



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA-R09-OAR-2011-0955; FRL-9649-4]

Proposed Approval of Revision of Five California Clean Air Act
Title V Operating Permits Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Operating Permits (Title V) programs of the Monterey Bay Unified Air Pollution Control District (MBUAPCD), San Luis Obispo County Air Pollution Control District (SLOCAPCD), Santa Barbara County Air Pollution Control District (SBCAPCD), South Coast Air Quality Management District (SCAQMD), and Ventura County Air Pollution Control District (VCAPCD). These program revisions will require sources with the potential to emit (PTE) of greenhouse gas (GHG) above the thresholds in EPA's Tailoring Rule that have not been previously subject to Title V for other reasons to obtain a Title V permit. See "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule," (the Tailoring Rule), 75 FR 31514 (June 3, 2010). We are taking comments on this proposal and plan to follow with a final

action.

DATE: Any comments must arrive by [Insert date 30 days from the date of publication in the Federal Register].

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2011-0955, by one of the following methods:

1. Federal eRulemaking Portal: www.regulations.gov. Follow the on-line instructions.
2. E-mail: R9airpermits@epa.gov.
3. Mail or deliver: Gerardo Rios (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail. www.regulations.gov is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically

captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: EPA has established a docket for this action under EPA-R09-OAR-2011-0955. Generally, documents in the docket for this action are available electronically at www.regulations.gov or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. While all documents are listed at www.regulations.gov, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Roger Kohn, EPA Region IX, (415) 972-3973, kohn.roger@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board.

Table 1 - Submitted Rules

Local Agency	Rule #	Rule Title	Adopted	Submitted
MBUAPCD	218	Title V: Federal Operating	11/17/10	11/7/11

Local Agency	Rule #	Rule Title	Adopted	Submitted
		Permits		
SLOCAPCD	216	Federal Part 70 Operating Permits	3/23/11	8/19/11
SBCAPCD	1301	Part 70 Operating Permits - General Information	1/20/11	4/21/11
SCAQMD	3000	General	11/5/10	11/5/10
	3001	Applicability		
	3002	Requirements		
	3003	Applications		
	3005	Permit Revisions		
	3006	Public Participation		
VCAPCD	33	Part 70 Permits - General	4/12/11	8/19/11
	33.1	Part 70 Permits - Definitions		

II. The Part 70 Operating Permits Program

A. What is the Part 70 operating permits program?

Title V of the Clean Air Act (CAA) Amendments of 1990 require all states to develop an operating permits program that meets federal criteria listed in 40 Code of Federal Regulations (CFR) Part 70. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the Part 70 operating permits program (also known as the

Title V program) is to improve enforcement and compliance by issuing each source a single permit that consolidates all of the applicable CAA requirements into a federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

B. How did EPA revise Part 70 to address Title V permitting of GHG sources?

In the Tailoring Rule (75 FR 31514, June 3, 2010), we amended the definition of "major source" in Part 70 by codifying EPA's longstanding interpretation that applicability for a "major stationary source" under CAA sections 501(2)(B) and 302(j) and 40 CFR 70.2 is triggered by sources of pollutants "subject to regulation." We also added a definition of "subject to regulation" to clarify that this phrase means a pollutant subject to either a provision in the CAA or a regulation adopted by EPA under the CAA that requires actual control of emissions of that pollutant and that has taken effect under the CAA. Finally, to tailor the Title V program for GHGs, we also included a second component within the definition of "subject to regulation," specifying that GHGs are not subject to regulation

for purposes of defining a major source, unless as of July 1, 2011, the GHG emissions are from a source emitting or having the potential to emit 100,000 tons per year (tpy) of GHGs on a carbon dioxide equivalent (CO₂e) basis. We defined the term "greenhouse gases" with a cross-reference to the definition in 40 CFR 86.1818-12(a). The combined effect of these Part 70 amendments is to revise the Title V program to require stationary sources that have the potential to emit 100,000 tpy or more of GHGs on a CO₂e basis to obtain Title V permits, regardless of whether they are subject to any CAA requirement to control their GHG emissions. The five air districts whose Title V programs we are proposing to revise took differing approaches to revising their Title V regulations to address the Tailoring Rule's Title V requirements, depending on the structure and content of their rules. In section III.B., we explain how the districts' revised Title V regulations satisfy the new Title V GHG criteria.

- C. What is the federal approval process for revisions to a Part 70 operating permits program?

