

PROJECT DESCRIPTION SUMMARY: EFFECTS OF A NEGATIVE DECLARATION IN LIEU OF RULES TO ADOPT CERTAIN FEDERAL REGULATIONS ON EMISSION GUIDELINES FOR EXISTING SOURCES

Purpose:

The Santa Barbara County Air Pollution Control District (District) is providing this summary to fulfill the requirements in Health and Safety Code Section 40725(b).

Project Overview:

The project consists of adopting a negative declaration in lieu of rules indicating that Santa Barbara County does not have any sources subject to the following Title 40 Code of Federal Regulations (40 CFR), Part 60, Subparts:

- Cb, Emissions Guidelines and Compliance Times (Guidelines) for Large Municipal Waste Combustors That Are Constructed on or Before September 20, 1994 [60.30b]
- Cd, Guidelines for Sulfuric Acid Production Units [60.30d]
- Ce, Guidelines for Hospital/Medical/Infectious Waste Incinerators [60.30e]
- BBBB, Guidelines for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999 [60.1500]
- DDDD, Guidelines for Commercial and Industrial Solid Waste Incineration Units Constructed on or Before November 30, 1999 [60.2500]
- FFFF, Guidelines for Other Solid Waste Incineration Units Constructed After December 9, 2004 [60.2980]
- HHHH, Guidelines for Coal-Fired Electric Steam Generating Units [60.4101]

Objectives:

The goal of the rulemaking action is to obtain Board approval of a “negative declaration in lieu of rules” and other associated findings through a public hearing process. Adoption of the negative declaration and the associated findings will allow the District to request that the U.S.EPA update the County portion of the California State Plan to make it current.

Background:

Consistent with Clean Air Act (CAA) section 111(d)(1), the U.S.EPA establishes standards of performance for certain *existing sources* that would be subject to a New Source Performance Standard if such sources were *new sources*. These standards of performance are referred to as

“Emission Guidelines” (Guidelines). The District has adopted by reference many of Title 40 Code of Federal Regulations (CFR), Part 60, standards that apply to *new sources* through the adoption of Rule 901, New Source Performance Standards (NSPS). However, the Guidelines shown in Table 1 for *existing sources* cannot be adopted by reference since the referenced 40 CFR Part 60 subparts do not contain direct requirements on *existing sources*.

Table 1. TITLE 40 CODE OF FEDERAL REGULATIONS, PART 60, SUBPARTS THAT INCLUDE EMISSIONS GUIDELINES AND COMPLIANCE TIMES FOR EXISTING SOURCES

CFR Subpart	Subpart Title [Section the Subpart Commences with]
Subpart Cb	Emissions Guidelines and Compliance Times for Large Municipal Waste Combustors That Are Constructed on or Before September 20, 1994 [60.30b]
Subpart Cc	Emissions Guidelines and Compliance Times for Municipal Solid Waste Landfills [60.30c] <i>{District Rule 341 incorporates these requirements}</i>
Subpart Cd	Emissions Guidelines and Compliance Times for Sulfuric Acid Production Units [60.30d] ¹
Subpart Ce	Emissions Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators [60.30e] ²
Subpart BBBB	Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999 [60.1500]
Subpart DDDD	Emission Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units Constructed on or Before November 30, 1999 [60.2500]
Subpart FFFF	Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units Constructed After December 9, 2004 [60.2980]
Subpart HHHH	Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units [60.4101] ³

¹ Subpart Cd applies to existing sulfuric acid production units that commenced construction or modification before August 17, 1971. Further, Subpart H [40 CFR 60.80 et seq.] applies to any sulfuric acid production unit that commenced construction or modification after August 17, 1971.

² Subpart Ce applies to existing hospital/medical/infectious waste incinerators for which construction or modification was commenced on or before June 20, 1996. Further, Subpart Ec [40CFR 60.50c] applies to any hospital/medical/infectious waste incinerators for which construction is commenced after June 20, 1996.

³ Subpart HHHH establishes a model rule for the State mercury Budget Trading Program. There are no dates associated with the applicability of Subpart HHHH.

To ensure that the Guidelines are implemented, the U.S.EPA requires each state to prepare and submit a State Plan. Generally, the local agency will adopt a Guideline as a rule and submit the rule to the California Air Resources Board (ARB) to fulfill this requirement. If the ARB finds the rule suitable, they will submit it to EPA, on the local agency's behalf, with a request that it be considered for inclusion in the State Plan.

