




air pollution control district  
SANTA BARBARA COUNTY

Agenda Item: G-1  
Agenda Date: August 15, 2024  
Agenda Placement: Regular  
Estimated Time: 10 minutes  
Continued Item: No

## Board Agenda Item

TO: Air Pollution Control District Board

FROM: Aeron Arlin Genet, Air Pollution Control Officer 

CONTACT: Timothy Mitro, Air Quality Engineer, Planning Division (805) 979-8329

SUBJECT: Amendments to District Regulation XIII – Part 70 Operating Permits

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### RECOMMENDATION:

Consider recommendations as follows:

1. Hold a public hearing on the proposed amendments to Regulation XIII – Part 70 Operating Permits;
2. Adopt the resolution included as Attachment A that contains the following action items:
  - a. Adopt the California Environmental Quality Act (CEQA) Findings pursuant to the CEQA guidelines;
  - b. Adopt the General Rule Findings in support of the proposed rule amendments pursuant to Health and Safety Code §40727 regarding necessity, authority, clarity, consistency, nonduplication, and reference; and
  - c. Adopt the proposed amendments to District Regulation XIII – Part 70 Operating Permits (Rules 1301, 1302, and 1303).

### BACKGROUND:

The federal Clean Air Act (CAA) is the comprehensive law that regulates air emissions from stationary and mobile sources. In 1992, the United States Environmental Protection Agency (EPA) promulgated regulations applicable to the operation of major stationary sources of air pollutants under Title V of the Clean Air Act. These regulations (as codified in 40 Code of Federal Regulations (CFR) Part 70) enacted new requirements where major stationary sources of air pollution had to obtain federally-approved operating permits. Local Air Districts typically issue these federally-approved permits once their program meets all EPA requirements.

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When the EPA adopted the initial Title V regulations, the regulations contained provisions for emergency affirmative defenses. These provisions stated that if a technology-based emission limitation was exceeded at a permitted source due to an emergency, the permittee could assert an affirmative defense to avoid liability in an enforcement proceeding. An affirmative defense can demonstrate why, despite violations of an emission limit, the source should not be assessed monetary penalties for such noncompliance.

On July 21, 2023, the EPA issued a final rule in the federal register that removed the emergency affirmative defense provisions from the EPA's Title V operating permit regulation. For those local agencies that have emergency affirmative defense provisions included in their federally-approved Title V program, the EPA requires the local agencies to revise their rule sets no later than August 21, 2024 to incorporate the recent changes.

## **DISCUSSION:**

Staff proposes to amend District Regulation XIII, Part 70 Operating Permit Program to:

- 1) Remove the Emergency Affirmative Defense provisions to align our District rules with the recently revised EPA Title V regulation, and
- 2) Include minor changes to definitions and compliance requirements consistent with the federal Clean Air Act (CAA).

These changes are required by the EPA so the District can maintain a federally-approved Title V program. Upon implementation of the proposed amendments, any excess emissions during periods of emergencies may be subject to monetary penalties.

Despite the above, please note that per the District's Mutual Settlement Program, the District factors in multiple components in deciding the appropriate penalty for violations of emission standards. Even if the Emergency Affirmative Defense provisions are removed, an emergency and the source's actions in responding to and mitigating any excess emissions associated with the emergency would still be factored into the overall penalty calculation. Furthermore, District Rule 505 – Breakdown Conditions – addresses situations where the failure or malfunction of air pollution control equipment causes a violation of an emission limit. Breakdowns are not specifically connected to emergencies, but they may provide regulatory relief from enforcement action if all of the provisions of Rule 505 are satisfied.

## **FISCAL IMPACTS:**

There are currently 17 major stationary sources within the District that have Part 70 permits. None of the stationary sources have ever needed to use the Emergency Affirmative Defense provisions in the past 31 years. In order to implement the program amendments, the affirmative defense provisions included within individual operating permits will also need to be removed. These permit changes will occur in the ordinary course of business as permits are periodically renewed, revised, or reopened for other reasons. Hence, the proposed amendments are anticipated to have negligible impacts on industry.

## **PUBLIC REVIEW & STAKEHOLDER ENGAGEMENT:**

On April 15, 2024, staff distributed the draft rule language and the rationale for the changes to the EPA for a 30-day review period. The EPA informally agreed with the recommended changes and had no additional comments.

On June 24, 2024, the District informed the permitted major stationary sources and all stakeholders and subscribers on the District's listserv about the proposed changes. The District also published the draft rule and staff report on its website.

On July 8, 2024, a Community Advisory Council (CAC) special meeting was held to discuss the draft staff report and rule amendments for Regulation XIII. Staff provided a presentation on the proposed changes, answered questions from the CAC members, and provided an opportunity for public comment. After discussing the proposed changes, the CAC voted unanimously to approve staff's recommendation that the Board of Directors adopt the proposed amendments to District Regulation XIII – Part 70 Operating Permits.

In accordance with California Health and Safety Code §40725, the proposed amendments were publicly noticed on July 11, 2024 and made available at the District offices and on the District's website. Members of the public may attend the Board meeting and can provide comments on the proposed amendments prior to or at the hearing. To date, no public comments have been received.

## **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):**

The California Environmental Quality Act (CEQA) requires environmental review for certain actions. This rulemaking project consists of removing the emergency affirmative defense provisions and other administrative changes in order to maintain a federally-approved Title V operating permit program. Since these rule changes are limited to enforcement and administrative changes, there are no reasonably foreseeable environmental impacts. Pursuant to §15061(b)(3) of the State CEQA Guidelines – Common Sense Exemption – the project is exempt from CEQA as it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment. As a result, the project is not subject to any additional CEQA review.

## **ATTACHMENTS:**

- A. District Board Resolution for amending District Regulation XIII – Part 70 Operating Permits, which includes the following:
  - 1) California Environmental Quality Act (CEQA) Findings.
  - 2) General Rule Findings.
  - 3) Regulation XIII Staff Report.
  - 4) Proposed Rules 1301, 1302, and 1303 (Track Changes).

## ATTACHMENT A

District Board Resolution for Amending District  
Regulation XIII – Part 70 Operating Permits,  
which includes the following:

- 1) California Environmental Quality Act (CEQA) Findings.
- 2) General Rule Findings.
- 3) Regulation XIII Staff Report.
- 4) Proposed Rules 1301, 1302, and 1303 (Track Changes)

August 15, 2024

Santa Barbara County Air Pollution Control District  
Board of Directors

260 San Antonio Road, Suite A  
Santa Barbara, California 93110

**RESOLUTION OF THE BOARD OF DIRECTORS OF  
THE SANTA BARBARA COUNTY  
AIR POLLUTION CONTROL DISTRICT**

IN THE MATTER OF AMENDMENTS TO  
DISTRICT REGULATION XIII – PART 70  
OPERATING PERMITS (RULES 1301,  
1302, AND 1303)

APCD RESOLUTION NO. \_\_\_\_\_

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**RECITALS**

**WHEREAS**, the Air Pollution Control District Board of the County of Santa Barbara (“Board”) is authorized to adopt, amend, or repeal rules and regulations pursuant to Health and Safety Code section 40725 et seq; and

**WHEREAS**, on July 21, 2023, the Environmental Protection Agency (EPA) published a final rule in the federal register that fully removed the emergency affirmative defense provisions from the EPA’s Title V operating permit program and required affected air districts to revise their implementing rules no later than August 21, 2024;

**WHEREAS**, on April 15, 2024, District staff distributed the draft language for Regulation XIII and the rationale for the changes to the EPA for a 30-day review period.

**WHEREAS**, on June 24, 2024, the District published the draft rules and staff report on its website and informed the permitted major stationary sources and all stakeholders on the District’s listserv about the proposed changes;

**WHEREAS**, on July 8, 2024, a Community Advisory Council special meeting was held at which the proposed amendments to Regulation XIII were discussed and evaluated and recommended for approval by the District Board of Directors;

**WHEREAS**, on July 11, 2024, District staff published in a newspaper of general circulation the notice of public hearing required by Health and Safety Code section 40725 and also distributed and published on the District’s website a request for public comments on the proposed amendments to Regulation XIII; and

APCD RESOLUTION – AMENDMENTS TO DISTRICT  
REGULATION XIII – PART 70 OPERATING PERMITS  
(RULES 1301, 1302, AND 1303)

**WHEREAS**, the Board held a public hearing on August 15, 2024, to consider the proposed amendments to Regulation XIII in accordance with all provisions of law;

**NOW, THEREFORE, IT IS HEREBY RESOLVED**, as follows:

1. The California Environmental Quality Act (“CEQA”) findings, as set forth in Attachment 1 of this resolution, are hereby adopted as findings of this Board pursuant to CEQA, the State CEQA Guidelines, and the Environmental Review Guidelines for the Santa Barbara County Air Pollution Control District.
2. The General Rule findings, as set forth in Attachment 2 of this resolution, are hereby adopted as findings of this Board pursuant to Health and Safety Code section 40727.
3. The Staff Report, as set forth in Attachment 3 of this resolution, has been presented to this Board, reviewed, and considered prior to approving this project.
4. The proposed amendments to Regulation XIII – Part 70 Operating Permits, as set forth in Attachment 4 of this resolution, are hereby adopted as rules of the Santa Barbara County Air Pollution Control District pursuant to Health and Safety Code section 40725 et seq.

