Bay Area Air Quality Management District

939 Ellis Street
San Francisco, CA 94109

Proposed Amendments to Regulation 2 (Permits) Rule 1 (General Requirements), Regulation 2 (Permits) Rule 2 (New Source Review), Regulation 2 (Permits) Rule 4 (Emissions Banking)

Staff Report

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STAFF REPORT

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Executive Summary

The proposed amendments to the District's permitting program fall into two areas:

- **Offsets.** Currently, under the **No Net Increase** program, offsets must be provided for new and modified sources at facilities with emissions of precursor organic compounds or nitrogen oxides greater than 15 tons/year (TPY). The District provides those offsets for small facilities (emissions less than 50 TPY). The proposed amendments lower the offset threshold to 10 TPY, and lower the ceiling for the District's provision of offsets to 35 TPY. The 10 TPY threshold is required by recent amendments to California Air Resources Board (CARB) regulations. The CARB regulations require the District to adopt the lower threshold by December 31, 2004. The lower 35 TPY ceiling for providing offsets is needed to ensure that the District's supply of offsets is not depleted by the requirement to provide offsets to smaller projects.
- **Miscellaneous Changes.** A number of miscellaneous changes to the permit regulations would:
  - Clarify a general exemption for small sources, delete an exemption for cold cleaners, and clarify exemptions for spray gun cleaning and low usage of ink.
  - Clarify requirements for protecting trade secret information.
  - Require operators to construct in accordance with the terms of the authority to construct. This will clarify District authority to take enforcement action against operators who construct sources that do not comply with the authority to construct.
  - Require all crematories to obtain a permit, regardless of age or size.
  - Require operators to sign permits. This will ensure that operators have seen any attached permit conditions.
  - Move language regarding application completeness from Regulation 2-2 to Regulation 2-1.

In addition, a number of minor grammatical changes are proposed.

A proposed amendment that would have extended the time within which an authority to construct could be used has been withdrawn. This proposal would have amended current District provisions that allow an initial two-year period to use an authority to construct and

an additional two years if substantial work begins within the initial two years. Most projects are completed within the initial two years. The District is aware of one project for which the current restrictions could pose a problem, but the problem would not arise until two to three years from now. That project is covered by an Environmental Impact Report (EIR) addressing construction over a period longer than the four years available under the current rule. The proposed amendments would have allowed an extended life of up to ten years for an authority to construct if the project is covered by an EIR addressing construction over such a period. However, it appears that California law may now limit the extent to which the District can maintain the current restrictions and may make the proposed amendment unnecessary. The District intends to review the applicable law and bring alternative language to the Board next year.

A public workshop to discuss the proposed amendments was held on October 12, 2004. Written comments received after publication of the draft rule are summarized at the end of this report. The proposed amendments are exempt under the California Environmental Quality Act because it can be seen with certainty that there is no possibility of a significant effect on the environment. The proposed amendments are also not expected to have any socioeconomic impacts but are exempt from socieconomic review requirements for rules. In addition, the amendments do not conflict with SB288, which was enacted in 2003 to prevent any permit rule relaxations arising from EPA's 2002 amendments to its New Source Review regulations ("NSR reform").

Proposed Amendments

The proposed amendments are discussed below. Amendments are grouped into two broad categories: No Net Increase Amendments and Miscellaneous Amendments. The proposed changes are presented in underline/strikeout format in the attached proposed rules.

No Net Increase Program amendments

Adjust thresholds for offsets and use of Small Facility Bank (2-2-302)

The District's No Net Increase Program ensures that emission increases at all subject new and modified sources are offset by reductions at the same or other facilities. Health and Safety Code section 40919 requires the District to maintain a minimum offset threshold of 15 TPY. In 2003, the California Air Resources Board (CARB) reviewed its ozone transport regulations and concluded that upwind air districts should have the same offset thresholds as the downwind air districts to which emissions are transported. As a result, CARB amended its regulations (California Code of Regulations §70600, subd. (b)(2)) to require the District to lower the emission threshold for facilities included in the program from 15 TPY to 10 TPY by December 31, 2004.

The District operates a Small Facility Bank (SFB). Under this program, the District provides offsets for small facilities. This greatly expedites the permit process for facilities affected by the program. The operators do not need to try to find offsets on the open market, and the

District does not delay the permit process to verify that offsets are valid. Under existing rules, the SFB provides offsets for facilities that are between 15 and 50 TPY in actual emissions. The SFB is replenished by shutdowns of sources that had previously withdrawn credits, shutdowns of sources for which banking applications are not submitted, and reimbursement by facilities whose operations have expanded to bring them above the 50 TPY threshold.

