the following sources:
  - 4.1.1 Agricultural operation site where the total acreage of all agricultural parcels is less than forty (40) acres if there are less than five (5) separate residences or businesses within one-quarter (¼) mile of the site boundaries.
  - 4.1.2 Agricultural operation site where the total acreage of all agricultural parcels is less than ten (10) acres if there are five (5) or more residences or businesses within one-quarter (¼) mile of the site boundaries.

- 4.1.3 Woodland and wasteland not actually under cultivation or used for pasture.
- 4.1.4 Land placed in the Conservation Reserve Program meeting the definition and criteria set by the NRCS.
- 4.1.5 Agricultural operation parcel used for the purpose of:
  - 4.1.5.1 Propagating plants for transplanting, and exhibiting plants under controlled conditions inside a building with walls and roof, or
  - 4.1.5.2 Forestry, including, but not limited to, timber harvest operations, silvicultural practices, forest management burning, or forest protection practices, or
  - 4.1.5.3 Providing grazing on open rangeland or pasture. However, the cultivation of pasture is not exempt.
- 4.2 The provisions of this rule, except for the recordkeeping provisions of Section 6.5.2, shall not apply to any of the following sources within an agricultural operation site:
  - 4.2.1 An AFO with less than 150 head of domesticated farm mammals, including, but not limited to, cattle (heifers, steers, bulls veal calves and cow/calf pairs), sheep and pigs, or
  - 4.2.2 An AFO with less than 2,500 fowl, including, but not limited to, chickens and turkey.
- 4.3 This rule does not exempt the owner/operator from any other District regulations.

## 5.0 REQUIREMENTS

- 5.1 Effective on and after the schedule set forth below in Sections 5.1.1 through 5.1.3, an owner/operator shall implement the applicable CMPs selected pursuant to Section 6.2 for each agricultural operation site.
  - 5.1.1 For all Agricultural Operations located within the Owens Valley PM<sub>10</sub> non-attainment area, the requirements of this rule shall go into effect on and after January 1, 2006.
  - 5.1.2 For all Agricultural Operations located within the Coso Junction (formerly Searles Valley), Mono Basin and Mammoth Lakes PM<sub>10</sub> non-attainment areas, the requirements of this rule shall go into effect on and after January 1, 2007.
  - 5.1.3 For all Agricultural Operations located within all areas of the Great Basin Unified Air Pollution Control District not designated in Sections 5.1.1 and 5.1.2, the requirements of this rule shall go into effect on and after January 1, 2008.

- 5.2 An owner/operator shall prepare and submit a CMP Application for each agricultural operation site, pursuant to Section 6.0, to the APCO for approval. A CMP Application approved by the APCO shall constitute a CMP Plan.
- 5.3 Except as provided by Section 5.4, an owner/operator shall implement the CMPs as contained in the CMP Plan approved pursuant to Section 6.0 for each agricultural operation site no later than thirty (30) days after notification by the APCO of the approval of the CMP Application.
- 5.4 An owner/operator that discontinues the implementation of a CMP as committed to in a CMP Plan or makes other changes that are inconsistent with the CMP Plan shall comply with the requirements of Section 6.3.4.

## 6.0 ADMINISTRATIVE REQUIREMENTS

### 6.1 CMP Application Preparation

An owner/operator shall prepare a CMP Application for each agricultural operation site. Each CMP Application shall include, but is not limited to, the following information:

- 6.1.1 The name, business address, phone number and emergency contact information of the owner/operator responsible for the preparation and the implementation of the CMP Plan.
- 6.1.2 The signature of the owner/operator and the date that the application was signed.
- 6.1.3 A plot plan or map which contains the following information:
  - 6.1.3.1 The location of the agricultural operation site,
  - 6.1.3.2 The location of each agricultural parcel on the agricultural operation site,
  - 6.1.3.3 The location of unpaved roads and unpaved equipment/traffic areas to be covered by the CMP Plan, and
  - 6.1.3.4 The location where the CMP will be implemented.
  - 6.1.3.5 The plot plan or map shall be maintained on-site and made available to the APCO or the APCO's agent upon request.
- 6.1.4 The following information, for each agricultural parcel of the agricultural site:
  - 6.1.4.1 The CMPs, selected pursuant to Section 6.2, implemented or planned for implementation and
  - 6.1.4.2 The crop, AFO, or other use of the agricultural parcel.

6.1.5 Information necessary to calculate emission reductions including, but not limited to:

6.1.5.1 The crop or animals and total crop acreage or number of animals and the total length (miles) of unpaved roads, and the total area (acres or square feet) of the unpaved equipment and traffic areas to be covered by the CMP Plan, and

6.1.5.2 Other information as determined by the APCO.

## 6.2 CMP Selection

An owner/operator shall select and implement one (1) CMP from the CMP list for each of the applicable CMP categories for each agricultural parcel of an agricultural operation site, except as provided below:

6.2.1 If an agricultural operation site or agricultural parcel has crop rotation, an owner/operator shall select one (1) CMP from the CMP list for each of the applicable CMP categories for each rotated crop type.

6.2.2 If a CMP can only be selected for implementation on a portion of an agricultural operation site, an owner/operator shall select an additional CMP within the CMP category to be implemented on the remaining acreage or remaining AFO.

6.2.3 An owner/operator may select a substitute CMP from another CMP category when no feasible CMP can be identified from one category. This provision shall not apply for the unpaved road, and unpaved vehicle/equipment traffic area CMP categories.

6.2.3.1 An owner/operator may identify or develop a new CMP not on the CMP list to be used to comply with the requirements of this rule. Prior to use of the new CMP, the owner/operator must obtain the interim approval of the APCO to use a new CMP to meet the requirements of Section 6.2. The owner/operator shall demonstrate that the new CMP achieves PM<sub>10</sub> emission reductions that are at least equivalent to other CMPs on the CMP list that could be selected for the applicable operation.

6.2.3.2 The APCO will perform an independent analysis of proposed CMPs to determine that they achieve PM<sub>10</sub> emission reductions that are at least equivalent to other CMPs on the CMP list that could be selected for the applicable operation. This analysis shall be made using the most recent emission factors provided by U.S. Environmental Protection Agency (EPA) or the California Air Resources Board (CARB) when available. CMPs that are not shown to achieve equivalent emission reductions will be disapproved. The District shall maintain a list of CMPs determined to be equivalent under this Section.



### 6.3 CMP Application Submission

An owner/operator shall submit a CMP Application, prepared pursuant to Section 6.1, to the APCO according to the following schedule:

- 6.3.1 For an agricultural operation site located within the Owens Valley PM<sub>10</sub> non-attainment area, no later than October 1, 2005 for existing agricultural operation sites and within 90 days for an agricultural operation site or an agricultural parcel that is acquired or becomes subject to the provisions of this Rule after January 1, 2006.
- 6.3.2 For an agricultural operation site located within the Coso Junction (formerly Searles Valley), Mono Basin or Mammoth Lakes PM<sub>10</sub> non-attainment areas, no later than October 1, 2006 for existing agricultural operation sites and within 90 days for an agricultural operation site or an agricultural parcel that is acquired or becomes subject to the provisions of this Rule after January 1, 2007.
- 6.3.3 For an agricultural operation site located within all areas of the Great Basin Unified Air Pollution Control District not designated in Sections 6.3.1 and 6.3.2, no later than October 1, 2007 for existing agricultural operation sites and within 90 days for an agricultural operation site or an agricultural parcel that is acquired or becomes subject to the provisions of this Rule after January 1, 2008.
- 6.3.4 Within 60 days of any operational, administrative, or other modification that necessitates the revision of an existing approved CMP Plan. A modification includes, but is not limited to, the following:
  - 6.3.4.1 Administrative changes to any information provided pursuant to Section 6.0,
  - 6.3.4.2 Implementation of a CMP other than the CMP listed in a CMP Plan,
  - 6.3.4.3 Change of the crop or AFO on a agricultural parcel, and
  - 6.3.4.4 Any other changes as determined by the APCO.

### 6.4 CMP Application Review and Evaluation

#### 6.4.1 The APCO shall:

- 6.4.1.1 Review the CMP Application and determine whether the submitted CMP Application is complete. Completeness shall be determined by evaluating whether the CMP Application meets the requirements of Section 6.1 of this rule and the applicable requirements of Rule 307 (Conservation Management Practices Plan Fees).

6.4.1.2 Notify the owner/operator in writing of the determination that the CMP Application is, or is not, complete and request the owner/operator to provide additional information within 30 days.

6.4.1.3 Evaluate and either approve or disapprove the CMP Application and provide written notification to the owner/operator within 60 days after receipt of the complete CMP Application, of the approval or disapproval of the CMP Application.

6.4.2 A CMP Application for a modification to a CMP Plan pursuant to Section 6.3.4.1 shall be deemed approved as submitted unless written comments are transmitted by the APCO to the owner/operator within 30 days of receipt of the CMP application.

6.4.3 A CMP Application for a modification to a CMP Plan pursuant to Sections 6.3.4.2, 6.3.4.3, and 6.3.4.4 shall be deemed conditionally approved as submitted unless written comments are transmitted by the APCO to the owner/operator within 30 days of receipt of the CMP application.

6.4.4 The approval of a CMP Application shall not serve to excuse the owner or operator from complying with law, nor shall it excuse any violation.

## 6.5 Recordkeeping

An owner/operator shall, upon request, make available to the APCO the records required to be kept pursuant to Section 6.5.1 and Section 6.5.2.

6.5.1. An owner/operator subject to Section 5.0 shall maintain the following records for a minimum of five (5) years:

6.5.1.1 A copy of each CMP Application and CMP Plan.

6.5.1.2 Supporting information necessary to confirm the implementation of the CMPs.

6.5.2 An owner/operator claiming exemption pursuant to Section 4.0 shall maintain records for a minimum of five (5) years that demonstrate that the agricultural operation site or agricultural parcel qualified for the exemption.

## 6.6 Loss of Exemption

An owner/operator of an agricultural operation site or agricultural parcel that becomes subject to the provisions of Section 5.0 of this rule, through loss of exemption, shall comply with all applicable provisions of this rule pursuant to the schedule in Section 6.3.

## 7.0 COMPLIANCE SCHEDULE

Unless otherwise noted, all provisions of this rule shall be effective on and after July 7, 2005.

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## REGULATION VI – PROCEDURE BEFORE THE HEARING BOARD

### RULE 600. GENERAL

Adopted: 09/05/74

This regulation shall apply to all hearings before the Hearing Board of the Great Basin Unified Air Pollution Control District.

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RULE 601. FILING PETITIONS

Adopted: 10/31/77      Revised: 04/24/91

Request for hearing shall be initiated by the filing of a petition in triplicate with the Clerk of the Hearing Board and the payment to said Clerk of a filing fee pursuant to Rule 306, after service of a copy of the petition has been made on the Air Pollution Control Officer, and one (1) copy on the holder of the permit or variance, if any involved. Service may be made in person or by mail and service may be approved by written acknowledgement of the person served or by the affidavit of the person making the service.

[Intentionally left blank.]

RULE 602. CONTENTS OF PETITIONS

Adopted: 09/05/74

Every petition shall state:

- A. The name, address and telephone number of the petitioner, or other person authorized to receive service of notices.
- B. Whether the petitioner is an individual, co-partnership, corporation or other entity, and names and addresses of partners, if a co-partnership; names and addresses of the managing officers, if a corporation; and the names and addresses of the persons in control, if other entity.
- C. The type of business or activity involved in the application and the street address at which it is conducted.
- D. A brief description of the article, machine, equipment or other contrivance, if any, involved in the application. The section or rule under which the petition is filed, that is, whether petitioner desires a hearing:
- E. The section or rule under which the petition is filed, that is, whether petitioner desires a hearing:
  - 1. To determine whether a permit shall be revoked or suspended or reinstated;
  - 2. For an emergency variance;
  - 3. For a short term variance;
  - 4. For a regular variance and approval of a compliance schedule;
  - 5. For an interim variance in conjunction with a petition for a short or regular term variance;
  - 6. For a variance and/or approval of a compliance schedule for a rule not yet effective;
  - 7. To revoke or modify a variance; and
  - 8. To review the denial or conditional granting of an authority to construct or permit to operate under Rule 214 of these Rules and Regulations.
- F. Each petition shall be signed by the petitioner, or by some person on his behalf, and where the person signing is not the petitioner it shall set forth this authority to sign.
- G. Petitions for revocation of permits shall allege in addition the rule under which permit was granted, the rule or section which is alleged to have been violated together with a brief statement of the facts constituting such alleged violations.
- H. Petitions for reinstatement of suspended permits shall allege in addition the rule under which the permit was granted, the request and alleged refusal which formed the basis for

such suspension, together with a brief statement as to why information requested, if any, was not furnished, whether such information is believed by petitioner to be pertinent, and, if so, when it will be furnished.

- I. All petitions shall be typewritten, double spaced, on legal or letter size paper, on one side of the paper only, leaving a margin of at least one inch at the top and left side of each sheet.

[Intentionally left blank]

RULE 603. PETITIONS FOR VARIANCES

Adopted: 09/05/74

In addition to the matters required by Rule 602, petitions for variance shall state briefly:

1. The section, rule or order complained of;
2. The facts showing why compliance with the section, rule or order is unreasonable;
3. For what period of time the variance is sought and why;
4. The damage or harm resulting or which would result to petitioner from compliance with such section, rule or order;
5. Except in a petition for an interim or emergency variance, a final compliance date specifying when petitioner will be in compliance with the section or rule from which a variance is sought;
6. If the final compliance date required in subsection (E) is one year or more after the date set for hearing (other than the hearing for an emergency or interim variance) then petitioner shall attach to his petition a proposed schedule of increments of progress as defined by Rule 106;
7. Both the advantages and disadvantages to the residents of the district resulting from requiring compliance or resulting from granting a variance; and
8. Whether or not operations under such variance, if granted, would constitute a nuisance.

[Intentionally left blank.]



RULE 604. APPEAL FROM DENIAL

Adopted: 09/05/74

A petition to review a denial or conditional approval of an authority to construct or permit to operate shall, in addition to the matters required by Rule 602, set forth a summary of the application or a copy thereof and the alleged reasons for the denial or conditional approval and the reasons for appeal.

[Intentionally left blank.]

RULE 605. FAILURE TO COMPLY WITH RULES

Adopted: 09/05/74

The Clerk of the Hearing Board shall not accept for filing any petition which does not comply with these rules relating to the form, filing and service of petitions unless the Chairman or any three members of the Hearing Board direct otherwise and confirm such direction in writing. Such direction need not be made at a meeting of the Hearing Board. The Chairman or any three members, without a meeting, may require the petitioner to state further facts or reframe a petition so as to disclose clearly the issues involved.

[Intentionally left blank.]

RULE 606. ANSWERS

Adopted: 09/05/74

Any person may file an answer within 10 days after service. All answers shall be served the same as petitions under Rule 601.

[Intentionally left blank.]

RULE 607. WITHDRAWAL OF PETITION

Adopted: 09/05/74

The petitioner may withdraw petition at any time before submission of the case to the Hearing Board, without a hearing or meeting of the Hearing Board. The Clerk of the Hearing Board shall notify all interested persons of such withdrawal.

[Intentionally left blank.]

RULE 608. PLACE OF HEARING

Adopted: 09/05/74

All hearings shall be held at the place designated by the Hearing Board.

[Intentionally left blank.]

RULE 609. NOTICE OF HEARING

Adopted: 09/05/74 Revised: 03/10/76

The Clerk of the Hearing Board shall mail or deliver a notice of hearing to the petitioner, the Air Pollution Control Officer, the holder of the permit or variance involved, if any, and to any person entitled to notice in the Health and Safety Code under Sections 40823 through 40827 inclusive.

[Intentionally left blank.]

RULE 610. EVIDENCE

Adopted: 09/05/74

- A. Oral evidence shall be taken only on oath or affirmation.
- B. Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him. If respondent does not testify in his own behalf, he may be called and examined as if under cross-examination.
- C. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions, and irrelevant and unduly repetitious evidence shall be excluded.

[Intentionally left blank.]

RULE 611. RECORD OF PROCEEDINGS

Adopted: 09/05/74

A record of all proceedings had before the Hearing Board shall be made. The record shall be prepared in accordance with one of the following methods:

1. A written summary of all the evidence, testimony and proceedings had and presented at the hearing shall be made by a person designated by the Hearing Board for that purpose; or
2. A tape recording may be made of the proceedings; or
3. Any interested person, including the District, may at his own cost provide a certified shorthand reporter satisfactory to the Hearing Board who shall prepare a verbatim transcript of all the evidence, testimony and proceedings had and presented at the hearing.

The Hearing Board may require that the original and one copy of such transcript, each certified to by the reporter as to its accuracy, be filed with the Hearing Board within 30 days from the closing date of the hearing unless required by the Board prior to that time.

[Intentionally left blank.]



RULE 612. PRELIMINARY MATTERS

Adopted: 09/05/74

Preliminary matters such as setting a date for hearings, granting continuances, approving petitions for filing, allowing amendments, issuing subpoenas, and other preliminary rulings not determinative of the merits of the case may be made by the Chairman or any three members of the Hearing Board prior to that time.

[Intentionally left blank.]

RULE 613. OFFICIAL NOTICE

Adopted: 09/05/74

The Hearing Board may take official notice of any matter which may be judicially noticed by the courts of this state.

[Intentionally left blank.]

RULE 614. CONTINUANCES

Adopted: 09/05/74

The Chairman or any three members of the Hearing Board shall grant any continuance of 15 days or less, concurred in by petitioner, the Air Pollution Control Officer, and by every person who has filed an answer in the action and may grant any reasonable continuance; in either case such action may be ex parte, without a meeting of the Hearing Board and without prior notice.

[Intentionally left blank.]

RULE 615. DECISION

Adopted: 09/05/74

The decision shall be in writing, served and filed within 30 days after submission of the cause by the parties thereto and shall contain the determination of the issues presented and the order of the Hearing Board. A copy shall be mailed or delivered to the Air Pollution Control Officer, the petitioner and to every person who has filed an answer or who has appeared as a party in person or by counsel at the hearing. A copy shall also be mailed to the Air Resources Board and interested parties within 30 days.

[Intentionally left blank.]

RULE 616. EFFECTIVE DATE OF DECISION

Adopted: 09/05/74

The decision shall become effective 15 days after delivery or mailing a copy of the decision, as provided in Rule 615, or the Hearing Board may order that the decision shall become effective sooner.

[Intentionally left blank.]

RULE 617. EMERGENCY VARIANCE

Adopted: 07/20/77      Revised: 01/18/79, 06/25/79

- A. If the breakdown conditions will either require more than twenty-four (24) hours to correct or persists longer than the end of the production run (except for continuous monitoring equipment, for which the period shall be ninety-six (96) hours), the owner or operator may, in lieu of shutdown, file a petition, pursuant to Rule 601, for an emergency variance.
- B. Upon receipt of the petition for an emergency variance, the Air Pollution Control Officer shall contact the Chairperson of the hearing board, or other designated members of the hearing board and make a recommendation to grant or deny emergency variance, and the owner or operator of the source shall be entitled to present testimony or evidence. The burden shall be on the owner or operator to establish that a breakdown condition exists. Thereafter, the Chairperson or other designated members of the hearing board may, without notice or hearing grant or deny an emergency variance. Reasonable conditions may be included in the variance. The Chairperson or other designated members of the hearing board shall, within five (5) working days, issue a written order confirming the decision, with appropriate findings.
- C. No emergency variance shall be granted unless the Chairperson or other designated members of the hearing board determines that:
  - 1. The occurrence constitutes a breakdown condition;
  - 2. Continued operation is not likely to create an immediate threat or hazard to public health or safety;
  - 3. The requirements for a variance set forth in Health and Safety Code Sections 42352 and 42353 have been met; and
  - 4. The continued operation in a breakdown condition will not interfere with the attainment or maintenance of the national ambient air quality standards.
- D. At any time after an emergency variance has been granted, the Air Pollution Control Officer may request that the Chairperson or designated members of the hearing board reconsider and revoke, modify or further condition the variance if the Air Pollution Control Officer has good cause to believe that:
  - 1. Continued operation is likely to create an immediate threat or hazard to public health or safety;
  - 2. The owner or operator is not complying with all applicable conditions of the variance;
  - 3. A breakdown condition no longer exists; or
  - 4. Final compliance is not being accomplished as expeditiously as practicable.

