

**SACRAMENTO METROPOLITAN
AIR QUALITY MANAGEMENT DISTRICT**

For Agenda of **March 23, 2006**

To: Board of Directors
Sacramento Metropolitan Air Quality Management District

From: Larry Greene, Air Pollution Control Officer
Sacramento Metropolitan Air Quality Management District

Subject: Adoption of Rule 213 – Federal Major Modifications

Recommendations

1. Determine that the adoption of Rule 213 is exempt from the California Environmental Quality Act (CEQA), and
 2. Approve the attached resolution adopting new Rule 213.
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Executive Summary

Rule 213, FEDERAL MAJOR MODIFICATIONS, will be used in conjunction with Rule 202, NEW SOURCE REVIEW to address the New Source Review (NSR) reform requirements for federal major modifications. It establishes definitions for Federal Major Modifications and Plantwide Applicability Limits and then exempts non-Federal Major Modifications from the federal-only requirement of an alternative siting analysis in Rule 202.

Attachments

The table below identifies the attachments to this memo:

Item	Attachment	Page Number
Board Resolution for Rule 213 – Federal Major Modifications	A	5
Rule 213 – Federal Major Modifications	B	8
Staff Report for Rule 213	C	12
Evidence of Public Notice for Rule 213	D	19

Background

In December 2002, the United States Environmental Protection Agency (EPA) adopted amendments to the Clean Air Act modifying New Source Review requirements for modifications of major sources (NSR reform). These federal NSR reforms were designed by EPA to allow major sources of air contaminants greater flexibility to modify existing

facilities without triggering NSR requirements, such as Best Available Control Technology (BACT) and offsets. EPA's premise was that some facilities delayed modernizing equipment to avoid triggering NSR requirements, that lifting the requirements would encourage facilities to upgrade, and that the upgrades would yield a net air quality benefit.

The California Air Resources Board (CARB) and many of the air districts, including ours, disagreed with EPA's conclusions. These agencies took the position that: (i) NSR requirements are necessary to improve air quality in California; and (ii) there is no evidence that California facilities have delayed upgrades to avoid NSR requirements.

California responded to EPA NSR reform on two fronts. First, the state legislature passed California Senate Bill 288 – Protect California Air Act of 2003 (SB 288), which was sponsored by State Senator Byron Sher. The bill prohibits local districts from amending or revising their NSR rules or regulations to be less stringent than certain requirements in those rules and regulations that existed on December 30, 2002. Second, the state took part in a lawsuit filed against EPA to try to prevent the implementation of the reforms. Your Board voted to participate in this lawsuit in February 2003. On June 24, 2005 the Court issued a decision vacating some provisions of the NSR reform, remanding some provisions back to EPA for further consideration, and upholding other provisions.

Under Federal regulations, the District was mandated to amend its NSR program and re-establish equivalency with the federal requirements and implement such a program by January 2, 2006. Amendments to the District's NSR program were not completed by the January 2, 2006 deadline. EPA may issue a SIP call, which will start a sanction clock to comply with the mandate. If the District does not comply with the mandate by the end of the sanction clock, then two federal sanctions could result: (i) increase credit requirements for large sources; and (ii) withholding transportation funding.

Staff is proposing the adoption of new Rule 213, FEDERAL MAJOR MODIFICATIONS, to address both NSR Reform and SB288.

Summary of Changes

Staff throughout the State has been working closely with the California Air Pollution Control Officers' Association (CAPCOA), CARB, and EPA to meet the two conflicting requirements of NSR Reform and SB288. The methods developed rely on the Clean Air Act authorization for state and local agencies to adopt rules that are more stringent than required by the Clean Air Act.

Consistent with the method developed, staff is proposing to adopt new rule, Rule 213, which will be similar to a rule adopted by the South Coast Air Quality Management District (SCAQMD) on December 2, 2005. This new rule defines a "federal major modification" and exempts those modifications from the alternative siting analysis required by Rule 202, NEW SOURCE REVIEW. Federal major modifications are those sources that emit more than

specified levels (e.g. 50 tons per year of nitrogen oxides) and have increased their emissions more than the significance levels set by the Clean Air Act. An alternative siting analysis is an analysis of alternative sites, sizes, production processes and environmental control techniques for the proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification. Non-major stationary sources are not required to do an alternative siting analysis. EPA staff, at both Region IX and EPA Headquarters, has indicated preliminary approval of SCAQMD's new rule pending a public comment rulemaking process.

Business Cost Impacts

The new rule does not impose new costs on businesses. It would result in business cost savings for permit modifications exempt from an alternative siting analysis under Rule 202.

District Impacts

The proposed rule will not result in any additional need for staff resources.

Emission Impacts

Rule 213 is an administrative rule and is not expected to impact emissions.

Environmental Review and Compliance

The approval of the proposed action is exempt from CEQA. The proposed action consists of adopting approved federal requirements within the constraints of state law. The District has not exercised discretion by modifying federal requirements, therefore, this action is considered to be ministerial in nature and thus is statutorily exempt from CEQA, pursuant to state CEQA Guidelines Section 15268 – Ministerial Projects, as defined by CEQA Guidelines Section 15369.

Public Outreach/Public Comments

A notice for the public hearing was published in the Sacramento Bee on February 21, 2006. The notice was also mailed to all permit holders, except perc dry cleaners and retail gas stations, and all persons who have requested rulemaking notices. Staff did not notify perc dry cleaners because the NSR rule does not apply to them and retail gas stations because they are not a large enough source to be considered a major stationary source and would already be exempt from needing an alternative siting analysis.

No public comments have been received by March 16, 2006.

Board Memo
Rule 213
March 23, 2006
Page 4

Conclusion

Proposed Rule 213 is necessary to comply with EPA's NSR Reform requirements. Therefore, staff recommends that the Board approve Rules 213 as proposed.

Respectfully Submitted

Larry Greene; Air Pollution Control Officer
Sacramento Metropolitan
Air Quality Management District

Attachments

ATTACHMENT A

Board Resolution for Rule 213

ATTACHMENT B

Rule 213 – FEDERAL MAJOR MODIFICATIONS

ATTACHMENT C

**Staff Report
Rule 213 – FEDERAL MAJOR MODIFICATIONS**

ATTACHMENT D

**Evidence of Public Notice
Rule 213- FEDERAL MAJOR MODIFICATIONS**