In order for state regulations to be approved as part of the federally-enforceable Title V operating permits program, states must formally adopt regulations consistent with state and Federal requirements. This process generally includes a public

notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into its approved operating permits program. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 502 of the CAA, including revisions to the state program, are included in the Federally-approved operating permits program. Records of such actions are maintained in the CFR at Title 40, part 70, appendix A, entitled "Approval Status of State and Local Operating Permits Programs."

III. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

The relevant statutory provisions for our review of the submitted rules include 40 CFR Part 70, as amended by the June 3, 2010 Tailoring Rule.

B. Do the rules meet the evaluation criteria?

We have reviewed the five districts' revised Title V rules

in accordance with the rule evaluation criteria described above. A discussion for each District is provided below. EPA is proposing to find that each district's submittal correctly implements the changes in Title V applicability required by the Tailoring Rule.

MBUAPCD revised Rule 218 (Title V: Federal Operating Permits) to satisfy the Tailoring Rule requirements. The District revised the definition of "Major Source" in section 2.18.5 of the rule to include sources that, as of July 1, 2010, emit or have the potential to emit "100,000 tpy or more of carbon dioxide equivalent (CO₂e) greenhouse gas emissions and directly emit, or have the potential to emit, 100 tons per year (tpy) or more of any greenhouse gas," as required by the Tailoring Rule. The District also revised Section 1.3 of the rule to exempt sources that limit their PTE of GHG emissions to less than 100,000 tpy of CO₂e greenhouse gas emissions, and to exclude greenhouse gases from the exemption for sources that limit their PTE to less than 100 tpy of any air pollutant. The District added new definitions for "Greenhouse Gases" and "Carbon Dioxide Equivalent Emissions". Instead of using a cross-reference to 40 CFR 86.1818-12(a), as EPA does in the Tailoring Rule, MBUAPCD has provided a specific definition of Greenhouse Gases in its rule, which is consistent with the EPA

definition. The District's definition of "Carbon Dioxide Equivalent Emissions" incorporates the Global Warming Potential values that EPA lists in Table A-1 to Subpart A of 40 CFR Part 98, EPA's Mandatory Greenhouse Gas Reporting regulation. All of these changes, which are the only changes that the District made to Rule 218, are consistent with the requirements of the Tailoring Rule. We note that the applicability date of July 1, 2010 is one year earlier than required by the Tailoring Rule. This had no practical effect in the District because there are no sources newly subject to Title V based solely on being classified a major source for GHG emissions.

SLOAPCD added a new provision to the Applicability section of Rule 216 (Federal Part 70 Permits). The new provision, in paragraph 216.B.2., requires sources that emit GHG in amounts "equal to or exceeding the thresholds specified in 40 CFR 70.2 in effect August 2, 2010" to apply for a title V permit. The District also added a new provision to the definition of "Air Pollutant." The new provision, in paragraph 216.C.4.f., adds "Greenhouse gases that are 'subject to regulation' as defined in 40 CFR 70.2 in effect August 2, 2010" to the list of the air pollutants defined in the rule. These cross-references to 40 CFR 70.2 means that the District's approach to tailoring the applicability of its Title V program for GHG sources is

identical to EPA's. We are proposing to approve these revisions to SLOAPCD's title V program because they are consistent with EPA's approach to Title V applicability for GHG sources in the Tailoring Rule.

SBCAPCD revised Rule 1301 (General Information), which is one of five rules that comprise the District's Regulation XIII (Part 70 Operating Permit Program), by adding a cross-reference to 40 CFR 70.2. Specifically, the District amended the definition of "Part 70 Source" in section 1301.C. by adding a new provision that makes sources with the potential to emit "greenhouse gases that are 'subject to regulation' as defined in 40 CFR 70.2 in effect August 2, 2010" subject to Title V. This cross-reference to the 40 CFR 70.2 definition of "subject to regulation" means that the District's approach to tailoring the applicability of its Title V program to GHG sources is identical to EPA's, and therefore approvable.

In addition to the GHG-related rule changes adopted on January 20, 2011, SBCAPCD had previously revised the definition of "stationary source" in Rule 1301 to reduce the area in which marine vessels associated with a stationary source must account for their emissions. Rule 1301 now limits the geographic area of emissions liability to "California Coastal Waters" (as defined in Rule 1301) adjacent to the District, and excludes

areas adjacent to the neighboring counties of San Luis Obispo and Ventura. We are proposing to approve this change, which is consistent with the District's jurisdiction in Santa Barbara County.