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APCD RESOLUTION – AMENDMENTS TO DISTRICT  
REGULATION XIII – PART 70 OPERATING PERMITS  
(RULES 1301, 1302, AND 1303)

**PASSED, APPROVED AND ADOPTED** by the Air Pollution Control District Board of  
the Santa Barbara County, State of California, this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by the  
following vote:

Ayes:

Noes:

Abstain:

Absent:

SANTA BARBARA COUNTY  
AIR POLLUTION CONTROL DISTRICT

**ATTEST:**

AERON ARLIN GENET  
Clerk of the Board


By \_\_\_\_\_  
Deputy

By \_\_\_\_\_  
Chair

Date \_\_\_\_\_

**APPROVED AS TO FORM:**

RACHEL VAN MULLEM  
Santa Barbara County Counsel

By  \_\_\_\_\_  
District Counsel

Resolution in the Matter of  
Amendments to District Regulation XIII –  
Part 70 Operating Permits

ATTACHMENT 1

CEQA Findings



## CEQA FINDINGS

Pursuant to State CEQA Guidelines, Santa Barbara County Air Pollution Control District (District), as Lead Agency, reviewed the amendments to Regulation XIII – Part 70 Operating Permits. The District found that there is no potential for significant environmental impacts from the amendment of these rules.

The Board finds that:

- The amendments to District Regulation XIII will not have significant adverse impacts on the environment.
- No relaxation in meeting ambient air quality standards will result. No cross-media impacts were identified.
- Pursuant to §15061(b)(3) of the State CEQA Guidelines – Common Sense Exemption – the project is exempt from CEQA as it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment. The District will prepare and file a Notice of Exemption for the project with the County Clerk of the Board in compliance with CEQA Guidelines §15062.

### Discussion of CEQA Guidelines §15061(b)(3)

District staff has evaluated the environmental impacts related to the proposed amendments to Regulation XIII in the context of the California Environmental Quality Act (CEQA) Guidelines §15061, *Review for Exemption*. Subsection (a) of this section states that, “*once a lead agency has determined that an activity is a project subject to CEQA, a lead agency shall determine whether the project is exempt from CEQA.*” A CEQA exemption can be in the form of a statutory exemption, a categorical exemption, or it can be covered by the general rule, as expressed in §15061(b)(3), that, “*...CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.*”

This rulemaking project consists of amending the District’s Part 70 Operating Permit Program to comply with recent changes to federal rules and regulations. Because the proposed project makes administrative amendments without requiring any physical modifications to conform with U.S. EPA regulations, it can be seen with certainty that implementing the proposed project would not cause a significant adverse effect on the environment. Therefore, substantial evidence supports the District’s determination that this rule project will not have any significant adverse effects on the environment and the proposed project is exempt from CEQA. As a result, the project is not subject to any additional CEQA review.

Resolution in the Matter of  
Amendments to District Regulation XIII –  
Part 70 Operating Permits

ATTACHMENT 2

General Rule Findings

## GENERAL RULE FINDINGS

Pursuant to California Health and Safety Code §40727, the Board makes the following findings for the amendments to District Regulation XIII – Part 70 Operating Permits.

### Necessity

The Board determines that it is necessary to amend District Regulation XIII – Part 70 Operating Permits in order to maintain a federally-approved Title V operating permit program, consistent with 40 Code of Federal Regulations, Part 70.

### Authority

The Board is authorized under state law to adopt, amend, or repeal rules and regulations pursuant to Health and Safety Code §40000, §40001, and §40725 through §40728, which assigns to local and regional authorities the primary responsibility for the control of air pollution from all sources other than exhaust emissions from motor vehicles. Additionally, pursuant to Health and Safety Code §40702, the Board has the authority to do such acts as are necessary and proper to execute the powers and duties granted to it and imposed upon it by State law.

### Clarity

The Board finds that the proposed rules are sufficiently clear. The rules were publicly noticed and reviewed by the Community Advisory Council. The rules are written or displayed so that their meaning can be easily understood by persons directly affected by them.

### Consistency

The Board determines that the proposed rules are consistent with, and not in conflict with or contradictory to, existing federal or state statutes, court decisions, or regulations.

### Nonduplication

The Board finds that the proposed rules do not impose the same restrictions as any existing state or federal regulation, and the proposed rules are necessary and proper to execute the powers and duties granted to, and imposed upon, the District.

### Reference

The Board finds that it has the authority under state law to adopt amendments to Regulation XIII pursuant to Health and Safety Code §39002. Health and Safety Code §39002 assigns to local and regional authorities the primary responsibility for the control of air pollution from all sources other than exhaust emissions from motor vehicles. Additionally, pursuant to Health and Safety Code §40702, the Board is required to adopt rules and regulations and to do such acts as necessary and proper to execute the powers and duties granted to it and imposed upon it by State law.

Resolution in the Matter of  
Amendments to District Regulation XIII –  
Part 70 Operating Permits

ATTACHMENT 3

Staff Report



air pollution control district  
SANTA BARBARA COUNTY

## **Staff Report for Regulation XIII – Part 70 Operating Permits**

### **Emergency Affirmative Defense Provisions**

**Date: June 24, 2024**

Aeron Arlin Genet  
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Prepared By:  
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Our Mission  
*Our mission is to protect the people and the environment of  
Santa Barbara County from the effects of air pollution.*

## TABLE OF CONTENTS

<u>SECTION</u>	<u>Page #</u>
<b>1. Executive Summary .....</b>	<b>1</b>
<b>2. Background .....</b>	<b>2</b>
2.1 Title V & Part 70 Background	
2.2 Emergency Affirmative Defense Background	
<b>3. Proposed Amendments.....</b>	<b>4</b>
3.1 Removal of Title V Emergency Affirmative Defense Provisions	
3.2 Administrative Revisions	
<b>4. Rule Impacts and Other Rule Evaluations.....</b>	<b>5</b>
4.1 Industry and Fiscal Impacts	
4.2 Environmental Impacts	
4.3 California Environmental Quality Act (CEQA) Requirements	
4.4 Socioeconomic Impacts	
4.5 Rule Consistency Analysis	
<b>5. Public Review &amp; Stakeholder Engagement.....</b>	<b>7</b>
5.1 EPA Review	
5.2 Community Advisory Council and Outreach	
5.3 Public Hearings	
<b>6. References.....</b>	<b>7</b>

## 1. Executive Summary

On July 21, 2023, the United States Environmental Protection Agency (EPA) issued a final rule in the federal register that removed the emergency affirmative defense provisions from the EPA's Title V operating permit regulations. For those local agencies that have emergency affirmative defense provisions included in their federally-approved Title V program, the EPA requires the local agencies to revise their rule sets no later than August 21, 2024 to incorporate the recent changes. Hence, the Santa Barbara County Air Pollution Control District (District) is proposing to amend District Regulation XIII, Part 70 Operating Permit Program to:

- 1) Remove the Emergency Affirmative Defense provisions to align our District rules with the recently revised EPA Title V regulation, and
- 2) Include minor changes to definitions and compliance requirements consistent with the federal Clean Air Act (CAA).

There are currently 17 major stationary sources within the District that have Part 70 permits.<sup>1</sup> None of the stationary sources have ever needed to use the Emergency Affirmative Defense provisions in the past 31 years, and the proposed amendments are anticipated to have negligible impacts on industry.

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<sup>1</sup> Major stationary sources of air pollution typically have a criteria pollutant potential to emit that exceeds 100 tons per year. The full definition can be found in Rule 1301, Part 70 Operating Permits, under the definition "Part 70 Source."

## 2. Background

### 2.1 Title V & Part 70 Background

The federal Clean Air Act (CAA) is the comprehensive law that regulates air emissions from stationary and mobile sources. In 1992, the EPA promulgated regulations applicable to the operation of major stationary sources of air pollutants under Title V of the CAA. These regulations (as codified in 40 Code of Federal Regulations (CFR) Part 70) enacted new requirements where major stationary sources of air pollution had to obtain federally-approved operating permits. State and local agencies typically issue these federally-approved permits once their program meets all EPA requirements.

In 1993, the District adopted Regulation XIII – Part 70 Operating Permits to have an EPA-approved operating permit program for major stationary sources of air pollution. The regulation is composed of five separate rules, as shown in Table 1 below. These rules contain permit application requirements, terms and conditions that are needed in each permit, as well as the procedures to issue, reissue or modify the operating permits. There have only been a handful of amendments to these rules throughout the last 31 years, with most of the amendments focused on responding to updated EPA determinations.

**Table 1 – Regulation XIII – Part 70 Operating Permit Program**

<b>Rule #</b>	<b>Rule Name</b>	<b>Year Last Amended</b>	<b>Last Amended Reason</b>
<b>1301</b>	General Information	2016	New Source Review (NSR) changes
<b>1302</b>	Permit Application	1993	--
<b>1303</b>	Permits	2001	EPA corrections
<b>1304</b>	Issuance, Renewal, Modification, and Reopening	2018	E-notice procedures
<b>1305</b>	Enforcement	1993	--

### 2.2 Emergency Affirmative Defense Background

When the EPA adopted the initial Title V regulations in 1992, the regulations contained provisions for emergency affirmative defenses. These provisions stated that if a technology-based emission limitation was exceeded at a permitted source due to an emergency, the permittee could assert an affirmative defense to avoid liability in an enforcement proceeding. An affirmative defense can demonstrate why, despite violations of an emission limit, the source should not be assessed penalties for the exceedance.

An “emergency”, as defined in District Rule 1301, means any situation arising from sudden and reasonably unforeseeable events beyond the control of a permittee, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the stationary source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not



include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

To claim an emergency affirmative defense, the permittee must follow all of the criteria listed in District Rule 1303, which includes:

- 1) The permittee documents with operating logs that an emergency occurred and identifies the cause(s) of the emergency;
- 2) The permittee documents that the source was being properly operated at the time the emergency occurred;
- 3) The permittee demonstrates that all reasonable steps were taken to minimize emissions in excess of permit requirements;
- 4) The permittee submitted a description of the emergency and all mitigating and corrective actions taken to the District within two (2) working days of the emergency.
- 5) The permittee demonstrates that the emergency was not due to the permittee's negligence or willful misconduct.

