

**Analysis of Proposed Amended New Source Review Rules for
Compliance with California Health & Safety Code §§ 42500 et seq. (Senate Bill 288)**

The California Health and Safety Code Section 42500 et seq. (Senate Bill (SB) 288) prohibits California air districts from changing their New Source Review (NSR) program requirements in ways that would make them less stringent than the rules that existed on December 30, 2002. For the San Diego County Air Pollution Control District's (District) NSR Rules 20.1, 20.3 and 20.4, this would mean the version of the rules adopted November 4, 1998, effective December 17, 1998. For the District's Title V Rule 1401, no version existed on December 30, 2002.

The District is proposing amendments to its NSR rules to address a partial approval of Rule 20.1 by the U.S. Environmental Protection Agency (EPA), and to remove the provisions allowing inter-pollutant offsets due to a recent court ruling prohibiting inter-pollutant offset trading. Inter-pollutant offset trading allows 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. The District is also proposing amendments to its Title V rule to add a reference to the federally mandated ozone non-attainment classification applicability thresholds to Rule 1401 which was necessitated by the redesignation of San Diego to severe non-attainment for ozone to be consistent with federal requirements.

These proposed amendments will not result in a less stringent new source review program, and will not make the 1998 District NSR rule requirements less stringent as explained below:

- Removing the sentence from the Rule 20.1 applicability section allows the District to apply the Severe ozone nonattainment designation at the time an Authority to Construct is issued, ensuring that the most current requirements are applied to the application.
- Removing the provision allowing for inter-pollutant offsets from the NSR rules is required due to the recent ruling by the U.S. Court of Appeals, D.C. Circuit on January 29, 2021, *EPA v. Sierra Club*, 985 F.3d. 1055 (D.C. Cir. 2021).
- Referencing the federal ozone nonattainment classification applicability thresholds and requirements for federal major stationary sources clarifies existing requirements under federal regulations.

It can thus be seen that the proposed amended NSR Rules 20.1, 20.3 and 20.4 are not less stringent than the prior 1998 NSR Rules. The proposed amended Title V Rule 1401 is also not less stringent since no version of the rule existed on December 30, 2002.

SB 288 also prescribes four specific NSR rule elements that cannot be revised if the result would be to exempt, relax, or reduce the obligations of a stationary source. The four elements are:

- The sources to which the NSR rules apply.
- The definitions of "modification," "major modification," "routine maintenance," and "repair and replacement."
- The calculation methodology, thresholds or other procedures of new source review.
- The definitions and requirements of NSR regulations.

Health and Safety Code Section 42504(b) precludes an air district from revising the above four elements of its NSR rules if doing so would exempt, relax, or reduce the obligations of a source with regard to the following requirements:

- (1) Any requirement to get a permit prior to construction.
- (2) Any requirement to apply Best Available Control Technology (BACT) or Lowest Achievable Emission Rates (LAER).
- (3) Any requirement to perform an air quality impact analysis.
- (4) Any requirement for monitoring, recordkeeping, and reporting if these would be less representative, enforceable, or publicly accessible.
- (5) Any requirement for regulating any air pollutant covered by the NSR rules.
- (6) Any requirement for public participation prior to permit issuance.

Health and Safety Code Section 42504(c) allows amendments to the above requirements if they make the rules more stringent.

The proposed amendments to the District's NSR Rules 20.1, 20.3 and 20.4 will not change any requirements above.