Bay Area Air Quality Management District

939 Ellis Street
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Proposed Amendments to Regulation 1 (General Provisions and Definitions), Regulation 2 (Permits) Rule 1 (General Requirements), Regulation 2 (Permits) Rule 2 (New Source Review)

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Summary

The District is proposing to amend its permit regulations. These amendments fall into two categories:

No net increase provisions

A change in state law requires the District to revise the thresholds for provision of offsets and participation in the small facility bank program. Currently, emission increases at facilities larger than 15 tons/year of emissions must be offset; for facilities between 15 and 50 TPY, the offsets are provided from the Small Facility Bank at no cost to the applicant.

The proposed revisions change the thresholds. Offsets will be required for emission increases at facilities larger than 10 TPY; a facility will need to be between 10 and 35 TPY to draw from the Small Facility Bank. Facilities larger than 35 TPY will have to provide their own offsets.

Miscellaneous Revisions

The District periodically revises its permitting rules to address issues that have arisen in the course of routine activities. Minor changes to the permit exemption list reflect the experience of permitting staff and, for the most part, either clarify ambiguous language, or adjust the permit requirements to include or exclude sources in a reasonable manner.

- Exclusion of certain types of smoke generators from District regulations.
- Requiring all crematories to obtain a permit, regardless of age or size.
- Extend authorities to construct beyond four years for long-range construction projects.
- Require operators to countersign permits. This will ensure that operators have seen any attached permit conditions
- Require operators to certify compliance when notifying the District of startup. This will allow the District to take enforcement action against operators who construct sources that does not comply with the authority to construct.
- Clarify requirements for protecting trade secret information.

Proposed Revisions

The proposed revisions are presented below. Revisions are grouped into two broad categories: No Net Increase Revisions and Miscellaneous Revisions. The proposed changes are presented in underline/strikeout format.

No Net Increase Program revisions

The District's No Net Increase Program ensures that all new sources are offset by reductions at the same or other facilities. Effective January 1, 2005, state law requires the District to lower the emission threshold for facilities included in the program from 15 TPY to 10 TPY.

> California Code of Regulations §70600 (b)(2): San Francisco Bay Area Air Basin shall:
>
> …
>
> (C) require the implementation, by December 31, 2004, of a stationary source permitting program designed to achieve no net increase in the emissions of ozone precursors from new or modified stationary sources that emit or have the potential to emit 10 tons or greater per year of an ozone precursor.

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.

The District must change its rules to require offsets for projects at 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 also be changed to require the larger facilities to provide their own offsets in the future. 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. If the applicant had known that offsets were required, a lower throughput would have been requested. The 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. The revisions allow a facility in this situation to reimburse the bank by accepting a lower throughput limit than contained in the original

permit, provided that actual throughput has never exceeded the new limit. The "unused" portion of the offsets goes back to the SFB. The requirement to reimburse the bank will be triggered the next time the facility applies for a permit for a new or modified source.

2-2-302 **Offset Requirements, Precursor Organic Compounds and Nitrogen Oxides, NSR:** Except as provided by Sections 2-2-313 or 421, before the APCO may issue an authority to construct or a permit to operate for a new or modified source at a facility which emits ~~50~~ 35 tons per year or more or will be permitted to emit ~~50~~ 35 tons per year or more, on a pollutant specific basis, of precursor organic compounds or nitrogen oxides, federally enforceable emission offsets shall be provided, for the emission from the new or modified source and any pre-existing cumulative increase, minus any onsite contemporaneous emission reduction credits determined in accordance with Section 2-2-605, at a 1.15 to 1.0 ratio; additionally, the applicant must reimburse the District Small Facility Banking Account for any unreimbursed offsets previously provided by the District, at a 1.0 to 1.0 ratio. Before the APCO may issue an authority to construct or a permit to operate for a new or modified source at a facility which emits or will be permitted to emit more than ~~15~~ 10 tons per year but less than ~~50~~ 35 tons per year, on a pollutant specific basis, of precursor organic compounds or nitrogen oxides, emission offsets shall be provided, by the District (or by the applicant, if the Small Facility Banking account has been exhausted) at a 1.0 to 1.0 ratio for the emission from the new or modified source and any pre-existing cumulative increase, minus any onsite contemporaneous emission reduction credits determined in accordance with Section 2-2-605, from the Small Facility Banking account in the District's Emissions Bank in accordance with the provisions of Regulations 2-4-414. The APCO shall determine the total facility emissions, on a pollutant specific basis, by adding the emissions from the proposed new or modified source(s) to the most recent District Emissions Inventory, adjusted for any errors and adjusted upward for any permitted levels of emissions not currently being emitted.