However, in 2014, the D.C. Circuit Court of Appeals vacated affirmative defense provisions contained in the EPA's National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Portland cement industry.<sup>2</sup> In the decision, the D.C. Circuit concluded that the EPA lacked the authority to create these affirmative defense provisions because they contradicted fundamental requirements of the CAA concerning the authority of courts to decide whether to assess civil penalties in CAA enforcement suits. Due to this decision, EPA started to reevaluate its interpretation of the CAA with respect to affirmative defense provisions in the Title V program.

In 2016, EPA proposed changes to the Title V program to remove the emergency affirmative defense provisions. However, the 2016 changes were not finalized.

In 2022, EPA repropoed the removal of the emergency affirmative defense provisions from the Title V program. Then on July 21, 2023, the EPA published a final rule in the federal register that fully removed the emergency affirmative defense provisions from the EPA's Title V operating permit program in 40 CFR Part 70.<sup>3</sup> As a result, affected state, local, and tribal permitting authorities have to submit program revisions to the EPA to remove any Title V affirmative defense provisions from their EPA-approved Title V programs no later than August 21, 2024.

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<sup>2</sup> *Natural Res. Def. Council v. Env'tl. Prot. Agency*, 749 F.3d 1055 (D.C. Cir. 2014)

<sup>3</sup> *Removal of Title V Emergency Affirmative Defense Provisions From State Operating Permit Programs and Federal Operating Permit Program*, 88 Federal Register 47029 (July 21, 2023)

### 3. Proposed Amendments

#### 3.1 Removal of Title V Emergency Affirmative Defense Provisions

As discussed in Section 2.2 of this document, the EPA removed the emergency affirmative defense provisions from their Title V operating permit regulations. Consequently, to make conforming revisions to the District's EPA-approved Title V program, the District is proposing to revise Rules 1301 and 1303 to remove the affected text related to affirmative defenses. Upon implementation of the proposed amendments, any excess emissions during periods of emergencies may be subject to monetary penalties.

Despite the above, please note that per the District's Mutual Settlement Program, the District factors in multiple components in deciding the appropriate penalty for violations of emission standards. Even if the Emergency Affirmative Defense provisions are removed, an emergency and the source's actions in responding to and mitigating any excess emissions associated with the emergency would still be factored into the overall penalty calculation. This is consistent with the Penalty Assessment Criteria in the CAA where the EPA Administrator or the court, as appropriate, takes into consideration the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

Furthermore, District Rule 505 – Breakdown Conditions – addresses situations where the failure or malfunction of air pollution control equipment causes a violation of an emission limit. Breakdowns are not specifically connected to emergencies, but they may provide regulatory relief from enforcement action and monetary penalties if all of the provisions of Rule 505 are satisfied. If a breakdown persists for more than 24 hours or the end of the production run (whichever comes first), the stationary source may also apply for an emergency variance from the District's Hearing Board.<sup>4</sup>

#### 3.2 Administrative Revisions

Additionally, as part of this rule amendment project, the District is proposing to make a few administrative revisions to make sure that the rules contain all necessary provisions for a federally-approved program. This includes adding the definition of "Draft Operating Permit" to Rule 1301 and adding text to the Compliance Certification section in Rule 1302.D.3 related to "knowingly making a false certification or omitting material information." These revisions will result in no change to the Title V permitting process or how the District administers the program.

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<sup>4</sup> Additional information on breakdowns and variances can be found at: [www.ourair.org/breakdowns/](http://www.ourair.org/breakdowns/) and [www.ourair.org/variance/](http://www.ourair.org/variance/). Please note that the EPA does not recognize California's variance program; therefore, a variance does not protect the source from Federal enforcement actions.

## **4. Rule Impacts and Other Rule Evaluations**

### **4.1 Industry and Fiscal Impacts**

There are currently 17 stationary sources within the District that have Part 70 permits, and none of the stationary sources have ever needed to use the Emergency Affirmative Defense provisions in the past 31 years. In order to implement the program amendments, the affirmative defense provisions included within individual operating permits will also need to be removed. These permit changes will occur in the ordinary course of business as permits are periodically renewed, revised, or reopened for other reasons. Hence, the proposed amendments are anticipated to have negligible impacts on industry.

### **4.2 Environmental Impacts**

California Public Resources Code §21159 requires the District to perform an analysis of the reasonably foreseeable environmental impacts if a rule or regulation sets a performance standard or requires the installation of pollution-control equipment. The proposed rule amendments are administrative in nature and do not involve performance standards or pollution-control equipment. Therefore, there is no reasonable possibility that the proposed amendments will have a significant effect on the environment.

### **4.3 California Environmental Quality Act (CEQA) Requirements**

The California Environmental Quality Act (CEQA) requires environmental review for discretionary actions undertaken by a public agency. This rule project is anticipated to be exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) – Common Sense Exemption. According to §15061(b)(3) of the CEQA Guidelines, a project is exempt from CEQA if, “(t)he activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.” This rulemaking project consists of amending the District’s Part 70 Operating Permit Program to comply with recent changes to federal rules and regulations. Because the proposed project makes administrative amendments without requiring any physical modifications to conform with U.S. EPA regulations, it can be seen with certainty that implementing the proposed project would not cause a significant adverse effect on the environment. Therefore, substantial evidence supports the District’s determination that this rule project will not have any significant adverse effects on the environment and the proposed project is exempt from CEQA.

A CEQA determination will be made when the proposed rule package is brought to the District Board for adoption.

### **4.4 Socioeconomic Impacts**

California Health and Safety Code §40728.5 requires air districts with populations greater than 500,000 people to consider the socioeconomic impact of any new rule if air quality or emission limits are significantly affected. Based on the 2020 census data, the population of Santa Barbara County was approximately 450,000 persons. Using the expected growth rates for the County, the current population estimate is still below the 500,000 person threshold. Furthermore, the

proposed amendments will not strengthen an emission limitation. Therefore, the District is not required to perform a socioeconomic impact analysis for the proposed rule amendments.

#### **4.5 Rule Consistency Analysis**

Pursuant to California Health and Safety Code §40727.2(g), a rule consistency analysis of the proposed rules is required if the rules strengthen emission limits or impose more stringent monitoring, reporting, or recordkeeping requirements. The proposed rules do not strengthen emission limits or impose more stringent monitoring, reporting, or recordkeeping requirements; therefore, a rule consistency analysis is not required.

## 5. Public Review & Stakeholder Engagement

### 5.1 EPA Review

On April 15, 2024, staff distributed the draft rule language and the rationale for the changes to the EPA for a 30-day review period. The EPA informally agreed with the recommended changes and had no additional comments.

### 5.2 Community Advisory Council and Outreach

To facilitate the participation of the public and the regulated community in the development of the District's regulatory program, the District created the Community Advisory Council (CAC). The CAC is composed of representatives appointed by the District's Board of Directors. Its charter is, among other things, to review proposed changes to the District's Rules and Regulations and make recommendations to the Board of Directors on these changes.

Ahead of the CAC meeting, on June 24, 2024, the District published the draft rules and staff report on its website and informed the permitted major stationary sources and all stakeholders and subscribers on the District's listserv about the proposed changes.

At the CAC meeting on July 8, 2024 in Buellton, staff will provide a presentation on all of the proposed changes, answer questions from the CAC members, and provide an opportunity for public comment. The CAC may then vote whether to approve staff's recommendation that the Board of Directors adopt the proposed amendments to District Regulation XIII.

### 5.3 Public Hearings

In accordance with California Health and Safety Code §40725, the proposed amendments are anticipated to be publicly noticed on July 11, 2024 and made available at the District offices and on the District's website. The public hearing before the Board of Directors is scheduled for August 15, 2024. Members of the public may attend the Board meeting and can provide comments on the proposed amendments prior to or at the hearing.

## 6. References

- 1) Natural Res. Def. Council v. Env'tl. Prot. Agency, 749 F.3d 1055 (D.C. Cir. 2014)
- 2) Removal of Title V Emergency Affirmative Defense Provisions From State Operating Permit Programs and Federal Operating Permit Program, 88 Federal Register 47029 (July 21, 2023)
- 3) EPA Fact Sheet: Final Removal of Title V Emergency Affirmative Defense Provisions, located at <https://www.epa.gov/title-v-operating-permits/current-regulations-and-regulatory-actions>

Resolution in the Matter of  
Amendments to District Regulation XIII –  
Part 70 Operating Permits

ATTACHMENT 4

Proposed Rules (Track Changes)

- 1) Rule 1301 – Part 70 Operating Permits - General Information
- 2) Rule 1302 – Part 70 Operating Permits - Permit Application
- 3) Rule 1303 – Part 70 Operating Permits - Permits

**RULE 1301. PART 70 OPERATING PERMITS – GENERAL INFORMATION**

(Adopted 11/09/1993, revised 8/15/1996, 4/17/1997, 9/18/1997, 1/18/2001, 6/19/2003, 1/20/2011, ~~and 8/25/2016~~, [and 8/15/2024](#))

**A. Applicability**

The provisions of this rule and of Rules 1302 through 1305 shall apply to any source that qualifies as a **"Part 70 source"** as defined in Section C below.

