

APPENDIX A

**Summary of Significant Comments and Responses
For Amendments to Rule 2201**

December 22, 2015

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**SUMMARY OF SIGNIFICANT COMMENTS
RULE 2201 (NEW AND MODIFIED STATIONARY SOURCE REVIEW RULE)
PUBLIC WORKSHOP – NOVEMBER 10, 2015**

The San Joaquin Valley Unified Air Pollution Control District (District) held a public workshop to present, discuss, and hear comments on the draft amendments to Rule 4905 and draft staff report on October 16, 2014. Summaries of significant comments received during the public workshop and the associated two-week commenting period following the workshop are summarized below.

EPA REGION IX COMMENTS:

COMMENT: EPA believes that the proposed definition of PM_{2.5} is problematic because it suggests that only materials that are a liquid or solid at standard conditions AND are less than 2.5 microns while in this state, are included in the definition. Instead all of the gaseous emissions that condense at ambient conditions are included.

EPA's proposed changes are as follows:

- 3.28 PM_{2.5}: particulate matter, ~~including any material except uncombined water, which exists in a finely divided form as a liquid or solid at standard conditions,~~ with an aerodynamic diameter smaller than or equal to a nominal 2.5 microns, including gaseous emissions which condense to form particulate matter at ambient temperatures.

RESPONSE: The District has incorporated EPA's comment, so as to make the PM_{2.5} definition consistent with EPA's published definition of PM_{2.5}. It should be noted that this change has no impact on applicability of PM_{2.5} requirements nor does it impact the methods used to measure PM_{2.5} for the purposes of demonstrating compliance with Rule 2201 requirements: gaseous emissions that condense to form particulate matter at ambient temperatures were already included in the District's proposed definition, as they are, at those conditions, no longer gaseous and become "a liquid or solid".

Revised rule language will read as follows:

- 3.28 PM_{2.5}: particulate matter with an aerodynamic diameter smaller than or equal to a nominal 2.5 microns, including gaseous emissions which condense to form particulate matter at ambient temperatures.

COMMENT: EPA proposed new language to Section 7.1.1 of the rule, to clarify some of the federally required offsets that must be tracked pursuant to 40 CFR 51.165, and Title I part D of the Clean Air Act (CAA).

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EPA's proposed changes are as follows:

- 7.1.1 The quantity of offsets that would have been required for new major sources and federal major modifications in the District had the federal new source review requirements, codified in 40 CFR 51.165, and Title I part D of the Clean Air Act (CAA), been applied to these sources. These requirements include offsetting the full emissions increase from new and modified major sources, using actual emissions baselines when required under 40 CFR 51.165, offsets required for Highly-Utilized, Fully-Offset and Clean Emission Units, and providing offsets necessary to meet the CAA offset ratio requirements and provide a net air quality benefit.

RESPONSE: The District currently implements the Offset Tracking System exactly as EPA has specified in their comments. We believe the addition of the words “increase” and “and modified” are appropriate clarifications. However, we believe that adding the phrase “offsets required for Highly Utilized, Fully Offset and Clean Emissions Units” is unnecessary and redundant with the sentence in which EPA asks that it be inserted. Specifically, the requirement that the District demonstrate equivalency with federal offsetting requirements and 40 CFR 51.165 already fully addresses EPA's intent that the District include in all such demonstrations any situations in which the Highly Utilized, Fully Offset and Clean Emissions Units provisions were utilize. In other words, Section 7.1 already includes all applicable requirements under 40 CFR 51.165 as validated with EPA's approval of the rule on 9/17/2014¹.

Revised rule language will read as follows:

- 7.1.1 The quantity of offsets that would have been required for new major sources and federal major modifications in the District had the federal new source review requirements, codified in 40 CFR 51.165, and Title I part D of the Clean Air Act (CAA), been applied to these sources. These requirements include offsetting the full emissions increase from new and modified major sources, using actual emissions baselines when required under 40 CFR 51.165, and providing offsets necessary to meet the CAA offset ratio requirements and provide a net air quality benefit.

COMMENT: EPA believes that Section 8.0 of Rule 2201 is not consistent with 40 CFR 51.160(b) of the Clean Air Act since the District would not have the opportunity to deny a Routine Replacement or a TREU (as the proposed rule amendments include) if the source utilized the Application Shield allowed under Section 8.0 and the change resulted in a violation of the Act or a NAAQS.

¹ <https://www.gpo.gov/fdsys/pkg/FR-2014-09-17/pdf/2014-22019.pdf>

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Additionally, EPA has compared the proposed amendments to Section 8.0 of Rule 2201 to proposed amendments submitted by Clark County, Nevada for their local New Source Review Rule that included a “notice and go” provision, which would have allowed a source to notify the agency of a proposed action, and then to implement it after a stated timeframe, with no action required by the agency. EPA further references comments made several years ago regarding the Clark County proposal. EPA provided the following excerpt from EPA’s comments to Clark County:

The triggering of a new applicable requirement should always require review by (the permitting authority) to assure all necessary terms and conditions are included to ensure compliance.

