




MEMORANDUM

TO: Community Advisory Council Members

FROM: Doug Grapple 

DATE: April 24, 2013

SUBJECT: Proposed Amended Rule 810, Federal Prevention of Significant Deterioration (PSD)

Enclosed please find proposed amended Rule 810 with marked up changes and a table summarizing reasons for the rule changes. Rule 810 is an *incorporation by reference*-type rule (i.e., it adopts federal PSD requirements by reference). The Board adopted Rule 810 in 2011 as part of a set of rules to implement EPA's greenhouse gas tailoring rule.

EPA requires changes to Rule 810 before incorporation of the rule into the State Implementation Plan (SIP). EPA is working with a number of California air districts on similar rule changes to assure SIP approval. We are fast-tracking this project since the rule has minimal impacts and needs to be incorporated into the SIP as soon as possible.

We envision:

1. Requesting a CAC recommendation that the Board approve the Rule 810 amendment at the May 8, 2013 meeting, and
2. Taking the project to the Board for a Public Hearing and adoption in June 2013.

If there are questions or concerns you would like to discuss before the CAC meeting, please call me at (805) 961-8883 or send an email to grappled@sbcapcd.org.

Attached:

Proposed Amended Rule 810
Summary of Reasons for Proposed Amended Rule 810 Changes

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RULE 810. FEDERAL PREVENTION OF SIGNIFICANT DETERIORATION (PSD).
(Adopted 1/20/2011, amended [date of amended rule adoption])

A. Purpose

The federal Prevention of Significant Deterioration program is a construction permitting program for new major stationary sources and major modifications to existing major stationary sources located in areas classified as attainment or in areas that are unclassifiable for any criteria air pollutant. Rule 201, ~~(Permits Required)~~, contains application requirements and Rule 204, ~~(Applications)~~, Rule 205, ~~(Standards for Granting Applications)~~, Rule 206, ~~(Conditional Approval of Authority to Construct or Permit to Operate)~~, Rule 207, ~~(Denial of Applications)~~, and Rule 208, ~~(Action on Applications - Time Limits)~~, contain processing requirements for permit actions. The purpose of this rule is to incorporate the federal Prevention of Significant Deterioration 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 40 Code of Federal Regulations, Part 52, Section 52.21 (40 CFR 52.21) in effect ~~August 2, 2010~~ [date of amended rule adoption] as incorporated into this rule.

C. Incorporation by Reference

Except as provided below, the provisions of Title 40 CFR 52.21 in effect ~~August 2, 2010~~ [date of amended rule adoption] are incorporated herein by reference and made part of the Rules and Regulations of the Santa Barbara County Air Pollution Control District.

1. The following subsections of 40 CFR 52.21 are excluded: (a)(1), (b)(55-58), (f), (g), (i)(1)(i-v), (i)(1)(ix-x), (i)(6-8), (p)(6-8), (q), (s), (t), (u), (v), (w), (x), (y), (z), and (cc).

~~2. The following definitions found in 40 CFR 52.21(b) are revised as follows:~~

~~a. The definition of "potential to emit" contained in 40 CFR 52.21(b)(4) is revised so that the phrase "is federally enforceable" shall read "is federally enforceable or enforceable as a practical matter."~~

~~b. The definition of "allowable emissions" contained in 40 CFR 52.21(b)(16) is revised so that:~~

~~1) the phrase "unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both" shall read, "unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both."~~

~~2) paragraph (iii) shall read as follows: "The emissions rate specified as an enforceable permit condition, including those with a future compliance date."~~

~~3) The following terms and phrases found in 40 CFR 52.21(b) are revised as follows:~~

~~a. The term "administrator" means:~~

- 1) ~~“federal Environmental Protection Agency 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
 - 2) “Control Officer” elsewhere, as defined in Rule 102, ~~(Definitions)~~.
- b. The phrase “paragraph (q) of this section” in 40 CFR 52.21 ~~(l)(2) and~~ (p)(1) shall read as follows: “the public notice and comment provisions of Rule 810 Section E ~~below~~.”
3. The phrase “permit to construct” found in 40 CFR 52.21(p)(1) means “Authority to Construct” as defined in Rule 102, Definitions.

D. Requirements:

1. The Control Officer shall provide written notice of any permit application for a proposed major stationary source or major modification to the Environmental Protection Agency 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 an Authority to Construct.
2. The Control Officer 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 Control Officer may agree. If the Control Officer 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 resubmittal of the application, a new 30-day period to determine completeness shall begin. If the Control Officer determines that the application is still not complete, the applicant may appeal that determination to the Board. The Board shall make its written determination within 60 days after receiving the applicant's appeal. Pursuant to Government Code section 65943(c), if such determination is not made within that 60-day period, the application with the submitted materials shall be deemed complete. Appeals will be assessed a fee based on the cost reimbursement provisions of Rule 210, Fees. Upon determination that the application is complete, the Control Officer 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.
43. An owner or operator must obtain a federal Prevention of Significant Deterioration permit pursuant to this rule before beginning actual construction of a new major stationary source, a major modification, or a plantwide applicability limitation (PAL) major modification, as defined in 40 CFR 52.21(b).
24. Notwithstanding the provisions of any other District Rule or Regulation, the Control Officer shall require compliance with this rule prior to issuing a federal Prevention of Significant Deterioration permit as required by Clean Air Act Section 165.
35. The applicant shall pay the applicable fees specified in Rule 210, ~~(Fees)~~.