Because state law now requires the District to require offsets from facilities in the 10-15 TPY range, the amount of offsets to be provided from the SFB will increase. In order to prevent depletion of the SFB, the rule will be changed to require the larger facilities to provide their own offsets. Analysis of permit applications indicates that the rate of depletion will equal the rate of replenishment if the range of facilities using the SFB changes from 15-50 TPY to 10-35 TPY.

Some facilities in the 35-50 TPY range have accepted high throughput limits with the understanding that the District would provide offsets. In many cases, if the applicant had known that offsets would later be required, a lower throughput would have been requested. The existing rule requires facilities that have obtained offsets from the SFB in the past, but lose their eligibility to utilize the SFB, to reimburse the bank. Prior to the proposed rule change, a facility would have triggered this requirement by growing to a size larger than the small facility bank cutoff. The proposed rule change, however, moves the cutoff line, so some facilities will suddenly find themselves on the high side of the line.

The amendments allow a facility in this situation to reimburse the bank by accepting a lower throughput limit than contained in the original permit, or surrendering the permit entirely. The requirement to reimburse the bank will be triggered the next time the facility applies for a permit for a new or modified source.

The language of Section 2-2-302.3 has been revised since the workshop to expand the circumstances under which a facility may request adjustment of its cumulative increase. The current proposal removes a proposed sunset date for adjustments and allows a facility to zero out its cumulative increase for a source that has been shut down. See the written comments and responses for more information about the change.

Delete redundant portion of language authorizing Small Facility Bank (2-4-414)

Section 2-4-414 contains additional provisions that apply to the use of the small facility bank. The sentence referring to the use of the bank to provide offsets under 2-2-302 is redundant to language in Section 2-2-302 and will be deleted. This change was not discussed at the public workshop.

Miscellaneous Amendments

The District periodically revises its permitting rules to address issues that have arisen in the course of routine activities. A number of the proposed miscellaneous amendments

involve minor changes to the permit exemption list and clarify ambiguous language or adjust the permit requirements to include or exclude sources in a reasonable manner.

Clarify the general exemption (2-1-103)

The general rule is that all sources of air pollutants require permits. The exemptions in Sections 2-1-113 through 2-1-128 are for sources that have been explicitly evaluated by District staff, and determined to have emissions so insignificant as to be unsuitable for permitting. The Section 2-1-103 exemption was conceived as a general exemption that would cover sources that had low emissions (less than 10 lb/highest day), but had not been specifically considered for exemption.

Section 2-1-103 states that small sources (<10 lb/day) "not subject to" a category-specific rule are not required to have a permit. The current language does not make it clear whether the general exemption applies to small sources that are in a source category to which a rule applies, but are exempted from the rule. As an example, a storage tank containing a low-volatility organic compounds would be exempt from Regulation 8-5 and might not require a permit if emissions are below 10 lb/day and provided the tank is regarded as being "not subject to" Regulation 8-5. One reasonable interpretation of the Section 2-1-103 language is that such a tank is not "subject to" Regulation 8-5. Another reasonable interpretation is that it is "subject to" but exempted from the rule.

The proposed amendment states that the general exemption is not available to a source "in a source category subject to" an existing rule. There are two reasons for clarifying Section 2-1-103 in this manner. First, in choosing to regulate a source category, the District has concluded that emissions are significant. Exempted sources in a regulated category may produce significant emissions if throughput or the type of material processed changes. Requiring permits for these sources gives the District a tool to track these kinds of changes and ensure compliance with the existing rule. Second, if further emission reductions are required in connection with ozone plans, what was once exempted may become worthy of controls. Permits for exempted sources in a category with significant emissions provide the information necessary to evaluate further controls.

Delete exemption for cold cleaners (2-1-118.7)

Prior to May 17, 2000, solvent cold cleaners, such as those used to clean parts in auto repair shops, were exempt from District permits. In an attempt to provide an incentive to operators of solvent cold cleaners to voluntarily convert to aqueous cleaners, the District revised the exemption to require permits at facilities with more than one solvent cold cleaner. To allow for some applications that required organic solvents for proper cleaning, one low-usage solvent cleaner could continue to be exempt, but all other solvent cleaners at the facility required a permit.