**B. Exemptions**

The requirement to obtain a Part 70 operating permit under this rule shall not apply to:

1. Any stationary source required to obtain a Part 70 permit solely because such source is subject to the provisions of 40 CFR 60, Subpart AAA, Standards of Performance for New Residential Wood Heaters; or
2. Any stationary source or operation required to obtain a Part 70 permit solely because such source is subject to the provisions of 40 CFR 61, Subpart M, National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145, Standard for Demolition and Renovation; or
3. Any stationary source, including an area source, required to obtain a Part 70 permit solely because such source is subject to regulations or requirements pursuant to Section 112(r) of the Clean Air Act (CAA).

**C. Definitions**

See Rule 102, Definitions, for definitions not limited to this regulation. For the purposes of Regulation XIII, the following definitions shall apply:

**"Acid Rain Source"** means any stationary source that includes one or more emission units that are subject to emission reduction requirements or limitations pursuant to Title IV (Acid Rain) of the CAA Amendments of 1990.

**"Administrative Permit Amendment"** means a modification to a Part 70 permit that is being made solely for the purpose of accomplishing one or more of the following objectives:

1. To correct typographical errors.
2. To make an administrative change at the source such as the name, address or phone number of a person named in the permit.
3. To require more frequent monitoring or reporting by the permittee.
4. To allow the transfer of ownership or operational control of a stationary source where the District has determined that no other change in the permit is necessary, and provided that a written agreement containing a specific date for transfer of permit responsibility, coverage and liability between the current and new permittee has been submitted to the District.
5. To incorporate into the Part 70 permit the terms and conditions of USEPA's preconstruction review permit or the District Authority to Construct permit issued under a program approved by USEPA as meeting procedural requirements substantially equivalent to the procedural requirements of 40 CFR 70.7 and 70.8 and the compliance requirements of 40 CFR 70.6.

Significant or minor permit modifications defined elsewhere within this rule shall not be deemed as administrative amendments.

**"Air Pollutant (also Air Contaminant)"** means **"Regulated Air Pollutant."**

**"Affected States"** means states that are contiguous to California whose air quality may be affected by emissions resulting from issuance, renewal or modification of a permit to a Part 70 source.

**"Applicable Requirement"** means any federal, state, or District requirement including any federally approved State Implementation Plan requirement for Santa Barbara County, and any **"federally enforceable requirement."**

**"CFR"** means the Code of Federal Regulations, an official compilation of federal Regulations generated by federal administrative agencies.

**"Clean Air Act (Act or CAA)"** means the federal Clean Air Act as amended, 42 U.S.C. 7401, *et seq.*

**"Day or Days"** means calendar day or days unless otherwise stated.

**"District"** means the Santa Barbara County Air Pollution Control District.

**"Draft Operating Permit"** means a permit with District and federally enforceable conditions which is made available for public review in accordance with Rule 1304, Part 70 Operating Permits – Issuance, Renewal, Modification and Reopening.

~~**"Emergency"** means any situation arising from sudden and reasonably unforeseeable events beyond the control of a permittee, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the stationary source to exceed a technology based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.~~

**"Emissions Allowable Under the Federally Enforceable Permit"** means a federally enforceable permit term or condition determined by the District or the USEPA as required under a federally enforceable requirement. The term or condition establishes an emissions limit (including a work practice standard) or a federally enforceable emission cap that the source has assumed to avoid a federally enforceable requirement to which the source would otherwise be subject.

**"Emissions Unit"** means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any substance listed pursuant to Section 112(b) of the CAA and its implementing regulations.

**"Environmental Protection Agency (USEPA) or the Administrator"** means the U.S. Environmental Protection Agency or its administrator or the administrator's designee.

**"Federally Enforceable Requirement"** means any requirement set forth in, or authorized by the CAA and its implementing regulations or USEPA regulations. Federally enforceable requirements include requirements that have been promulgated or approved by USEPA through rulemaking at the time of issuance of a Part 70 permit but have future effective dates. Federally enforceable requirements include:

1. Title I requirements of the CAA and its implementing regulations, including:
  - a. District Regulation VIII requirements in the state implementation plan approved by the USEPA and the terms and conditions of a preconstruction permit issued pursuant to such rule.



- b. New Source Review (NSR) consisting of Nonattainment Area Review (NAR) and Prevention of Significant Deterioration (PSD) review requirements and the terms and conditions of the NAR/PSD permits (40 CFR Parts 51 and 52).
  - c. New Source Performance Standards (40 CFR Part 60).
  - d. National Ambient Air Quality Standards, increment, or visibility requirements, but only as they would apply to sources permitted pursuant to Section 504(e) of the CAA and its implementing regulations.
  - e. National Emissions Standards for Hazardous Air Pollutants (40 CFR Part 61).
  - f. Any standards, determinations or other requirements under Section 112 of the CAA and its implementing regulations, including MACT and GACT Standards and MACT and GACT determinations made pursuant to CAA, Sections 112(g) and 112(j).
  - g. Solid Waste Incineration requirements (Section 129 of the CAA and its implementing regulations).
  - h. Consumer and Commercial Product requirements (Section 183 of the CAA and its implementing regulations).
  - i. Tank Vessel requirements (Section 183 of the CAA and its implementing regulations).
  - j. District rules that are approved into the state implementation plan.
  - k. Federal Implementation Plan requirements.
  - l. Enhanced Monitoring and Compliance Certification requirements (Section 114(a)(3) of the CAA and its implementing regulations).
2. Title III, Section 328 (Outer Continental Shelf or OCS) requirements of the CAA (40 CFR Part 55), upon delegation by USEPA of the OCS program to the District.
  3. Title III, Section 112 (Hazardous Air Pollutant) requirements of the CAA and its implementing regulations.
  4. Title IV (Acid Deposition Control) requirements of the CAA (40 CFR Parts 72, 73, 75, 76, 77, 78).
  5. Title VI (Stratospheric Ozone Protection) requirements of the CAA (40 CFR Part 82).
  6. Monitoring and Analysis requirements (Section 504(b) of the CAA and 40 CFR 64).

Terms and conditions of Part 70 permits are federally enforceable, unless they have been specifically designated as non-federally enforceable.

**"Final Operating Permit"** means a permit with District and federally enforceable conditions, which has completed all review procedures required by Rule 1304, Part 70 Operating Permits – Issuance, Renewal, Modification and Reopening, has not been disapproved by the Environmental Protection Agency and has been issued by the District.

**"Fugitive Emissions"** means those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening. Fugitive emissions from a Part 70 source shall be included in the permit application and the Part 70 permit in the same manner as stack emissions.

**"General Permit"** means a federally enforceable operating permit that meets the requirements of 40 CFR 70.6(d).

**"Generally Available Control Technology (GACT)"** means a generally available control technology standard or management practice promulgated pursuant to Section 112(d) of the CAA (40 CFR 63).

**"Hazardous Air Pollutant (HAP)"** means any hazardous air pollutant listed in Section 112(b) of the CAA and its implementing regulations.

**"Insignificant Activities"** mean activities whose emissions do not exceed insignificant emission levels. Activities exempted because of size, emissions levels, or production rate shall be listed in the permit application. Also, all information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate any applicable permit fees must be provided for each of the insignificant activities listed in the permit application

**"Insignificant Emissions Levels"** mean the emissions levels from any emission unit, that for regulated air pollutants excluding HAPs, are less than 2 tons per year potential to emit and do not exceed 0.5 tons per year potential to emit of any HAPs regulated under Section 112(g) of the Clean Air Act.

**"Maximum Achievable Control Technology (MACT)"** means any maximum achievable control technology emission limit or other requirement promulgated pursuant to CAA, Section 112(d) as set forth in 40 CFR 63.

**"Minor Permit Modification"** means a modification to a Part 70 permit that meets all of the following criteria:

1. The modification is not a Title I modification.
2. The modification does not violate any applicable requirements.
3. The modification does not require or change a case-by-case determination of an emission limitation or other standard.
4. The modification does not involve any relaxation of any existing monitoring, reporting or recordkeeping requirements in the permit, or any significant changes to existing monitoring requirements in the permit.
5. The modification does not seek to establish or change a permit condition that established a federally enforceable emissions cap assumed to avoid an otherwise federally enforceable requirement.
6. The modification does not cause a net emissions increase which triggers a significant permit modification.

**"Modification"** means any physical change, change in the method of operation of, or addition to an existing Part 70 source that would result in a net emissions increase of any regulated pollutant at that source. In this context, a physical change does not include routine maintenance or repair. Also, unless previously limited by a federally enforceable permit condition, the following shall not be considered changes in the method of operation:

1. An increase in the production rate if such increase does not exceed the operating design capacity or the demonstrated actual maximum capacity of the equipment;
2. A change in ownership;

3. Use of an alternate fuel or raw material, provided that such use is expressly authorized on the permit;
4. A replacement of a piece of equipment with an equivalent piece of equipment with the operating design capacity or the demonstrated actual maximum capacity less than or equal to those of the original piece of equipment. However, this exemption shall not apply to equipment used in a source category which is subject to the New Source Performance Standards stipulated by Section 111 or to the Emission Standards for Hazardous Air Pollutants mandated under Section 112 of the CAA and its implementing regulations.

A modification shall be considered "**Title I (or Major) Modification**" for a Part 70 source if the net emissions increase of any regulated pollutant equals or exceeds the levels stipulated as a "**Title I Modification.**"

For Part 70 sources subject to New Source Performance Standards (NSPS), modification means any physical change, or change in the method of operation of, an existing equipment (to which NSPS can apply when newly constructed or modified) which increases the amount of any air pollutant (to which a standard applies) emitted into the air by that equipment or which results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted. For Part 70 sources subject to Emission Standards for Hazardous Pollutants mandated under Section 112 of the CAA, modification means any physical change, or change in the method of operation of the source which increases the actual emissions of any hazardous air pollutant (HAP) emitted by such source by more than a de minimis amount or which results in the emission of any hazardous pollutant not previously emitted by more than a de minimis amount. The de minimis amounts mentioned above shall correspond to the levels listed by the USEPA in the federal register promulgations of the HAP standards under Section 112 of the CAA.