The procedures set forth in paragraph B shall govern any further proceedings conducted under this subparagraph.

- E. An emergency variance shall remain in effect only for as long as necessary to repair or remedy the breakdown condition, but in no event after a regularly noticed hearing to consider an interim or 90 day variance has been held, or fifteen (15) days from the date of the subject occurrence, whichever is sooner.
- F. An emergency variance shall be exempt from filing fees as required by Rule 601.

[Intentionally left blank.]

## REGULATION VII - EMERGENCIES

### RULE 700. GENERAL

Adopted: 09/05/74

This emergency regulation is designed to prevent the excessive buildup of air contaminants and to avoid any possibility of a catastrophe caused by toxic concentrations of air contaminants. Past history indicates that the possibility of such a catastrophe is extremely remote.

The Air Pollution Control Board deems it is desirable to have ready, and the Air Pollution Control Officer shall establish, an adequate plan to prevent such an occurrence, and in case of the happening of this unforeseen event, to provide for adequate actions to protect the health of the citizens in the Air Pollution Control District.

[Intentionally left blank.]



## **RULE 701. AIR POLLUTION EPISODE PLAN**

Adopted: 03/03/14

### **A. Description**

1. The Great Basin Unified Air Pollution Control District (GBUAPCD) Air Pollution Episode Plan is a system designed to alert the public of air contaminants that may be harmful to health and to protect that portion of the population at risk. It establishes advisory procedures when specified levels are reached.

### **B. Purpose**

1. Define air pollution episode criteria.
2. Provide for episode notification to the public.
3. Recommend precautionary actions to be taken during episodes.
4. Prevent or reduce the severity of episodes.

### **C. GBUAPCD Requirements**

#### **1. Measurements**

- a. The APCO shall maintain strategic air monitoring stations throughout the District so that air quality can be monitored on a continuous basis and air pollution episodes can be measured and predicted.
- b. The APCO shall utilize other sources of information, including, but not limited to, the National Weather Service, Tribal Environmental Exchange Network and Incident Information System for episode notification and forecasting.

#### **2. Episode Notifications**

- a. The APCO shall notify the United States Environmental Protection Agency (USEPA), California Air Resources Board (CARB), news media, schools, medical facilities, child day care facilities and the general public when an episode is declared.
- b. The APCO shall maintain on-line access to district wide air monitoring network measurements at <http://gbuapcd.org/data>.
- c. The APCO shall provide on-line subscription options for episode notifications at <http://gbuapcd.org/healthadvisory>.
- d. The APCO shall monitor air quality 24 (twenty four) hours a day, 7 (seven) days a week and will disseminate episode information to the parties identified in paragraph C.2.a and episode notification subscribers by the following methods within an hour of the first hourly reading in a day that exceeds the episode criteria specified in paragraph C.4:
  - i. Phone text messaging
  - ii. E-mail to the [healthadvisory@gbuapcd.org](mailto:healthadvisory@gbuapcd.org) listserv
  - iii. Website <http://gbuapcd.org/healthadvisory>.

3. Notification Content
  - a. Stage level.
  - b. Impacted geographic area(s) and communities.
  - c. Pollutant for which the episode is declared, specified dust or wildfire smoke air contaminant and PM concentration.
  - d. Associated health message.
4. Episode Criteria (Attachment 1)
  - a. A Stage 1 air pollution health advisory will be issued when hourly PM10 particulate pollution levels exceed 400 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) for dust and 100  $\mu\text{g}/\text{m}^3$  for wildfire smoke or when hourly PM2.5 particulate pollution levels exceed 150 microgram per cubic meter ( $\mu\text{g}/\text{m}^3$ ).
  - b. A Stage 2 air pollution health advisory will be issued when hourly particulate pollution levels exceed 800  $\mu\text{g}/\text{m}^3$  for dust and 200  $\mu\text{g}/\text{m}^3$  for wildfire smoke or when hourly PM2.5 particulate pollution levels exceed 300 microgram per cubic meter ( $\mu\text{g}/\text{m}^3$ ).
5. Actions
  - a. Stage 1  
A Stage 1 health advisory will recommend:
    - i. Minimize outdoor activity.
    - ii. Children, the elderly, and people with heart or lung problems refrain from strenuous outdoor activities in the impacted area.
    - iii. Outdoor physical education classes, sports practices, and athletic competitions should be rescheduled or cancelled if practicable.
  - b. Stage 2  
A Stage 2 health advisory will recommend:
    - i. Eliminate outdoor activities in impacted area.
    - ii. Remain indoors with doors and windows closed until the episode is terminated.
    - iii. Avoid all activities that produce aerosols, dust, fumes and other irritants.
6. Episode Termination
  - a. An episode shall terminate when the concentration of the pollutant which causes the declaration of such episode has been verified to have fallen below the criteria level for the declaration of the episode and an analysis of meteorological and air quality data indicates that the pollutant concentration is expected to continue to decrease.

## 7. Special Actions for Prescribed Burning

Where prescribed burning is defined in:

Rule 408 – Open Burning in Agricultural Operations or Disease or Prevention

Rule 409 – Range Improvement Burning

Rule 410 – Forest Management Burning

Rule 411 – Wildland Vegetation Management Burning in Wildland and Wildland/Urban Interface Areas

Rule 412 – Open Burning of Non-Industrial Wood Waste at City of County Disposal Sites

- a. Upon the declaration of any predicted Stage 1 or Stage 2 episode, all coinciding scheduled prescribed burning, shall be prohibited.
- b. Upon the declaration of any Stage 1 or Stage 2 episode, all prescribed burning, if already ignited, shall be terminated.

8. Interdistrict Coordination

- a. Upon request of an air pollution control officer in an adjoining air basin for action to abate Stage 1 or Stage 2 episodes occurring within that district, the APCO shall make a determination, and if the need for action is confirmed, direct the implementation of the actions required in this Rule for any significant source area identified within the District which contributes to the ongoing episode in the adjoining district.

9. Abatement Actions

- a. The APCO shall investigate the nature of the problem and determine if abatement actions could be taken to reduce the pollution levels.
- b. The notification system will allow citizens to take actions to limit exposure.

D. Definitions

For the purpose of this rule, the following definitions apply:

1. “Air Contaminant or Air Pollutant” - any discharge, release, or other propagation into the atmosphere and includes, but is not limited to, dust, smoke, particulate matter or any combination thereof.
2. “Air Pollution Control Officer” (APCO) - the person appointed to the position of Air Pollution Control Officer of GBUAPCD pursuant to the provisions of California Health & Safety Code §40750, and his or her designee.
3. “Child Day Care Facility”- a State licensed child day care, pre-school, or after-school program.
4. “Great Basin Unified Air Pollution Control District” (GBUAPCD)- California regional government agency that works to protect the people and the environment of Alpine, Mono and Inyo Counties from the harmful effects of air pollution.
5. “Episodes” – exceedances of hourly PM levels set by the District for issuing air quality advisories to protect public health prior to 24-hour exceedances of the National Ambient Air Quality Standard and Level of Significant Harm. The applicable Episode criteria, for this rule, are presented in Attachment 1.
6. “Impacted Area and Communities”- geographic location or place of human occupation or permanent dwelling within or downwind of known or forecasted pollution impact boundaries.

7. "Medical Facility"- any location at which medicine is practiced regularly ranging from small clinics and doctor's offices to urgent care centers and hospitals.
8. "News Media" - the written press, television, radio, and other mass media of communication such as on-line computer information services.
9. "PM10 and PM2.5"- Particulate matter of less than 10 and 2.5 microns in aerodynamic diameter, respectively, which are regulated under federal and state law to protect public health. PM10 and PM2.5 are easily inhaled into the deepest parts of the lung and can cause adverse health consequences, particularly for children, the elderly, and people with respiratory conditions.
10. "Prescribed Burning"- the intentional use of fire to reduce wildfire hazards, clear downed trees, control plant diseases, improve rangeland and wildlife habitats, and restore natural ecosystems.
11. "School"- means public and private educational institutions for children ranging from grades Kindergarten through high school.
12. "Strenuous Outdoor Activity"- Vigorous outdoor exercise lasting short durations at high intensity or long durations at moderate intensity.

# ATTACHMENT 1

EPISODE CRITERIA					
For the purpose of Rule 701, the following episode criteria shall apply:					
<b>Air Pollutant</b>	<b>Averaging Time</b>	<b>Stage 1 Health Advisory</b>	<b>Stage 2 Health Advisory</b>	<b>Health</b>	
PM10 - Dust	1 Hour	400 µg/m <sup>3</sup>	800 µg/m <sup>3</sup>		
PM2.5 - Dust	1 Hour	150 µg/m <sup>3</sup>	300 µg/m <sup>3</sup>		
PM10 - Wildfire Smoke	1 Hour	100 µg/m <sup>3</sup>	200 µg/m <sup>3</sup>		

## REGULATION VIII – ORDERS FOR ABATEMENT

### RULE 800. GENERAL

Adopted: 09/05/74

Notwithstanding Rule 600, this regulation shall apply to all hearings on orders for abatement before the Air Pollution Control Board of the Great Basin Unified Air Pollution Control District.

[Intentionally left blank.]

RULE 801. ORDER FOR ABATEMENT

Adopted: 09/05/74

In accordance with Health and Safety Code Section 42450, the Air Pollution Control Board, when petitioned as provided herein, is authorized and directed to notice and hold hearings for the purpose of issuing orders for abatement. The Air Pollution Control Board, in holding hearings on the issuance of orders for abatement shall have all powers and duties conferred upon it by Part 1 of Division 26, in the California Health and Safety Code.

[Intentionally left blank.]

RULE 802. FILING PETITIONS

Adopted: 09/05/74

Requests by the Air Pollution Control Officer for a hearing on an order for abatement shall be initiated by the filing of the original and two copies of the petition with the Clerk of the Air Pollution Control Board. One copy of the petition will then be served upon the person against whom the order for abatement is sought (the respondent). Service may be made in person or by mail, and service may be proved by written acknowledgement of the person served or by the affidavit of the person making the service.

[Intentionally left blank.]



RULE 803. CONTENTS OF PETITION

Adopted: 09/05/74

The petition for order for abatement shall contain the following information:

- A. The name, address and telephone number of the respondent.
- B. The type of business or activity involved and the street address at which it is conducted.
- C. A brief description of the article, machine, equipment, or other contrivance, if any, involved in the violation emission.
- D. The section or rule which is alleged to have been violated, together with a brief statement of the facts constituting such alleged violation. The permit status and history of the source sought to be abated may be included in the petition. A proposed order for abatement may also be included. All petitions shall be typewritten, double-spaced, on letter-size paper (8 1/2 inches by 11 inches) on one side of the paper only, leaving a margin of at least one inch at the top and each side of the paper.

[Intentionally left blank.]

RULE 804. SCOPE OF ORDER

Adopted: 09/05/74

An order for abatement issued by the Air Pollution Control Board shall include an order to comply with the statute or rule being violated. Such order may provide for installation of control equipment and for a schedule of completion and compliance. As an alternative to an order to comply, the Air Pollution Control Board may order the shutdown of any source of emissions which violates any statute or rule. An order for abatement may also include a directive to take other action determined appropriate to accomplish the necessary abatement.

[Intentionally left blank.]

RULE 805. FINDINGS

Adopted: 09/05/74

No order for abatement shall be granted unless the Air Pollution Control Board makes all of the following findings:

- A. That the respondent is in violation of the California Health and Safety Code, or of any rule or regulation of the Air Pollution Control District;
- B. That the order of abatement will not constitute a taking of property without due process of law; and
- C. That if the order for abatement results in the closing or elimination of an otherwise lawful business, such closing would not be without a corresponding benefit in reducing air contaminants.

[Intentionally left blank.]

RULE 806. PLEADINGS

Adopted: 09/05/74

Any person may file a written answer, other responsive pleading, memorandum, or brief not less than five days before the hearing. Said documents shall be served the same as petitions under Rule 802.

[Intentionally left blank.]

RULE 807. EVIDENCE

Adopted: 09/05/74

- A. Oral evidence shall be taken only on oath or affirmation.
- B. Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him. If respondent does not testify in his own behalf he may be called and examined as if under cross-examination.
- C. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules or privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions, and irrelevant and unduly repetitious evidence shall be excluded.

[Intentionally left blank.]

RULE 808. FAILURE TO COMPLY WITH RULES

Adopted: 09/05/74

The Clerk of the Air Pollution Control Board shall not accept for filing any petition which does not comply with these rules relating to the form, filing and service of petitions unless the Chairman or any two members of the Hearing Board direct otherwise and confirm such direction in writing. Such direction need not be made at a meeting of the Hearing Board. The Chairman or any two members, without a meeting, may require the petitioner to state further facts or reframe a petition so as to disclose clearly the issues involved.

[Intentionally left blank.]

RULE 809. WITHDRAWAL OF PETITION

Adopted: 09/05/74

The Air Pollution Control Officer may withdraw his petition at any time before submission of the case to the Board without a hearing or meeting of the Air Pollution Control Board. The Clerk of the Air Pollution Control Board shall notify all interested persons of such withdrawal.

[Intentionally left blank.]

RULE 810. PLACE OF HEARING

Adopted: 09/05/74

All hearings shall be held at the time and place designated by Air Pollution Control Officer.

[Intentionally left blank.]



RULE 811. NOTICE OF HEARING

Adopted: 09/05/74

The Clerk of the Air Pollution Control Board shall mail or deliver a Notice of Hearing to the respondent and to any person entitled to notice under applicable provisions of Division 26 of the Health and Safety Code, not less than 10 days before the date of hearing.

[Intentionally left blank.]

RULE 812. PRELIMINARY MATTERS

Adopted: 09/05/74

Preliminary matters such as setting a date for hearing, granting continuances, approving petitions for filing, allowing amendments and other preliminary rulings not determinative of the merits of the case may be made by the Chairman or any two members of the Air Pollution Control Board without a hearing or meeting of the Hearing Board and without notice.

[Intentionally left blank.]

RULE 813. OFFICIAL NOTICE

Adopted: 09/05/74

The Air Pollution Control Board may take official notice of any matter which may be judicially noticed by the courts of this State.

[Intentionally left blank.]

RULE 814. CONTINUANCE

Adopted: 09/05/74

The Chairman or any two members of the Air Pollution Control Board shall grant any continuance of 15 days or less, concurred in by the respondent, the Air Pollution Control Officer, and by every person who has filed an answer or other pleading in the action and may grant any reasonable continuance; in either case such action may be ex parte, without a meeting of the Air Pollution Control Board and without prior notice.

[Intentionally left blank.]

RULE 815. ORDER AND DECISION

Adopted: 09/05/74

The decision shall be in writing, served and filed within 15 days after submission of the cause by the parties thereto and shall contain a brief statement of facts found to be true, the determination of the issues presented and the order of the Air Pollution Control Board. A copy shall be mailed or delivered to the Air Pollution Control Officer, the respondent, and to every person who has filed an answer or other pleading or who has applied as a party in person or by counsel at the hearing.

[Intentionally left blank.]

RULE 816. EFFECTIVE DATE OF DECISION

Adopted: 09/05/74

The decision shall become effective 15 days after delivering or mailing a copy of the decision, as provided in Rule 814, or the Air Pollution Control Board may order that the decision shall become effective sooner.

[Intentionally left blank.]

RULE 817. RECORD OF PROCEEDINGS

Adopted: 09/05/74

A record of all proceedings had before the Hearing Board shall be made. The record shall be prepared in accordance with one of the following methods:

1. A written summary of all the evidence, testimony and proceedings had and presented at the hearing shall be made by a person designated by the Hearing Board for that purpose; or
2. A tape recording may be made of the proceedings; or
3. Any interested person, including the District, may at his own cost provide a certified shorthand reporter satisfactory to the Hearing Board who shall prepare a verbatim transcript of all the evidence, testimony and proceedings had and presented at the hearing.

The Hearing Board may require that the original and one copy of such transcript, each certified to by the reporter as to its accuracy, be filed with the Hearing Board within 30 days from the closing date of the hearing unless required by the Board prior to that time.

[Intentionally left blank.]

## REGULATION IX – NEW SOURCE PERFORMANCE STANDARDS

### REGULATION 9. NEW SOURCE PERFORMANCE STANDARDS

Adopted: 07/20/77      Revised: 01/18/79

All new sources of air pollution and modifications of existing sources of air pollution shall, to the extent required therein, comply with the standards, criteria and requirements set forth in the Great Basin Unified Air Pollution Control District New Source Performance Standards which are hereby adopted by reference as of January 18, 1979.

[Intentionally left blank.]



## REGULATION X – EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

All sources of hazardous air pollutants shall, to the extent required therein, comply with the standards, criteria and requirements set forth in the Great Basin Unified Air Pollution Control District Emission Standards for Hazardous Pollutants which are hereby adopted by reference as of January 18, 1979.

### RULE 1002. NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS: ASBESTOS

Adopted: 07/20/77      Revised: 01/18/79, 03/11/87

The provisions of Part 61, Chapter I, Title 40, Subpart M, of the Code of Federal Regulations (CFR), as published in the Federal Register of July 1, 1986 are made part of the Rules and Regulations of the Great Basin Unified Air Pollution Control District. Whenever any source is subject to more than one rule, regulation, provision or requirement relating to the control of any air contaminant, in cases of conflict or duplication the most stringent rule, regulation, provision, or requirement shall apply.

All new sources of air pollution and all modified or reconstructed sources of air pollution shall comply with the standards, criteria, and requirements set forth herein. For the purpose of this Regulation, the word "Administrator" as used in Part 61, Chapter I, Title 40, Subpart M, of the CFR shall mean the Air Pollution Control Officer of the Great Basin Unified Air Pollution Control District, except that the Air Pollution Control Officer shall not be empowered to approve alternate or equivalent test methods nor alternative standards/workpractices.

[Intentionally left blank.]

RULE 1102. GOVERNING BOARD MEMBERSHIP, FUNDING AND VOTING PROCEDURES

Adopted: 06/29/94

A. GOVERNING BOARD MEMBERSHIP

The District Governing Board shall be made up of seven members. The Inyo County Board of Supervisors shall, from time to time as necessary, select two of its members to serve as members of the District Governing Board. The Mono County Board of Supervisors shall, from time to time as necessary, select two of its members to serve on the District Governing Board. The Alpine Board of Supervisors shall, from time to time as necessary, select two of its members to serve on the District Governing Board. The Mammoth City Council shall, from time to time as necessary, select one of its members to serve on the District Governing Board.

