

MOJAVE DESERT AIR QUALITY MANAGEMENT DISTRICT

RULE 1302 – PROCEDURE

(Adopted: 7/21/80) (Amended: 10/27/93, 03/25/96, 09/24/01)

(A) Applicability

- (1) This rule shall apply to all new or modified Facilities, including EEGFs as defined in District Rule 1301(T), pursuant to the provisions of District Rule 1306.

(B) Applications

(1) Initial Analysis

- (a) Any application for an ATC or modification to a PTO, submitted pursuant to the procedures of District Regulation II, shall be analyzed to determine if such application is complete.
 - (i) An application is complete when it contains enough information to allow all the applicable analysis and calculations required under this Regulation to be made.
 - (ii) Comprehensive Emission Inventory
 - a. All Facilities shall submit a Comprehensive Emissions Inventory in conjunction with the application.
 - b. If a Facility has a current, approved Comprehensive Emissions Inventory on file with the District such Facility may, upon written request and approval of the APCO, update the Comprehensive Emission Inventory to reflect the addition, deletion or modification of all Emissions Units affected by the application.
 - c. No application may be determined to be complete without a Comprehensive Emissions Inventory or Comprehensive Emission Inventory update.
 - (iii) Alternative Siting
 - a. Facilities for which an analysis of alternative sites, sizes and production processes is required under 42 U.S.C. 7503(a)(5) (Federal Clean Air Act §173(a)(5)) a complete application shall include an analysis functionally equivalent to that required pursuant to Division 13 of the California Public Resources Code (commencing with section 21000).

- (iv) Class I Area Visibility Protection
 - a. An application for a Major Facility or a Facility with a Major Modification which is located within 60 miles of a Class I Area, as defined in 40 CFR 51.301(o), shall include in its application an analysis of any anticipated impacts on visibility within that Class I Area. Such analysis shall include, but is not limited to, an analysis of the factors found in 40 CFR 51.301(a).
 - (b) The APCO shall determine whether the application is complete not later than thirty (30) calendar days after receipt of the application, or after such longer time as both the applicant and the APCO may agree in writing.
- (2) Notifications Regarding Applications
- (a) After the determination of completeness has been made, the APCO shall transmit a written determination of completeness or incompleteness immediately to the applicant at the address indicated on the application.
 - (i) If the application is determined to be incomplete, the determination shall specify which parts of the application are incomplete and how they can be made complete.
 - a. Upon receipt by the APCO of information required to render an application complete or upon resubmittal of the entire application, a new thirty (30) day period in which the APCO must determine completeness, shall begin.
 - (b) In the alternative, the APCO may complete the issuance of the ATC(s) within the thirty (30) calendar days after receipt of the application so long as either of the following conditions are met:
 - (i) None of the requirements contained in District Rule 1303 apply to the project; or
 - (ii) The requirements of District Rule 1303(A) applies to the project and the issuance of the ATC(s) comply with the requirements of subsection (C)(2)(a)(i).
 - (c) If the application contains an analysis of anticipated visibility impacts on a Class I Area, as defined in 40 CFR 51.301(o), pursuant to subsection (B)(1)(a)(iv) above, the APCO shall, within thirty (30) calendar days after receipt of the application, notify USEPA and the Federal Land Manager of the affected Class I Area.
 - (i) The APCO shall include in such notification a copy of the application and the analysis of anticipated impacts on the affected Class I Area.

(3) Effect of Complete Application

- (a) After an application is determined to be complete, the APCO shall not subsequently request of an applicant any new or additional information which was not specified in the APCO's list of items to be included within such applications.
- (b) Notwithstanding the above, the APCO may, during the processing of the application, require an applicant to clarify, amplify, correct or otherwise supplement the information required in such list in effect at the time the complete application was received.
- (c) A request by the APCO for clarification pursuant to subsection (B)(3)(b) above does not waive, extend, or delay the time limits in this rule for final action on the completed application, except as the applicant and the APCO may both agree in writing.

(4) Fees

- (a) The APCO shall not perform any analysis as set forth in section (C) below unless all applicable fees, including but not limited to Project Evaluation Fees for Complex Sources, as set forth in District Rule 301 have been paid.

(C) Analysis

(1) Determination of Emissions

- (a) The APCO shall analyze the application to determine the type, amount, and change (if any) in emissions pursuant to the provisions of District Rule 1304.