Our second concern is one of enforcement. It is not clear what would happen and what the enforcement liability would be for a source if they began construction after the seven day period

Ultimately, to be approvable under 40 CFR part 51, the program must contain “legally enforceable procedures that enable the State or local agency to determine whether the construction or modification of [the source/project] will result in (1) A violation of applicable portions of the control strategy; or (2) Interference with attainment or maintenance of a [NAAQS]....” The program must also enable the permitting agency to “prevent construction” when it determines that either of these will occur. 40 CFR 51.160(b)

RESPONSE: The proposed amendments to Section 8.0 of Rule 2201 are only adding an allowance for Temporary Replacement Emission Units to use the longstanding application shield that has historically only applied to non-temporary routine replacements. We are not creating a new application shield. There should be no question about the appropriateness of such a change as discussed in the staff report.

Additionally, facilities must meet the requirements of Section 8.0 to qualify for the application shield. This section only allows replacements of existing equipment, with no increase in design capacity or emissions. These requirements are are “legally enforceable” and do allow the District to determine, in advance, whether construction or modification of (the source/project) will result in violations of control strategies or interfere with attainment or maintenance of a NAAQS. And it is illegal for construction to proceed if those enforceable requirements are not met, so this “prevents construction” of any proposal that doesn’t meet those requirements.

Enforcement would be handled exactly as any other violation of the CAA. If a permittee improperly claims the application shield, the District would treat it as construction without a required permit, and would take enforcement action accordingly. Any use of the application shield is fully examined via the District’s

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review of the subsequent permit application (or report, if a temporary replacement has already been removed prior to the application deadline). This assures that any violations are uncovered and that any appropriate enforcement ensues.

The San Joaquin Valley recognizes the realities in the business world that sometimes require very quick action to avoid economic catastrophes. This section applies only to specific small subset of those urgent business scenarios in a way that provides some important relief from lengthy permitting timelines, without allowing an increase emissions or a change a facility's capacity and without avoiding a full permit review and compliance analysis. Given that this effort at common sense governance cannot result in increases in emissions or any sidestepping of clean air requirements, we believe EPA should approve of the addition of Temporary Replacement Emission Units to this longstanding application shield that has historically only applied to non-temporary routine replacements.

ARB COMMENTS:

No comments were received from ARB.

PUBLIC COMMENTS:

Comments were received from the following:

Manufacturers Council of the Central Valley (MCCV)
California Construction & Industrial Materials Association (CalCIMA)

COMMENT: The Draft Report includes several pages discussing PM2.5 precursors showing certain pollutants as not being significant PM2.5 precursors. Upon review, we did not see the information in this analysis reflected in the language used in the draft Rule.

To avoid misinterpretations, please consider adding clarification on this point, for example, adding the word "significant" before the word "precursors" in line three of Section 3.4 of the Rule. (MCCV)

RESPONSE: The term "significant" as it is used in the staff report is not an official Clean Air Act term. Rather, it is merely a convenient shorthand way to reference the importance of the contribution of the precursor to the nonattainment status in the District. In addition, it would not be appropriate to add the term "significant" to the rule language because while a pollutant may not be a significant contributor to one ambient air quality standard it may be significant for another air quality standard, as explained in the staff report. Therefore, the rule proposed for adoption by District staff does not incorporate the proposed changes.

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COMMENT: While the association had no comments on the proposed amendments to Rule 2201, they did propose changes to existing sections (3.25 “Modification” and 3.35 “Routine Replacement”) “to facilitate positive changes to facilities without longer review times.” Their proposed changes are as follows:

- 3.25.3.4 Routine replacement of a whole or partial emissions unit where the replacement part does not result in a net emissions increase. is the same as the original emissions unit in all respects except for the serial number.
- 3.35.2 There is no increase in design capacity, unless an old part is no longer available, or the replacement results in a reduction of greenhouse gases, in which case the replacement can result in a design capacity increase of up to 10%. No change to the permitted throughput or emissions is authorized due to a change in design capacity as part of routine replacement. Such changes shall require application for permit modification. (CalCIMA)

RESPONSE: Proposed revisions in the above comment would constitute a potential relaxation of the rule and therefore may be illegal under SB 288, the “Protect California Air Act of 2003”. In addition, greenhouse gas control requirements are not included in Rule 2201, the District’s criteria pollutant New Source Review rule. In fact, the District’s longstanding policy is to avoid allowing or encouraging situations that would trade greenhouse gas emissions reductions for potential criteria pollutant increases. Such situations have the potential to create local criteria or toxic pollutant hotspots, and may exacerbate the difficult attainment challenges faced in the San Joaquin Valley. Therefore, the rule proposed for adoption by District staff does not incorporate the proposed changes.

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