B. FUNDING

The District shall be funded by the counties and cities who have representatives on the District Governing Board, by making the following annual payments to the District:

1. Inyo County: \$0.55 per capita of population within the County boundaries;
2. Alpine County: \$0.55 per capita of population within the County boundaries;
3. Mono County: \$0.55 per capita of population within the unincorporated area of the county;
4. City of Mammoth: \$0.55 per capita of population within the incorporated city.

C. VOTING PROCEDURES

A quorum of the District Governing Board shall be four; actions requiring 4/5ths vote of the Governing Board shall require 6 (six) votes.

D. MODIFICATION OF AGREEMENT

Upon ratification by the Inyo County, Mono County and Alpine County Boards of Supervisors and the Mammoth City Council, this Rule shall constitute a modification to the Agreement between Inyo, Mono and Alpine Counties forming the Great Basin Unified Air Pollution Control District.

E. EFFECTIVE DATE

This Rule shall become effective on June 30, 1994.

[Intentionally left blank.]

## REGULATION XII – TRANSPORTATION CONFORMITY

### Reg. 12. CONFORMITY TO STATE IMPLEMENTATION PLANS OF TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS DEVELOPED, FUNDED OR APPROVED UNDER TITLE 23 U.S.C. OR THE FEDERAL TRANSIT ACT

Adopted: 10/05/94

#### Section

- 1201 Purpose
- 1202 Definitions
- 1203 Applicability
- 1204 Priority
- 1205 Frequency of conformity determinations
- 1206 Consultation
- 1207 Content of transportation plans.
- 1208 Relationship of transportation plan and TIP conformity with the NEPA process.
- 1209 Fiscal constraints for transportation plans and TIPs.
- 1210 Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.
- 1211 Criteria and procedures: Latest planning assumptions.
- 1212 Criteria and procedures: Latest emissions model.
- 1213 Criteria and procedures: Consultation.
- 1214 Criteria and procedures: Timely implementation of TCMs.
- 1215 Criteria and procedures: Currently conforming transportation plan and TIP.
- 1216 Criteria and procedures: Projects from a plan and TIP.
- 1217 Criteria and procedures: Localized CO and PM10 violations (hot spots).
- 1218 Criteria and procedures: Compliance with PM10 control measures.
- 1219 Criteria and procedures: Motor vehicle emissions budget (transportation plan).
- 1220 Criteria and procedures: Motor vehicle emissions budget (TIP).
- 1221 Criteria and procedures: Motor vehicle emissions budget (project not from a plan and TIP).
- 1222 Criteria and procedures: Localized CO violations (hot spots) in the interim period.
- 1223 Criteria and procedures: Interim period reductions in ozone and CO areas (transportation plan).
- 1224 Criteria and procedures: Interim period reductions in ozone and CO areas (TIP).
- 1225 Criteria and procedures: Interim period reductions for ozone and CO areas (project not from a plan and TIP).
- 1226 Criteria and procedures: Interim period reductions for PM10 and NO2 areas (transportation plan).
- 1227 Criteria and procedures: Interim period reductions for PM10 and NO2 areas (TIP).
- 1228 Criteria and procedures: Interim period reductions for PM10 and NO2 areas (project not from a plan and TIP).
- 1229 Transition from the interim period to the control strategy period.
- 1230 Requirements for adoption or approval of projects by other recipients of funds designated under title 23 U.S.C. or the Federal Transit Act.
- 1231 Procedures for determining regional transportation-related emissions.
- 1232 Procedures for determining localized CO and PM10 concentrations (hot spot analysis).

1233	Using the motor vehicle emissions budget in the applicable implementation plan (or implementation plan submission).
1234	Enforceability of design concept and scope and project level mitigation and control measures.
1235	Exempt projects.
1236	Projects exempt from regional emissions analyses.
1237	Special provisions for nonattainment areas which are not required to demonstrate reasonable further progress and attainment.
1238	Savings provisions.

#### § 1201 Purpose.

The purpose of this rule is to implement section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 et seq.), the related requirements of 23 U.S.C. 109(j), and regulations under 40 CFR part 51 subpart T, with respect to the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the United States Department of Transportation (DOT), and by metropolitan planning organizations (MPOs) or other recipients of funds under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.). This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to this applicable implementation plan, developed and applicable pursuant to section 110 and Part D of the CAA.

#### § 1202 Definitions.

Terms used but not defined in this rule shall have the meaning given them by the CAA, titles 23 and 49 U.S.C., other Environmental Protection Agency (EPA) regulations, other DOT regulations, or other State or local air quality or transportation rules, in that order of priority.

Applicable implementation plan is defined in § 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under § 110, or promulgated under § 110(c), or promulgated or approved pursuant to regulations promulgated under § 301(d) and which implements the relevant requirements of the CAA.

CAA means the Clean Air Act, as amended.

Cause or contribute to a new violation for a project means:

1. To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented, or
2. To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.

Consultation means that one party confers with another identified party, provides all appropriate information to that party needed for meaningful input, and, prior to taking any action, considers the views of that party and (except with respect to those actions for which only notification is required and those actions subject to §§ 1206(b)(7), 1206(c)(1)(vii), and responds to those views in a timely, substantive written manner prior to any final decision on such action. Such views and written response shall be made part of the record of any decision or action.

Control strategy implementation plan revision is the applicable implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA §§ 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and §§ 192(a) and 192(b), for nitrogen dioxide).

Control strategy period with respect to particulate matter less than 10 microns in diameter (PM10), carbon monoxide (CO), nitrogen dioxide (NO2), or ozone precursors (volatile organic compounds (VOC) and oxides of nitrogen (NOx)), means that period of time after EPA approves control strategy implementation plan revisions containing strategies for controlling PM10, NO2, CO, or ozone, as appropriate. This period ends when the State submits and EPA approves a request under § 107(d) of the CAA for redesignation to an attainment area.

Design concept means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade separated highway, reserved right-of-way rail transit, mixed traffic rail transit, exclusive busway, etc.

Design scope means the design aspects of a facility which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

DOT means the United States Department of Transportation.

EPA means the Environmental Protection Agency.

FHWA means the Federal Highway Administration of DOT.

FHWA/FTA project, for the purpose of this rule, is any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway program or the Federal mass transit program, or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

FTA means the Federal Transit Administration of DOT.

Forecast period with respect to a transportation plan is the period covered by the transportation plan pursuant to 23 CFR part 450.

Highway project is an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to: (1) connect logical termini and be of sufficient length to address environmental matters on a broad scope; (2) have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and (3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Horizon year is a year for which the transportation plan describes the envisioned transportation system in accordance with § 1207 of this rule.

Hot-spot analysis is an estimation of likely future localized CO and PM<sub>10</sub> pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Pollutant concentrations to be estimated should be based on the total emissions burden which may result from the implementation of a single, specific project, summed together with future background concentrations (which can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors) expected in the area. The total concentration must be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

Incomplete data area means any ozone nonattainment area which EPA has classified, in 40 CFR part 81, as an incomplete data area.

Increase the frequency or severity means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.

ISTEA means the Intermodal Surface Transportation Efficiency Act of 1991.

Maintenance area means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under § 175A of the CAA.

Maintenance period with respect to a pollutant or pollutant precursor means that period of time beginning when a State submits and EPA approves a request under § 107(d) of the CAA for redesignation to an attainment area, and lasting for 20 years, unless the applicable implementation plan specifies that the maintenance period shall last for more than 20 years.

Metropolitan planning organization (MPO) is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607. It is the forum for cooperative transportation decision-making.

Milestone has the meaning given in § 182(g)(1) and § 189(c) of the CAA. A milestone consists of an emissions level and the date on which it is required to be achieved.

Motor vehicle emissions budget is that portion of the total allowable emissions defined in a revision to the applicable implementation plan (or in an implementation plan revision which was endorsed by the California Air Resources Board, subject to a public hearing, and submitted to EPA, but not yet approved by EPA) for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations, for any criteria pollutant or its precursors, allocated by the applicable implementation plan to highway and transit vehicles. The applicable implementation plan for an ozone nonattainment area may also designate a motor vehicle emissions budget for oxides of nitrogen (NO<sub>x</sub>) for a reasonable further progress milestone year if the applicable implementation plan demonstrates that this NO<sub>x</sub> budget will be achieved with measures in the implementation plan (as an implementation

plan must do for VOC milestone requirements). The applicable implementation plan for an ozone nonattainment area includes a NO<sub>x</sub> budget if NO<sub>x</sub> reductions are being substituted for reductions in volatile organic compounds in milestone years required for reasonable further progress.

National ambient air quality standards (NAAQS) are those standards established pursuant to § 109 of the CAA.

NEPA means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).

NEPA process completion, for the purposes of this rule, with respect to FHWA or FTA, means the point at which there is a specific action to make a formal final determination that a project is categorically excluded, to make a Finding of No Significant Impact, or to issue a record of decision on a Final Environmental Impact Statement under NEPA.

Nonattainment area means any geographic region of the United States which has been designated as nonattainment under § 107 of the CAA for any pollutant for which a national ambient air quality standard exists.

Not classified area means any carbon monoxide nonattainment area which EPA has not classified as either moderate or serious.

Phase II of the interim period with respect to a pollutant or pollutant precursor means that period of time after December 27, 1993, lasting until the earlier of the following: (1) submission to EPA of the relevant control strategy implementation plan revisions which have been endorsed by the Governor (or his or her designee) and have been subject to a public hearing, or (2) the date that the Clean Air Act requires relevant control strategy implementation plans to be submitted to EPA, provided EPA has made a finding of the State's failure to submit any such plans and the State, MPO, and DOT have received notice of such finding of the State's failure to submit any such plans. The precise end of Phase II of the interim period is defined in § 1229 of this rule.

Project means a highway project or transit project.

Recipient of funds designated under title 23 U.S.C. or the Federal Transit Act means any agency at any level of State, county, city, or regional government that routinely receives title 23 U.S.C. or Federal Transit Act funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.

Regionally significant project means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals, as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum—

1. all principal arterial highways,

2. all fixed guideway transit facilities that offer an alternative to regional highway travel,
3. any project that increases vehicle miles traveled (VMT) in the region by a statistically significant amount or will lead to an increase in emissions of more than 5% of the mobile sources emissions budget for the area or subarea,
4. any project that will be associated with a statistically significant increase of vehicle trips per day,
5. any project that is associated with an increase in emissions of PM10 of 250 pounds per day or more,
6. any project that increases the capacity of any minor arterial or greater classification highway,
7. any project that adds a new, or significantly modifies an existing, interchange or intersection in a manner that may increase emissions,
8. any project that adds a lane (other than a turning lane in the vicinity of an intersection) to a minor arterial or greater classification highway,
9. any project that changes facility alignment in a manner that may increase emissions on more than a local basis,
10. any change in facility classification or access classification of the facility that may be associated with an increase in emissions,
11. any project for the construction of a new facility that is a minor arterial or greater classification highway, and
12. any project that the State air quality agency identifies as having the potential to affect air quality on a regional basis.

Rural transport ozone nonattainment area means an ozone nonattainment area that does not include, and is not adjacent to, any part of a Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area (as defined by the United States Bureau of the Census) and is classified under CAA § 182(h) as a rural transport area.

Standard means a national ambient air quality standard.

State project is any highway or transit project which is proposed to receive funding assistance [or approval] through any State or local transportation program.

Statewide transportation improvement program (STIP) means a staged, multi-year, intermodal program of transportation projects covering the State [or the nonattainment area, attainment area, or maintenance area], which is consistent with the statewide transportation plan and metropolitan transportation plans, and developed pursuant to 23 CFR part 450.

Statewide transportation plan means the official intermodal statewide transportation plan that is developed through the statewide planning process for the State, developed pursuant to 23 CFR part 450.

Submarginal area means any ozone nonattainment area which EPA has classified as submarginal in 40 CFR part 81.

Title 23 U.S.C. means title 23 of the United States Code.

Transit is mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.



Transit project is an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to: (1) connect logical termini and be of sufficient length to address environmental matters on a broad scope; (2) have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and (3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Transitional area means any ozone nonattainment area which EPA has classified as transitional in 40 CFR part 81.

Transitional period with respect to a pollutant or pollutant precursor means that period of time which begins after submission to EPA of the relevant control strategy implementation plan which has been endorsed by the California Air Resources Board and has been subject to a public hearing. The transitional period lasts until EPA takes final approval or disapproval action on the control strategy implementation plan submission or finds it to be incomplete. The precise beginning and end of the transitional period is defined in § 1229 of this rule.

Transportation control measure (TCM) is any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in § 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this rule.

Transportation improvement program (TIP) means a staged, multi-year, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan, and developed pursuant to 23 CFR part 450.

Transportation plan means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR part 450.

Transportation project is a highway project or a transit project.

#### § 1203 Applicability.

##### a. Action applicability.

1. Except as provided for in paragraph (c) of this section or § 1235, conformity determinations are required for:
  - i The adoption, acceptance, approval or support of transportation plans developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT;

- ii The adoption, acceptance, approval or support of TIPs developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT; and
    - iii The approval, funding, or implementation of FHWA/FTA projects.
  - 2. Conformity determinations are not required under this rule for individual projects which are not FHWA/FTA projects. However, § 1230 applies to such projects if they are regionally significant.
- b. Geographic applicability.
- 1. The provisions of this rule shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.
  - 2. The provisions of this rule apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide, nitrogen dioxide, and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10).
  - 3. The provisions of this rule apply with respect to emissions of the following precursor pollutants:
    - i Volatile organic compounds and nitrogen oxides in ozone areas
    - ii Nitrogen oxides in nitrogen dioxide areas; and
    - iii Volatile organic compounds, nitrogen oxides, and PM10 in PM10 areas if:
      - A. During the interim period, the EPA Regional Administrator or the director of the State air agency has made a finding (including a finding in an applicable implementation plan or a submitted implementation plan revision) that transportation-related precursor emissions within the nonattainment area are a significant contributor to the PM10 nonattainment problem and has so notified the MPO and DOT; or
      - B. During the transitional, control strategy, and maintenance periods, the applicable implementation plan (or implementation plan submission) establishes a budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.
- c. Limitations.
- 1. Projects subject to this rule for which the NEPA process and a conformity determination have been completed by FHWA or FTA may proceed toward implementation without further conformity determinations if one of the following major steps has occurred within the most recent three year period: NEPA process completion; formal start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. All phases of such projects which were considered in the conformity determination

are also included, if those phases were for the purpose of funding, final design, right-of-way acquisition, construction, or any combination of these phases.

2. A new conformity determination for the project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if no major steps to advance the project have occurred within the most recent three year period.

#### § 1204 Priority.

When assisting or approving any action with air quality-related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds among States or other jurisdictions.

#### § 1205 Frequency of conformity determinations.

- a. Conformity determinations and conformity redeterminations for transportation plans, TIPs, and FHWA/FTA projects must be made according to the requirements of this section and the applicable implementation plan.
- b. Transportation plans.
  1. Each new transportation plan must be found to conform before the transportation plan is approved by the MPO or accepted by DOT.
  2. All transportation plan revisions must be found to conform before the transportation plan revisions are approved by MPO or accepted by DOT, unless the revision merely adds or deletes exempt projects listed in § 1235 and has been made in accordance with the notification provisions of § 1206(c)(1)(vii). The conformity determination must be based on the transportation plan and the revision taken as a whole.
  3. The existing conformity determination will lapse unless conformity of existing transportation plans is redetermined:
    - i within 18 months of EPA approval of an implementation plan revision which:
      - A. establishes or revises a transportation-related emissions budget (as required by CAA §§ 175A(a), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and §§ 192(a) and 192(b), for nitrogen dioxide); or
      - B. adds, deletes, or changes TCMs; and
    - ii within 18 months of EPA promulgation of an implementation plan which establishes or revises a transportation-related emissions budget or adds, deletes, or changes TCMs.

4. In any case, conformity determinations must be made no less frequently than every three years, or the existing conformity determination will lapse.
- c. Transportation improvement programs.
1. A new TIP must be found to conform before the TIP is approved by the MPO or accepted by DOT.
  2. A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in § 1235 and has been made in accordance with the notification provisions of § 1206(c)(1)(vii).
  3. After an MPO adopts a new or revised transportation plan, conformity of the TIP must be redetermined by the MPO and DOT within six months from the date of adoption of the plan, unless the new or revised plan merely adds or deletes exempt projects listed in § 1235 and has been made in accordance with the notification provisions of § 1206(c)(1)(vii). Otherwise, the existing conformity determination for the TIP will lapse.
  4. In any case, conformity determinations must be made no less frequently than every three years or the existing conformity determination will lapse.
- d. Projects.

FHWA/FTA projects must be found to conform before they are adopted, accepted, approved, or funded. Conformity must be redetermined for any FHWA/FTA project if none of the following major steps has occurred within the most recent three year period: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates.

#### § 1206 Consultation.

a. General.

This rule provides procedures for interagency consultation (Federal, State, and local) and resolution of conflicts. Such consultation procedures shall be undertaken by MPOs, the State department of transportation, and DOT with State and local air quality agencies and EPA before making conformity determinations, and by State and local air agencies and EPA with MPOs, the State department of transportation, and DOT in developing applicable implementation plans.

Before this implementation plan revision is approved by EPA, MPOs before making any conformity determinations shall provide reasonable opportunity for consultation with State air agencies, local air quality and transportation agencies, the State department of transportation, DOT, and EPA, including consultation on the issues described in paragraph (c)(1) of this section.

b. Interagency consultation procedures: General factors.

1.

- A. Representatives of the MPOs, State and local air quality planning agencies, and State and local transportation agencies, and shall undertake an interagency consultation process in accordance with this section with each other and with local or regional offices of EPA, FHWA, and FTA on the development of the implementation plan, the list of TCMs in the applicable implementation plan, the unified planning work program under 23 CFR § 450.314, the transportation plan, the TIP, any revisions to the preceding documents, and all conformity determinations required by this rule.
- B. The Great Basin Unified Air Pollution Control District shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of applicable implementation plans and control strategy implementation plan revisions and the list of TCMs in the applicable implementation plan.

The MPO shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of the unified planning work program under 23 CFR § 450.314, the transportation plan, the TIP, and any amendments or revisions thereto. In the case of non-metropolitan areas, the California Department of Transportation shall be the lead agency responsible for preparing the final document or decision for regional and localized actions, and for assuring the adequacy of the interagency consultation process with respect to the development of the Statewide transportation plan, the STIP, and any amendments or revisions thereto. The MPO shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to any determinations of conformity under this rule for which the MPO is responsible.

- C. In addition to the lead agencies identified in subparagraph (B), other agencies entitled to participate in any interagency consultation process under this rule include the California Department of Transportation, both headquarters and the District 9 & 10 Offices, the Town of Mammoth Lakes, the Federal Highway Administration - California Division, the Federal Transit Administration regional office, and the California Air Resources Board.
- D. It shall be the role and responsibility of each lead agency in an interagency consultation process, as specified in subparagraph

(B), to confer with all other agencies identified under subparagraph (C) with an interest in the document to be developed, provide all appropriate information to those agencies needed for meaningful input, solicit early and continuing input from those agencies, conduct the consultation process described in the applicable paragraphs of § 1206(b), where required, assure policy-level contact with those agencies, and, (except for actions subject to § 1206(b)(7) or (c)(1)(vii)) prior to taking any action, consider the views of each such agency and respond to those views in a timely, substantive written manner prior to any final decision on such document, and assure that such views and written response are made part of the record of any decision or action. It shall be the role and responsibility of each agency specified in subparagraph (C), when not fulfilling the role and responsibilities of a lead agency, to confer with the lead agency and other participants in the consultation process, review and comment as appropriate (including comments in writing) on all proposed and final documents and decisions in a timely manner, attend consultation and decision meetings as appropriate, assure policy-level contact with other participants, provide input on any area of substantive expertise or responsibility (including planning assumptions, modeling, information on status of TCM implementation, and interpretation of regulatory or other requirements), and provide technical assistance to the lead agency or consultation process in accordance with this paragraph when requested.

