

California Air Resources Board Guidance
Review Process for Implementing Senate Bill 288

April 2006

The Protect California Air Act of 2003 (SB 288, Sher; Health and Safety Code sections 42500 through 42507), designed to protect the stringency of California's New Source Review (NSR) rules and regulations, generally prohibits air pollution control and air quality management districts (Districts) from amending their NSR rules to be less stringent than those that existed on December 30, 2002. Under the statute, the Air Resources Board (ARB) has responsibilities for ensuring that the Act is properly implemented. We provided a guidance document regarding implementation of SB 288 on October 14, 2004. That document was subsequently updated in April, 2006, and is posted on ARB's SB 288 website at <http://www.arb.ca.gov/nsr/sb288/sb288.htm>. Having been requested to review certain recently adopted and proposed amendments to District NSR rules, we are providing additional guidance on the review process we propose to follow.

Section 42504(a) of the Health and Safety Code provides in part:

If the state Board finds, after a public hearing, that a district's rules or regulations are not equivalent to or more stringent than the rules or regulations that existed on December 30, 2002, the state board shall promptly adopt for that district the rules or regulations that may be necessary to establish equivalency, consistent with subdivision (b). (Emphasis added).

Further, SB 288, in Health and Safety Code section 42504(d), identifies a number of exceptions to the general prohibition against weakening NSR rules, and requires any such amendments to be "submitted to and approved by the state board after a public hearing" to ensure that the action meets specified conditions. (See, generally, Health and Safety Code section 42504(d)(1) through (4)).

Having received a petition to review an amendment that allegedly weakens a District NSR rule, and having been consulted by a District regarding allowable weakening amendments, we want to clarify how we intend to implement the two provisions quoted above.

Section 42504 provides for a public hearing to review NSR rule changes that have not been submitted to ARB by a District requesting a finding of exception to the general anti-back-sliding prohibition. ARB will encounter these rule revisions during its quotidian review of District rules, or as brought to our attention by petition or letter from a member of the public. ARB will conduct a staff-level, threshold review of the rule and revision at issue to determine if it is in conflict

with the requirements of SB 288, specifically the provisions set forth in Health and Safety Code section 42504(a), (b), and (c), as interpreted by our earlier guidance.

If we receive a citizen petition, or if we are questioning the propriety of a revision on our own motion, we will notify the District and open a dialog on the revision. We will also post any such petition on ARB's SB 288 website. If ARB staff determines that the rule change is not covered by SB 288, or clearly does not weaken the District's NSR rules as they existed on December 30, 2002, or that any weakening is clearly *de minimis*, we will conclude the review and not proceed to public hearing. If the review was initiated by citizen petition, staff will prepare written findings that document its reasons for rejecting the petition.

If, on the other hand, staff concludes that the revisions sufficiently weaken NSR requirements to justify action under SB 288, ARB will prepare a staff report and conduct a noticed public hearing to enable us to determine whether a District NSR rule revision is less stringent than its December 30, 2002, rules and regulations. The District and any interested persons will be given the opportunity to present both oral and written testimony at the hearing, which will be conducted by the Board, the Executive Officer, or by her delegate.

After conclusion of the public hearing and consideration of all relevant material presented, ARB will prepare a written decision. If ARB decides that there was no violation of Health and Safety Code section 42504 and that the revision was "equivalent to or more stringent than the rules or regulations that existed on December 30, 2002," no further action will be taken. (Of course, a petitioner could challenge ARB's decision and the District action in court).

If ARB finds that the provisions of section 42504 have been violated and that action under that statute is appropriate, the District will be notified and given the opportunity to promptly schedule a hearing to amend its NSR regulation consistent with ARB's findings. If the District decides not to act on its own, the Board will be presented with the written decision and will schedule the required hearing to "promptly adopt for that district the rules or regulations that may be necessary to establish equivalency." In this event a noticed public hearing to assume the District's rulemaking powers will be held in accordance with sections 41500 et seq. of the Health and Safe Code, and specifically section 41504. The full Board will conduct the hearing and determine what action is appropriate to comply with SB 288.

The public hearing contemplated by Health and Safety Code section 42504(d) occurs under different circumstances than the process described above. In this case, the District itself will have amended its NSR rule at a public hearing where its governing board determined, based upon substantial evidence in the record, that each of the conditions listed in Health and Safety Code section 42504(d)(1) through (4) has been met. Moreover, in accordance with the statute, the District

will be requesting ARB to ratify its decision at a public hearing. Notice of the hearing will be provided and the hearing will be conducted by the Board or the Executive Officer (or her delegate), and the District, the public, and ARB staff will have the opportunity to present oral or written testimony.

Following the hearing, ARB will issue a written decision. If ARB approves the District NSR rule revision as being in compliance the statutory conditions, the rule will become effective; if ARB determines that the conditions in section 42504(d) have not been met, ARB will work with the District to make the necessary changes. A follow-up hearing may or may not be necessary, depending upon the scope of the changes and the treatment of the issues at the public hearing.

ARB intends to post this guidance on our SB 288 web page so that the public as well as the Districts will be aware of the review process we intend to follow in carrying out our responsibilities under SB 288. As always, ARB staff is available for consultation with District staff as amendments to NSR rules are contemplated and developed. If you have technical questions related to this guidance, please call Kitty Howard, Manager, Regulatory Assistance Section, at (916) 322-3984; legal questions should be directed to Leslie Krinsk, Senior Staff Counsel, at (805) 473-7325.