For the one Guideline that applies to sources in the Santa Barbara County area (40 CFR Part 60 Subpart Cc), the District integrated the requirements into the Santa Barbara County portion of the California State Plan by adopting Rule 341, Municipal Solid Waste Landfills. The U.S.EPA approved the District's Rule 341 into the California State Plan (reference 67 FR 54739, dated September 23, 1999).

For the other seven 40 CFR Part 60 Subpart Guidelines shown in Table 1, there are no sources in Santa Barbara County that are subject to them. The District is making a "negative declaration in lieu of rules" on those Guidelines, which will be submitted to ARB for consideration of inclusion into the State Plan.¹

The District is performing this negative declaration in lieu of rules consistent with the U.S.EPA policy on negative declarations associated with the CAA sections 110(a)(2) and 110(l).² Although those sections are relative to State Implementation Plan (SIP) submittals, section 111(d)(1) of the CAA indicates that the Administrator shall prescribe regulations which shall establish a procedure similar to that provided by section 110. It is the District's understanding that negative declarations in lieu of rules relative to section 111(d)(1) are to undergo the same public noticing and a public hearing process that a rule adoption undertakes.

Implications to the Regulated Community:

The District is unaware of any sources that are subject to the 40 CFR Part 60, Subparts Cb, Cd, Ce, BBBB, DDDD, FFFF, and HHHH. Thus, there are no known sources that are affected by those Guidelines or the "negative declaration in lieu of rules."

¹ Provisions in 40 CFR Part 60, Subpart B, Adoption and Submittal of State Plans for Designated Facilities, section 60.23(b), indicate that if there are no sources subject to a Guideline in a state, then the state will submit a letter of certification to that effect to the U.S.EPA within 9 months of the publication of the final Guideline in the Federal Register. The District is unable to confirm that such a letter of certification was submitted to the U.S.EPA in a timely manner for the seven Guidelines listed in the negative declaration (Attachment 2). Hence, the District intends to submit the negative declaration as an alternative to a letter of certification to confirm that there are no designated facilities in Santa Barbara County subject to the specified seven Guidelines.

² The U.S.EPA policy on negative declarations indicates that a negative declaration must go through the same public review requirements as any other SIP submittal because, while the negative declaration itself is not specifically required by the CAA, it is replacing a required program element. Therefore, the negative declaration would be subject to the same administrative procedures as any other SIP submittal.

Investigation Findings and Staff Recommendations:

The District has reviewed its permit files and the emission inventory and has determined that there are no designated facilities in the source categories shown in the Table 1 except for Subpart Cc (which is covered by Rule 341). Staff recommends that the Board adopt the negative declaration in lieu of rules, the negative declaration findings, and the CEQA findings.

Implications to the Air Pollution Control District Workload and Budget:

The District expects there will be no workload or fiscal impacts to the Air Pollution Control District from the adoption of the negative declaration in lieu of rules and the filing of the negative declaration with the California Air Resources Board. The alternative course of adopting rules would incur significant expense.

Public Review:

On June 14, 2010, the District posted on its website this Project Description Summary. The District plans to publish a public notice of the Board hearing to adopt the negative declaration on July 18, 2010. No workshops are planned for this project because of its noncontroversial nature.

Invitation to Submit Written Comments on this Project:

The District invites the submittal of written comments on this project via regular mail to the address listed below or via email to Douglas Grapple (GrappleD@sbcapcd.org).

Santa Barbara County
Air Pollution Control District
Attention: Douglas Grapple
260 N. San Antonio Rd, Suite A
Santa Barbara, CA 93110
805.961.8883

Please provide written comments to Douglas Grapple by July 9, 2010 to allow time for the District to formulate responses before the July 14, 2010 CAC meeting. The regulated industry and the public will also have an opportunity to submit written comments during the formal comment period (July 18 to August 14, 2010) before the Board hearing scheduled for August 19, 2010.

Attachment:

Negative Declaration in Lieu of Rules to Adopt Certain Federal Emission Guidelines and Negative Declaration Findings

NEGATIVE DECLARATION IN LIEU OF RULES TO ADOPT CERTAIN FEDERAL EMISSION GUIDELINES AND NEGATIVE DECLARATION FINDINGS ON:

TITLE 40 CODE OF FEDERAL REGULATIONS, PART 60, SUBPARTS:

- **Cb, Emissions Guidelines and Compliance Times (Guidelines) for Large Municipal Waste Combustors That Are Constructed on or Before September 20, 1994 [60.30b]**
- **Cd, Guidelines for Sulfuric Acid Production Units [60.30d]**
- **Ce, Guidelines for Hospital/Medical/Infectious Waste Incinerators [60.30e]**
- **BBBB, Guidelines for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999 [60.1500]**
- **DDDD, Guidelines for Commercial and Industrial Solid Waste Incineration Units Constructed on or Before November 30, 1999 [60.2500]**
- **FFFF, Guidelines for Other Solid Waste Incineration Units Constructed After December 9, 2004 [60.2980]**
- **HHHH, Guidelines for Coal-Fired Electric Steam Generating Units [60.4101]**