- E. Specific roles and responsibilities of various participants in the interagency consultation process shall be as follows:
- (i) The Great Basin Unified Air Pollution Control District shall be responsible for developing (I) emissions inventories, (II) emissions budgets, (III) air quality modeling, (IV) attainment demonstrations, (V) control strategy implementation plan revisions, (VI) regulatory TCMs, and (VII) updated motor vehicle emissions factors;
  - (ii) The MPO shall be responsible for (I) developing transportation plans and TIPs, (II) evaluating TCM transportation impacts, (III) developing transportation and socioeconomic data and planning assumptions and providing such data and planning assumptions to air quality agencies for use in air quality analysis to determine conformity of transportation plans, TIPs, and projects, (IV) monitoring regionally significant projects, (V) developing system- or facility-based or other programmatic (non-regulatory) TCMs, (VI) providing technical and policy input on emissions budgets, and (VII) perform transportation modeling, regional emissions analyses and documentation of timely implementation of TCMs needed for conformity assessments;

- (iii) The California Department of Transportation shall be responsible for (I) developing Statewide transportation plans and STIPs, (II) providing technical input on proposed revisions to motor vehicle emissions factors, (III) distributing draft and final project environmental documents to other agencies, and (IV) convening air quality technical review meetings on specific projects when requested by other agencies or as needed;
- (iv) FHWA and FTA shall be responsible for (I) assuring timely action on final findings of conformity, after consultation with other agencies as provided in this section and 40 CFR § 51.402, and (II) provide guidance on conformity and the transportation planning process to agencies in interagency consultation; and
- (v) EPA shall be responsible for (I) reviewing and approving updated motor vehicle emissions factors, and (II) providing guidance on conformity criteria and procedures to agencies in interagency consultation.
- (vi) The California Air Resources Board shall be responsible for (I) reviewing all draft and final State Implementation Plan (SIP) revisions for compliance with applicable requirements, (II) submitting SIP revisions to EPA, (III) developing and soliciting input on and adopting updated motor vehicle emission factors (EMFAC) for use in control strategy SIP development, and (IV) advocating the State's position on air quality-related issues to federal agencies.

2. Consultation on Regional Transportation Plans, Transportation Improvement Programs, and State Implementation Plans.

- A. It shall be the affirmative responsibility of the agency with the responsibility for preparing the final document or decision subject to the interagency consultation process to initiate the process by notifying other participants, convene consultation meetings early in the process of decision on the final document, appoint the convenors of technical meetings, and assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner.
- B. Regular consultation on major activities such as the development of an implementation plan or any control strategy implementation plan revision, the development of a transportation plan, the development of a TIP, or any determination of conformity on transportation plans or TIPs, shall include annual meetings and shall be attended by representatives at the technical level of each agency. In addition, policy meetings shall be convened as necessary.
- C. Each lead agency in the consultation process required under this section (that is, the agency with the responsibility for preparing the final document subject to the interagency consultation process)

shall confer with all other agencies identified under paragraph (1) with an interest in the document to be developed, provide all appropriate information to those agencies needed for meaningful input, and, prior to taking any action, consider the views of each such agency and respond to those views in a timely, substantive written manner prior to any final decision on such document. Such views and written response shall be made part of the record of any decision or action.

3. Consultation on Transportation Projects.

It shall be the affirmative responsibility of the agency with the responsibility for preparing the final document or decision subject to the interagency consultation process to initiate the process by notifying other participants early in the process of decision on the final document and assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner. Such notification shall be provided within 30 days from the issuance of a final environmental assessment under the California Environmental Quality Act (CEQA) or within 30 days prior to the preparation of the final document or decision if the proposed action is not subject to CEQA requirements.

4. Each lead agency subject to an interagency consultation process under this section (including any Federal agency) shall provide each final document that is the product of such consultation process (including applicable implementation plans or implementation plan revisions, transportation plans, TIPs, and determinations of conformity), together with all supporting information, to each other agency that has participated in the consultation process within 7 days of adopting or approving such document or making such determination. Any such agency may supply a checklist of available supporting information, which such other participating agencies may use to request all or part of such supporting information, in lieu of generally distributing all supporting information.
5. A meeting that is scheduled or required for another purpose may be used for the purposes of consultation if the conformity consultation purpose is identified in the public notice for the meeting.

c. Interagency consultation procedures: Specific processes.

1. An interagency consultation process in accordance with paragraph (b) involving the MPO, State and local air quality planning agencies, State and local transportation agencies, EPA, and DOT shall be undertaken for the following:
- i. Evaluating and choosing each model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses, including vehicle miles traveled (VMT) forecasting, to be initiated by the Great Basin Unified Air Pollution Control District and conducted in accordance with paragraph (b)(2);
  - ii. Determining which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an



- alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP, to be initiated by the California Department of Transportation, Districts 9 or 10 and conducted in accordance with paragraph (b)(2);
- iii. Evaluating whether projects otherwise exempted from meeting the requirements of this rule (see §§ 1235 and 1236) should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason, to be initiated by the Great Basin Unified Air Pollution Control District and conducted in accordance with paragraph (b)(2);
  - iv. Making a determination, as required by § 1214(c)(1), whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs, to be initiated by the Great Basin Unified Air Pollution Control District and conducted in accordance with paragraph (b)(2). This consultation process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;
  - v. Making a determination, as required by § 1230(b), whether the project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not strictly "included" in the TIP for the purposes of MPO project selection or endorsement, and whether the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility, to be initiated by the Great Basin Unified Air Pollution Control District and conducted in accordance with paragraph (b)(2);
  - vi. Identifying, as required by § 1232(d), projects located at sites in PM10 nonattainment areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM10 hot-spot analysis, to be initiated by the Great Basin Unified Air Pollution Control District and conducted in accordance with paragraph (b)(2);
  - vii. Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in § 1235, to be initiated by the California Department of Transportation, District 9 or 10 and conducted in accordance with paragraph (b)(2), other than the requirement that such notice be provided prior to final action;
  - viii. Determining what forecast of vehicle miles traveled (VMT) to use in establishing or tracking emissions budgets, developing transportation plans, TIPs, or applicable implementation plans, or making conformity determinations, to be initiated by the Great Basin Unified Air Pollution Control District and conducted in accordance with paragraph (b)(2);
  - ix. Determining the definition of "reasonable professional practice" for the purposes of §§ 1231 and 1232(b), to be initiated by the Great Basin

- Unified Air Pollution Control District and conducted in accordance with paragraph (b)(2); and
- x. Determining whether the project sponsor or MPO has demonstrated that the requirements of §§ 1217, 1219, and 1220 are satisfied without a particular mitigation or control measure, as provided in § 1234(d), to be initiated by the Great Basin Unified Air Pollution Control District and conducted in accordance with paragraph (b)(2).
2. An interagency consultation process in accordance with paragraph (b) involving the MPO, State and local air quality planning agencies, and State and local transportation agencies, shall be undertaken for the following:
- i. Evaluating events which will trigger new conformity determinations in addition to those triggering events established in § 1205, to be initiated by the GBUAPCD and conducted in accordance with paragraph (b)(2); and
  - ii. Consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas or air basins, to be initiated by the GBUAPCD and conducted in accordance with paragraph (b)(2).
3. Where the metropolitan planning area does not include the entire nonattainment or maintenance area, an interagency consultation process in accordance with paragraph (b) involving the MPO and the State department of transportation shall be undertaken for cooperative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area, to be initiated by the California Department of Transportation, District 9 or 10, and conducted in accordance with paragraph (b)(2).
- 4.
- i. An interagency consultation process in accordance with paragraph (b) involving the MPO, State and local air quality planning agencies, State and local transportation agencies, and recipients of funds designated under title 23 U.S.C. or the Federal Transit Act shall be undertaken to assure that plans for construction of regionally significant projects which are not FHWA/FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including all those by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act, are disclosed to the MPO on a regular basis, and to assure that any changes to those plans are immediately disclosed.
  - ii. The sponsor of any such regionally significant project, and any agency that becomes aware of any such project through applications for approval, permitting or funding or otherwise, shall disclose such project to the MPO in a timely manner. Such disclosure shall be made not later than the first occasion on which any of the following actions is sought: any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to design or construct the facility, the execution of any indebtedness for the facility, any final action of a board, commission

or administrator authorizing or directing employees to proceed with design, permitting or construction of the project, or the execution of any contract to design or construct or any approval needed for any facility that is dependent on the completion of the regionally significant project. To help assure timely disclosure, the sponsor of any potential regionally significant project shall disclose to the MPO annually, not later than December 31 of each year each project for which alternatives have been identified through the NEPA process, and in particular, any preferred alternative that may be a regionally significant project.

- iii. In the case of any such regionally significant project that has not been disclosed to the MPO and other interested agencies participating in the consultation process in a timely manner, such regionally significant project shall be deemed not to be included in the regional emissions analysis supporting the currently conforming TIP's conformity determination and not to be consistent with the motor vehicle emissions budget in the applicable implementation plan, for the purposes of § 1230.
  - iv. For the purposes of this section and § 1230, the phrase "adopt or approve of a regionally significant project" means the first time any action necessary to authorizing a project occurs, such as any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to construct the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with construction of the project, or any written decision or authorization from the MPO that the project may be adopted or approved.
- 5. An interagency consultation process in accordance with paragraph (b) involving the MPO and other recipients of funds designated under title 23 U.S.C. or the Federal Transit Act shall be undertaken for assuming the location and design concept and scope of projects which are disclosed to the MPO as required by paragraph (c)(4) of this section but whose sponsors have not yet decided these features, in sufficient detail to perform the regional emissions analysis according to the requirements of § 1231, to be initiated by the California Department of Transportation, District 9 or 10 and conducted in accordance with paragraph (b)(2).
  - 6. An interagency consultation process in accordance with paragraph (b) involving the MPO, State and local air quality planning agencies, and State and local transportation agencies, shall be undertaken for the design, schedule, and funding of research and data collection efforts and regional transportation model development by the MPO (e.g., household/travel transportation surveys), to be initiated by the Great Basin Unified Air Pollution Control District and conducted in accordance with paragraph (b)(2).
  - 7. Final decisions made following interagency consultation in accordance with paragraph (b) shall be made through concurrence of the participating agencies.

d. Resolving conflicts.

1. Any conflict among State agencies or between State agencies and an MPO shall be escalated to the Governor if the conflict cannot be resolved by the heads of the involved agencies. In the first instance, such agencies shall make every effort to resolve any differences, including personal meetings between the heads of such agencies or their policy-level representatives, to the extent possible.
2.
  - A. The State air quality agency has 14 calendar days to appeal a proposed determination of conformity (or other policy decision under this rule) to the Governor after the State DOT or MPO has notified the State air quality agency of the resolution of all comments on such proposed determination of conformity or policy decision. Such 14-day period shall commence when the MPO or the State DOT has confirmed receipt by the director of the State air agency of the resolution of the comments of the State air quality agency. If the State air quality agency appeals to the Governor, the final conformity determination must have the concurrence of the Governor. The State air quality agency must provide notice of any appeal under this subsection to the MPO and the State DOT. If the State air quality agency does not appeal to the Governor within 14 days, the MPO or State DOT may proceed with the final conformity determination.
  - B. In the case of any comments with regard to findings of fiscal constraint under § 1209 or the air quality effects of any proposed determination of conformity, the State DOT has 14 calendar days to appeal a proposed determination of conformity (or other policy decision under this rule) to the Governor after the MPO has notified the State air quality agency or the State DOT of the resolution of all comments on such proposed determination of conformity or policy decision. Such 14-day period shall commence when the MPO has confirmed receipt by the director of the State air agency or the State DOT of the resolution of the comments of the State DOT. If the State DOT appeals to the Governor, the final conformity determination must have the concurrence of the Governor. The State DOT must provide notice of any appeal under this subsection to the MPO and the State air quality agency. If the State DOT does not appeal to the Governor within 14 days, the MPO may proceed with the final conformity determination.
3. The Governor may delegate the role of hearing any such appeal under this subsection and of deciding whether to concur in the conformity determination to another official or agency within the State, but not to the head or staff of the State air quality agency or any local air quality agency, the State department of transportation, a State transportation commission or board, any agency that has responsibility for only one of these functions, or an MPO.

e. Public consultation procedures.

Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish and continuously implement a proactive public involvement process which provides opportunity for public review and comment prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with the requirements of 23 CFR part 450, including §§ 450.316(b)(1), 450.322(c), and 450.324(c) as in effect on the date of adoption of this rule. In addition, any such agency must specifically address in writing all public comments that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. Any such agency shall also provide opportunity for public involvement in conformity determinations for projects to the extent otherwise required by law (e.g. NEPA or CEQA). The opportunity for public involvement provided under this subsection shall include access to information, emissions data, analyses, models and modeling assumptions used to perform a conformity determination, and the obligation of any such agency to consider and respond to significant comments. No transportation plan, TIP, or project may be found to conform unless the determination of conformity has been subject to a public involvement process in accordance with this subsection, without regard to whether the DOT has certified any process under 23 CFR part 450.

§ 1207 Content of transportation plans.

a. Transportation plans adopted after January 1, 1995, in serious, severe, or extreme ozone nonattainment areas and in serious carbon monoxide nonattainment areas.

The transportation plan must specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

1. The agency or organization developing the transportation plan, after consultation in accordance with § 1206, may choose any years to be horizon years, subject to the following restrictions:
  - i. Horizon years may be no more than 10 years apart.
  - ii. The first horizon year may be no more than 10 years from the base year used to validate the transportation demand planning model.
  - iii. If the attainment year is in the time span of the transportation plan, the attainment year must be a horizon year.
  - iv. The last horizon year must be the last year of the transportation plan's forecast period.
2. For these horizon years:
  - i. The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts, in accordance with implementation plan provisions and § 1206;
  - ii. The highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be

operational in the horizon years. Additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities, and to determine their effect on route options between transportation analysis zones. Each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for areawide transportation analysis in use by the MPO. Transit facilities, equipment, and services envisioned for the future shall be identified in terms of design concept, design scope, and operating policies sufficiently to allow modeling of their transit ridership. The description of additions and modifications to the transportation network shall also be sufficiently specific to show that there is a reasonable relationship between expected land use and the envisioned transportation system; and

- iii. Other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.
- b. Moderate areas reclassified to serious: Ozone or CO nonattainment areas which are reclassified from moderate to serious must meet the requirements of paragraph (a) of this section within two years from the date of reclassification.
- c. Transportation plans for other areas: Transportation plans for other areas must meet the requirements of paragraph (a) of this section at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, transportation plans must describe the transportation system envisioned for the future specifically enough to allow determination of conformity according to the criteria and procedures of §§ 1210 - 1228.
- d. Savings: The requirements of this section supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

#### § 1208 Relationship of transportation plan and TIP conformity with the NEPA process.

The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project must meet the criteria in §§ 1210 - 1228 for projects not from a TIP before NEPA process completion.

#### § 1209 Fiscal constraints for transportation plans and TIPs.

Transportation plans and TIPs shall be fiscally constrained and meet the requirements of 23 CFR 450.322(b)(11) and 450.324(e) as in effect on the date of adoption of this rule in order to be found in conformity. The determination that a transportation plan or TIP is fiscally constrained shall be subject to consultation in accordance with § 1206.

§ 1210 Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.

- a. In order to be found to conform, each transportation plan, program, and FHWA/FTA project must satisfy the applicable criteria and procedures in §§ 1211 - 1228 as listed in Table 1 in paragraph (b) of this section, and must comply with all applicable conformity requirements of implementation plans and this rule and of court orders for the area which pertain specifically to conformity determination requirements. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs, and FHWA/FTA projects, the time period in which the conformity determination is made, and the relevant pollutant.
- b. The following table indicates the criteria and procedures in §§ 1211 - 1228 which apply for each action in each time period.

Table 1.  
Conformity Criteria

During all periods:

Action	Criteria
Transportation Plan	§§ 1211, 1212, 1213, 1214(b)
TIP	§§ 1211, 1212, 1213, 1214(c)
Project (From a conforming plan and TIP)	§§ 1211, 1212, 1213, 1215, 1216, 1217, 1218
Project (Not from a conforming plan and TIP)	§§ 1211, 1212, 1213, 1214(d), 1215, 1217, 1218

Phase II of the interim period:

Action	Criteria
Transportation Plan	§§ 1223, 1226
TIP	§§ 1224, 1227
Project (From a conforming plan and TIP)	§ 1222
Project (Not from a conforming plan and TIP)	§§ 1222, 1225, 1228

Transitional period:

Action	Criteria
Transportation Plan	§§ 1219, 1223, 1226
TIP	§§ 1220, 1224, 1227
Project (From a conforming plan and TIP)	§ 1222
Project (Not from a conforming plan and TIP)	§§ 1221, 1222, 1225, 1228

Control strategy and maintenance periods:

Action	Criteria
Transportation Plan	§ 1219
TIP	§ 1220
Project (From a conforming plan and TIP)	No additional criteria
Project (Not from a conforming plan and TIP)	§ 1221

§ 1211 Criteria and procedures: Latest planning assumptions.

- a. During all periods the conformity determination, with respect to all other applicable criteria in §§ 1212 - 1228, shall be based upon the most recent planning assumptions in force at the time of the conformity determination. The conformity determination must satisfy the requirements of paragraphs (b) through (f) of this section.
- b. Assumptions (including, but not limited to, vehicle miles traveled per capita or per household, trip generation per household, vehicle occupancy, household size, vehicle fleet mix, vehicle ownership, and the geographic distribution of population growth) must be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO. The conformity determination must also be based on the latest assumptions about current and future background concentrations. Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, must be approved by the MPO or other agency authorized to make such estimates for the area, after consultation with the State air quality agency.
- c. The conformity determination for each transportation plan and TIP must discuss how transit operating policies (including fares and service levels) and assumed transit ridership have changed since the previous conformity determination.
- d. The conformity determination must include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.
- e. The conformity determination must use the latest existing information regarding the effectiveness of the TCMs which have already been implemented.
- f. Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by § 1206.

§ 1212 Criteria and procedures: Latest emissions model.

- a. During all periods the conformity determination shall be based on the latest emission estimation model available. This criterion is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in the State or area is used for the conformity analysis. (Where EMFAC is the motor vehicle emissions model used in preparing or revising the applicable implementation plan, new versions must be approved by EPA before they are used in the conformity analysis.)
- b. Conformity analyses for which the emissions analysis was begun before the Federal Register notice of availability of the latest emission model, or during the grace period announced in such notice, may continue to use the previous version of the model for transportation plans and TIPs. The previous model may also be used for projects if the analysis was begun during the grace period or before the Federal Register notice of availability, provided no more than three years have passed since the draft environmental document was issued.



§ 1213 Criteria and procedures: Consultation.