In 2002, the District amended Regulation 8-16 to impose stringent VOC limits on cold cleaners. Though the amendments effectively required aqueous cleaning for most materials, some solvent cleaning was still allowed for certain parts. To ensure that solvent

cleaners are used only for the limited purposes allowed by Regulation 8-16, the District must know where organic solvent cleaners are being used. By deleting the remaining exemption for a low usage solvent cleaner, the proposed amendment would require any facility operating a non-aqueous cold cleaner to obtain a permit. Regulation 8-16 allows these facilities to continue to operate such cleaners.

Clarify spray gun cleaning exemption (2-1-118.11)

There has been some confusion as to whether the exemption for spray gun cleaning means that emissions from the activity are not considered by the District. The proposed amendment clarifies the original intent: spray gun cleaning does not require a separate permit because the emissions are counted with the spray booth where coatings are applied. The exemption is therefore limited to spray gun cleaning associated with a spray booth or other source with a permit.

Clarify exemption for low ink usage at printers (2-1-119)

The permit rule has a low usage exemption for surface coating operations. The exemption lists printing equipment as one kind of activity that is exempt from permits if facility-wide usage of coatings is below certain levels. Printing equipment, however, is not a surface coating activity, and inks are not coatings. A literal interpretation of the existing language would result in the conclusion that a printing operation would be exempt from permits regardless of ink usage, because it is located at a facility using less than 30 gallons/year of coatings.

The low usage exemption was intended to cover low ink usage as well as low paint usage. The proposed amendment clarifies this intent.

This proposed change was NOT discussed at the public workshop. It was added by staff as a result of a request for clarification of the existing language.

Clarify requirements for designating information as "trade secret" (2-1-202)

State law requires applicants to provide the information that the District needs to evaluate an application, even if the required information is trade secret. The District must keep such information confidential. If trade secret information is requested, the applicant must be provided an opportunity to protect the information by seeking judicial review.

The proposed amendment will clearly define the steps that need to be taken by an applicant in order to claim trade secret protection. This will improve public access to information because the application must contain both public and confidential versions of any page containing trade secret information. The only information that is withheld from a requestor is the claimed trade secret. The labeling requirements will minimize the chance of error on the part of the District.

Require construction in conformance with Authority to Construct (2-1-305)

District regulations do not currently require the applicant to construct in accordance with the authority to construct. Instead, the regulations require the APCO to deny a permit to a source not constructed in accordance with the authority to construct. This places the burden for ensuring compliance with the construction requirements on the District.

District staff are not always able to inspect equipment after it is constructed. Rarely, this can result in a permit to operate being issued to a source that does not conform to the Authority to Construct. The District may readily enforce operating requirements. Once the District has issued a permit to operate, however, much of its ability to enforce construction requirements has been effectively waived.

The proposed amendment imposes an enforceable obligation on the applicant to construct the source in accordance with the authorization issued by the District. If the APCO determines that the source is not in compliance before permit issuance, a permit may be denied. If non-compliance is detected after permit issuance, the APCO may take appropriate enforcement action.

The draft amendments presented at the workshop contained a proposed certification requirement that would have obligated an operator to certify, under penalty of perjury, substantial compliance with the construction requirements contained in the Authority to Construct. This certification requirement is no longer part of the proposed amendments.

Require grandfathered crematoria to obtain a permit (2-1-401)

Crematoria are sources of toxic air contaminants. The proposed amendment would require all crematoria, regardless of size, to obtain a District permit. This requirement would only affect crematoria built before 1979. All others are already subject to permit requirements.

The requirement to obtain a permit will not result in a requirement to install controls. However, once emission information is reviewed, it may turn out that some old crematoria may be subject to the notification and mitigation requirements of the Toxic Hot Spots program.

Signature for Permits (2-1-411)

Occasionally, District staff encounter an operator who is unfamiliar with the conditions that apply to operating permits or who claims that the company never agreed to the limitation contained in the permit. The existing Rule 2-1-405, Posting of Permit to Operate, is intended to ensure that applicable permit conditions are accessible to the equipment operator.

Staff propose to modify Rule 2-1-411, Permit to Operate, Final Action. The proposed rule amendment specifies that the permit must be signed by the permit holder or by a person authorized to sign on behalf of the permit holder. This section applies to new and modified

permits. The operator will not have to sign permits upon renewal, or sign permits that have already been issued.