"**National Ambient Air Quality Standards (NAAQS)**" means air quality standards promulgated pursuant to Section 109 of the CAA and its implementing regulations to protect public health and welfare, and consisting of primary and secondary standards. Primary standards are aimed at protecting the public health, while secondary standards are intended to safeguard the public welfare.

"**Non-Federal Minor Permit Change**" means a change to a non-federally enforceable term or condition of a Part 70 permit that meets all of the following criteria:

1. The change is not addressed or prohibited by the federally enforceable portion of the Part 70 permit.
2. The change is not a Title I modification.
3. The change does not violate any applicable requirements nor any existing permit terms or conditions.
4. The change does not cause a net emissions increase which triggers a significant permit modification.
5. The change is not subject to any requirements under Title IV (Acid Rain) of the CAA and its implementing regulations.

A non-federal minor permit change requires approval through the District's NSR process and incorporation into the facility operating permit prior to its implementation.

"**Outer Continental Shelf (OCS) source**" includes any equipment, activity, or facility which:

1. emits or has the potential to emit any air pollutant,
2. is regulated or authorized under the Outer Continental Shelf Lands Act, and

3. is located on the OCS or in or on waters above the OCS.

Such activities include, but are not limited to, platform and drill ship exploration, construction, development, production, processing and transportation. For purposes of this subsection, emissions from any vessel servicing or associated with an OCS source, including emissions while at the OCS source or en route to or from the OCS source within 25 miles of the OCS source, shall be considered direct emissions from the OCS source. Such emissions shall be included in the "**potential to emit**" for an OCS source.

**"Part 70 Permit"** means that portion of any permit (or group of permits) covering a Part 70 source that is issued, renewed, amended or revised pursuant to Rules 1301 through 1305.

**"Part 70 Source"** means stationary sources included in the following source categories:

1. A stationary source with the potential to emit a regulated air pollutant or a hazardous air pollutant in quantities equal to or exceeding any of the following thresholds:
  - a. 100 tons per year of any regulated air pollutant except greenhouse gases.
  - b. Greenhouse gases that are "subject to regulation," as defined in 40 CFR 70.2 in effect August 2, 2010.
  - c. 10 tons per year of any individual hazardous air pollutant or 25 tons per year of a combination of hazardous air pollutants, or any lesser quantity thresholds for any hazardous air pollutant established by Environmental Protection Agency rulemaking. Fugitive emissions of hazardous air pollutants must be counted for the purposes of determining applicability. However, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units are Part 70 sources.
  - d. Any lesser quantity thresholds established by Environmental Protection Agency rulemaking.
2. Any stationary source defined by the Environmental Protection Agency as major for the District under Title I, Part D (Plans for Nonattainment Areas) of the Clean Air Act and its implementing regulations including:
  - a. For ozone nonattainment areas, sources with the potential to emit 100 tons per year or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tons per year or more in areas classified as "serious," 25 tons per year or more in areas classified as "severe," and 10 tons per year or more in areas classified as "extreme."
3. Acid rain sources included under the provisions of Title IV of the Clean Air Act and its implementing regulations.
4. Any source required to have a preconstruction review permit pursuant to the requirements of the New Source Review or Prevention of Significant Deterioration program under Title I, Parts C and D of the Clean Air Act and its implementing regulations.
5. Any solid waste incineration unit required to obtain a Part 70 permit pursuant to Section 129(e) of the Clean Air Act and its implementing regulations.
6. Any stationary source required to obtain a Part 70 permit pursuant to regulations promulgated by the Environmental Protection Agency Administrator.

**"Potential to Emit"** means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on the hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitations are set forth in permit conditions or in rules or regulations that are legally and practically enforceable by the USEPA and citizens or by the District. Secondary emissions do not count in determining the potential to emit of a stationary source. Secondary emissions are defined in 40 CFR 52.21(b)(18). The fugitive emissions of a stationary source shall be included in the potential to emit for the stationary source if such source category is specified by the USEPA as qualified to include fugitive emissions, e.g., source categories listed under 40 CFR 70.2 or fugitive HAP emissions from HAP sources.

**"Proposed Operating Permit"** means a permit with District and federally enforceable conditions proposed for issuance by the District and forwarded to the USEPA for review in compliance with Rule 1304, Part 70 Operating Permits – Issuance, Renewal, Modification and Reopening.

**"Regulation XIII"** means District Regulation XIII, District Rules 1301, 1302, 1303, 1304 and 1305.

**"Regulated Air Pollutant"** means any air pollutant (a) which is emitted into or otherwise enters the ambient air, as defined in 40 CFR 50.1 in effect August 2, 2010, and (b) for which the Environmental Protection Agency has adopted an emission limit, standard or other requirement. Regulated air pollutants include:

1. Oxides of nitrogen and volatile organic compounds as defined in 40 CFR 51.166 in effect August 2, 2010;
2. Any pollutant for which a national ambient air quality standard has been promulgated pursuant to Section 109 of the Clean Air Act and its implementing regulations;
3. Any pollutant subject to any standard promulgated under Section 111 (New Source Performance Standards) of the Clean Air Act and its implementing regulations;
4. Any ozone-depleting substance specified as class I or II substance pursuant to Title VI of the Clean Air Act and its implementing regulations;
5. Any pollutant subject to a standard promulgated under Section 112 (Hazardous Air Pollutants) of the Clean Air Act and its implementing regulations, including:
  - a. Any pollutant listed pursuant to Section 112(r) of the Clean Air Act shall be considered a regulated air pollutant upon promulgation of the list.
  - b. Any hazardous air pollutant subject to a standard or other requirement promulgated by the Environmental Protection Agency pursuant to Section 112(d) of the Clean Air Act or adopted by the District pursuant to Sections 112(g) and 112(j) of the Clean Air Act shall be considered a regulated air pollutant for all sources or source categories: (a) upon promulgation of the standard or requirement, or (b) 18 months after the standard or requirement was scheduled to be promulgated pursuant to Section 112(e)(3) of the Clean Air Act.
  - c. Any hazardous air pollutant subject to a District case-by-case emissions limitation determination for a new or modified source, prior to Environmental Protection Agency promulgation or scheduled promulgation of an emissions limitation, shall be considered a regulated air pollutant when the determination is made pursuant to Section 112(g)(2) of the Clean Air Act. In case-by-case emissions limitation determinations, the hazardous air pollutant shall be considered a regulated air pollutant only for the individual source for which the emission limitation determination was made.

6. Greenhouse gases that are “subject to regulation” as defined in 40 CFR 70.2 in effect August 2, 2010.

**"Responsible Official"** means one of the following:

1. For a corporation: a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a Part 70 permit and either:
  - a. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25,000,000 (in second quarter 1980 dollars); or
  - b. The delegation of authority to such representatives is approved in advance by the District.
2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively.
3. For a municipality, state, federal or other public agency: either a principal executive officer or ranking elected official. For the purposes of this rule, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.
4. For acid rain sources:
  - a. The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the federal CAA or 40 CFR 72 are concerned; or
  - b. The designated representative for any other purposes under Rules 1301 through 1305.

**"Significant Part 70 Permit Action"** means the:

1. Issuance of an initial Part 70 permit, or
2. Renewal of a Part 70 permit, or
3. Reissuance of a Part 70 permit after reopening and modification/revocation of the permit, or
4. Modification of a Part 70 permit, except an administrative permit amendment, a minor permit modification or a non-federal minor permit change.

**"Significant Part 70 Permit Modification"** means any of the following:

1. Any modification to a Part 70 permit that is not an administrative amendment, a minor permit modification or a non-federal minor permit change as these terms are defined herein;
2. A Part 70 permit modification that equals or exceeds any of the threshold limits triggering public review listed in the District's NSR rules.
3. A Part 70 permit modification allowing a net emissions increase of any other regulated air pollutant from any Part 70 source that equals or exceeds the significance (or de minimis) level for the pollutant listed by the USEPA, e.g., 40 CFR 52.21 or Federal Register rulemaking promulgation pursuant to Section 112(g) of the CAA.
4. Any significant changes in existing monitoring permit terms or conditions;

5. Any relaxation of recordkeeping or reporting permit terms and conditions; and
6. Any equivalent or identical replacement of an emissions unit that is subject to standards promulgated under CAA, Sections 111 or 112.
7. Any modifications under Part 60.

**"State Implementation Plan (SIP)"** means the USEPA-approved plan submitted by each State under 42 U.S. C., Section 7401, *et seq.* (federal CAA and its implementing regulations) to achieve and maintain federal ambient air quality standards (NAAQS).

**"Stationary Source"** means any building, structure, facility, or installation which emits or may emit any regulated air pollutant or any pollutant listed pursuant to Section 112 (b) of the Act.