All conformity determinations shall be made according to the consultation procedures in this rule, and according to the public involvement procedures established by the MPO in compliance with 23 CFR part 450. This criterion applies during all periods. Until this rule is approved by EPA as an implementation plan revision, the conformity determination must be made according to the procedures in 40 CFR § 51.402(a)(2) and 40 CFR § 51.402(e). Once the implementation plan revision has been approved by EPA, this criterion is satisfied if the conformity determination is made consistent with the implementation plan's consultation requirements.

§ 1214 Criteria and procedures: Timely implementation of TCMs.

- a. During all periods the transportation plan, TIP, or any FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan.
- b. For transportation plans, this criterion is satisfied if the following two conditions are met:
  1. The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the applicable implementation plan, including, but not limited to, those which are eligible for funding under title 23 U.S.C. or the Federal Transit Act, consistent with schedules included in the applicable implementation plan.
  2. Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.
- c. For TIPs, this criterion is satisfied if the following conditions are met:
  1. An examination of the specific steps and funding source(s) needed to fully implement each TCM indicates that TCMs, including, but not limited to, those which are eligible for funding under title 23 U.S.C. or the Federal Transit Act, are on or ahead of the schedule established in the applicable implementation plan, or, if such TCMs are behind the schedule established in the applicable implementation plan, the MPO and DOT have determined that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area. Maximum priority to approval or funding of TCMs includes demonstrations with respect to funding acceleration, commitment of staff or other agency resources, diligent efforts to seek approvals, and similar actions.
  2. If Federal funding intended for TCMs in the applicable implementation plan has previously been programmed but is reallocated to projects in the TIP other than TCMs (or if there are no other TCMs in the TIP, to projects in the TIP other than projects which are eligible for Federal funding under ISTEAs Congestion Mitigation and Air Quality Improvement Program), and the TCMs are behind the schedule in the implementation plan, then the TIP cannot be found to conform.

3. Nothing in the TIP interferes with the implementation of any TCM in the applicable implementation plan.
- d. For FHWA/FTA projects which are not from a conforming transportation plan and TIP, this criterion is satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation plan.

§ 1215 Criteria and procedures: Currently conforming transportation plan and TIP.

During all periods there must be a currently conforming transportation plan and currently conforming TIP at the time of project approval. This criterion is satisfied if the current transportation plan and TIP have been found to conform to the applicable implementation plan by the MPO and DOT according to the criteria and procedures of this rule. Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the conformity determination for the current plan or TIP is found to conform by DOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements of § 1205.

§ 1216 Criteria and procedures: Projects from a plan and TIP.

- a. During all periods the project must come from a conforming transportation plan and TIP. If this criterion is not satisfied, the project must satisfy all criteria in Table 1 of § 1210 for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of paragraph (b) of this section and from a conforming TIP if it meets the requirements of paragraph (c) of this section.
- b. A project is considered to be from a conforming transportation plan if one of the following conditions applies:
  1. For projects which are required to be identified in the transportation plan in order to satisfy § 1207, the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or
  2. For projects which are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan.
- c. A project is considered to be from a conforming TIP if the following conditions are met:
  1. The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions and have not changed significantly from those which were described in the TIP, or in a manner which would significantly impact use of the facility; and

2. If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, enforceable written commitments to implement such measures must be obtained from the project sponsor or operator as required by § 1234(a) in order for the project to be considered from a conforming TIP. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.

§ 1217 Criteria and procedures: Localized CO and PM10 violations (hot spots).

- a. During all periods the FHWA/FTA project must not cause or contribute to any new localized CO or PM10 violations or increase the frequency or severity of any existing CO or PM10 violations in CO and PM10 nonattainment and maintenance areas. This criterion is satisfied if it is demonstrated that no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project.
- b. The demonstration must be performed according to the requirements of § 1206(c)(1)(i) and § 1232.
- c. For projects which are not of the type identified by §§ 1232(a) or 1232(d), this criterion may be satisfied if consideration of local factors clearly demonstrates that no local violations presently exist and no new local violations will be created as a result of the project. Otherwise, in CO nonattainment and maintenance areas, a quantitative demonstration must be performed according to the requirements of § 1232(b).

§ 1218 Criteria and procedures: Compliance with PM10 control measures.

During all periods the FHWA/FTA project must comply with PM10 control measures in the applicable implementation plan. This criterion is satisfied if control measures (for the purpose of limiting PM10 emissions from the construction activities or normal use and operation associated with the project) contained in the applicable implementation plan are included in the final plans, specifications, and estimates for the project.

§ 1219 Criteria and procedures: Motor vehicle emissions budget (transportation plan).

- a. The transportation plan must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in § 1237. This criterion may be satisfied if the requirements in paragraphs (b) and (c) of this section are met.
- b. A regional emissions analysis shall be performed as follows:
  1. The regional analysis shall estimate emissions of any of the following pollutants and pollutant precursors for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes an emissions budget:
    - i. VOC as an ozone precursor;
    - ii. NOx as an ozone precursor;

- iii. CO;
  - iv. PM10 (and its precursors VOC and NOx if the applicable implementation plan or implementation plan submission identifies transportation-related precursor emissions within the nonattainment area as a significant contributor to the PM10 nonattainment problem or establishes a budget for such emissions); or
  - v. NOx (in NO2 nonattainment or maintenance areas);
2. The regional emissions analysis shall estimate emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan;
  3. The emissions analysis methodology shall meet the requirements of § 1231;
  4. For areas with a transportation plan that meets the content requirements of § 1207(a), the emissions analysis shall be performed for each horizon year. Emissions in milestone years which are between the horizon years may be determined by interpolation; and
  5. For areas with a transportation plan that does not meet the content requirements of § 1207(a), the emissions analysis shall be performed for –
    - i. the last year of the plan's forecast period;
    - ii. the attainment year, if the attainment year is in the time span of the transportation plan; and
    - iii. any other years in the time span of the transportation plan that are no more than ten years apart.

Emissions in milestone years which are between these analysis years may be determined by interpolation.

- c. The regional emissions analysis shall demonstrate that for each of the applicable pollutants or pollutant precursors in paragraph (b)(1) of this section the emissions are less than or equal to the motor vehicle emissions budget as established in the applicable implementation plan or implementation plan submission as follows:
  1. If the applicable implementation plan or implementation plan submission establishes emissions budgets for milestone years, emissions in each milestone year are less than or equal to the motor vehicle emissions budget established for that year;
  2. For nonattainment areas, emissions in the attainment year are less than or equal to the motor vehicle emissions budget established in the applicable implementation plan or implementation plan submission for that year;
  3. For nonattainment areas, emissions in each analysis or horizon year after the attainment year are less than or equal to the motor vehicle emissions budget established by the applicable implementation plan or implementation plan submission for the attainment year. If emissions budgets are established for

years after the attainment year, emissions in each analysis year or horizon year must be less than or equal to the motor vehicle emissions budget for that year, if any, or the motor vehicle emissions budget for the most recent budget year prior to the analysis year or horizon year; and

4. For maintenance areas, emissions in each analysis or horizon year are less than or equal to the motor vehicle emissions budget established by the maintenance plan for that year, if any, or the emissions budget for the most recent budget year prior to the analysis or horizon year; and

§ 1220 Criteria and procedures: Motor vehicle emissions budget (TIP).

- a. The TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in § 1237. This criterion may be satisfied if the requirements in paragraphs (b) and (c) of this section are met.
- b. For areas with a conforming transportation plan that fully meets the content requirements of § 1207(a), this criterion may be satisfied without additional regional emissions analysis if:
  1. Each program year of the TIP is consistent with the Federal funding which may be reasonably expected for that year, and required State/local matching funds and funds for State/local funding-only projects are consistent with the revenue sources expected over the same period; and
  2. The TIP is consistent with the conforming transportation plan such that the regional emissions analysis already performed for the plan applies to the TIP also. This requires a demonstration that:
    - i. The TIP contains all projects which must be started in the TIP's timeframe in order to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;
    - ii. All TIP projects which are regionally significant are part of the specific highway or transit system envisioned in the transportation plan's horizon years; and
    - iii. The design concept and scope of each regionally significant project in the TIP is not significantly different from that described in the transportation plan.
  3. If the requirements in paragraphs (b)(1) and (b)(2) of this section are not met, then:
    - i. The TIP may be modified to meet those requirements; or
    - ii. The transportation plan must be revised so that the requirements in paragraphs (b)(1) and (b)(2) of this section are met. Once the revised plan has been found to conform, this criterion is met for the TIP with no additional analysis except a demonstration that the TIP meets the requirements of paragraphs (b)(1) and (b)(2) of this section.

- c. For areas with a transportation plan that does not meet the content requirements of § 1207(a), a regional emissions analysis must meet all of the following requirements:
  - 1. The regional emissions analysis shall estimate emissions from the entire transportation system, including all projects contained in the proposed TIP, the transportation plan, and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan;
  - 2. The analysis methodology shall meet the requirements of § 1231(c); and
  - 3. The regional emissions analysis shall satisfy the requirements of § 1219(b)(1), § 1219(b)(5), and § 1219(c).

§ 1221 Criteria and procedures: Motor vehicle emissions budget (Project not from a plan and TIP).

- a. The project which is not from a conforming transportation plan and a conforming TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in § 1237. It is satisfied if emissions from the implementation of the project, when considered with the emissions from the projects in the conforming transportation plan and TIP and all other regionally significant projects expected in the area, do not exceed the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission).
- b. For areas with a conforming transportation plan that meets the content requirements of § 1207(a):
  - 1. This criterion may be satisfied without additional regional analysis if the project is included in the conforming transportation plan, even if it is not specifically included in the latest conforming TIP. This requires a demonstration that:
    - i. Allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;
    - ii. The project is not regionally significant or is part of the specific highway or transit system envisioned in the transportation plan's horizon years; and
    - iii. The design concept and scope of the project is not significantly different from that described in the transportation plan.
  - 2. If the requirements in paragraph (b)(i) of this section are not met, a regional emissions analysis must be performed as follows:
    - i. The analysis methodology shall meet the requirements of § 1231;
    - ii. The analysis shall estimate emissions from the transportation system, including the proposed project and all other regionally significant projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan. The analysis must include emissions from all

- previously approved projects which were not from a transportation plan and TIP; and
  - iii. The regional emissions analysis shall meet the requirements of § 1219(b)(1), § 1219(b)(4), and § 1219(c).
- c. For areas with a transportation plan that does not meet the content requirements of § 1207(a), a regional emissions analysis must be performed for the project together with the conforming TIP and all other regionally significant projects expected in the nonattainment or maintenance area. This criterion may be satisfied if:
  - 1. The analysis methodology meets the requirements of § 1231(c);
  - 2. The analysis estimates emissions from the transportation system, including the proposed project, and all other regionally significant projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan; and
  - 3. The regional emissions analysis satisfies the requirements of § 1219(b)(1), § 1219(b)(5), and § 1219(c).

§ 1222 Criteria and procedures: Localized CO violations (hot spots) in the interim period.

- a. Each FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion applies during the interim and transitional periods only. This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that existing localized CO violations will be eliminated or reduced in severity and number as a result of the project.
- b. The demonstration must be performed according to the requirements of § 1206(c)(1)(i) and § 1232.
- c. For projects which are not of the type identified by § 1232(a), this criterion may be satisfied if consideration of local factors clearly demonstrates that existing CO violations will be eliminated or reduced in severity and number. Otherwise, a quantitative demonstration must be performed according to the requirements of § 1232(b).

§ 1223 Criteria and procedures: Interim period reductions in ozone and CO areas (transportation plan).

- a. A transportation plan must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in § 1237. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if a regional emissions analysis is performed as described in paragraphs (b) through (f) of this section.
- b. Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than ten years apart. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The second analysis year shall be either the attainment year for the area, or if

the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

- c. Define the 'Baseline' scenario for each of the analysis years to be the future transportation system that would result from current programs, composed of the following (except that projects listed in § 1235 and § 1236 need not be explicitly considered):
  1. All in-place regionally significant highway and transit facilities, services and activities;
  2. All ongoing travel demand management or transportation system management activities; and
  3. Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming transportation plan or TIP; or have completed the NEPA process. (For the first conformity determination on the transportation plan after November 24, 1993, a project may not be included in the 'Baseline' scenario if one of the following major steps has not occurred within the most recent three year period: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project must be included in the 'Action' scenario, as described in paragraph (d) of this section.)
- d. Define the 'Action' scenario for each of the analysis years as the transportation system that will result in that year from the implementation of the proposed transportation plan, TIPs adopted under it, and other expected regionally significant projects in the nonattainment area. It will include the following (except that projects listed in § 1235 and § 1236 need not be explicitly considered):
  1. All facilities, services, and activities in the 'Baseline' scenario;
  2. Completion of all TCMs and regionally significant projects (including facilities, services, and activities) specifically identified in the proposed transportation plan which will be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;
  3. All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which have been fully adopted and funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the transportation plan;
  4. The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval,



which were adopted or funded prior to the date of the last conformity determination on the transportation plan, but which have been modified since then to be more stringent or effective;

5. Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and
  6. Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.
- e. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the 'Baseline' and 'Action' scenarios and determine the difference in regional VOC and NO<sub>x</sub> emissions between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis must be performed for each of the analysis years according to the requirements of § 1231. Emissions in milestone years which are between the analysis years may be determined by interpolation.
- f. This criterion is met if the regional VOC and NO<sub>x</sub> emissions (for ozone nonattainment areas) and CO emissions (for CO nonattainment areas) predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and if this can reasonably be expected to be true in the periods between the first milestone year and the analysis years. The regional emissions analysis must show that the 'Action' scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

§ 1224 Criteria and procedures: Interim period reductions in ozone and CO areas (TIP).

- a. A TIP must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in § 1237. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if a regional emissions analysis is performed as described in paragraphs (b) through (f) of this section.
- b. Determine the analysis years for which emissions are to be estimated. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The analysis years shall be no more than ten years apart. The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.
- c. Define the 'Baseline' scenario as the future transportation system that would result from current programs, composed of the following (except that projects listed in § 1235 and § 1236 need not be explicitly considered):
  1. All in-place regionally significant highway and transit facilities, services and activities;

2. All ongoing travel demand management or transportation system management activities; and
  3. Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming TIP; or have completed the NEPA process. (For the first conformity determination on the TIP after November 24, 1993, a project may not be included in the 'Baseline' scenario if one of the following major steps has not occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project must be included in the 'Action' scenario, as described in paragraph (d) of this section.)
- d. Define the 'Action' scenario as the future transportation system that will result from the implementation of the proposed TIP and other expected regionally significant projects in the nonattainment area in the timeframe of the transportation plan. It will include the following (except that projects listed in § 1235 and § 1236 need not be explicitly considered):
1. All facilities, services, and activities in the 'Baseline' scenario;
  2. Completion of all TCMs and regionally significant projects (including facilities, services, and activities) included in the proposed TIP, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is contained in the applicable implementation plan;
  3. All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which have been fully adopted and funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the TIP;
  4. The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which were adopted or funded prior to the date of the last conformity determination on the TIP, but which have been modified since then to be more stringent or effective;
  5. Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and
  6. Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.
- e. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the 'Baseline' and 'Action' scenarios, and determine the difference in regional VOC and NO<sub>x</sub> emissions and the difference in CO emissions

between the two scenarios for CO nonattainment areas. The analysis must be performed for each of the analysis years according to the requirements of § 1231. Emissions in milestone years which are between analysis years may be determined by interpolation.

- f. This criterion is met if the regional VOC and NO<sub>x</sub> emissions in ozone nonattainment areas and CO emissions in CO nonattainment areas predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and if this can reasonably be expected to be true in the period between the analysis years. The regional emissions analysis must show that the 'Action' scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

§ 1225 Criteria and procedures: Interim period reductions for ozone and CO areas (project not from a plan and TIP).

A transportation project which is not from a conforming transportation plan and TIP must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in § 1237. This criterion is satisfied if a regional emissions analysis is performed which meets the requirements of § 1223 and which includes the transportation plan and project in the 'Action' scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the 'Baseline' scenario must include the project with its original design concept and scope, and the 'Action' scenario must include the project with its new design concept and scope.

§ 1226 Criteria and procedures: Interim period reductions for PM<sub>10</sub> and NO<sub>2</sub> areas (transportation plan).

- a. A transportation plan must contribute to emission reductions or must not increase emissions in PM<sub>10</sub> and NO<sub>2</sub> nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if the requirements of either paragraph (b) or (c) of this section are met.
- b. Demonstrate that implementation of the plan and all other regionally significant projects expected in the nonattainment area will contribute to reductions in emissions of PM<sub>10</sub> in a PM<sub>10</sub> nonattainment area (and of each transportation-related precursor of PM<sub>10</sub> in PM<sub>10</sub> nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified the MPO and DOT) and of NO<sub>x</sub> in an NO<sub>2</sub> nonattainment area, by performing a regional emissions analysis as follows:
  - 1. Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than ten years apart. The first analysis year shall be no later than 1996 (for NO<sub>2</sub> areas) or four years and six months following the date of designation (for PM<sub>10</sub> areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

2. Define for each of the analysis years the 'Baseline' scenario, as defined in § 1223(c), and the 'Action' scenario, as defined in § 1223(d).
  3. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the 'Baseline' and 'Action' scenarios and determine the difference between the two scenarios in regional PM10 emissions in a PM10 nonattainment area (and transportation-related precursors of PM10 in PM10 nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM10 nonattainment problem and has so notified the MPO and DOT) and in NOx emissions in an NO2 nonattainment area. The analysis must be performed for each of the analysis years according to the requirements of § 1231. The analysis must address the periods between the analysis years and the periods between 1990, the first milestone year (if any), and the first of the analysis years. Emissions in milestone years which are between the analysis years may be determined by interpolation.
  4. Demonstrate that the regional PM10 emissions and PM10 precursor emissions, where applicable, (for PM10 nonattainment areas) and NOx emissions (for NO2 nonattainment areas) predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and that this can reasonably be expected to be true in the periods between the first milestone year (if any) and the analysis years.
- c. Demonstrate that when the projects in the transportation plan and all other regionally significant projects expected in the nonattainment area are implemented, the transportation system's total highway and transit emissions of PM10 in a PM10 nonattainment area (and transportation-related precursors of PM10 in PM10 nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM10 nonattainment problem and has so notified the MPO and DOT) and of NOx in an NO2 nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as follows:
1. Determine the baseline regional emissions of PM10 and PM10 precursors, where applicable (for PM10 nonattainment areas) and NOx (for NO2 nonattainment areas) from highway and transit sources. Baseline emissions are those estimated to have occurred during calendar year 1990.
  2. Estimate the emissions of the applicable pollutant(s) from the entire transportation system, including projects in the transportation plan and TIP and all other regionally significant projects in the nonattainment area, according to the requirements of § 1231. Emissions shall be estimated for analysis years which are no more than ten years apart. The first analysis year shall be no later than 1996 (for NO2 areas) or four years and six months following the date of designation (for PM10 areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years

beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

3. Demonstrate that for each analysis year the emissions estimated in paragraph (c)(2) of this section are no greater than baseline emissions of PM10 and PM10 precursors, where applicable (for PM10 nonattainment areas) or NOx (for NO2 nonattainment areas) from highway and transit sources.

§ 1227 Criteria and procedures: Interim period reductions for PM10 and NO2 areas (TIP).