(2) Determination of Requirements

- (a) The APCO shall, after the analysis, determine if any or all of the provisions of District Rule 1303 apply to the new or modified Facility.
 - (i) If none of the provisions of District Rule 1303 apply to the new or Modified Facility, then the APCO shall commence the issuance of the ATC or modification of the PTO pursuant to the provisions of Regulation II.
 - (ii) If only the provisions of District Rule 1303(A) apply to the new or modified Facility, and the application does not utilize SERs to reduce PE then:
 - a. The APCO shall commence the issuance of the ATC or

- (i) The APCO shall thereafter notify the applicant in writing of the specific amount and type of Offsets.
- (b) Upon receipt of the notification, the applicant shall provide to the APCO a proposed Offset package which contains evidence of Offsets eligible for use pursuant to the provisions of District Rule 1305.
 - (i) The APCO shall analyze the proposed Offset package to determine if an adjustment in the value of such Offsets is required pursuant to the provisions of District Rule 1305(C)(4).
 - (ii) The APCO shall disallow the use of any Offsets which were created by the shutdown of Emissions Unit(s) when:
 - a. The Offsets were created by a shutdown of Emissions Unit(s) which was not contemporaneous with the creation of the Offsets; and
 - b. USEPA has disapproved the applicable implementation plan for the District or USEPA has made a finding of a failure to submit for the District of all or a portion of an applicable implementation plan.
 - (iii) After determining that the Offsets are real, enforceable, surplus, permanent and quantifiable and after any permit modifications required pursuant to District Rule 1305 or Regulation XIV have been made, the APCO shall approve the use of the Offsets subject to the approval of CARB and USEPA during the comment period required pursuant to subsection (D)(2) below.
 - (iv) The Offset package must be submitted and approved by the APCO prior to the issuance of the New Source Review Document and any permits.
 - (v) The Offsets must be obtained prior to the commencement of construction on the new or Modified Facility.

(D) Permit Issuance Procedure

(1) Preliminary Decision

- (a) After the analysis has been completed, the APCO shall issue a preliminary decision as to whether the New Source Review Document should be approved, conditionally approved, or disapproved and whether ATC(s) should be issued to the new or modified Facility.
- (b) The preliminary decision shall include:

- (i) A succinct written analysis of the approval, conditional approval or denial; and
 - (ii) If approved or conditionally approved, proposed permit conditions for the ATC(s) or modified PTO(s) and the reasons for imposing such permit conditions.
- (2) CARB, USEPA and Affected State Review
 - (a) If the provisions of District Rule 1303(B) apply to the new or modified Facility the APCO shall, concurrently with the publication required pursuant to subsection (D)(3) below, send a copy of the preliminary decision and any underlying analysis to CARB, USEPA and any Affected State.
 - (b) CARB, USEPA and any Affected State shall have thirty (30) days from the date of publication of the notice pursuant to subsection (D)(3) below to submit comments and recommendations regarding the preliminary decision.
 - (c) Upon receipt of any comments and/or recommendations from CARB USEPA and any Affected State the APCO shall either:
 - (i) Accept such comments and/or recommendations and modify the preliminary decision accordingly; or
 - (ii) Reject such comments and/or recommendations, notify CARB, USEPA, and/or the Affected State of the rejection and the reasons for such rejection.
 - (d) For applications containing an analysis of anticipated visibility impacts on a Class I Area, as defined in 40 CFR 51.301(o), pursuant to subsection (B)(1)(a)(iv) above, the APCO, upon receipt of any comments from USEPA or the Federal Land Manager of the affected Class I Area, shall:
 - (i) Accept such comments and/or recommendations and modify the preliminary decision accordingly; or
 - (ii) Reject such comments and/or recommendations, notify CARB, USEPA, and/or the Federal Land Manager of the affected Class I Area of the rejection and the reasons for such rejection.
- (3) Public Review and Comment
 - (a) Publication of Notice
 - (i) If the provisions of District Rule 1303(B) apply to the new or modified Facility then, within ten (10) days of the issuance of the preliminary determination, the APCO shall:

- a. Publish a notice in at least one newspaper of general circulation within the District; and
 - b. Send a copy of the notice to all persons who have requested such notice and/or on a list of persons requesting notice of actions pursuant to this regulation generally on file with the Clerk of the Board for the District; and
 - c. Provide notice by other reasonable means, if such notice is necessary to assure fair and adequate notice to the public
- (ii) Such notice shall provide thirty (30) days from the date of the publication of the notice for the public to submit written comments on the preliminary decision and shall include:
- a. The name and location of the Facility, including the name and address of the applicant if different.
 - b. A statement indicating the availability, conclusions of the preliminary decision and a location where the public may obtain or inspect the preliminary decision and supporting documentation; and
 - c. A brief description of the comment procedures and deadlines; and
 - d. If the APCO has rejected comments regarding anticipated visibility impacts on a Class I Area, a notation of the availability of the reasons for such rejection.

(b) Availability of Documents

- (i) If the provisions of District Rule 1303(B) apply to the new or modified Facility, then at the time of publication of the notice required above the APCO shall make available for public inspection at the offices of the District or in another prominent place the following information:
 - a. The application and any other information submitted by the applicant; and
 - b. The preliminary decision to grant or deny the Authority to Construct, including any proposed permit conditions and the reasons therefore; and
 - c. The supporting analysis for the preliminary decision.
- (ii) Notwithstanding the above, the APCO is not required to release confidential information. Information shall be considered confidential when:
 - a. The information is a trade secret or otherwise confidential pursuant to California Government Code 6254.7(d); or
 - b. The information is entitled to confidentiality pursuant to 18 U.S.C. §1905; and
 - c. Such information is clearly marked or otherwise identified by the applicant as confidential.