1. Department of Defense Facilities. Department of Defense stationary sources shall be subject to the following, as applicable:
  - a. Stationary Source Designations. For air pollutants regulated under Title I of the Act, a Department of Defense stationary source shall be designated as set forth below if the responsible official submits a plan to the Control Officer that meets the requirements set forth in paragraph (1)(b), below.
    - 1) Stationary Source Designation. Each of the following shall be a separate stationary source: Air Force primary mission, Remediation, NASA, Flight Line, Navy, Range Group, Amenities Group, Hospital Services, and Commercial Space.
    - 2) Exclusion of Sources. No stationary source at a Department of Defense facility shall include the following activities: military tactical support equipment, infrastructure maintenance equipment, or building maintenance equipment.
  - b. Emission Reductions; Plan – Requirements.
    - 1) Plan Submittal and Requirements. The responsible official shall submit a plan to the Control Officer which shall provide that:
      - (a) By April 30, 1999, thirty percent of the candidate boilers identified in the plan shall be retrofitted or under construction;
      - (b) By April 30, 2000, two tons per year of ozone precursor emission reductions shall be achieved;
      - (c) By April 30, 2001, seventy percent of the candidate boilers identified in the plan shall be retrofitted or under construction; and
      - (d) By November 30, 2002, ten or more tons per year of ozone precursor emission reductions shall be achieved.

These milestones shall be based on actual emissions established pursuant to baseline protocols submitted as part of the plan by the responsible official and approved by the Control Officer. Failure to achieve a milestone shall result in expiration pursuant to paragraph (2)(b), below; however, such failure shall not constitute a violation of District Rules and Regulations. Achieved emission reductions shall be enforceable pursuant to paragraph (1)(b)(3), below.

- 2) Plan Approval. The Control Officer shall approve a plan submitted pursuant to (1)(b)(1), above, if the conditions in (1)(b)(1) are met and the Control Officer finds that the

emission reductions are real, quantifiable, surplus, and enforceable. The Control Officer shall submit the approved plan to the USEPA for inclusion in the State Implementation Plan. The plan shall become federally enforceable upon the USEPA Administrator's approval into the state implementation plan. USEPA will include the plan in the state implementation plan within one year after submittal by the District if finds that the emission reductions are real, quantifiable, surplus and enforceable. The Control Officer may extend that time for good cause.

- 3) Final Project Agreement. The responsible official shall enter into a Final Project Agreement with the Control Officer and the USEPA which commits the Department of Defense to the emission reductions specified in paragraph (1)(b)(1) "**Emission Reductions; Plan Submittal And Requirements,**" above.
2. Department of Defense Facilities – Expiration. The provisions of paragraph (1) "**Department of Defense Facilities,**" above, shall expire if any of the following conditions occur:
    - a. The stationary source becomes subject to permit under this Regulation.
    - b. The stationary source does not achieve the emissions reductions required by this Regulation pursuant to a schedule of milestones included in the Plan approved by the Control Officer pursuant to paragraph (1)(b), above.
    - c. USEPA does not approve the plan for inclusion in the state implementation plan within one year of approval of the plan by the Control Officer. The Control Officer may extend this period for up to one year or until such time as USEPA takes action on the plan, whichever occurs earlier.
  3. Department of Defense Facilities - Applicable Requirements After Expiration.
    - a. Stationary Source Designations. Upon expiration of paragraph (1) "**Department of Defense Facilities,**" the stationary source shall include all applicable activities and sources consistent with federal and state law and these Rules and Regulations. If such inclusion subjects the stationary source to the permitting requirements of this Regulation, the responsible official shall apply for and obtain a permit in accordance with this Regulation and applicable federal regulations.
    - b. Achieved Emission Reductions Remain Enforceable. Notwithstanding any other provision in this Regulation, any achieved emission reductions shall remain in place and shall be enforceable. Achieved emission reductions shall be emission reductions required in an approved plan that have been implemented or are being retrofitted at the time of expiration. Failure to maintain any achieved and verified reductions obtained through execution of the plan shall constitute a violation of District Rules and Regulations.
  4. This definition ("**Department of Defense Facilities,**" "**Expiration,**" and "**Applicable Requirements After Expiration**") shall remain in effect only until January 1, 1998, and as of such date is repealed, unless a later enacted rule, which is adopted before January 1, 1998, deletes or extends such date or unless a plan is filed with the Control Officer by that date and later approved by the Control Officer.

"**Building, structure or facility**" as referred to in the stationary source definition includes all pollutant emitting activities, including activities located in California coastal waters adjacent to the District boundaries and those areas of Outer Continental Shelf waters for which the District is the corresponding onshore area which:

1. Belong to the same industrial grouping, and



2. Are located on one or more contiguous or adjacent properties (except for activities located in California coastal waters or are on the Outer Continental Shelf), and
3. Are under the same or common ownership, operation, or control or which are owned or operated by entities which are under common control.

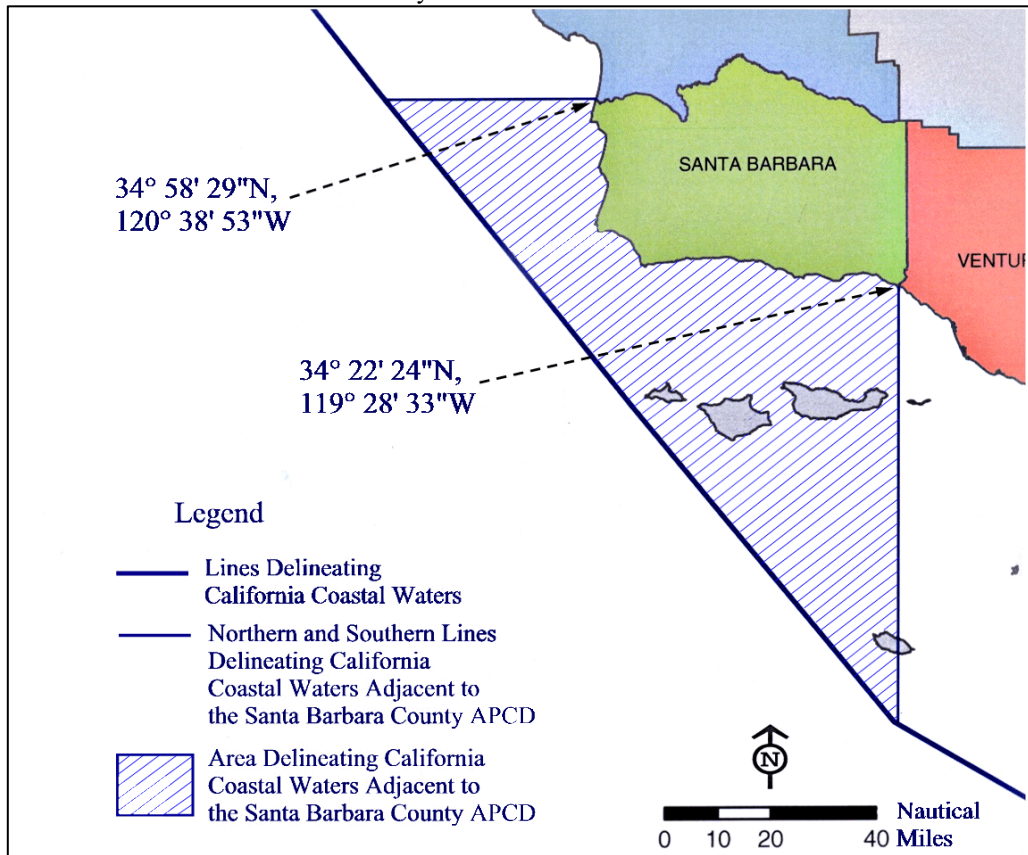
Pollutant emitting activities shall be considered as part of the same industrial grouping if they are part of a common production process. (Common production process includes industrial processes, manufacturing processes, and any connected processes involving a common raw material.)

**"Common operations"** include operations which are related through dependent processes, storage or transportation of the same or similar products or raw material. Emissions from all marine vessels, including cargo carriers, servicing or associated with a stationary source shall be considered emissions from the stationary source while operating within:

1. the District, including California Coastal Waters adjacent to the District (Figure 1301);
2. the Outer Continental Shelf for which the District is the corresponding onshore area; and
3. 25 miles of an Outer Continental Shelf source for which the District is the corresponding onshore area.

The emissions from marine vessels, including cargo carriers, shall include reactive organic compound vapors that are displaced into the atmosphere; fugitive emissions; combustion emissions in the waters described above; and emissions from the loading and unloading of cargo. The term "Cargo Carrier" shall not include trains or vehicles.

**Figure 1301.** Map Depicting the California Coastal Waters Adjacent to the Santa Barbara County Air Pollution Control District



**“Building Maintenance Equipment”** as referred to in the stationary source definition means internal combustion engines used exclusively at a Department of Defense facility for the maintenance of buildings that meet the definition of **“nonroad engine,”** and are exempt from permit under Regulation II.

**“Infrastructure Maintenance Equipment”** as referred to in the stationary source definition means internal combustion engines used exclusively at a Department of Defense facility to maintain roads and public service utilities that meet the definition of **“nonroad engine,”** and are exempt from permit under Regulation II.

**“Installation”** as referred to in the stationary source definition includes any operation, article, machine, equipment, contrivance or grouping of equipment belonging to the same two-digit standard industrial classification code, which emits or may emit any regulated pollutant or HAP, and are located on one or more contiguous properties and under common control.

**“Internal Combustion Engine”** shall mean a reciprocating internal combustion engine.

**“Military Tactical Support Equipment”** as referred to in the stationary source definition means a portable internal combustion engine that meets the definition of **“nonroad engine”** that is built to military specifications, owned by the U.S. Department of Defense, and/or the U.S. military services, and is used in combat, combat support, combat service support, tactical or relief operations, or training for such operations. Examples include, but are not limited to, engines associated with portable generators, aircraft start carts, heaters, and lighting carts.