The current proposal is a change from an earlier proposal presented at the workshop. See the response to comments for more information about the changes.

Determination of Complete Application (2-1-432, 2-2-402)

Regulation 2-2-402 requires the APCO to determine whether a permit application is complete within three weeks of receipt. This requirement applies to all permit applications, not just those subject to Regulation 2-2. It is more logical for this requirement to be located in Regulation 2-1, along with the requirement for prompt review of a complete application. This proposed amendment is merely a relocation of language from Regulation 2-2 to Regulation 2-1. No change to the text is proposed.

Withdrawn Proposals

Two proposed amendments considered by staff and presented at the workshop are being withdrawn for further study.

Exclude certain types of intentional smoke generation from District regulations (1-110)

At the workshop, staff presented draft amendments that would have excluded certain types of smoke generation from District regulations and District permits. More work is needed to refine this language. Staff will offer a proposal at a future date.

Extend Authority to Construct for Certain Construction Projects (2-1-407)

Current District regulations provide that authorities to construct (AC) expire after two years, unless substantial use is made, or unless renewed for an additional two years by the APCO. Prior to renewing an AC, the APCO determines whether the project would meet current requirements (District regulations, BACT, and offsets). If it does not, the Authority to Construct is not renewed.

At the workshop, staff presented a proposed amendment that would have extended the time within which an authority to construct could be used. This proposal would have amended current District provisions that allow an initial two-year period to use an authority to construct and an additional two years if substantial work begins within the initial two years. Most project are completed within the initial two years. The District is aware of one project for which the current restrictions could pose a problem, but the problem would not arise until two to three years from now. That project is covered by an Environmental Impact Report (EIR) addressing construction over a period longer than the four years available under the current rule. The proposed amendments would have allowed an extended life of up to ten years for an authority to construct if the project is covered by an

EIR addressing construction over such a period. However, it appears that California law may now limit the extent to which the District can maintain the current restrictions and may make the proposed amendment unnecessary. The District is therefore withdrawing this proposal. The District intends to review the applicable law and bring alternative language to the Board next year.

Socioeconomic Impacts of Rulemaking

Section 40728.5, subdivision (a) of the California Health and Safety Code (H&SC) requires districts to assess the socioeconomic impacts of amendments to regulations that, "...will significantly affect air quality or emissions limitations, that agency shall, to the extent data are available, perform an assessment of the socioeconomic impacts of the adoption, amendment, or repeal of the rule or regulation."

District staff has determined that this section of the Health and Safety Code is not applicable to the proposed amendment. The proposed amendment will not significantly affect air quality or emissions limitations.

Under Health and Safety Code § 40920.6, the District is required to perform an incremental cost analysis for any proposed best available retrofit control technology rule. If applicable to this proposed rulemaking activity, the District is required to: (1) identify one or more control options achieving the emission reduction objectives for the proposed rule, (2) determine the cost effectiveness for each option, and (3) calculate the incremental cost effectiveness for each option. To determine incremental costs, the District must "calculate the difference in the dollar costs divided by the difference in the emission reduction potentials between each progressively more stringent potential control option as compared to the next less expensive control option."

District staff has determined that this section of the Health and Safety Code is not applicable to the proposed amendments. The rules being amended are not best available retrofit control technology rules.

Regulatory Impacts

Health and Safety Code Section 40727.2 imposes requirements on the adoption, amendment, or repeal of air district regulations. The law requires a district to identify existing federal and district air pollution control requirements for the equipment or source type affected by the proposed change in district rules. The district must then note any differences between these existing requirements and the requirements imposed by the proposed change. Where the district proposal does not impose a new emission limit or standard, make an existing emission limit or standard more stringent, or impose new or more stringent monitoring, reporting, or recordkeeping requirements, the district may simply note this fact and avoid additional analysis.

These proposed amendments do not impose a new standard, make an existing standard more stringent, or impose new or more stringent monitoring, reporting, or recordkeeping requirements.