E. Public Participation

Prior to issuing a federal Prevention of Significant Deterioration permit pursuant to this rule and within one year after receipt of a complete application, the Control Officer shall:

1. Make a preliminary determination whether construction should be approved with conditions or disapproved.

2. Make available in at least one location in Santa Barbara County 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.
3. Notify the public, by advertisement in a newspaper of general circulation in Santa Barbara County 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.
4. Send a copy of the notice of public comment to the applicant, United States Environmental Protection Agency 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 cities in the County; the County Executive Officer; 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.
5. 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 Control Officer's judgment such a hearing is warranted.
6. 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.
7. Make a final determination whether construction should be approved with conditions or disapproved.
8. 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.

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Summary of Reasons for Proposed Amended Rule 810 Changes

Rule 810 Section Changed	Proposed Changes in Strikethrough and Underline Formatting	Reason for Change
A, Purpose	[. . .] Rule 201, (Permits Required) , contains application requirements and Rule 204, (Applications) , Rule 205, (Standards for Granting Applications) , Rule 206, (Conditional Approval of Authority to Construct or Permit to Operate) , Rule 207, (Denial of Applications) , and Rule 208, (Action on Applications - Time Limits) , contain [. . .]	Changes make the text consistent with the standard format used in other rules.
B, Applicability	[. . .] 40 Code of Federal Regulations, Part 52, Section 52.21 (40 CFR 52.21) in effect August 2, 2010 <u>[date of amended rule adoption]</u> as incorporated into this rule.	<p>This change is consistent with the CAPCOA model rule. By changing the rule's <i>in effect</i> date to refer to the most current 40 CFR 52.21 the rule will incorporate by reference the most recent changes and revisions made to 40 CFR 52.21 (and, by extension, 40 CFR 51.166).</p> <p>The substantive changes made to these sections include a revision to the definition of "regulated NSR pollutant" so that 1) condensable particulate matter is included as part of the emissions measurements for regulation of PM2.5 and PM10, and 2) the January 22, 2013 D.C. Circuit Court of Appeal Order vacating certain provisions of 40 CFR 51.166 and 40 CFR 52.21.</p> <p>Additional information on changes to the 40 CFR 52.21 may be obtained from this web page: www.epa.gov/nsr/actions.html.</p>
C. Incorporation by Reference	Except as provided below, the provisions of Title 40 CFR 52.21 in effect August 2, 2010 <u>[date of amended rule adoption]</u> are incorporated herein by reference [. . .]	Same as above.

Summary of Reasons for Proposed Amended Rule 810 Changes

Rule 810 Section Changed	Proposed Changes in Strikethrough and Underline Formatting	Reason for Change
C.2	<p>2. The following definitions found in 40 CFR 52.21(b) are revised as follows:</p> <p>a. The definition of “potential to emit” contained in 40 CFR 52.21(b)(4) is revised so that the phrase “is federally enforceable” shall read “is federally enforceable or enforceable as a practical matter.”</p> <p>b. The definition of “allowable emissions” contained in 40 CFR 52.21(b)(16) is revised so that:</p> <p>1) the phrase “unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both” shall read, “unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both.”</p> <p>2) paragraph (iii) shall read as follows: “The emissions rate specified as an enforceable permit condition, including those with a future compliance date.”</p>	EPA determined that revisions to the <i>potential to emit</i> and <i>allowable emissions</i> terms are not necessary for approval.
C.2 (renumbered)	The following terms <u>and phrases</u> found in 40 CFR 52.21(b) are revised as follows:	The revision is needed to make the statement consistent with the sections below it.
C.2.b (renumbered)	The phrase “paragraph (q) of this section” in 40 CFR 52.21(1)(2) <u>and</u> (p)(1) shall read as follows: “the public notice and comment provisions of Rule 810 Section E <u>below</u> .”	40 CFR 52.21(1)(2) also includes the phrase “paragraph (q) of this section.”. Including “below” in the phrase may have been confusing.
C.3 (new)	<u>The phrase “permit to construct” found in 40 CFR 52.21(p)(1) means “Authority to Construct” as defined in Rule 102, Definitions.</u>	This change is needed for consistency with phrases found in other SBC APCD rules and the D.1 provision below.
D.1 (renumbered and new)	<u>The Control Officer shall provide written notice of any permit application for a proposed major stationary source or major modification to the Environmental Protection Agency 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 an Authority to Construct</u>	Upon review and approval of other PSD rules using the CAPCOA Model Rule, EPA determined these revisions are a required element of a PSD program. See 40 CFR 51.166(p)(1). 40 CFR 52.21 does not contain these requirements because the regulation was intended to be administered by EPA.

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D.2 (renumbered and new)	<p><u>The Control Officer 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 Control Officer may agree. If the Control Officer 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 resubmittal of the application, a new 30-day period to determine completeness shall begin. If the Control Officer determines that the application is still not complete, the applicant may appeal that determination to the Board. The Board shall make its written determination within 60 days after receiving the applicant's appeal. If such determination is not made within that 60-day period, the application with the submitted materials shall be deemed complete. Appeals will be assessed a fee based on the cost reimbursement provisions of Rule 210, Fees. Upon determination that the application is complete, the Control Officer 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.</u></p>	<p>Upon review and approval of other PSD rules using the CAPCOA Model Rule, EPA determined these revisions are a required element of a PSD program. See 40 CFR 51.166(q)(1). 40 CFR 52.21 does not contain these requirements because they are contained in a separate portion of the CFR, which is not included in Rule 810. The District requested the addition of the appeal language to be consistent with how the District already determines application completeness in Rule 208, Action on Applications - Time Limits.</p>
E, Public Participation	<p>Prior to issuing a federal Prevention of Significant Deterioration permit pursuant to this rule and <u>within one year</u> after receipt of a complete application, the Control Officer shall:</p>	<p>Upon review and approval of other PSD rules using the CAPCOA Model Rule, EPA determined this additional phrase was inadvertently left out of the Model Rule. This is a required element of a PSD Program [reference 40 CFR 51.166(q)(2)].</p>