**“Nonroad Engines”** as used in the definitions of **“Building Maintenance Equipment,” “Infrastructure Maintenance Equipment”** and **“Military Tactical Support Equipment,”** mean any internal combustion engine:

1. in or on a piece of equipment that is self propelled or serves a dual purpose by both propelling itself and performing another function; or
2. in or on a piece of equipment that is intended to be propelled while performing its function (such as lawn mowers), or
3. that, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indications of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

An internal combustion engine is not a nonroad engine if:

1. the engine is regulated by a federal New Source Performance Standard promulgated under Section 111 of the federal Clean Air Act, or
2. the engine otherwise included in paragraph 3 above and remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (that is, at least two years) and that operates at that single location approximately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

As applied to an attainment pollutant, **"stationary source"** shall be interpreted to mean facility-wide. The term **"installation"** shall have the same meaning as **"building, structure, or facility."**

**"Title I (or Major) Modification"** means a modification that meets any of the following criteria:

1. The potential to emit from any new or modified emissions unit(s) at the major stationary source which are covered by the application(s) for such permit modification(s) plus all other net emissions increases at the source which occurred during the specified contemporaneous evaluation period listed below, are equal to or greater than the limits in Table 1301-A.

**Table 1301-A**

<b>Pollutant</b>	<b>Threshold</b>
Carbon Monoxide	100.0 tons/yr
Volatile Organic Compounds (VOC)	40.0 tons/yr
Nitrogen Oxides (NO <sub>x</sub> )	40.0 tons/yr
Sulfur Oxides (SO <sub>x</sub> )	40.0 tons/yr
Particulate Matter (PM <sub>10</sub> )	15.0 tons/yr
Particulate Matter (PM <sub>2.5</sub> )	10.0 tons/yr direct PM <sub>2.5</sub> emissions, or 40.0 tons/yr NO <sub>x</sub> emissions, or 40.0 tons/yr SO <sub>x</sub> emissions.
Lead	0.6 tons/yr

2. The potential to emit any regulated hazardous air pollutant (HAP) from any new or modified emission unit(s) at the Part 70 source which are covered by the application(s) for such permit modification(s) plus all other net emissions increase at the source which occurred during the

specified contemporaneous period would be equal to or greater than the de minimis level for such regulated HAP specified by USEPA rulemaking pursuant to Section 112(g) of the federal CAA.

3. For the purpose of defining Title I modification, the specified contemporaneous evaluation period to compute emissions increase shall consist of a period of five (5) consecutive calendar years, ending with the calendar year during which the complete application for such proposed change is submitted to the District. For computing Title I emission decreases, the period shall expand and extend further to the date on which operation begins for the proposed modified emissions unit.
4. Title I modifications include all modifications under Part 60.

#### **D. Requirements**

All Part 70 source permits and permit applications for issuance, amendments, modifications and renewals shall be drafted based on the definitions listed in this rule along with the provisions listed in Regulation XIII.

A person shall operate all equipment and emission units located at a Part 70 source in compliance with all terms, applicable requirements and conditions specified in the Part 70 permit at all times. Any noncompliance with a Part 70 permit term, requirement or condition is a violation of Regulation XIII. Additionally, any noncompliance with a federally enforceable requirement or resultant permit term or condition constitutes a violation of the federal CAA and its implementing regulations. Each day during any portion of which a violation occurs is a separate offense. Any Part 70 permit noncompliance shall be grounds for appropriate enforcement action under the California Health & Safety Code and/or the federal CAA and its implementing regulations.

#### **E. Compliance Schedule**

Provisions of this rule become effective on the date this rule is approved by the USEPA. All Part 70 sources subject to this rule, except the outer continental shelf (OCS) sources, shall comply with this rule effective that date. All OCS sources shall comply with this rule either on the USEPA's approval date for this rule or on the date USEPA delegates the OCS program to the District, whichever is later.

**RULE 1302. PART 70 OPERATING PERMITS -- PERMIT APPLICATION**  
(Adopted 11/9/1993, [revised 8/15/2024](#))

**A. Applicability**

The provisions of this Rule shall apply to applications for permit issuance, renewals, modifications or amendments from any Part 70 source.

**B. Exemptions**

No applications are required from Part 70 sources proposing operational, process or emission changes that occur under the following situations:

1. Reasonably anticipated operating scenarios (see Section E later), and,
2. CAA Section 502(b)(10) changes, that allow contravening express permit conditions, as discussed in Rule 1303.

**C. Definitions**

For purposes of this Rule, definitions listed in Rule 1301, Section C shall apply.

**D. Requirements**

Unless exempt under Section B of this Rule, each Part 70 source shall submit complete permit applications for all permit issuances, renewals, modifications and amendments in accordance with the requirements listed below. Except for administrative amendments, a copy of each application, including the compliance plan, any required compliance schedule and the compliance certification, shall also be forwarded to the USEPA, Region IX, by the applicant.

1. Required Permit Application Information

A complete application for a Part 70 permit shall contain all the information necessary for the Control Officer to determine compliance with all applicable requirements. The information shall, to the extent possible, be submitted on standard application forms available from the District. The following information shall be included, at a minimum:

- a. Information identifying the Part 70 source.
- b. A description of the source's processes and products by Standard Industrial Classification Code including those associated with any reasonably anticipated operating scenarios.
- c. Identification and descriptions of all points of emissions.
- d. All emission-related information, including all emission quantities and emissions parameters of pollutants for which the source is major, and all emissions data for regulated air pollutants, emission calculations and all assumptions used in the calculations including process rate, fuel use, production rate and operating schedules and any information that is necessary to determine which requirements apply to the source and should be included in the permit.
- e. Citation and description of all applicable requirements and description of or reference to any associated test methods.
- f. An explanation of any proposed exemptions from any applicable requirements.

- g. A complete description of any reasonable anticipated operating scenarios to be included in the permit.
- h. A compliance plan as required by Section D.2 of this Rule and, if required, a compliance attainment description, and a schedule of compliance (as specified under Section D.2 of this Rule) that has been approved by the Control Officer.
- i. Compliance certification for the Part 70 source as required by Section D.3 of this Rule.
- j. For acid rain sources, completed nationally-standardized forms as required by 40 CFR Part 70.
- k. For minor permit modification applications, the following information shall also be included:
  - i. A description of the proposed modification, any resultant emission changes and all applicable requirements for the proposed changes.
  - ii. A suggested draft permit for the source.
  - iii. Certification by a responsible official stating that the modification meets the criteria for use of minor permit modification procedures.
  - iv. Completed District forms to notify the USEPA and adjacent States.

Applications for permit revisions need supply only such information as are related to the proposed modification.

The information required for a complete application is explained in more detail in "Santa Barbara County Air Pollution Control District Guidelines for Part 70 Permit Applications," which is available from the District.

## 2. Compliance Plans

A compliance plan is required with any Part 70 permit application. The compliance plan shall contain all of the following information:

- a. A description of the compliance status of the source with respect to all federally enforceable requirements.
- b. For requirements with which the source complies, the plan must state that the source will continue to comply.
- c. For requirements that will become effective during the permit term, the plan must state that the source will comply with such requirements in a timely manner.
- d. For requirements with which the source does not comply, a description of how the source will achieve compliance, and a schedule of compliance approved by the Control Officer. The compliance schedule shall include:
  - i. For applicable requirements that will become effective during the permit term, a statement that the source will meet in a timely manner applicable requirements that become effective during the permit term.

- ii. For applicable requirements that are not being met at the time of permit issuance, a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with the applicable requirements. The compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. The schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.
- iii. A requirement that the permittee shall submit certified progress reports on any schedule of compliance at least every 6 months or more frequently if ordered to do so by the Control Officer.

The compliance plan content requirements also apply to acid rain sources.

### 3. Compliance Certification

All permittees and applicants must submit certification of compliance with all applicable requirements and all permit conditions. A compliance certification shall be submitted with any permit application and annually, on the anniversary date of the permit, or on a more frequent schedule if required by an applicable requirement or permit condition.

Compliance certification shall identify each applicable requirement or condition of the permit, the compliance status of the Part 70 source, whether the compliance was continuous or intermittent since the last certification, and the method(s) used to determine compliance. In addition, the certification shall indicate the Part 70 source's compliance status with any applicable enhanced monitoring and compliance certification requirement of the CAA and its implementing regulations. If necessary, the owner or operator shall also identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information.

### 4. Confidentiality

If a Part 70 source submits an application for permit issuance, renewal or modification and includes information that is claimed to be confidential, a copy of the information shall be sent directly to the USEPA, Region IX, claiming confidentiality and requesting the handling of submitted information according to 40 CFR [Part 2](#) stipulations. District Policy and Procedure Number 6100.020 (copy available from the District), based on California laws, covers the protocol for handling claims for the confidentiality of the information submitted to the District.

### 5. Document Certification

Any permit application and any document, including compliance plans and schedules, reports, schedule of compliance progress reports and compliance certifications, required by a Part 70 permit, shall be certified by a responsible official regarding its truth, accuracy and completeness. The certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

### 6. Additional Information After An Application is Complete

If the District determines that additional information is necessary to evaluate a permit application after the application has been deemed complete, the District may request such information in writing and set a reasonable deadline for a response. A copy of such request will also be forwarded to the USEPA, Region IX.

### 7. Supplementary and Correction Information

Any applicant who has failed to submit any relevant information or who has submitted incorrect information to the District shall, upon becoming aware of such failure or incorrect submittal, promptly submit such relevant or corrected information in writing. In addition, any applicant shall provide additional information as necessary to address any requirements that become applicable after a complete application has been submitted but before a draft permit is released.