Environmental Impacts of the Rulemaking

Pursuant to the California Environmental Quality Act (Public Resources Code section 21000 *et seq*.), the District is the Lead Agency for the described project. It has been determined that these proposed amendments to Regulation 2, Rule 1, Rule 2, and Rule 4 are exempt from provisions of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) pursuant to State CEQA Guidelines, Sections 15061, subd. (b)(3). The proposed amendments are administrative in nature, and do not in themselves affect air emissions from any sources or operations subject to the rule. It can therefore be seen with certainty that there is no possibility that these proposed amendments will have a significant environmental impact. Moreover, in its Staff Report: Initial Statement of Reasons for the Proposed Amendments to the Ozone Transport Mitigation Regulations (April 4, 2003), the California Air Resources Board analyzed the environmental impacts of its changes to the transport regulations and concluded that changes to offset requirements would not have any significant environmental impacts. The District intends to file a Notice of Exemption pursuant to State CEQA Guidelines, Section 15062.

Compliance with SB 288

The United States Environmental Protection Agency (EPA) published final changes to 40 CFR Parts 51 and 52, Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR) on December 31, 2002. These changes specify new federal requirements for Baseline Emissions Determination, Actual-to-Future-Actual Methodology, Plantwide Applicability Limitations, Clean Units and Pollution Control Projects. Briefly, EPA's revisions: 1) provide new evaluation procedures and thresholds to determine which projects for new and modified sources trigger federal NSR requirements; and 2) create newly defined Pollution Control Projects (PCPs). The effective date of the federal revisions was March 3, 2003. The date by which implementing agencies must adopt and submit amendments to their programs implementing the minimum program elements is January 2, 2006.

California Senate Bill 288, the Protect California Air Act of 2003, was approved by the Governor and filed with the Secretary of State on September 22, 2003. SB 288 added sections 42500 through 42507 to the Health and Safety Code. The new provisions state that amendments to California air district NSR rules must not lessen the stringency of the rules as a whole. Additionally, certain parts of the rules (applicability determination, definitions, calculation methodologies and thresholds) may not be changed to exempt, relax or reduce the obligations of a stationary source for certain requirements (obligation to obtain a permit, application of BACT, air quality impact analysis, monitoring requirements, regulation of pollutants, and public participation) unless certain findings are made.

Table 1 lists the proposed amendments, and describes the effect of the amendments on the overall stringency of the NSR rule.

Based upon the analysis summarized in the table, Staff conclude that the proposed amendments do not reduce the stringency of the NSR rules in any respect, and are therefore in compliance with the requirements of H&S §42504.

Table 1 Effect of Proposed Amendments

Section	Description	Effect on Rule Stringency
No Net Increase		
2-2-302	Lower levels for provision of offsets from small facility bank, and from applicant	More stringent. The proposed amendments increase the amount of offsets provided by permit applicants (or reduce the amount of requested emission increases) by approximately 20 TPY per year (NOx) and 10 TPY per year (VOC).
Miscellaneous Amendments		
2-1-103	Clarify exemption for miscellaneous small sources	Neutral—clarification. Some previously exempt sources may require permits.
2-1-118.7	Delete exemption for cold cleaners	More stringent—insignificant (adds only a permit requirement)
2-1-118.11	Clarify exemption for spray gun cleaning	Neutral--clarification
2-1-119	Clarify exemption for low usage of inks	Neutral--clarification
2-1-202	Clarify requirements for trade secrets	Neutral—clarification
2-1-305	Require construction in conformance with authority to construct	Neutral—enhances enforceability of existing requirements
2-1-401	Require permits for crematoria	More stringent—insignificant (adds only a permit requirement)
2-1-411	Signature for permits	Neutral—enhances enforceability of existing requirements
2-1-432, 2-2-402	Determination of Complete Application	Neutral

Statutory Findings

Pursuant to Section 40727 of the California Health and Safety Code (H&SC), regulatory amendments must meet findings of necessity, authority, clarity, consistency, non-duplication, and reference. The proposed amendments are:

- Required by California Code of Regulations §70600 (b)(2)
- Authorized by H&SC Sections 40000, 40001, 40702, 40709 through 40714.5, 40725 through 40728, 40918, and 42300 et seq., 42 USC §7410, 42 USC §7503;
- Written or displayed so that their meaning can be easily understood by the persons directly affected by them;
- Consistent with other District rules, and not in conflict with state or federal law;
- Non-duplicative of other statutes, rules, or regulations.

Conclusion

The proposed amendments have met all legal noticing requirements and have been discussed with interested parties. District staff recommends adoption of the amendments as proposed.

Response to Comments

City of Benicia, September 14, 2004

Permit Expiration (2-1-407)

Comment: The city supports the proposed rule change to extend an AC under the circumstances contained in the proposal.