Pursuant to California Health and Safety Code Section 40727, the Board makes a negative declaration in lieu of rules to adopt federal emission guidelines (Guidelines) specified in Title 40 Code of Federal Regulations (CFR), Part 60, Subparts Cb, Cd, Ce, BBBB, DDDD, FFFF, and HHHH and makes the following findings on the negative declaration.

Necessity

The Board determines that it is necessary to adopt the negative declaration in lieu of rules concerning the U.S.EPA Guidelines cited above (“negative declaration”) pursuant to Title 40 Code of Federal Regulations, Section 60.23, before transmitting the negative declaration in lieu of rules to the State Air Resources Board for consideration of inclusion into the State Plan. In addition, the Board has determined that there are no “designated facilities,” as defined in 40 CFR Part 60, section 60.21(b), located within the District that are subject to the U.S.EPA Guidelines cited above. Therefore, rulemaking for these source categories is unnecessary.

Provisions in 40 CFR Part 60, Subpart B, Adoption and Submittal of State Plans for Designated Facilities, section 60.23(b), indicate that if there are no sources subject to a Guideline in a state, then the state will submit a letter of certification to that effect to the U.S.EPA within 9 months of the publication of the final Guideline in the Federal Register. The District is unable to confirm that such a letter of certification was submitted to the U.S.EPA in a timely manner for each of the Guidelines cited above. Hence, the District will submit the negative declaration as an alternative to letters of certification to confirm that there are no designated facilities in Santa Barbara County subject to the Guidelines cited above.

In a letter dated December 15, 1994, Daniel Meer of the U.S.EPA, clarified the agency's policy regarding the negative declaration process. This letter indicates, in part, “. . . the negative declaration must go through the same public review requirements as any other SIP submittal because, while the negative declaration itself is not specifically required by the CAA, it is replacing a required program element. Therefore, the negative declaration would be subject to the same administrative procedures as any other SIP submittal.” Although this U.S.EPA policy is relative to State Implementation Plan (SIP) submittals, negative declarations in lieu of rules for the State Plan replace program elements (i.e., a local rule or a letter of certification) in a similar manner and need to undergo the same public review process as any other State Plan submittal undertakes.

Authority

The Board is authorized under state law to adopt, amend, or repeal rules and regulations pursuant to Health and Safety Code Section 40000, and 40725 through 40728 which assigns to local and regional authorities the primary responsibility for the control of air pollution from all sources other than exhaust emissions from motor vehicles. In addition, Health and Safety Code Section 40702 requires the District Board to adopt rules and regulations and to do such acts as necessary and proper to execute the powers and duties granted to it and imposed upon it by state law.

Section 111 of the Clean Air Act, 40 Code of Federal Regulations, Part 60, Subpart B (adoption and submittal of State Plans for designated facilities), and the U.S.EPA policy require that the negative declaration in lieu of rules adoption follow the same process as an Air Pollution Control District rule action.

Clarity

The Board finds that the resolution for the negative declaration in lieu of rules is sufficiently clear. The proposed negative declaration in lieu of rules was publicly noticed. The resolution for the negative declaration in lieu of rules is written or displayed so that its meaning can be easily understood by persons directly affected by it.

Consistency

The Board determines that proposed negative declaration in lieu of rules is consistent with, and not in conflict with or contradictory to, existing federal or state statutes, court decisions, or regulations.

Nonduplication

The Board finds that the proposed negative declaration in lieu of rules does not impose the same restrictions as any existing state or federal regulation, and the proposed negative declaration is necessary and proper to execute the powers and duties granted to, and imposed upon, the Air Pollution Control District.

Reference

The Board finds that we have authority under State law to adopt the negative declaration in lieu of rules pursuant to Health and Safety Code Section 39002 which assigns to local and regional authorities the primary responsibility for the control of air pollution from all sources other than exhaust emissions from motor vehicles. Additionally, pursuant to the federal Clean Air Plan Section 111, 40 Code of Federal Regulations, Part 60, Subpart B (adoption and submittal of State Plans for designated facilities), and the U.S.EPA policy, the Board is required to adopt rules, regulations, and negative declarations in lieu of rules, and to do such acts as are necessary and proper to execute the powers and duties granted to it and imposed upon it by State law.