Background of Proposed Amended New Source Review (NSR) and Title V Rules

The rules of the San Diego County Air Pollution Control District (District), including the requirement to have permits to operate, apply to factories and other stationary sources of air pollution in the San Diego region. The purpose of these rules is to protect air quality and public health as new facilities are built and existing facilities expand.

A permit outlines the actions a facility must take to control and reduce its air pollutant emissions to protect public health. Permits must comply with federal, State and local requirements. Rules 20.1, 20.3 and 20.4 regulate emissions of air contaminants from new and modified facilities requiring permits from the District, and Rule 1401 governs the District's Title V permitting program which requires each existing "major stationary source" of regulated air pollutants to obtain a federally enforceable operating permit from the District.

Rule 20.1 Modification Requested by EPA

Existing New Source Review (NSR) Rule 20.1 was amended by the Air Pollution Control Board on June 26, 2019. These rules were developed in close collaboration with the U.S. Environmental Protection Agency (EPA) and the California Air Resources Board (CARB) to ensure compliance with applicable federal and State requirements. Following the Board's approval in 2019, the EPA granted partial approval of Rule 20.1. EPA requested the removal of one sentence in the rule's applicability section which could limit the District's ability to immediately enforce the region's upcoming reclassification from a Serious to Severe ozone nonattainment area on permit applications received, but not yet acted upon.

The San Diego region was officially reclassified by EPA to a Severe ozone nonattainment area, effective July 2, 2021. The reclassification to Severe means that a major stationary source is now defined as a source emitting 25 tons or more per year of either oxides of nitrogen (NOx) or volatile organic compounds (VOC), down from the 50 tons or more per year NOx or VOC threshold for a Serious nonattainment area designation. New and modified major stationary sources are subject to more stringent levels of control than non-major stationary sources.

Rule 20.3 and Rule 20.4 Inter-Pollutant Offset Trading

Previously, existing federal law allowed certain facilities to offset their increased emissions of one air pollutant by reducing the emissions of another air pollutant, at prescribed ratios, provided both pollutants contribute to the same air quality nonattainment problem. For example, volatile organic compounds (VOC) and oxides of nitrogen (NOx) emissions both contribute to the formation of ozone, therefore these two ozone-causing air pollutants could be "traded" during the permitting process to satisfy offset requirements. This is known as "inter-pollutant offset trading".

On January 29, 2021, the U.S. Court of Appeals for the D.C. Circuit ruled that the Clean Air Act does not allow inter-pollutant offset trading for ozone precursors and struck down the provisions allowing for such trading in the EPA's nonattainment NSR regulations (*EPA v. Sierra Club,* 985 F.3d 1055 (D.C. Cir. 2021). As a result, the District can no longer allow inter-pollutant offset trading, and has removed any reference to inter-pollutant offset trading in NSR Rules 20.3 and 20.4.

Rule 1401 Applicability Thresholds
The District's Title V permit program is mandated by Title V of the federal Clean Air Act. It requires each existing "major stationary source" of regulated air pollutants to obtain a federally enforceable operating permit from the District that addresses all applicable requirements under the Clean Air Act including monitoring, record keeping, and reporting requirements.

Under federal law, the emission thresholds for the applicability of certain Title V permitting requirements on new and expanding facilities vary depending on the region's degree or "classification" of ozone nonattainment, i.e., Marginal, Moderate, Serious, Severe or Extreme. Existing Title V Rule 1401 does not list the emission applicability thresholds for possible federal ozone nonattainment classifications. The proposed rule amendments revise the definition of "Major Stationary Source" in Section (c) Definitions to reference and align with the "Federal Major Stationary Source" definition in existing NSR Rule 20.1, Section (c) Definitions. This "Federal Major Stationary Source" definition is consistent with federal law and specifies the emission rate thresholds that define a "major stationary source" of volatile organic compounds and/or oxides of nitrogen based on the region's degree or "classification" of ozone nonattainment.

As a result of the region's July 2, 2021 reclassification to Severe nonattainment, facilities now considered a "major stationary source" (i.e., emitting 25 tons of more per year of NOx or VOC) have one year from the date of reclassification, to either submit a Title V application or to revise their permits to limit their emissions to below the major source threshold. There are currently 27 facilities that have a Title V permit. The District anticipates that approximately 40 facilities will be impacted by this reclassification.

If adopted, these rule amendments will provide additional clarity and certainty about which federal Title V permitting requirements apply to existing stationary sources based on their emission rates and the applicable ozone nonattainment classification of the region.

Rule Evaluations and Comparisons
State law prohibits relaxing or weakening New Source Review rules compared to the rules that were in effect on December 30, 2002. District staff evaluated the proposed rule amendments, in coordination with CARB, and determined they do not result in a relaxation of the New Source Review rules in effect on those dates, therefore the amendments are permissible. Staff's evaluation pertaining to the State law (California Health and Safety Code §§42500 et seq., "Senate Bill (SB) 288") is documented in Attachment C, fulfilling CARB's request to include this information in today's proceedings.

Additionally, State law requires the District to identify all federal, State and District requirements that apply to the same equipment or sources as do the proposed amended rules, except in specified circumstances. This analysis is provided in Attachment D.

Socioeconomic Impact Assessment
State law requires the District to perform an assessment of the socioeconomic impacts when adopting, amending, or repealing a rule that will significantly affect air quality or emission limitations. A review conducted by District staff found that proposed amended Rules 20.1, 20.3,

20.4 (New Source Review) and Rule 1401 (Title V General Provisions) will not significantly affect air quality or emission limitations. The proposed amendments implement existing federal requirements. Accordingly, a socioeconomic impact assessment is not required.

Submittal to EPA

If adopted, the proposed amended rules will be submitted through CARB to the EPA for approval and inclusion, as appropriate, in the San Diego County portion of the State Implementation Plan for attaining and maintaining air quality standards. The submittal to the EPA is necessary to demonstrate compliance with more stringent federal requirements to implement "reasonably available control technology" on stationary gas turbine engines.