- a. A TIP must contribute to emission reductions or must not increase emissions in PM10 and NO2 nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if the requirements of either paragraph (b) or paragraph (c) of this section are met.
- b. Demonstrate that implementation of the plan and TIP and all other regionally significant projects expected in the nonattainment area will contribute to reductions in emissions of PM10 in a PM10 nonattainment area (and transportation-related precursors of PM10 in PM10 nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM10 nonattainment problem and has so notified the MPO and DOT) and of NOx in an NO2 nonattainment area, by performing a regional emissions analysis as follows:
  1. Determine the analysis years for which emissions are to be estimated, according to the requirements of § 1226(b)(1).
  2. Define for each of the analysis years the 'Baseline' scenario, as defined in § 1224(c), and the 'Action' scenario, as defined in § 1224(d).
  3. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the 'Baseline' and 'Action' scenarios as required by § 1226(b)(3), and make the demonstration required by § 1226(b)(4).
- c. Demonstrate that when the projects in the transportation plan and TIP and all other regionally significant projects expected in the area are implemented, the transportation system's total highway and transit emissions of PM10 in a PM10 nonattainment area (and transportation-related precursors of PM10 in PM10 nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM10 nonattainment problem and has so notified the MPO and DOT) and of NOx in an NO2 nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as required by § 1226(c)(1), (2), and (3).

§ 1228 Criteria and procedures: Interim period reductions for PM10 and NO2 areas (project not from a plan and TIP).

A transportation project which is not from a conforming transportation plan and TIP must contribute to emission reductions or must not increase emissions in PM10 and NO2 nonattainment areas. This criterion applies during the interim and transitional periods only. This

criterion is met if a regional emissions analysis is performed which meets the requirements of § 1226 and which includes the transportation plan and project in the 'Action' scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the transportation plan or TIP, and § 126(b) is used to demonstrate satisfaction of this criterion, the 'Baseline' scenario must include the project with its original design concept and scope, and the 'Action' scenario must include the project with its new design concept and scope.

§ 1229 Transition from the interim period to the control strategy period.

- a. Areas which submit a control strategy implementation plan revision after November 24, 1993.
  1. The transportation plan and TIP must be demonstrated to conform according to transitional period criteria and procedures by one year from the date the Clean Air Act requires submission of such control strategy implementation plan revision. Otherwise, the conformity status of the transportation plan and TIP will lapse, and no new project-level conformity determinations may be made.
    - i. The conformity of new transportation plans and TIPs may be demonstrated according to Phase II interim period criteria and procedures for 90 days following submission of the control strategy implementation plan revision, provided the conformity of such transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in paragraph (a)(1) of this section and such transportation plans and TIPs are consistent with the motor vehicle emissions budget in the applicable implementation plan or any previously submitted control strategy implementation plan revision.
    - ii. Beginning 90 days after submission of the control strategy implementation plan revision, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.
  2. If EPA disapproves the submitted control strategy implementation plan revision and so notifies the State, MPO, and DOT, which initiates the sanction process under Clean Air Act §§ 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse 120 days after EPA's disapproval, and no new project-level conformity determinations may be made. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.
  3. Notwithstanding paragraph (a)(2) of this section, if EPA disapproves the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act § 110(a)(2)(A), the provisions of paragraph (a)(1) of this section shall apply for 12 months following the date of disapproval. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of disapproval unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

- b. Areas which have not submitted a control strategy implementation plan revision.
  - 1. For areas whose Clean Air Act deadline for submission of the control strategy implementation plan revision is after November 24, 1993, and EPA has notified the State, MPO, and DOT of the State's failure to submit a control strategy implementation plan revision, which initiates the sanction process under Clean Air Act §§ 179 or 110(m):
    - i. No new transportation plans or TIPs may be found to conform beginning 120 days after the Clean Air Act deadline; and
    - ii. The conformity status of the transportation plan and TIP shall lapse one year after the Clean Air Act deadline, and no new project-level conformity determinations may be made.
  - 2. For areas whose Clean Air Act deadline for submission of the control strategy implementation plan was before November 24, 1993, and EPA has made a finding of failure to submit a control strategy implementation plan revision, which initiates the sanction process under Clean Air Act §§ 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:
    - i. No new transportation plans or TIPs may be found to conform beginning March 24, 1994; and
    - ii. The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.
- c. Areas which have not submitted a complete control strategy implementation plan revision.
  - 1. For areas where EPA notifies the State, MPO, and DOT after November 24, 1993, that the control strategy implementation plan revision submitted by the State is incomplete, which initiates the sanction process under Clean Air Act §§ 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:
    - i. No new transportation plans or TIPs may be found to conform beginning 120 days after EPA's incompleteness finding; and
    - ii. The conformity status of the transportation plan and TIP shall lapse one year after the Clean Air Act deadline, and no new project-level conformity determinations may be made.
    - iii. Notwithstanding paragraphs (c)(1)(i) and (ii) of this section, if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act § 110(a)(2)(A), the provisions of paragraph (a)(1) of this section shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy

implementation plan revision is submitted to EPA and found to be complete.

2. For areas where EPA has determined before November 24, 1993, that the control strategy implementation plan revision is incomplete, which initiates the sanction process under Clean Air Act §§ 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:
  - i. No new transportation plans or TIPs may be found to conform beginning March 24, 1994; and
  - ii. The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.
  - iii. Notwithstanding paragraphs (c)(2)(i) and (ii) of this section, if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act § 110(a)(2)(A), the provisions of paragraph (d)(1) of this section shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy implementation plan revision is submitted to EPA and found to be complete.
- d. Areas which submitted a control strategy implementation plan before November 24, 1993.
  1. The transportation plan and TIP must be demonstrated to conform according to transitional period criteria and procedures by November 25, 1994. Otherwise, their conformity status will lapse, and no new project-level conformity determinations may be made.
    - i. The conformity of new transportation plans and TIPs may be demonstrated according to Phase II interim period criteria and procedures until February 22, 1994, provided the conformity of such transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in paragraph (d)(1) of this section.
    - ii. Beginning February 22, 1994, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.
  2. If EPA has disapproved the most recent control strategy implementation plan submission, the conformity status of the transportation plan and TIP shall lapse March 24, 1994, and no new project-level conformity determinations may be made. No new transportation plans, TIPs, or projects may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.



3. Notwithstanding paragraph (d)(2) of this section, if EPA has disapproved the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act § 110(a)(2)(A), the provisions of paragraph (d)(1) of this section shall apply until November 25, 1994. The conformity status of the transportation plan and TIP shall lapse November 25, 1994, unless another control strategy implementation plan revision is submitted to EPA and found to be complete.
- e. Projects: If the currently conforming transportation plan and TIP have not been demonstrated to conform according to transitional period criteria and procedures, the requirements of paragraphs (e)(1) and (2) of this section must be met.
1. Before a FHWA/FTA project which is regionally significant and increases single-occupant vehicle capacity (a new general purpose highway on a new location or adding general purpose lanes) may be found to conform, the State air agency must be consulted on how the emissions which the existing transportation plan and TIP's conformity determination estimates for the 'Action' scenario (as required by §§ 1223 - 1228) compare to the motor vehicle emissions budget in the implementation plan submission or the projected motor vehicle emissions budget in the implementation plan under development.
  2. In the event of unresolved disputes on such project-level conformity determinations, the State air agency may escalate the issue to the Governor consistent with the procedure in § 1206(d), which applies for any State air agency comments on a conformity determination.
- f. Redetermination of conformity of the existing transportation plan and TIP according to the transitional period criteria and procedures.
1. The redetermination of the conformity of the existing transportation plan and TIP according to transitional period criteria and procedures (as required by paragraphs (a)(1) and (d)(1) of this section) does not require new emissions analysis and does not have to satisfy the requirements of §§ 1211 and 1212 if:
    - i. The control strategy implementation plan revision submitted to EPA uses the MPO's modeling of the existing transportation plan and TIP for its projections of motor vehicle emissions; and
    - ii. The control strategy implementation plan does not include any transportation projects which are not included in the transportation plan and TIP.
  2. A redetermination of conformity as described in paragraph (f)(1) of this section is not considered a conformity determination for the purposes of § 1205(b)(4) or § 1205(c)(4) regarding the maximum intervals between conformity determinations. Conformity must be determined according to all applicable criteria and procedures of § 1210 within three years of the last determination which did not rely on paragraph (f)(1) of this section.
- g. Ozone nonattainment areas.

1. The requirements of paragraph (b)(1) of this section apply if a serious or above ozone nonattainment area has not submitted the implementation plan revisions which Clean Air Act §§ 182(c)(2)(A) and 182(c)(2)(B) require to be submitted to EPA November 15, 1994, even if the area has submitted the implementation plan revision which Clean Air Act § 182(b)(1) requires to be submitted to EPA November 15, 1993.
  2. The requirements of paragraph (b)(1) of this section apply if a moderate ozone nonattainment area which is using photochemical dispersion modeling to demonstrate the "specific annual reductions as necessary to attain" required by Clean Air Act § 182(b)(1), and which has permission from EPA to delay submission of such demonstration until November 15, 1994, does not submit such demonstration by that date. The requirements of paragraph (b)(1) of this section apply in this case even if the area has submitted the 15% emission reduction demonstration required by Clean Air Act § 182(b)(1).
  3. The requirements of paragraph (a) of this section apply when the implementation plan revisions required by Clean Air Act §§ 182(c)(2)(A) and 182(c)(2)(B) are submitted.
- h. Nonattainment areas which are not required to demonstrate reasonable further progress and attainment.
1. If an area listed in § 1237 submits a control strategy implementation plan revision, the requirements of paragraphs (a) and (e) of this section apply. Because the areas listed in § 1237 are not required to demonstrate reasonable further progress and attainment and therefore have no Clean Air Act deadline, the provisions of paragraph (b) of this section do not apply to these areas at any time.
- i. Maintenance plans: If a control strategy implementation plan revision is not submitted to EPA but a maintenance plan required by Clean Air Act § 175A is submitted to EPA, the requirements of paragraph (a) or (d) of this section apply, with the maintenance plan submission treated as a "control strategy implementation plan revision" for the purposes of those requirements.

§ 1230 Requirements for adoption or approval of projects by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act.

No recipient of federal funds designated under title 23 U.S.C. or the Federal Transit Act shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless there is a currently conforming transportation plan and TIP consistent with the requirements of § 1215 and the requirements of one of the following paragraphs (a) through (e) are met:

- a. The project comes from a conforming plan and program consistent with the requirements of § 1216;
- b. The project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not strictly "included" in

the TIP for the purposes of MPO project selection or endorsement, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility;

- c. During the control strategy or maintenance period, the project is consistent with the motor vehicle emissions budget(s) in the applicable implementation plan consistent with the requirements of § 1221;
- d. During Phase II of the interim period, the project contributes to emissions reductions or does not increase emissions consistent with the requirements of § 1225 (in ozone and CO nonattainment areas) or § 1228 (in PM10 and NO2 nonattainment areas); or
- e. During the transitional period, the project satisfies the requirements of both paragraphs (c) and (d) of this section.

#### § 1231 Procedures for determining regional transportation-related emissions.

##### a. General requirements.

- 1. The regional emissions analysis for the transportation plan, TIP, or project not from a conforming plan and TIP shall include all regionally significant projects expected in the nonattainment or maintenance area, including FHWA/FTA projects proposed in the transportation plan and TIP, and all other regionally significant projects which are disclosed to the MPO as required by § 1206. Projects which are not regionally significant are not required to be explicitly modeled, but VMT from such projects must be estimated in accordance with reasonable professional practice. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice.
- 2. The emissions analysis may not include for emissions reduction credit any TCMs which have been delayed beyond the scheduled date(s) until such time as implementation has been assured. If the TCM has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.
- 3. Emissions reduction credit from projects, programs, or activities which require a regulation in order to be implemented may not be included in the emissions analysis unless the regulation is already adopted by the enforcing jurisdiction. Adopted regulations are required for demand management strategies for reducing emissions which are not specifically identified in the applicable implementation plan, and for control programs which are external to the transportation system itself, such as tailpipe or evaporative emission standards, limits on gasoline volatility, inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel. A regulatory program may also be considered to be adopted if an opt-in to a Federally enforced program has been approved by EPA, if EPA has promulgated the program (if the control program is a Federal responsibility, such as tailpipe standards), or if the Clean Air Act requires the program without need for individual State action and without

any discretionary authority for EPA to set its stringency, delay its effective date, or not implement the program.

4. Notwithstanding paragraph (a)(3) of this section, during the transitional period, control measures or programs which are committed to in an implementation plan submission as described in §§ 1219 - 1221, but which has not received final EPA action in the form of a finding of incompleteness, approval, or disapproval, may be assumed for emission reduction credit for the purpose of demonstrating that the requirements of §§ 1219 - 1221 are satisfied.
  5. A regional emissions analysis for the purpose of satisfying the requirements of §§ 1223 - 1225 may account for the programs in paragraph (a)(4) of this section, but the same assumptions about these programs shall be used for both the 'Baseline' and 'Action' scenarios.
  6. Ambient temperatures shall be consistent with those used to establish the emissions budget in the applicable implementation plan. Factors other than temperatures, for example the fraction of travel in a hot stabilized engine mode, may be modified after interagency consultation in accordance with § 1206 if the newer estimates incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.
- b. Serious, severe, and extreme ozone nonattainment areas and serious carbon monoxide areas after January 1, 1995. Estimates of regional transportation-related emissions used to support conformity determinations must be made according to procedures which meet the requirements in paragraphs (b)(1) through (4) of this section.
1. A network-based transportation demand model or models relating travel demand and transportation system performance to land-use patterns, population demographics, employment, transportation infrastructure, and transportation policies must be used to estimate travel within the metropolitan planning area of the nonattainment area. Such a model shall possess the following attributes:
    - i. The modeling methods and the functional relationships used in the model(s) shall in all respects be in accordance with acceptable professional practice, and reasonable for purposes of emission estimation;
    - ii. The network-based model(s) must be validated against ground counts for a base year that is not more than 10 years prior to the date of the conformity determination. Land use, population, and other inputs must be based on the best available information and appropriate to the validation base year;
    - iii. For peak-hour or peak-period traffic assignments, a capacity sensitive assignment methodology must be used;
    - iv. Zone-to-zone travel times used to distribute trips between origin and destination pairs must be in reasonable agreement with the travel times which result from the process of assignment of trips to network links. Where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits;

- v. Free-flow speeds on network links shall be based on empirical observations;
  - vi. Peak and off-peak travel demand and travel times must be provided;
  - vii. Trip distribution and mode choice must be sensitive to pricing, where pricing is a significant factor, if the network model is capable of such determinations and the necessary information is available;
  - viii. The model(s) must utilize and document a logical correspondence between the assumed scenario of land development and use and the future transportation system for which emissions are being estimated. Reliance on a formal land-use model is not specifically required but is encouraged;
  - ix. A dependence of trip generation on the accessibility of destinations via the transportation system (including pricing) is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available;
  - x. A dependence of regional economic and population growth on the accessibility of destinations via the transportation system is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available; and
  - xi. Consideration of emissions increases from construction-related congestion is not specifically required.
2. Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled shall be considered the primary measure of vehicle miles traveled within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. A factor (or factors) shall be developed to reconcile and calibrate the network-based model estimates of vehicle miles traveled in the base year of its validation to the HPMS estimates for the same period, and these factors shall be applied to model estimates of future vehicle miles traveled. In this factoring process, consideration will be given to differences in the facility coverage of the HPMS and the modeled network description. Departure from these procedures is permitted with the concurrence of DOT and EPA.
  3. Reasonable methods shall be used to estimate nonattainment area vehicle travel on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.
  4. Reasonable methods in accordance with good practice must be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network model.
- c. Areas which are not serious, severe, or extreme ozone nonattainment areas or serious carbon monoxide areas, or before January 1, 1995.
1. Procedures which satisfy some or all of the requirements of paragraph (b) of this section shall be used in all areas not subject to paragraph (b) of this section in which those procedures have been the previous practice of the MPO.

2. Regional emissions may be estimated by methods which do not explicitly or comprehensively account for the influence of land use and transportation infrastructure on vehicle miles traveled and traffic speeds and congestion. Such methods must account for VMT growth by extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for vehicle miles traveled per person. These methods must also consider future economic activity, transit alternatives, and transportation system policies.
- d. Projects not from a conforming plan and TIP in isolated rural nonattainment and maintenance areas. This paragraph applies to any nonattainment or maintenance area or any portion thereof which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP (because the nonattainment or maintenance area or portion thereof does not contain a metropolitan planning area or portion of a metropolitan planning area and is not part of a Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area which is or contains a nonattainment or maintenance area).
1. Conformity demonstrations for projects in these areas may satisfy the requirements of §§ 1221, 1225, and 1228 with one regional emissions analysis which includes all the regionally significant projects in the nonattainment or maintenance area (or portion thereof).
  2. The requirements of § 1221 shall be satisfied according to the procedures in § 1221(c), with references to the "transportation plan" taken to mean the statewide transportation plan.
  3. The requirements of §§ 1225 and 1228 which reference "transportation plan" or "TIP" shall be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the nonattainment or maintenance area (or portion thereof).
  4. The requirement of § 1230(b) shall be satisfied if:
    - i. The project is included in the regional emissions analysis which includes all regionally significant highway and transportation projects in the nonattainment or maintenance area (or portion thereof) and supports the most recent conformity determination made according to the requirements of §§ 1221, 1225, or 1228 (as modified by paragraphs (d)(2) and (d)(3) of this section), as appropriate for the time period and pollutant; and
    - ii. The project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility.
- e. PM10 from construction-related fugitive dust.
1. For areas in which the implementation plan does not identify construction-related fugitive PM10 as a contributor to the nonattainment problem, the fugitive PM10 emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

2. In PM10 nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM10 as a contributor to the nonattainment problem, the regional PM10 emissions analysis shall consider construction-related fugitive PM10 and shall account for the level of construction activity, the fugitive PM10 control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

§ 1232 Procedures for determining localized CO and PM10 concentrations (hot-spot analysis).

- a. In the following cases, CO hot-spot analyses must be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR part 51 Appendix W ("Guideline on Air Quality Models (Revised)" (1988), supplement A (1987) and supplement B (1993), EPA publication no. 450/2-78-027R), unless, after the interagency consultation process described in § 1206 and with the approval of the EPA Regional Administrator, these models, data bases, and other requirements are determined to be inappropriate:
  1. For projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of current violation or possible current violation;
  2. For those intersections at Level-of-Service D, E, or F, or those that will change to Level-of-Service D, E, or F because of increased traffic volumes related to a new project in the vicinity;
  3. For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the highest traffic volumes;
  4. For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the worst Level-of-Service; and
  5. Where use of the "Guideline" models is practicable and reasonable given the potential for violations.
- b. In cases other than those described in paragraph (a) of this section, other quantitative methods may be used if they represent reasonable and common professional practice.
- c. CO hot-spot analyses must include the entire project, and may be performed only after the major design features which will significantly impact CO concentrations have been identified. The background concentration can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors.
- d. PM10 hot-spot analysis must be performed for projects which are located at sites at which violations have been verified by monitoring, and at sites which have essentially identical vehicle and roadway emission and dispersion characteristics (including sites near one at which a violation has been monitored). The projects which require PM10 hot-spot analysis shall be determined through the interagency consultation process required in § 1206. In PM10 nonattainment and maintenance areas, new or expanded

bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location require hot-spot analysis. DOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels. (The requirements of this paragraph for quantitative hot-spot analysis shall take effect when EPA releases modeling guidance on this subject and announces in the Federal Register that these requirements are in effect.)