SCAQMD addressed the Tailoring Rule requirements by revising six of the seven rules that comprise Regulation XXX (Title V Permits). Specifically, SCAQMD revised Rule 3000 (General) to add definitions of "Carbon Dioxide Equivalent", "Global Warming Potential", and "Greenhouse Gas." SCAQMD also revised Rule 3001 (Applicability) to require that any facility that, as of July 1, 2011, has the potential to emit 100,000 tpy or more of GHG on a CO₂e basis and a potential to emit more than 100 tpy of any GHG on a mass basis apply for a Title V permit within 180 days. SCAQMD provided a specific definition of GHG in Rule 3000 which is consistent with the EPA definition. The District's definition of "CO₂ equivalent" is based on the same Global Warming Potential values that EPA lists in Table A-1 to Subpart A of 40 CFR Part 98, EPA's Mandatory Greenhouse Gas Reporting regulation. SCAQMD's definition of "Global Warming Potential" uses the same language as EPA's definition in 40 CFR Section 98.6. Finally, SCAQMD revised Rule 3003 (Applications), Rule 3005 (Permit Revisions), and Rule 3006 (Public Participation), to make the cross references to Rule 3000 within

those rules consistent with the revised numbering sequence in that rule. Since the District's Title V program changes are consistent with EPA's approach to Title V in the Tailoring Rule, we are proposing to approve them as a revision to SCAQMD's Title V program.

VCAPCD addressed the applicability of title V permitting for major GHG sources by revising the applicability provisions of Rule 33 (Part 70 Permits - General). Specifically, the District revised subsection 33.B.1., which requires stationary sources with a PTE of 100 tpy or more of any regulated air pollutant to obtain a title V permit. VCAPCD added language to this provision to make it applicable to sources that emit greenhouse gases, effective July 1, 2011, if a source also has a PTE of 100,000 tons per year or more on a CO2 equivalent basis.

In addition the District added a new definition of "CO2 Equivalent (CO2e)" to Rule 33.1 (Part 70 Permits - Definitions) that is based on EPA's definition of "tpy CO2 equivalent emissions" in 40 CFR Section 70.2, and refers to the Global Warming Potentials that appear in Table 1 of Rule 2 (Definitions). (Rule 2 has been submitted to EPA for approval into the Ventura County portion of the California State Implementation Plan. We will take action on that rule in a separate rulemaking.) We are approving the District's

definition because, while it is not identical to the 70.2 definition, it is sufficiently similar to, and fully consistent with, our definition. The District also revised two definitions in Rule 33.1. The definition of "regulated air pollutant" now includes greenhouse gases if the source has a potential to emit of 100,000 tons per year or more CO₂ equivalent emissions. The definition of "Insignificant Activity" now excludes greenhouse gases from the emission level of 2 tpy of any regulated pollutant that otherwise qualifies an activity as insignificant.

VCAPCD also made one revision that is unrelated to GHG. The District revised the definition of "Federally-Enforceable Requirement" in Rule 33.1. The District added language to Subparagraph 33.1.12.a, which lists Title I requirements of the CAA that are federally enforceable, to clarify that federally enforceable Title I requirements are "not limited to" the requirements listed in the definition. The additional language ensures that the definition includes other Title I requirements that may be promulgated by the EPA Administrator in the future.

We are proposing to approve the Title V program revisions submitted by VCAPCD because the GHG provisions of the revised rules are consistent with EPA's approach to Title V in the Tailoring Rule, and the revision to the definition of "Federally-Enforceable Requirement" clarifies the definition and

is consistent with EPA's definition of "applicable requirement" in 40 CFR 70.2.

C. Public comment and proposed action.

EPA believes the submitted rules fulfill all of the Tailoring Rule's Title V requirements; therefore we are proposing to approve these rule changes, adopted in 2010 and 2011, as revisions to the Title V programs of all five districts. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action.

IV. Statutory and Executive Order Reviews

Today's proposed action merely proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
 - does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
 - does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
 - is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
 - is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
 - does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, this proposed action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249,

November 9, 2000), because the action is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon dioxide, Carbon dioxide equivalents, Greenhouse gases, Hydrofluorocarbons, Intergovernmental relations, Methane, Nitrous oxide, Perfluorocarbons, Reporting and recordkeeping requirements, Sulfur hexafluoride, Incorporation by Reference.

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Dated: March 8, 2012

Jared Blumenfeld,
Regional Administrator,
Region IX

[FR Doc. 2012-6676 Filed
03/20/2012 at 8:45 am; Publication Date: 03/21/2012]