302.1 Deleted May 17, 2000

302.2 Emission reduction credits of precursor organic compounds may be used to offset increased emissions of nitrogen oxides at the offset ratio specified above in Section 2-2-302, provided that the PSD requirements of Section 2-2-304, if applicable, are met.

302.3 Until January 1, 2008, reimbursement of the small facility bank may be provided by adjusting the cumulative increase calculated for the application for which small facility bank credits were originally provided. An adjustment may be made under the following circumstances: the applicant accepts an enforceable permit condition limiting emissions to a lower level than approved in the permit in question, and the applicant can document that the new level has never been exceeded during the life of the permit.

(Amended 11/20/91; 6/15/94; 10/7/98; 5/17/00)

Miscellaneous Revisions

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

Certain beneficial activities create smoke. In many instances, the smoke must exceed District limits on opacity in order to accomplish the intended purpose. In recognition of these facts, the District currently uses enforcement discretion to allow these activities to occur. Permits are not issued for these activities because they are of brief duration, and could not receive a permit anyway because they would violate applicable regulations.

The proposed exclusion will allow listed organizations to generate smoke when engaged in the listed activities without first obtaining a permit from the District. The exclusion from District regulations means that these activities are not subject to District rules for opacity and particulates, nor do they require a District permit.

1-110 **Exclusions:** District Regulations shall not apply to the following:

…

110.10 Emissions arising from smoke generators, pyrotechnics, or weapons used by law enforcement, security, military, fire fighting, or entertainment organizations.
(Renumbered 3/17/82; Amended 12/19/90; 11/3/93; 5/17/00; 5/2/01; <date of adoption>)

Clarify the general exemption (2-1-103)

Staff have determined that there is some ambiguity in the application of 2-1-103. This section provides an exemption from permits for small sources (<10 lb/day) that don't have a category-specific rule that applies. The confusion concerns small sources that are members of a specific source category that has an applicable rule, but are exempted from the regulation. For example, storage tanks containing low-volatility organic compounds are exempt from Regulation 8-5. Does such a tank require a permit, if emissions are below 10 lb/day?

The general rule is that all sources of air pollutants require permits. The District exemption list in Regulation 2-1-113 through 2-1-128 lists sources that have been explicitly considered by District staff, and determined to have emissions so insignificant as to be unsuitable for permitting. The 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. Because possession of a District permit is an important tool for ensuring compliance with applicable regulations, 2-1-103 does not apply to a source that belongs to a source category regulated by the District. A source category is subject to a District regulation if the category is explicitly listed in the Description section (Section X-X-101) of the regulation.

The proposed amendment clarifies that the general exemption is not available to a source in a source category for which appropriate permit exemption levels have been explicitly determined. In the example given above, a tank containing low-volatility liquids would require a permit, even if not subject to Regulation 8-5, unless it qualified for exemption under one of the tank exemptions in 2-1-123. Permits maybe necessary because the District needs information for future rulemaking.

2-1-103 **Exemption, Source not Subject to any District Rule:** Any source that is not already exempt from the requirements of Section 2-1-301 and 302 as set forth in Sections 2-1-105 to 2-1-128, is exempt from Section 2-1-301 and 302 if the source meets all of the following criteria:

103.1 The source is not in a source category subject to any of the provisions of Regulation 6[(1)], Regulation 8[(2)] excluding Rules 1 through 4, Regulations 9 through 12; and

103.2 The source is not subject to any of the provisions of Sections 2-1-316 through 319; and

103.3 Actual emissions of precursor organic compounds (POC), non-precursor organic compounds (NPOC), nitrogen oxides (NOx), sulfur dioxide (SO_2), PM_{10} and carbon monoxide (CO) from the source are each less than 10 pounds per highest day. A source

also satisfies this criterion if actual emissions of each pollutant are greater than 10 lb/highest day, but total emissions are less than 150 pounds per year, per pollutant.
Note 1: Typically, any source may be subject to Regulation 6, Particulate Matter and Visible Emissions. For the purposes of this section, Regulation 6 applicability shall be limited to the following types of sources that emit PM_{10}: combustion source; material handling/processing; sand, gravel or rock processing; cement, concrete and asphaltic concrete production; tub grinder; or similar PM_{10}-emitting source, as deemed by the APCO.
Note 2: If an exemption in a Regulation 8 Rule indicates that the source is subject to Regulation 8, Rules 1 through 4, then the source must comply with all applicable provisions of Regulation 8, Rules 1 through 4, to qualify for this exemption.