- (c) The APCO shall accept all relevant comment(s) submitted to the District in writing during the thirty (30) day public comment period.
 - (d) The APCO shall consider all written comments submitted by the public during the comment period.
 - (e) The APCO shall keep a record of all written comments received during the public comment period and shall retain copies of such comments in the District files for the particular Facility.
 - (f) If any changes are made to the preliminary decision as a result of comments received from the public, CARB, USEPA or any Affected State the APCO shall send a copy of the proposed changes to CARB and USEPA for review.
- (4) Final Action
- (a) After the conclusion of the comment period and consideration of the comments, the APCO shall produce a final New Source Review Document.
 - (b) Thereafter, the APCO shall take final action to issue, issue with conditions or decline to issue the New Source Review Document.
 - (i) Such final action shall take place no later than 180 days after the application has been determined to be complete.
 - (ii) The APCO shall not take final action to issue the New Source Review Document if either of the following occurs:
 - a. USEPA objects to such issuance in writing; or
 - b. USEPA has determined, as evidenced by a notice published in the Federal Register, that the applicable implementation plan is not being adequately implemented in the nonattainment area in which the new or modified Facility is located.
 - (c) The APCO shall provide written notice of the final action to the applicant, USEPA and CARB.
 - (d) If substantive changes have been made to the Preliminary Decision or other New Source Review Document after the opening of the public comment period, the APCO shall also cause to be published a notice substantially similar in content to the notice required by subsection (D)(3)(a) above, in a newspaper of general circulation within the District of the final action.
 - (e) The final New Source Review Documents and all supporting documentation shall remain available for public inspection at the offices of the District.

(5) Issuance of ATC(s)

- (a) In conjunction with final action on the NSR Document the APCO shall issue ATC(s) for the new or modified Facility pursuant to the provisions of District Regulation II. Such ATC(s) shall contain, at a minimum, the following conditions:
 - (i) All conditions regarding construction, operation and other matters as set forth in the NSR Document; and
 - (ii) If a new or modified Facility is a replacement, in whole or in part, for an existing Facility or Emissions Unit on the same or contiguous property, a condition allowing a maximum of one hundred eighty (180) days start up period for simultaneous operation of the new or modified Facility and the existing Facility or Emissions Unit; and
 - (iii) A condition requiring the Facility to be operated in accordance with the conditions contained on the ATC(s);

- (b) The APCO shall not issue ATC(s) to a new or modified Facility pursuant to this regulation unless:
 - (i) The new Facility or Modification to an existing Facility is constructed using BACT for each Nonattainment Air Pollutant when the provisions of Rule 1303(A) apply.
 - (ii) Any increase in emissions for each Nonattainment Air Pollutant has been properly offset prior to Beginning Actual Construction when the provisions of Rule 1303(B) apply.
 - (iii) The applicant certifies in writing, prior to the issuance of any permit that all Facilities which are under the control of the same person (or persons under common control) in the State of California, are in compliance with all applicable emissions limitations and standards under the Federal Clean Air Act and the applicable implementation plan for the air district in which the Facility is located.
 - (iv) The new or modified Facility complies with all applicable Rules and Regulations of the District.

(6) Issuance of PTO(s)

- (a) After the final action on the New Source Review Document pursuant to this Regulation and/or the issuance of ATC(s) pursuant to the provisions of District Regulation II, the APCO shall deny the subsequent issuance of PTO(s) unless the APCO determines that:

- (i) The owner or operator of the new or modified Facility has submitted a completed application for ATC(s) or modification of a PTO.
 - a. An initial application for PTO(s) may be considered an application for a ATC(s) if the application and the applicant comply with all the provisions of this Regulation.
- (ii) The new or modified Facility has been Constructed and operated in a manner consistent with the conditions as set forth in the NSR document and the ATC(s); and
- (iii) That the permit(s) of any Facility or Emissions Unit(s) which provided Offsets to the new or modified Facility have been properly modified and/or valid contracts have been obtained pursuant to the provisions of District Rule 1305 or Regulation XIV.
- (iv) That the Offsets, if required pursuant to District Rule 1303(B), were real, permanent, quantifiable prior to the commencement of construction of the Facility.
- (v) That all conditions contained in the ATC(s) requiring performance of particular acts or events by a date specified have occurred on or before such dates.
- (vi) If the actual emissions are greater than those calculated when the ATC was issued:
 - a. That the owner/operator has provided additional offsets to cover the difference between the amount of offsets originally provided and the amount of offsets necessary calculated pursuant to District Rule 1305 as based upon the actual emissions of the facility; and
 - b. That such additional offsets were provided within ninety (90) days of the owner/operator being notified by the APCO that such additional offsets are necessary.

[SIP: Submitted as amended 09/24/01 on _____; Approved 11/13/96, 61 FR 58133, 40 CFR 52.220(c)(239)(I)(A)(1); Submitted as amended 10/27/93 on 3/29/94; Conditional Approval 6/9/82, 47 FR 25013, 40 CFR 52.220(c)(87)(iv)(A) and 40 CFR 52.232(a)(13)(i)(A)]

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