- e. Hot-spot analysis assumptions must be consistent with those in the regional emissions analysis for those inputs which are required for both analyses.
- f. PM10 or CO mitigation or control measures shall be assumed in the hot-spot analysis only where there are written enforceable commitments from the project sponsor or operator to the implementation of such measures, as required by § 1234(a).
- g. CO and PM10 hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction-related activities shall be considered separately, using established "Guideline" methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.

§ 1233 Using the motor vehicle emissions budget in the applicable implementation plan (or implementation plan submission).

- a. In interpreting an applicable implementation plan (or implementation plan submission) with respect to its motor vehicle emissions budget(s), the MPO and DOT may not infer additions to the budget(s) that are not explicitly intended by the implementation plan (or submission). Unless the implementation plan explicitly quantifies the amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment, or maintenance requirement and explicitly states an intent that some or all of this additional amount should be available to the MPO and DOT in the emission budget for conformity purposes, the MPO may not interpret the budget to be higher than the implementation plan's estimate of future emissions. This applies in particular to applicable implementation plans (or submissions) which demonstrate that after implementation of control measures in the implementation plan:
  - 1. Emissions from all sources will be less than the total emissions that would be consistent with a required demonstration of an emissions reduction milestone;
  - 2. Emissions from all sources will result in achieving attainment prior to the attainment deadline or ambient concentrations in the attainment deadline year will be lower than needed to demonstrate attainment; or
  - 3. Emissions will be lower than needed to provide for continued maintenance.
- b. If an applicable implementation plan submitted before November 24, 1993, demonstrates that emissions from all sources will be less than the total emissions that would be consistent with attainment and quantifies that "safety margin," the State may submit an implementation plan revision which assigns some or all of this safety margin to highway and transit mobile sources for the purposes of conformity. Such an implementation plan revision, once it is endorsed by the Governor and has been subject



to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA.

- c. A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan (or implementation plan submission) allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, without an implementation plan revision or an applicable implementation plan which establishes mechanisms for such trades.
- d. If the applicable implementation plan (or implementation plan submission) estimates future emissions by geographic subarea of the nonattainment area, the MPO and DOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan (or implementation plan submission) explicitly indicates an intent to create such subarea budgets for the purposes of conformity.
- e. If a nonattainment area includes more than one MPO, the applicable implementation plan may establish motor vehicle emissions budgets for each MPO. Otherwise, the MPOs shall collectively make a conformity determination for the entire nonattainment area.

§ 1234 Enforceability of design concept and scope and project-level mitigation and control measures.

- a. Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under title 23 U.S.C. or the Federal Transit Act, FHWA, or FTA must obtain from the project sponsor or operator enforceable written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM10 or CO impacts. Before making conformity determinations enforceable written commitments must also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and included in the project design concept and scope which is used in the regional emissions analysis required by §§ 1219 - 1221 and §§ 1223 - 1225 or used in the project-level hot-spot analysis required by §§ 1217 and 1222.
- b. Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations shall provide enforceable written commitments and must comply with the obligations of such commitments.
- c. Enforceable written commitments to mitigation or control measures must be obtained prior to a positive conformity determination, and project sponsors must comply with such commitments.
- d. During the control strategy and maintenance periods, if the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the requirements of §§ 1217, 1219, and 1220 are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under § 1206. The MPO and DOT must confirm that the transportation plan and TIP still satisfy the requirements of

§§ 1219 and 1220 and that the project still satisfies the requirements of § 1217, and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid.

#### § 1235 Exempt projects.

Notwithstanding the other requirements of this rule, highway and transit projects of the types listed in Table 2 are exempt from the requirement that a conformity determination be made. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 is not exempt if the MPO in consultation with other agencies (see § 1206(c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs must assure that exempt projects do not interfere with TCM implementation.

Table 2.  
Exempt Projects

#### Safety

- Railroad/highway crossing
- Hazard elimination program
- Safer non-Federal-aid system roads
- Shoulder improvements
- Increasing sight distance
- Safety improvement program
- Traffic control devices and operating assistance other than signalization projects
- Railroad/highway crossing warning devices
- Guardrails, median barriers, crash cushions
- Pavement resurfacing or rehabilitation
- Pavement marking demonstration
- Emergency relief (23 U.S.C. 125)
- Fencing
- Skid treatments
- Safety roadside rest areas
- Adding medians
- Truck climbing lanes outside the urbanized area
- Lighting improvements
- Widening narrow pavements or reconstructing bridges (no additional travel lanes)
- Emergency truck pullovers

#### Mass Transit

- Operating assistance to transit agencies
- Purchase of support vehicles
- Rehabilitation of transit vehicles (In PM10 nonattainment or maintenance areas, only if projects are in compliance with control measures in the applicable implementation plan.)
- Purchase of office, shop, and operating equipment for existing facilities
- Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.)

- Construction or renovation of power, signal, and communications systems
- Construction of small passenger shelters and information kiosks
- Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures)
- Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way
- Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet (In PM10 nonattainment or maintenance areas, only if projects are in compliance with control measures in the applicable implementation plan.)
- Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR part 771

#### Air Quality

- Continuation of ride-sharing and van-pooling promotion activities at current levels
- Bicycle and pedestrian facilities

#### Other

- Specific activities which do not involve or lead directly to construction, such as:
- Planning and technical studies
- Grants for training and research programs
- Planning activities conducted pursuant to titles 23 and 49 U.S.C.
- Federal-aid systems revisions
- Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action
- Noise attenuation
- Advance land acquisitions (23 CFR part 712 or 23 CFR part 771)
- Acquisition of scenic easements
- Plantings, landscaping, etc.
- Sign removal
- Directional and informational signs
- Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities)
- Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational, or capacity changes

#### § 1236 Projects exempt from regional emissions analyses.

Notwithstanding the other requirements of this rule, highway and transit projects of the types listed in Table 3 are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM10 concentrations must be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see

1206(c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason.

Table 3.  
Projects Exempt from Regional Emissions Analyses

- Intersection channelization projects
- Intersection signalization projects at individual intersections
- Interchange reconfiguration projects
- Changes in vertical and horizontal alignment
- Truck size and weight inspection stations
- Bus terminals and transfer points

§ 1237 Special provisions for nonattainment areas which are not required to demonstrate reasonable further progress and attainment.

- a. Application: This section applies in the following areas:
  1. Rural transport ozone nonattainment areas;
  2. Marginal ozone areas;
  3. Submarginal ozone areas;
  4. Transitional ozone areas;
  5. Incomplete data ozone areas;
  6. Moderate CO areas with a design value of 12.7 ppm or less; and
  7. Not classified CO areas.
- b. Default conformity procedures: The criteria and procedures in §§ 1223 - 1225 will remain in effect throughout the control strategy period for transportation plans, TIPs, and projects (not from a conforming plan and TIP) in lieu of the procedures in §§ 1219 - 1221, except as otherwise provided in paragraph (c) of this section.
- c. Optional conformity procedures: The State or MPO may voluntarily develop an attainment demonstration and corresponding motor vehicle emissions budget like those required in areas with higher nonattainment classifications. In this case, the State must submit an implementation plan revision which contains that budget and attainment demonstration. Once EPA has approved this implementation plan revision, the procedures in §§ 1219-1221 apply in lieu of the procedures in §§ 1223-1225.

§ 1238 Savings provisions.

The Federal conformity rules under 40 CFR part 51 subpart T, in addition to any existing applicable State requirements, establish the conformity criteria and procedures necessary to meet the requirements of Clean Air Act section 176(c) until such time as this conformity implementation plan revision is approved by EPA. Following EPA approval of this revision to the applicable implementation plan (or a portion thereof), the approved (or approved portion of the) State criteria and procedures would govern conformity determinations and the Federal conformity regulations contained in 40 CFR part 93 would apply only for the portion, if any, of the State's conformity provisions that is not approved by EPA. In addition, any previously applicable implementation plan requirements relating to conformity remain enforceable until the State revises its applicable implementation plan to specifically remove them and that revision is approved by EPA.

## REGULATION XIII – GENERAL CONFORMITY

### Reg. 13. CONFORMITY OF GENERAL FEDERAL ACTIONS TO STATE IMPLEMENTATION PLANS

Adopted: 10/05/94

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##### § 1301 Purpose.

- a. The purpose of this rule is to implement section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 et seq.) and regulations under 40 CFR part 51 subpart W, with respect to the conformity of general Federal actions to the applicable implementation plan. Under those authorities, no department, agency or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to an applicable implementation plan. This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such actions to the applicable implementation plan.
- b. Under CAA §176(c) and 40 CFR part 51 subpart W, a Federal agency must make a determination that a Federal action conforms to the applicable implementation plan in accordance with the requirements of this rule before the action is taken.
- c. The preceding sentence does not include Federal actions where either:
  - 1. A National Environmental Policy Act (NEPA) analysis was completed as evidenced by a final environmental assessment (EA), environmental impact statement (EIS), or finding of no significant impact (FONSI) that was prepared prior to January 31, 1994, or

2.

- i. Prior to January 31, 1994, an EA was commenced or a contract was awarded to develop the specific environmental analysis,
  - ii. Sufficient environmental analysis is completed by March 15, 1994, so that the Federal agency may determine that the Federal action is in conformity with the specific requirements and the purposes of the applicable implementation plan pursuant to the agency's affirmative obligation under §176(c) of the CAA, and
  - iii. A written determination of conformity under §176(c) of the CAA has been made by the Federal agency responsible for the Federal action by March 15, 1994.
- d. Notwithstanding any provision of this rule, a determination that an action is in conformity with the applicable implementation plan does not exempt the action from any other requirements of the applicable implementation plan, the NEPA, or the CAA.

#### § 1302 Definitions.

Terms used but not defined in this rule shall have the meaning given them by the CAA and EPA's regulations, in that order of priority.

Affected Federal land manager means the Federal agency or the Federal official charged with direct responsibility for management of an area designated as Class I under the CAA (42 U.S.C. 7472) that is located within 100 km of the proposed Federal action.

Applicable implementation plan means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under §110 of the CAA, or promulgated under §110(c) of the CAA (Federal implementation plan), or promulgated or approved pursuant to regulations promulgated under §301(d) of the CAA and which implements the relevant requirements of the CAA.

Areawide air quality modeling analysis means an assessment on a scale that includes the entire nonattainment or maintenance area which uses an air quality dispersion model to determine the effects of emissions on air quality.

CAA means the Clean Air Act, as amended.

Cause or contribute to a new violation means a Federal action that:

1. Causes a new violation of a national ambient air quality standard (NAAQS) at a location in a nonattainment or maintenance area which would otherwise not be in violation of the standard during the future period in question if the Federal action were not taken, or
2. Contributes, in conjunction with other reasonably foreseeable actions, to a new violation of a NAAQS at a location in a nonattainment or maintenance area in a manner that would increase the frequency or severity of the new violation.

Caused by, as used in the terms "direct emissions" and "indirect emissions," means emissions that would not otherwise occur in the absence of the Federal action.

Consultation means that one party confers with another identified party, provides all information to that party needed for meaningful input, and, prior to taking any action, considers the views of that party and responds to those views in a timely, substantive written manner prior to any final decision on such action. Such views and written response shall be made part of the record of any decision or action.

Criteria pollutant or standard means any pollutant for which there is established a NAAQS at 40 CFR part 50.

Direct emissions means those emissions of a criteria pollutant or its precursors that are caused or initiated by the Federal action and occur at the same time and place as the action.

Emergency means a situation where extremely quick action on the part of the Federal agencies involved is needed and where the timing of such Federal activities makes it impractical to meet the requirements of this rule, such as natural disasters like hurricanes or earthquakes, civil disturbances such as terrorist acts, and military mobilizations.

Emissions budgets are those portions of the total allowable emissions defined in an EPA-approved revision to the applicable implementation plan for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations, for any criteria pollutant or its precursors, specifically allocated by the applicable implementation plan to mobile sources, to any stationary source or class of stationary sources, to any Federal action or class of action, to any class of area sources, or to any subcategory of the emissions inventory. The allocation system must be specific enough to assure meeting the criteria of §176(c)(1)(B) of the CAA. An emissions budget may be expressed in terms of an annual period, a daily period, or other period established in the applicable implementation plan.

Emission offsets, for purposes of §1308, are emissions reductions which are quantifiable, consistent with the applicable implementation plan attainment and reasonable further progress demonstrations, surplus to reductions required by, and credited to, other applicable implementation plan provisions, enforceable under both State and Federal law, and permanent within the time frame specified by the program. Emissions reductions intended to be achieved as emissions offsets under this rule must be monitored and enforced in a manner equivalent to that under EPA's new source review requirements.

Emissions that a Federal agency has a continuing program responsibility for means emissions that are specifically caused by an agency carrying out its authorities, and does not include emissions that occur due to subsequent activities, unless such activities are required by the Federal agency. Where an agency, in performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a non-Federal entity taking subsequent actions, such emissions are covered by the meaning of a continuing program responsibility.

EPA means the U.S. Environmental Protection Agency.

Federal action means any activity engaged in by a department, agency, or instrumentality of the Federal government, or any activity that a department, agency or instrumentality of the Federal government supports in any way, provides financial assistance for, licenses, permits, or approves, other than activities related to transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601

et seq.). Where the Federal action is a permit, license, or other approval for some aspect of a non-Federal undertaking, the relevant activity is the part, portion, or phase of the non-Federal undertaking that requires the Federal permit, license, or approval.

Federal agency means, for purposes of this rule, a Federal department, agency, or instrumentality of the Federal government.

Increase the frequency or severity of any existing violation of any standard in any area means to cause a nonattainment area to exceed a standard more often or to cause a violation at a greater concentration than previously existed or would otherwise exist during the future period in question, if the project were not implemented.

Indirect emissions means those emissions of a criteria pollutant or its precursors that:

1. are caused by the Federal action, but may occur later in time or may be farther removed in distance from the action itself but are still reasonably foreseeable, and
2. the Federal agency can practicably control and will maintain control over due to a continuing program responsibility of the Federal agency, including, but not limited to,
  - i. traffic on or to, or stimulated or accommodated by, a proposed facility which is related to increases or other changes in the scale or timing of operations of such facility;
  - ii. emissions related to the activities of employees of contractors or Federal employees;
  - iii. emissions related to employee commutation and similar programs to increase average vehicle occupancy imposed on all employers of a certain size in the locality;
  - iv. emissions related to the use of Federal facilities under lease or temporary permit; and
  - v. emissions related to the activities of contractors or leaseholders that may be addressed by provisions that are usual and customary for contracts or leases or within the scope of contractual protection of the interests of the United States.

[NOTE: This term does not have the same meaning as given to an indirect source of emissions under §110(a)(5) of the CAA.]

Local air quality modeling analysis means an assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, which uses an air quality dispersion model to determine the effects of emissions on air quality.

Maintenance area means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under §175A of the CAA.



Maintenance plan means a revision to the applicable implementation plan, meeting the requirements of §175A of the CAA.

Metropolitan planning organization (MPO) is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607.

Milestone has the meaning given in §§182(g)(1) and 189(c)(1) of the CAA. A milestone consists of an emissions level and the date on which it is required to be achieved.

National ambient air quality standards (NAAQS) are those standards established pursuant to §109 of the CAA and include standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO<sub>2</sub>), ozone, particulate matter (PM<sub>10</sub>), and sulfur dioxide (SO<sub>2</sub>). NEPA means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).

Nonattainment area (NAA) means any geographic area of the United States which has been designated as nonattainment under §107 of the CAA and described in 40 CFR part 81.

Precursors of a criteria pollutant are:

1. For ozone, nitrogen oxides (NO<sub>x</sub>) (unless an area is exempted from NO<sub>x</sub> requirements under §182(f) of the CAA), and volatile organic compounds (VOC); and
2. For PM<sub>10</sub>, those pollutants described in the PM<sub>10</sub> nonattainment area applicable implementation plan as significant contributors to the PM<sub>10</sub> levels.

Reasonably foreseeable emissions are projected future indirect emissions that are identified at the time the conformity determination is made; the location of such emissions is known to the extent adequate to determine the impact of such emissions; and the emissions are quantifiable, as described and documented by the Federal agency based on its own information and after reviewing any information presented to the Federal agency.

Regionally significant action means a Federal action for which the direct and indirect emissions of any pollutant represent 10 percent or more of a nonattainment or maintenance area's emissions inventory for that pollutant.

Regional water or wastewater projects include construction, operation, and maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment or maintenance area.

Total of direct and indirect emissions means the sum of direct and indirect emissions increases and decreases caused by the Federal action; i.e., the "net" emissions considering all direct and indirect emissions. Any emissions decreases used to reduce such total shall have already occurred or shall be enforceable under State and Federal law. The portion of emissions which are exempt or presumed to conform under §1303(c), (d), (e), or (f) are not included in the "total of direct and indirect emissions", except as provided in §1303(j). The "total of direct and indirect emissions" includes emissions of criteria pollutants and emissions of precursors of criteria pollutants. The segmentation of projects for conformity analyses when emissions are reasonably foreseeable is not permitted by this rule.

§ 1303 Applicability.

- a. Conformity determinations for Federal actions related to transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.) must meet the procedures and criteria of District Regulation XII - Conformity to State Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act, in lieu of the procedures set forth in this rule.
- b. For Federal actions not covered by paragraph (a) of this section, a conformity determination is required for each pollutant where the total of direct and indirect emissions in a nonattainment or maintenance area caused by a Federal action would equal or exceed any of the rates in paragraphs (b)(1) or (2) of this section.