Response: Comment noted. However, because the draft language may conflict with state law, the proposal is being withdrawn. It will be brought back for consideration in the near future.

Lawrence Livermore National Laboratory, October 7, 2004

Countersignature for Permits (2-1-411)

Comment: Proposed Regulation 2-1-411.2 provides that a permit is not valid until it is signed and returned to the District. This increases the paperwork burden for both the applicant and the District, without adding substantial value. We request that proposed Regulation 2-1-411.2 be deleted.

Response: The proposed regulation does not require the permit to be returned to the District in order to be valid. In fact, Regulation 2-1-405 requires the permit to be posted. The purpose of requiring a signature is to ensure that the operator looks at the permit, and become aware of the attached permit conditions, before operating the source. This is expected to improve compliance.

The draft language has been revised so that the operator is obligated to sign the permit; however, the permit is valid even if unsigned. Thus the goal of the amendment, to ensure that the operator has seen the permit and its conditions, is met. Upon further consideration, District staff realized that the draft amendment might make the conditions unenforceable (because the unsigned permit was invalid). The proposed amendment has been revised to eliminate this concern.

Startup Notification (2-1-432)

Comment: Proposed Regulation 2-1-432 discusses the requirements for a startup notification, and specifies that the notification be in writing. Such notification has been conducted very efficiently and effectively by e-mail, and we recommend that this practice be allowed in the future. The wording of 2-1-432 does not necessarily prohibit e-mail, but places it in doubt. The applicant's statement of the conformity of construction is not appropriate in a startup notification. If an applicant knows of a specific non-conformity, then the applicant should pursue a permit modification, and not startup the source. For these reasons, we recommend deletion of proposed Regulation 2-1-432.

Response: The draft 2-1-432 language has been removed from the staff proposal, and replaced with an amendment to 2-1-305. The proposed amendment does not impose a notification requirement, nor does it impose a certification of conformity.

No Net Increase (2-2-302)

Comment: The Small Facility Bank (SFB) procedures and administration should be changed, so that unused emissions are fully credited back to the SFB. In this way, any emission debits in the SFB would reflect true, long-term emissions increases only. The SFB should undergo a reconciliation of debits/credits annually, based on emission summary data, to properly reflect the true extent of emission increases/decreases at LLNL. If a facility's total emissions are stable or declining, the SFB debits should be cleared. The emissions from any cancelled permit should be credited back to the SFB at the same level of the original debit to the SFB.

Response: The proposed regulation has been revised in response to this comment. The proposal will allow a facility to adjust its balance of SFB debits by reimbursing the SFB with credits no longer in use by the facility.

Comment: Alternatively, LLNL's SMOP permit should be treated as the only permit governing the facility, so that day to day "permitting" of small sources would be administered by LLNL. In this scenario, the District would still receive the same permit fees, and would maintain ultimate control of all individual permitted sources, but SFB offsets would not be required, except for net increases of emissions. This approach has been proposed by EPA in the past and has been used successfully at a semiconductor facility in Camarillo, CA.

Response: This proposal would be a departure from the District's current New Source Review program and is not under consideration at this time.

Architectural coatings exemption (2-1-113.2.5)

Comment: We request a correction to Regulation 2-1-113.2.5, which should read: "Architectural and maintenance coatings and adhesives operations, that are exclusively subject to Reg 8, Rules 3, 48 or 51, because coatings and adhesives are applied to stationary structures."

Response: This comment suggests a revision to a section that was not modified in the original Staff proposal, and staff has not been able to determine its impact. It may be considered at a later date.

Lawrence Livermore National Laboratory, October 22, 2004

No Net Increase (2-2-302)

Comment: We recommend that Regulation 2-2-302 be modified, so that misinterpretation is avoided in the future. We recommend that the words "…or will be permitted to emit…" be eliminated from line 3 and line 12 of Regulation 2-2-302. This change is consistent with management of the SFB from the time of its inception, whereby the SFB thresholds were interpreted as thresholds for "actual annual emissions." This interpretation was important because many facilities, including LLNL, had old permits with no upper limits. LLNL could have, hypothetically, emitted over a hundred tons of POCs under the old permits, but eligibility for the SFB required only that actual emissions be below 50 tons.

Response: The requirement for offsets is contained in California Health & Safety Code §40919(a)(2). This statute requires that offsets be provided for "all new or modified stationary sources which emit, or have the potential to emit, 15 tons or more per year." A stationary source is a facility. The ARB has reduced the threshold from 15 tons per year to 10 tons per year.

