

**RULE 210.4 Prevention of Significant Deterioration** – Adopted 9/24/84, Amended 11/18/85, 9/2/99, Amended 1/12/12 (Effective 2/8/13)

**I. Purpose**

The purpose of this Rule is to include the federal Prevention of Significant Deterioration (PSD) rule requirements into the Eastern Kern Air Pollution Control District's (District) Rules and Regulations by incorporating the federal requirements by reference. The PSD program is a construction permitting program for new major source facilities and major modifications to existing major source facilities located in areas classified as attainment or in areas that are unclassifiable for any criteria air pollutant.

**II. Definitions**

The terms used in this rule are defined in Title 40 of the Code of Federal Regulations (hereinafter, CFR) Part 52.21(b) in effect on (date of adoption) unless a revised definition is provided below:

- A. Actual Emissions: The definition of "Actual Emissions" contained in 40 CFR 52.21(b)(21) is revised to read as set forth below whenever reference is made to that term or 40 CFR 52.21(b)(21):
1. Actual emissions is the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with Sections II.A.2 through II.A.4 below.
  2. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The APCO shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.
  3. The APCO may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.
  4. For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.
- B. Administrator: The term "Administrator" means:
1. "Federal Administrator" in 40 CFR 52.21(b)(17), (b)(37)(i), (b)(43), (b)(48)(ii)(c), (b)(50)(i), (b)(51), (l)(2) and (p)(2); and
  2. "APCO" elsewhere.

- C. APCO: Air Pollution Control Officer of the Eastern Kern Air Pollution Control District.
- D. Baseline Actual Emissions: The definition of “Baseline Actual Emissions” contained in 40 CFR 52.21(b)(48) is revised to read as set forth below whenever reference is made to that term or 40 CFR 52.21(b)(48):
1. Baseline Actual Emissions means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with Sections II.E.2 and II.E.3 below.
  2. In general, Baseline Actual Emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The Administrator shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Baseline Actual Emissions shall be calculated using the unit’s actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.
  3. For any emissions unit which has not begun normal operations on the particular date, Baseline Actual Emissions shall equal the potential to emit of the unit on that date.
- E. Major Modification: The definition of “Major Modification” contained in 40 CFR 52.21(b)(2) is revised to read as set forth below whenever reference is made to that term or 40 CFR 52.21(b)(2):
1. Major Modification means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.
  2. Any net emissions increase that is significant for VOCs or NO<sub>x</sub> shall be considered significant for ozone.
  3. A physical change or change in the method of operation shall not include:
    - a. Routine maintenance, repair and replacement;
    - b. Use of an alternative fuel or raw material by reason of an order under sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plant pursuant to the Federal Power Act;
    - c. Use of an alternative fuel by reason of an order or rule under section 125 of the Act;

- d. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
- e. Use of an alternative fuel or raw material by a stationary source which:
  - i. The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR subpart I or 40 CFR 51.166; or
  - ii. The source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;
- f. An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR subpart I or 40 CFR 51.166;
- g. Any change in ownership at a stationary source;
- h. Fugitive emissions shall not be included in determining for any of the purposes of this Section, whether a physical change in or change in the method of operation of a major stationary source is a major modification, unless the source belongs to one of the source categories listed in paragraph 40 CFR Part 52.21(b)(1)(iii).

F. Net Emissions Increase: The definition of “Net Emissions Increase” contained in 40 CFR 52.21(b)(3) is revised to read as set forth below whenever reference is made to that term or 40 CFR 52.21(b)(3):

- 1. Net Emissions Increase means the amount by which the sum of the following exceeds zero:
  - a. Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and
  - b. Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.
- 2. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:
  - a. The date five years before construction on the particular change commences; and

- b. The date that the increase from the particular change occurs.
  3. An increase or decrease in actual emissions is creditable only if the Administrator has not relied on it in issuing a permit for the source under this section, which permit is in effect when the increase in actual emissions from the particular change occurs.
  4. An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxide, which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM<sub>10</sub> emissions can be used to evaluate the net emissions increase for PM<sub>10</sub>.
  5. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.
  6. A decrease in actual emissions is creditable only to the extent that:
    - a. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
    - b. It is federally enforceable at and after the time that actual construction on the particular change begins; and
    - c. It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.
  7. [Reserved]
  8. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.
- G. Paragraph (q): The phrase “Paragraph (q) of this section” in 40 CFR 52.21(p)(1) shall read as follows: within ten calendar days following a preliminary decision pursuant to Section IV, Requirements of this rule, the APCO shall publish in at least one newspaper of general circulation in the District a notice stating the preliminary decision of the APCO, noting how pertinent information can be obtained, and inviting written public comment for a 30-day period following the date of publication. The notice shall include the time and place of any hearing that may be held, including a statement of procedure to request a hearing (unless a hearing has already been scheduled). The APCO shall give notice of any public hearing at least 30 days in advance of the hearing.