1. For purposes of paragraph (b) of this section, the following rates apply in nonattainment areas (NAAs):

	Tons/Year
Ozone (VOC or NO <sub>x</sub> ) Serious NAAs	50
Serious NAAs	25
Extreme NAAs	10
Other ozone NAAs outside an Ozone transport region	100
Marginal and moderate NAAs inside an ozone transport region	
VOC	50
NO <sub>x</sub>	100
Carbon monoxide	
All NAAs	100
SO <sub>2</sub> or NO <sub>2</sub>	
All NAAs	100
PM <sub>10</sub>	
Moderate NAAs	100
Serious NAAs	75
Pb	
All NAAs	25

2. For purposes of paragraph (b) of this section, the following rates apply in maintenance areas:

	Tons/Year
Ozone (NO <sub>x</sub> ), SO <sub>2</sub> or NO <sub>2</sub>	
All maintenance areas	100
Ozone (VOC)	
Maintenance areas inside an ozone transport region	50
Maintenance areas outside an ozone transport region	100
Carbon monoxide	
All maintenance areas	100
PM <sub>10</sub>	
All maintenance areas	100
Pb	
All maintenance areas	25

- c. The requirements of this rule shall not apply to:
1. Actions where the total of direct and indirect emissions are below the emissions levels specified in paragraph (b) of this section.
  2. The following actions which would result in no emissions increase or an increase in emissions that is clearly de minimis:
    - i. Judicial and legislative proceedings.
    - ii. Continuing and recurring activities such as permit renewals where activities conducted will be similar in scope and operation to activities currently being conducted.
    - iii. Rulemaking and policy development and issuance.
    - iv. Routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities.
    - v. Civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law enforcement personnel.
    - vi. Administrative actions such as personnel actions, organizational changes, debt management or collection, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties and fees.
    - vii. The routine, recurring transportation of materiel and personnel.
    - viii. Routine movement of mobile assets, such as ships and aircraft, in home port reassignments and stations (when no new support facilities or personnel are required) to perform as operational groups or for repair or overhaul.
    - ix. Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site.
    - x. With respect to existing structures, properties, facilities and lands where future activities conducted will be similar in scope and operation to activities currently being conducted at the existing structures, properties, facilities, and lands, actions such as relocation of personnel, disposition of federally-owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or conservatorship authority, assistance in purchasing structures, and the production of coins and currency.
    - xi. The granting of leases, licenses such as for exports and trade, permits, and easements where activities conducted will be similar in scope and operation to activities currently being conducted.
    - xii. Planning, studies, and provision of technical assistance.
    - xiii. Routine operation of facilities, mobile assets and equipment.
    - xiv. Transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer.
    - xv. The designation of empowerment zones, enterprise communities, or viticultural areas.
    - xvi. Actions by any of the Federal banking agencies or the Federal Reserve Banks, including actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions or depository institution holding companies, access to the discount window,

- or the provision of financial services to banking organizations or to any department, agency or instrumentality of the United States.
  - xvii. Actions by the Board of Governors of the Federal Reserve System or any Federal Reserve Bank to effect monetary or exchange rate policy.
  - xviii. Actions that implement a foreign affairs function of the United States.
  - xix. Actions (or portions thereof) associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and where the Federal agency does not retain continuing authority to control emissions associated with the lands, facilities, title, or real properties.
  - xx. Transfers of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity and assignments of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity for subsequent deeding to eligible applicants.
  - xxi. Actions by the Department of the Treasury to effect fiscal policy and to exercise the borrowing authority of the United States.
3. The following actions where the emissions are not reasonably foreseeable, such as the following:
- i. Initial Outer Continental Shelf lease sales which are made on a broad scale and are followed by exploration and development plans on a project level.
  - ii. Electric power marketing activities that involve the acquisition, sale and transmission of electric energy.
4. Individual actions which implement a decision to conduct or carry out a program that has been found to conform to the applicable implementation plan, such as prescribed burning actions which are consistent with a land management plan that has been found to conform to the applicable implementation plan. Such land management plan shall have been found to conform within the past five years.
- d. Notwithstanding the other requirements of this rule, a conformity determination is not required for the following Federal actions (or portion thereof):
- 1. The portion of an action that includes major new or modified stationary sources that require a permit under the new source review (NSR) program (§173 of the CAA) or the prevention of significant deterioration (PSD) program (title I, part C of the CAA).
  - 2. Actions in response to emergencies or natural disasters such as hurricanes, earthquakes, etc., which are commenced on the order of hours or days after the emergency or disaster and, if applicable, which meet the requirements of paragraph (e) of this section.

3. Research, investigations, studies, demonstrations, or training [other than those exempted under §1303(c)(2)], where no environmental detriment is incurred or the particular action furthers air quality research, as determined by the State agency primarily responsible for the applicable implementation plan.
  4. Alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations (e.g., hush houses for aircraft engines and scrubbers for air emissions).
  5. Direct emissions from remedial and removal actions carried out under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and associated regulations to the extent such emissions either comply with the substantive requirements of the PSD/NSR permitting program or are exempted from other environmental regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.
- e. Federal actions which are part of a continuing response to an emergency or disaster under §1303(d)(2) and which are to be taken more than 6 months after the commencement of the response to the emergency or disaster under §1303(d)(2) are exempt from the requirements of this subpart only if:
1. The Federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional 6 months, it is impractical to prepare the conformity analyses which would otherwise be required and the actions cannot be delayed due to overriding concerns for public health and welfare, national security interests and foreign policy commitments; or
  2. For actions which are to be taken after those actions covered by paragraph (e)(1) of this section, the Federal agency makes a new determination as provided in paragraph (e)(1) of this section.
- f. Notwithstanding other requirements of this rule, individual actions or classes of actions specified by individual Federal agencies that have met the criteria set forth in either paragraph (g)(1) or (g)(2) and the procedures set forth in paragraph (h) of this section are presumed to conform, except as provided in paragraph (j) of this section.
- g. The Federal agency must meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in either paragraph (g)(1) or (g)(2) of this section:
1. The Federal agency must clearly demonstrate using methods consistent with this rule that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not:
    - i. Cause or contribute to any new violation of any standard in any area;
    - ii. Interfere with provisions in the applicable implementation plan for maintenance of any standard;
    - iii. Increase the frequency or severity of any existing violation of any standard in any area; or
    - iv. Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area including, where applicable,

emission levels specified in the applicable implementation plan for purposes of:

- A. A demonstration of reasonable further progress;
- B. A demonstration of attainment; or
- C. A maintenance plan; or

- 2. The Federal agency must provide documentation that the total of direct and indirect emissions from such future actions would be below the emission rates for a conformity determination that are established in paragraph (b) of this section, based, for example, on similar actions taken over recent years.
- h. In addition to meeting the criteria for establishing exemptions set forth in paragraphs (g)(1) or (g)(2) of this section, the following procedures must also be complied with to presume that activities will conform:
- 1. The Federal agency must identify through publication in the Federal Register its list of proposed activities that are presumed to conform and the analysis, assumptions, emissions factors, and criteria used as the basis for the presumptions;
  - 2. The Federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, the agency designated under section 174 of the Act and the MPO and provide at least 30 days for the public to comment on the list of proposed activities presumed to conform;
  - 3. The Federal agency must document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and
  - 4. The Federal agency must publish the final list of such activities in the Federal Register.
- i. Notwithstanding the other requirements of this rule, when the total of direct and indirect emissions of any pollutant from a Federal action does not equal or exceed the rates specified in paragraph (b) of this section, but represents 10 percent or more of a nonattainment or maintenance area's total emissions of that pollutant, as established by the applicable implementation plan, the action is defined as a regionally significant action and the requirements of §1301 and §§1305 through 1310 shall apply for the Federal action.
- j. Where an action presumed to be de minimis under paragraphs (c)(1) or (c)(2) of this section or otherwise presumed to conform under paragraph (f) of this section is a regionally significant action or where an action otherwise presumed to conform under paragraph (f) of this section does not in fact meet one of the criteria in paragraph (g)(1) of this section, that action shall not be considered de minimis or presumed to conform and the requirements of §1301 and §§1305 through 1310 shall apply for the Federal action.
- k. The provisions of this rule shall apply in all nonattainment and maintenance areas.
- l. Any measures used to affect or determine applicability of this rule, as determined under this section, must result in projects that are in fact de minimis, must result in such de

minimis levels prior to the time the applicability determination is made, and must be State or Federally enforceable. Any measures that are intended to reduce air quality impacts for this purpose must be identified (including the identification and quantification of all emission reductions claimed) and the process for implementation (including any necessary funding of such measures and tracking of such emission reductions) and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation. Prior to a determination of applicability, the Federal agency making the determination must obtain written commitments from the appropriate persons or agencies to implement any measures which are identified as conditions for making such determinations. Such written commitment shall describe such mitigation measures and the nature of the commitment, in a manner consistent with the previous sentence. After this implementation plan revision is approved by EPA, enforceability through the applicable implementation plan of any measures necessary for a determination of applicability will apply to all persons who agree to reduce direct and indirect emissions associated with a Federal action for a conformity applicability determination.

#### § 1304 Conformity analysis.

Any Federal department, agency, or instrumentality of the Federal government taking an action subject to 40 CFR part 51 subpart W and this rule must make its own conformity determination consistent with the requirements of this rule. In making its conformity determination, a Federal agency must consider comments from any interested parties. Where multiple Federal agencies have jurisdiction for various aspects of a project, a Federal agency may choose to adopt the analysis of another Federal agency (to the extent the proposed action and impacts analyzed are the same as the project for which a conformity determination is required) or develop its own analysis in order to make its conformity determination.

#### § 1305 Reporting requirements.

- a. A Federal agency making a conformity determination under §1308 must provide to the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, affected Federal land managers, the agency designated under §174 of the CAA and the MPO a 30-day notice which describes the proposed action and the Federal agency's draft conformity determination on the action.
- b. A Federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, affected Federal land managers, the agency designated under §174 of the CAA and the MPO within 30 days after making a final conformity determination under §1308.

#### § 1306 Public participation and consultation.

- a. Upon request by any person regarding a specific Federal action, a Federal agency must make available for review its draft conformity determination under §1308 with supporting materials which describe the analytical methods, assumptions, and conclusions relied upon in making the applicability analysis and draft conformity determination.
- b. A Federal agency must make public its draft conformity determination under §1308 by placing a notice by prominent advertisement in a daily newspaper of general circulation in the areas affected by the action and by providing 30 days for written public comment

prior to taking any formal action on the draft determination. This comment period may be concurrent with any other public involvement, such as occurs in the NEPA process.

- c. A Federal agency must document its response to all the comments received on its draft conformity determination under §1308 and make the comments and responses available, upon request by any person regarding a specific Federal action, within 30 days of the final conformity determination.
- d. A Federal agency must make public its final conformity determination under §1308 for a Federal action by placing a notice by prominent advertisement in a daily newspaper of general circulation in the areas affected by the action within 30 days of the final conformity determination.

#### § 1307 Frequency of conformity determinations.

- a. The conformity status of a Federal action automatically lapses 5 years from the date a final conformity determination is reported under §1305, unless the Federal action has been completed or a continuous program has been commenced to implement that Federal action within a reasonable time.
- b. Ongoing Federal activities at a given site showing continuous progress are not new actions and do not require periodic redeterminations so long as the emissions associated with such activities are within the scope of the final conformity determination reported under §1305.
- c. If, after the conformity determination is made, the Federal action is changed so that there is an increase in the total of direct and indirect emissions above the levels in §1303(b), a new conformity determination is required.

#### § 1308 Criteria for determining conformity of general Federal actions.

- a. An action required under §1303 to have a conformity determination for a specific pollutant, will be determined to conform to the applicable implementation plan if, for each pollutant that exceeds the rates in §1303(b), or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of paragraph (c) of this section, and meets any of the following requirements:
  - 1. For any criteria pollutant, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable implementation plan's attainment or maintenance demonstration;
  - 2. For ozone or nitrogen dioxide, the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area through a revision to the applicable implementation plan or a measure similarly enforceable under State and Federal law that effects emission reductions so that there is no net increase in emissions of that pollutant;
  - 3. For any criteria pollutant, except ozone and nitrogen dioxide, the total of direct and indirect emissions from the action meet the requirements:



- i. specified in paragraph (b) of this section, based on areawide air quality modeling analysis and local air quality modeling analysis, or
  - ii. specified in paragraph (a)(5) and, for local air quality modeling analysis, the requirement of paragraph (b) of this section;
- 4. For CO or PM<sub>10</sub>,
  - i. Where the State agency primarily responsible for the applicable implementation plan determines (in accordance with §§1305 and 1306 and consistent with the applicable implementation plan) that an areawide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (b) of this section, based on local air quality modeling analysis, or
  - ii. Where the State agency primarily responsible for the applicable implementation plan determines (in accordance with §§1305 and 1306 and consistent with the applicable implementation plan) that an areawide air quality modeling analysis is appropriate and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (b) of this section, based on areawide modeling, or meet the requirements of paragraph (a)(5) of this section; or
- 5. For ozone or nitrogen dioxide, and for purposes of paragraphs (a)(3)(ii) and (a)(4)(ii) of this section, each portion of the action or the action as a whole meets any of the following requirements:
  - i. Where EPA has approved a revision to an area's attainment or maintenance demonstration after 1990 and the State makes a determination as provided in paragraph (A) or where the State makes a commitment as provided in paragraph (B.). Any such determination or commitment shall be made in compliance with §§1305 and 1306:
    - A. The total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the State agency primarily responsible for the applicable implementation plan to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would not exceed the emissions budgets specified in the applicable implementation plan.
    - B. The total of direct and indirect emissions from the action (or portion thereof) is determined by the State agency responsible for the applicable implementation plan to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would exceed an emissions budget specified in the applicable implementation plan and the Governor [or, if appropriate, the Governor's designee for SIP actions under State law] makes a written commitment to EPA which includes the following:
      - I. A specific schedule for adoption and submittal of a revision to the applicable implementation plan which would achieve the needed emission

- reductions prior to the time emissions from the Federal action would occur;
  - II. Identification of specific measures for incorporation into the applicable implementation plan which would result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable implementation plan;
  - III. A demonstration that all existing applicable implementation plan requirements are being implemented in the area for the pollutants affected by the Federal action, and that local authority to implement additional requirements has been fully pursued;
  - IV. A determination that the responsible Federal agencies have required all reasonable mitigation measures associated with their action; and
  - V. Written documentation including all air quality analyses supporting the conformity determination.
- C. Where a Federal agency made a conformity determination based on a State commitment under subparagraph (a)(5)(i)(B) of this paragraph, such a State commitment is automatically deemed a call for an implementation plan revision by EPA under §110(k)(5) of the CAA, effective on the date of the Federal conformity determination and requiring response within 18 months or any shorter time within which the State commits to revise the applicable implementation plan;
- ii. The action (or portion thereof), as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable implementation plan under District Regulation XII - Conformity to State Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act or 40 CFR part 93 subpart A;
- iii. The action (or portion thereof) fully offsets its emissions within the same nonattainment or maintenance area through a revision to the applicable implementation plan or an equally enforceable measure that effects emission reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant;
- iv. Where EPA has not approved a revision to the relevant implementation plan attainment or maintenance demonstration since 1990, the total of direct and indirect emissions from the action for the future years (described in paragraph (d) of section 1309) do not increase emissions with respect to the baseline emissions, and:
  - A. The baseline emissions reflect the historical activity levels that occurred in the geographic area affected by the proposed Federal action during:
    - I. Calendar year 1990,

- II. The calendar year that is the basis for the classification (or, where the classification is based on multiple years, the year that is most representative in terms of the level of activity), if a classification is promulgated in 40 CFR part 81, or
    - III. The year of the baseline inventory in the PM<sub>10</sub> applicable implementation plan;
  - B. The baseline emissions are the total of direct and indirect emissions calculated for the future years [described in paragraph (d) of §1309] using the historic activity levels [described in subparagraph (a)(5)(iv)(A) of this paragraph] and appropriate emission factors for the future years; or
  - v. Where the action involves regional water or wastewater projects, such projects are sized to meet only the needs of population projections that are in the applicable implementation plan, based on assumptions regarding per capita use that are developed or approved in accordance with §1309(a).
- b. The areawide and local air quality modeling analyses must:
  - 1. Meet the requirements in §1309 and
  - 2. Show that the action does not:
    - i. Cause or contribute to any new violation of any standard in any area; or
    - ii. Increase the frequency or severity of any existing violation of any standard in any area.
- c. Notwithstanding any other requirements of this section, an action subject to this rule may not be determined to conform to the applicable implementation plan unless the total of direct and indirect emissions from the action is in compliance or consistent with all relevant requirements and milestones contained in the applicable implementation plan, such as elements identified as part of the reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice requirements, and such action is otherwise in compliance with all relevant requirements of the applicable implementation plan.
- d. Any analyses required under this section must be completed, and any mitigation requirements necessary for a finding of conformity must be identified in compliance with §1310, before the determination of conformity is made.

§ 1309 Procedures for conformity determinations of general Federal actions.

- a. The analyses required under this rule must be based on the latest planning assumptions.
  - 1. All planning assumptions (including, but not limited to, per capita water and sewer use, vehicle miles traveled per capita or per household, trip generation per household, vehicle occupancy, household size, vehicle fleet mix, vehicle ownership, wood stoves per household, and the geographic distribution of population growth) must be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the

MPO or the California Department of Transportation. The conformity determination must also be based on the latest assumptions about current and future background concentrations and other Federal actions.

2. Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, must be approved by the MPO or other agency authorized to make such estimates for the area.
- b. The analyses required under this rule must be based on the latest and most accurate emission estimation techniques available as described below, unless such techniques are inappropriate. If such techniques are inappropriate and written approval of the EPA Regional Administrator is obtained for any modification or substitution, they may be modified or another technique substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific Federal agency program.
1. For motor vehicle emissions, the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in the State or area must be used for the conformity analysis as specified below:
    - i. The EPA must publish in the Federal Register a notice of availability of any new motor vehicle emissions model; and
    - ii. A grace period of three months shall apply during which the motor vehicle emissions model previously specified by EPA as the most current version may be used. Conformity analyses for which the analysis was begun during the grace period or no more than 3 years before the Federal Register notice of availability of the latest emission model may continue to use the previous version of the model specified by EPA, if a final determination as to conformity is made within 3 years of such analysis.
  2. For non-motor vehicle sources, including stationary and area source emissions, the latest emission factors specified by EPA in the "Compilation of Air Pollutant Emission Factors (AP- 42)" must be used for the conformity analysis unless more accurate emission data are available, such as actual stack test data from stationary sources which are part of the conformity analysis.
- c. The air quality modeling analyses required under this rule must be based on the applicable air quality models, data bases, and other requirements specified in the most recent version of the "Guideline on Air Quality Models (Revised)" (1986), including supplements (EPA publication no. 450/2-78-027R), unless:
1. The guideline techniques are inappropriate, in which case the model may be modified or another model substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific Federal agency program; and
  2. Written approval of the EPA Regional Administrator is obtained for any modification or substitution.

- d. The analyses required under this rule must be based on the total of direct and indirect emissions from the action and must reflect emission scenarios that are expected to occur under each of the following cases:
  - 1. The CAA mandated attainment year or, if applicable, the farthest year for which emissions are projected in the maintenance plan;
  - 2. The year during which the total of direct and indirect emissions from the action for each pollutant analyzed is expected to be the greatest on an annual basis; and
  - 3. Any year for which the applicable implementation plan specifies an emissions budget.

§ 1310 Mitigation of air quality impacts.

- a. Any measures that are intended to mitigate air quality impacts must be identified (including the identification and quantification of all emission reductions claimed) and the process for implementation (including any necessary funding of such measures and tracking of such emission reductions) and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation.
- b. Prior to determining that a Federal action is in conformity, the Federal agency making the conformity determination must obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity determinations. Such written commitment shall describe such mitigation measures and the nature of the commitment, in a manner consistent with paragraph (a).
- c. Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.
- d. In instances where the Federal agency is licensing, permitting or otherwise approving the action of another governmental or private entity, approval by the Federal agency must be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination, as provided in paragraph (a).
- e. When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination in accordance with §§1308 and 1309 and this section. Any proposed change in the mitigation measures is subject to the reporting requirements of §1305 and the public participation requirements of §1306.
- f. Written commitments to mitigation measures must be obtained prior to a positive conformity determination and such commitments must be fulfilled.
- g. After this implementation plan revision is approved by EPA, any agreements, including mitigation measures, necessary for a conformity determination will be both State and federally enforceable. Enforceability through the applicable implementation plan will

apply to all persons who agree to mitigate direct and indirect emissions associated with a Federal action for a conformity determination.

§ 1311 Savings provision.

The Federal conformity rules under 40 CFR part 51 subpart W, in addition to any existing applicable State requirements, establish the conformity criteria and procedures necessary to meet the requirements of Clean Air Act §176(c) until such time as this conformity implementation plan revision is approved by EPA. Following EPA approval of this revision to the applicable implementation plan (or a portion thereof), the approved (or approved portion of the) State criteria and procedures would govern conformity determinations and the Federal conformity regulations contained in 40 CFR part 93 would apply only for the portion, if any, of the State's conformity provisions that is not approved by EPA. In addition, any previously applicable implementation plan requirements relating to conformity remain enforceable until the State revises its applicable implementation plan to specifically remove them and that revision is approved by EPA.

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