State law clearly requires that the offset requirement be based on potential to emit, not actual emissions. The language in the District rule to which the comment refers makes it clear, as the Health and Safety Code does not, that the determination of potential to emit includes the project being reviewed for approval.

Comment: We understand that only fourteen facilities would be impacted by the proposed lowering of the SFB threshold from 50 to 35 tons, and that there would be little, if any, impact on air quality. We understand that the proposed lowering of the threshold is a discretionary decision on the part of the District, and that the rationale for lowering the threshold is to maintain the balance of debits and credits to the SFB. However, as LLNL staff proposed at the workshop, the balance of debits and credits to the SFB would be maintained if the District changes its accounting methods to fully credit curtailed emissions. Therefore, we believe that a lowering of the upper threshold of the SFB is unnecessary and we request that the threshold be maintained at 50 tons.

Response: The District already fully credits curtailed emissions. This is the method that the District currently uses to fund the small facility bank. This supply of credits was already taken into account in determining the new threshold for requiring the applicant to provide credits.

Comment: Alternatively, we request that those facilities that have existing SMOPs be allowed to continue to use the SFB. LLNL, like other facilities, agreed to a 50 tpy cap in order to be able to draw from the SFB. LLNL agreed to restrictions on our operations specifically in return for the right to draw from the SFB. LLNL, therefore, has a continuing expectation and a vested interest in continuing to be able to draw from the bank. Allowing this "grandfathering" of existing SMOP facilities that would be affected by BAAQMD's proposed changes would be an equitable way of implementing the proposed change. This

approach would put all potential candidates for SMOPs on notice of what the requirements for drawing from the SFB are. At the same time, it would preserve the expectations that existing SMOPs have in continuing to draw from the SFB.

Response: LLNL may continue to draw from the small facility bank if it applies for and receives a SMOP with 35 TPY limits for NOx and VOC.

Exclusion for Smoke Generators (2-1-110.10)

Comment: We propose the following wording: “Emissions arising from smoke generators, pyrotechnics, weapons used by law enforcement, security, military, fire fighting, or entertainment organizations, or the emissions arising from smoke generators used in scientific research and development.” The purpose for this change is to facilitate the testing or calibration of remote passive sensing equipment.

Response: The draft amendment has been withdrawn from the staff proposal for additional review. This issue will be addressed in a future rulemaking.

Valero Refining Company, October 29, 2004

Permit Expiration (2-1-407)

Comment: The proposed Rule 2-1-407 states that 'Renewal is subject to meeting the current BACT and offset requirements of Regulation 2-2-301, 302, and 303.' We read this to mean that an AC can be renewed if BACT or offset requirements change, but the more stringent BACT or offset requirements will be imposed as a condition of the renewal.

Response: The proposed amendment has been withdrawn because of concerns that it may conflict with state law. District staff intends to bring a proposal to the Board soon.

Comment: The current proposed Rule 2-1-407 says that an authority to construct can last longer than two years if it is either renewed or substantial use has begun, but the proposed language appears to say that an authority to construct can only last longer than four years if it is renewed. The language should be changed to make clear that the permit can also last longer than four years if substantial use has begun (and, of course, if the additional requirement related to an EIR is satisfied).

Response: The proposed amendment has been withdrawn because of concerns that it may conflict with state law. District staff intends to bring a proposal to the Board soon.

Countersignature for Permits (2-1-411)

Comment: The second sentence of new subsection 2-1-411.2 should be deleted. In some cases, a facility may decide to rely on a permit at the same time that it appeals certain

conditions, so the District should not require 'acceptance of and acquiescence to' permit conditions. In such a case, if the appeal is denied, a facility that relied on a permit would be bound by the conditions. There is no valid reason for BAAQMD to reduce the options available to a company and eliminate legal rights to appeal in such a case, and, based on the staff report, this does not appear to be the District's intent. The District's goal of making companies aware of permit conditions can be achieved by having a company sign a permit to acknowledge its awareness of the conditions without taking away that company's right to appeal illegal conditions.

Response: The sentence has been deleted, as suggested, for the reasons stated in the comment.

California Air Resources Board, October 21, 2004

Comment: The Air Resources Board staff reviewed the rules that were presented at the October 12 workshop, and had no comments at the time. The rule was examined by the Stationary Source Division.

Response: Comment noted.