103.4 The source is not an ozone generator (a piece of equipment designed to generate ozone) emitting 1 lb/day or more of ozone.

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 revision 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.

118.11 Spray gun cleaning performed in compliance with Regulation 8~~.~~, provided the cleaning is associated with a source, such as a spray booth, subject to the requirements of Section 2-1-301 and 302.

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

Prior to May 17, 2000, low-usage cold cleaners were exempt from District permits. In an attempt to provide an incentive to operators of cold cleaners to voluntarily convert to aqueous cleaners, the District revised the exemption to require permits for all facilities with more than one cold cleaner, regardless of usage. Because operators argued that some applications required organic solvents for proper cleaning, Staff agreed to retain the exemption for one low-usage cleaner. Thus a facility that has many cold cleaners does not currently require District permits, as long as only one of them uses non-aqueous cleaners, and that usage is less than 20 gallons per year.

The proposed revision would require any facility operating a non-aqueous cold cleaner to obtain a permit. Regulation 8-16 still allows these facilities to operate the cleaner. The structure of this exemption, however, has caused confusion among the public and District staff.

All of these cold cleaners are subject to Regulation 8-16. In order for the District to properly inspect these sources, they should be subject to District permit requirements.

118.7 ~~At any facility, not more than one solvent cold cleaner that is used for surface preparation, cleaning, or stripping with solvents or solutions that do not meet the VOC limit of 50 grams per liter (0.42 lb/gal) and from which solvent loss does not exceed 20 gallons per year. This exemption does not apply to solvent wipe cleaning operations or~~

~~solvent cleaning stations at semiconductor manufacturing fabrication areas.~~ (Deleted <date of adoption>)

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 revision 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.

2-1-202 **Complete Application:** An application which contains the following:

202.1 Sufficient information for the APCO to determine the emissions from such new or modified source and to quantify emissions from the proposed source(s) of offsets or credits.

202.2 Any information requested by the APCO in order to determine the air quality impact of the application.

202.3 All applicable fees, as described in Regulation 3.

202.4 The information required by Regulation 2-2-414 and 417 provided the application is subject to the PSD requirements of Regulations 2-2-304, 305, 306, or 308.

202.5 CEQA-related information which satisfies the requirements of Section 2-1-426.

202.6 A certification, stating whether the source triggers the requirements of Section 2-1-412.

202.7 A specific designation of ~~all~~ any information, contained in the application, which is asserted to be a trade secret pursuant to Section 6254.7 of the Government Code and not a public record. ~~Such designated information shall be provided in such a manner whereby it may be easily separated from information which is not asserted to be a trade secret.~~ The applicant shall submit two copies of each page containing trade secret information. One copy shall be clearly labeled "Trade Secret," and each trade secret item shall be clearly marked. The second copy shall be clearly labeled "Public Copy," and each trade secret item shall be redacted. The applicant shall include, for each ~~separate portion of the application~~ item which is asserted to be a trade secret, a statement signed by a responsible representative of the applicant identifying that portion of Government Code Section 6254.7 (d) upon which the assertion is based and a brief statement setting forth the basis for this assertion.

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

Crematoria are sources of toxic air contaminants. 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.

2-1-401 **Persons Affected:** Any person who has been granted or requires an authority to construct shall secure a permit to operate. Any person who is not required to obtain an authority to construct and who is required to obtain a permit to operate shall secure a permit to operate. In addition, the following shall apply for a permit to operate for any source which is not subject to an exemption per Sections 2-1-103, 105, or 113 through 2-1-129:

…

401.8 On or before July 1, 2005, any person who operates a crematorium for the cremation of human remains.

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

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 that the project would meet current requirements. The APCO reviews the project, as originally proposed, and determines whether or not the source complies with current BACT requirements, District regulations, and offset requirements. If it does not, the Authority to Construct is not renewed.

Four years is enough construction time for the vast majority of permits. If a project is not completed within four years, it is usually because it was delayed or deferred. It is reasonable to treat such a project as a new project, requiring a full compliance review of the proposal in the form of a new permit application, after such a delay.

Some projects, however, are expected to take more than four years to build. Under current rules, the developer of such a project faces two alternatives: delay applying for a District permit for those components that will not be completed within four years, or reapply for a new permit at a later date. The first choice results in piecemealing of the project, and results in uncertainty concerning project design. The second choice results in a duplicate permitting process, with resulting administrative inefficiency and expense.

The proposed rule change would allow the authority to construct for certain projects to be renewed for up to 10 years. Prior to renewing an AC, the APCO would still determine that the project meets current requirements. If requirements have changed such that the project no longer would comply, the AC would not be renewed.