### **III. Applicability**

The provisions of this rule shall apply to any source and the owner or operator of any source subject to any requirement under 40 CFR Part 52.21 as incorporated into this rule. This rule shall become effective upon the effective date of the federal Environmental Protection Agency's (EPA's) final approval of Rule 210.4.

Whenever any source is subject to more than one rule, regulation, provision, or requirement relating to the control of any regulated NSR pollutant, in cases of conflict or duplication, the most stringent rule, regulation, provision, or requirement shall apply. The applicability procedures contained in 40 CFR 52.21(a)(2) are replaced with the following language:

- A. No stationary source or modification to which the requirements of subsections (j) through (r) of 40 CFR Part 52.21 apply shall begin actual construction without a District permit stating that the stationary source or modification would meet those requirements.
- B. The requirements of subsections (j) through (r) of 40 CFR Part 52.21 shall apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under the Act that it would emit, except as this section otherwise provides.
- C. The requirements of subsections (j) through (r) of 40 CFR Part 52.21 apply only to any major stationary source or major modification that would be constructed in an area designated as attainment or unclassifiable under U.S. Code section 7407(d) or (e).
- D. In determining whether a stationary source or modification is major, fugitive emissions from an emissions unit are included only if the emissions unit is part of one of the source categories listed in 40 CFR 52.21(b)(1)(iii) or if the emission unit is located at a stationary source that belongs to one of the source categories listed in 40 CFR 52.21(b)(1)(iii). Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in 40 CFR 52.21(b)(1)(iii) and that are not, by themselves, part of a listed source category.

### **IV. Incorporation by Reference**

- A. Except as provided in Section V.B, below, the provisions of 40 CFR Part 52.21, in effect on (date of adoption), are incorporated herein by reference and made part of the Rules and Regulations of the District. All references to 40 CFR 52.21 in this Rule refer to the CFR in effect on (date of adoption).
- B. General Exclusion: The following subsections of 40 CFR Part 52.21 , in effect (date of adoption), as well as all references to these subsections or the terms defined in these subsections, are excluded in their entirety: (a)(1), (b)(55-58), (f), (g), (i)(1)((i-v) and (ix-xi)), (i)(6-8), (p)(6-8),(q), (s), (t), (u), (v), (w), (x), (y), (z), (aa), and (cc).

## **V. Exemption**

Greenhouse Gas Air Quality Analysis: Greenhouse gas emissions shall not be subject to the requirements of subsections (k) or (m) of 40 CFR Part 52.21 in effect on (date of adoption).

## **VI. Requirements**

- A. An owner or operator must obtain a PSD permit pursuant to this Rule before beginning actual construction of a new major stationary source or a major modification as defined in 40 CFR 52.21(b).
- B. Notwithstanding the provisions of any other District Rule or Regulation, the APCO shall require compliance with this rule prior to issuing a federal PSD permit as required by Clean Air Act (CAA) Section 165.
- C. The applicant shall pay the applicable fees specified in District Rules 301, Permit Fees and 303, Miscellaneous Fees.

## **VII. Public Participation**

- A. Prior to issuing a federal PSD permit pursuant to this rule and after receipt of a complete application, the APCO shall:
  - 1. Make a preliminary determination whether construction should be approved with conditions or disapproved.
  - 2. Make available in at least one location in each region in which the proposed source would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination, a copy of the proposed permit and a copy or summary of other materials, if any, considered in making the preliminary determination.
  - 3. Notify the public, by advertisement in a newspaper of general circulation in the District, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and of the opportunity for written public comment.
  - 4. Send a copy of the notice of public comment to the applicant, United States Environmental Protection Agency, Region 9, any persons requesting such notice and any other interested parties such as: Any other State agency or adjacent local air pollution control agencies, the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency, and any State, Federal Land Manager, or Indian Governing body whose lands may be affected by emissions from the source or modification.

5. Provide opportunity for a public hearing for persons to appear and submit written or oral comments on the air quality impact of the source, alternatives to it, the control technology required, and other appropriate considerations, if in the APCO's judgment such a hearing is warranted.
6. Consider all written comments that were submitted within 30 days after the notice of public comment is published and all comments received at any public hearing(s) in making a final decision on the approvability of the application and make all comments available for public inspection in the same locations where the District made available preconstruction information relating to the proposed source or modification.
7. Make a final determination whether construction should be approved with conditions or disapproved.
8. Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the District made available preconstruction information and public comments relating to the source.

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