In order to qualify for a construction period longer than four years, the project would have to have been the subject of an Environmental Impact Report (EIR). The long construction period must have been explicitly included in the project description in the EIR.

2-1-407 **Permit Expiration:** An authority to construct shall expire two years after the date of issuance, unless substantial use of the authority has begun or the authority to construct has been renewed. An authority to construct that has not expired after two years, due to substantial use or renewal, shall expire four years after the date of issuance, except as otherwise provided in this section. An authority to construct that was issued pursuant to an Environmental Impact Report that explicitly covered a construction period longer than four years, but less than 10 years, may be renewed throughout the construction period covered by the EIR. Any other ~~. However, an~~ authority to construct may be renewed one time for an additional period that does not extend past four years from the date of initial issuance of the authority to construct. An authority to construct may be renewed only upon receipt of a written request from the applicant and written approval thereof by the APCO prior to the expiration of the initial authority to construct. Renewal

is ~~two years,~~ subject to meeting the current BACT and offset requirements of Regulation 2-2-301, 302 and 303.~~,~~ ~~upon receipt of a written request from the applicant and written approval thereof by the APCO prior to the expiration of the initial authority to construct. An authority to construct that has not expired after two years, due to substantial use or renewal, shall expire after four years.~~ (Amended 7/17/91; Amended 10/7/98; date of adoption>)

Countersignature for Permits (2-1-411)

Occasionally, District staff encounter operators who are unfamiliar with the conditions that apply to operating permits. Some of these operators have become belligerent when the District's inspector issues a citation for non-compliance, arguing that they 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 modified rule specifies that a permit is not valid until 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.

2-1-411 **Permit to Operate, Final Action:** The APCO shall take final action to approve, approve with conditions, or disapprove a permit to operate a facility subject to this rule within 90 days after the initial date of the start-up period of the new or modified source. This time period may be extended upon the written request of the applicant stating the reasons why further start-up time is needed. In no case shall the APCO allow the start-up period to be greater than 180 days. All conditions, specific or implied, of the authority to construct are in effect during the entire start-up period.

411.1 Notwithstanding the above, final action taken on permits issued pursuant to Rule 6 of this Regulation shall be in accordance with the provisions of Section 2-6-410.

411.2 A permit approved under this section is not valid until signed by the permit holder or by a person authorized to sign on behalf of the permit holder. Signature shall indicate acceptance of and acquiescence to all permit conditions contained in the permit.

(Adopted 10/19/83; Amended 7/17/91; 11/3/93; 10/7/98; <date of adoption>)

Certification of Compliance on notification of startup (2-1-432)

District staff are not always able to inspect equipment after it is constructed. Rarely, this can result in a permit 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, however, much of its ability to enforce construction requirements has been waived.

The proposed certification requirement obligates an operator to certify, under penalty of perjury, substantial compliance with the construction requirements contained in the Authority to Construct. If the District issues a permit in reliance on the certification, it may subsequently use penalties for perjury as an incentive for corrective action.

2-1-432 Notification of Startup: The owner/operator of any source that has been granted an Authority to Construct shall notify the APCO no less than 7 days prior to initial operation of the source. The notification shall be in writing. The notification shall include a statement, made under penalty of perjury, that the source has been constructed substantially in conformance with the Authority to Construct., and describing any non-conforming aspects of the construction.

Determination of Complete Application (2-1-433, 2-2-402)

Regulation 2-2-402 requires the APCO to determine whether a permit application is complete within three weeks of receipt.

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. No change to the text is proposed.

~~**2-2-402**~~ **2-1-433**

Determination of Complete Application: Except for an application which is subject to the publication and public comment requirements of Section 2-2-405, the APCO shall determine whether an application for an authority to construct is complete not later than 15 working days following receipt of the application, or after a longer time period agreed upon by both the applicant and the APCO. If the APCO 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 15 working day period to determine completeness shall begin. For an application which is subject to the publication and public comment requirements of Section 2-2-405, the completeness review period(s) shall be 30 days. The application shall be deemed complete on the date of receipt of all information required for completeness. Upon determination that the application is complete, the APCO shall notify the applicant in writing. If applicable, such written notification shall include the District's determination that its evaluation of the application will be covered by the specific procedures, fixed standards and objective measurements set forth in the District's Permit Handbook and that the District's evaluation of that permit application will be classified as ministerial and will accordingly be exempt from CEQA review. Thereafter only information regarding offsets, or information to clarify, correct or otherwise supplement the information submitted in the application may be requested. (Amended 6/7/95; 10/7/98)