8. Permit Application Shield

No Part 70 source required to obtain a Part 70 permit shall operate after the time it is required to submit a timely and complete permit application except in compliance with its Part 70 permit or under one of the following conditions:

- a. When a Part 70 source has submitted a timely and complete permit application for the initial Part 70 permit, the source may continue to operate until the Part 70 permit is either issued or denied. This provision does not allow the Part 70 source to operate in violation of any other applicable requirements.
- b. When a timely and complete application for renewal of a Part 70 permit has been submitted, the Part 70 source must continue to comply with its existing Part 70 permit until the District and the USEPA takes final action on the application for renewal. Also, if such a timely and complete application has been submitted, then the existing permit shall not expire, and all conditions of the permit shall remain in effect, until the applied for Part 70 permit has been reissued or denied.
- c. When a complete application for a minor modification of a Part 70 permit has been submitted, the Part 70 stationary source can be operated in compliance with either: all applicable conditions on its Part 70 permit and all applicable conditions on its Authority to Construct (ATC) for the modification; or, if appropriate, all applicable conditions on the ATC application as listed by the Part 70 source itself, until the Part 70 permit is revised or the request for modification is denied.
- d. When a complete application for a significant modification for a Part 70 permit has been submitted by an existing Part 70 source, the permit application shield described in Section D.8.b shall apply to that source for that modification.
- e. The protection granted by Sections D.8.a, D.8.b, D.8.c and D.8.d shall cease if, subsequent to the District's determination that an application is complete, the applicant fails to submit by the deadline specified in writing by the District any additional information identified as needed to process the application. The protection shall be restored to the applicant following a thirty (30) day period for processing and USEPA transmittal, starting with the date of receipt of the complete information requested by the District. The District will inform the applicant and the USEPA, in writing, of the date of permit application shield restoration.

For sources being constructed under a SIP-approved preconstruction review program, and which would qualify as Part 70 sources when operational, a complete application to obtain the Part 70 permit shall be submitted within 12 months after commencing operation. During these 12 months, operation of these sources without Part 70 operating permits or permit applications shall be allowed, unless such construction or change in operation is prohibited under the applicable requirements.



9. Compliance with New Source Review

The submittal of a complete Part 70 permit application or application for amendment, change or modification to the Part 70 permit shall not relieve any person, including a source owner or operator, of the federally enforceable requirement to apply for and obtain a preconstruction permit under Title I of the federal CAA and its implementing regulations or of the applicable requirement for a permit (including an Authority to Construct) under California Health and Safety Code, Section 42300.

**E. Compliance Schedule**

All Part 70 sources subject to this rule, except the outer continental shelf (OCS) sources, shall comply with this rule on the date they become subject to the federal operating permit program as approved by the USEPA for the District. All OCS sources shall comply with this rule either on the USEPA's approval date for this rule or on the date USEPA delegates the OCS program to the District, whichever is later. Specific dates for compliance are provided in relevant sections of this rule.

**F. Effective Date of Rule**

The requirements of this rule shall become effective on the date of approval of this rule by the USEPA.

**RULE 1303. PART 70 OPERATING PERMITS – PERMITS**  
(Adopted 11/09/1993, revised 1/18/2001, [and 8/15/2024](#))

**A. Applicability**

This rule applies to operating permit contents for Part 70 sources.

**B. Exemptions**

Rule 1301 Section B describes sources which are exempt from the requirement to obtain Part 70 permits.

**C. Definitions**

For the purposes of this rule, the definitions of Rule 1301 Section C shall apply.

**D. Permit Content**

1. Each Part 70 permit shall include the following elements:

- a. Emission limitations and standards, including operational limits, that assure compliance with all applicable requirements.
- b. The origin of and authority for each permit term and condition and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.
- c. The permit term. Permit terms shall not exceed five (5) years. Part 70 sources shall submit an application for permit renewal two years and six months after the date of issuance of the initial Part 70 permit or subsequent permit renewals. The District may approve a later submittal date, but in no case shall the time period for a renewal application exceed four years and six months from the date of issuance. The following additional provisions apply:
  - 1) For acid rain sources the permit term shall be five (5) years.
  - 2) For solid waste incineration sources subject to CAA Section 129(e), the permit term shall be for no more than twelve (12) years, with a permit review due every five years.

The above provisions shall not relieve any source the obligation to renew the District permit pursuant to the California [Health & Safety](#) Code and/or the District Rules.

- d. A clause stating that the permit expiration date terminates the Part 70 source's right to operate unless a timely and complete application for permit reissuance has been submitted consistent with Rule 1302.
- e. Conditions establishing all applicable emissions monitoring and analysis procedures, emissions test methods or continuous monitoring equipment required under all applicable requirements, including the installation, use and maintenance of continuous monitoring equipment and methods, and related recordkeeping and reporting requirements. Where the applicable requirement does not require periodic testing or monitoring, conditions establishing periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to the permit's reporting requirement.
- f. Conditions establishing all applicable recordkeeping requirements. All applicable records shall be maintained for a period of at least 5 years. Records of required monitoring information ~~shall that~~ include the following:

- 1) The date, place as defined in the permit, and time of sampling measurement;
  - 2) The date(s) analyses were performed;
  - 3) The company or entity that performed the analyses;
  - 4) The analytical techniques or methods used;
  - 5) The results of such analyses; and
  - 6) The operating conditions as existing at the time of the sampling or measurement.
- g. Conditions establishing all applicable reporting requirements; reporting of any deviations from permit-stipulated requirements. All applicable reports shall be submitted every 6 months and shall be certified by a responsible official.
- h. The source shall submit a written report to the District documenting each and every deviation from the requirements of this permit or any applicable federal requirements within seven days after discovery of the violation, but not later than six months after the date of the occurrence. The report shall clearly document:
- 1) The probable cause and extent of the deviation,
  - 2) Equipment involved,
  - 3) The quantity of excess pollutant emissions, if any, and,
  - 4) Actions taken to correct the deviation.

The requirements of this condition shall not apply to deviations reported to the District in accordance with Rule 505. *Breakdown Conditions*, ~~or Rule 1303.F. *Emergency Provisions*.~~

- i. If applicable, a permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the Clean Air Act or under 40 CFR Part 72.
- j. A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.
- k. A statement that the permittee must comply with all conditions of the permit, and any permit non-compliance constitutes a violation of the CAA and its implementing regulations or of District Rules or of both, as applicable.
- l. A statement that the need for a permittee to halt or reduce activity shall not be a defense in an enforcement action.
- m. A statement that the permit may be modified, revoked, reopened, and reissued, or terminated for cause.
- n. A list of conditions under which the permit may be reopened prior to the expiration of the permit.
- o. A statement that the permit does not convey any property rights of any sort, or any exclusive privilege.

- p. A statement that the permittee shall furnish to the District or to the USEPA the following, within a reasonable time:
    - 1) Any information required to determine whether cause exists for modifying, revoking, reissuing, or terminating the permit.
    - 2) Any information required to determine compliance with the permit.
    - 3) Copies of any records required to be maintained by the permittee.
  - q. A condition requiring the permittee to pay fees due to the District consistent with all applicable fee schedules.
  - r. Applicable conditions for all reasonably anticipated operating scenarios identified by the source in its permit application. Such conditions shall meet all applicable requirements.
  - s. Applicable terms and conditions, if the permit applicant requests them, for allowing trading of emission increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of any emission trade. Such terms and conditions:
    - 1) Shall include all terms required under Rule 1305 (Enforcement) and Section D of this rule;
    - 2) May extend the permit shield described in Section E.4 of this rule to all terms and conditions that allow such increases and decreases in emissions;
    - 3) Must meet all applicable requirements and requirements of Regulation XIII of the Rules and Regulations of Santa Barbara County Air Pollution Control District.
  - t. Where a federally enforceable requirement and a District requirement apply to the same emissions unit but are mutually exclusive (e.g., require different air pollution control technology), the more stringent requirement implemented in the District's Authority to Construct/Permit to Operate (or USEPA's preconstruction permit) shall be incorporated as a Part 70 permit condition, and the other requirement shall be referenced.
2. Each Part 70 permit shall include the following compliance requirements:
- a. A statement that representative(s) of the USEPA and the District shall be allowed access to the Part 70 source and all required records as follows:
 

Upon presentation of credentials and other documents as may be required by law, the permittee shall allow the representative(s) to perform the following:

    - 1) Enter the Part 70 source premises, including the areas where emissions-related activities are conducted or where the records required by the permit are kept.
    - 2) Have access to and copy at reasonable hours any records that are kept under permit conditions.
    - 3) Inspect at reasonable times any facilities, equipment including monitoring or pollution control equipment, practices or operations regulated or required under the permit.
    - 4) Sample or monitor at reasonable times substances or parameters to assure compliance with the permit or applicable requirements.

- b. If the Part 70 source is not in compliance with any federally enforceable requirement, then the following provisions shall be included:
  - 1) A schedule of compliance submitted by the applicant under Rule 1302, Section D.2.d and as approved by the Control Officer.
  - 2) A condition that requires submittal of a progress report on the schedule of compliance at least semiannually. The progress report shall contain:
    - i. Dates for achieving the required activities, milestones or compliance required in the schedule of compliance and the dates when the activities, milestones or compliance were achieved.
    - ii. An explanation of why any dates were not or will not be met, and any preventive or corrected measures adopted.
- c. A requirement that the permittee submit compliance certification pursuant to Rule 1302, Section D.3 at least annually.

3. Federally Enforceable Requirements

Any condition of the permit shall be enforceable by the USEPA and citizens under the Clean Air Act unless that condition is specifically designated as not being federally enforceable.

**E. Operational Flexibility**

1. Reasonably Anticipated Operating Scenarios

The owner or operator of any Part 70 source required to obtain a Part 70 permit may submit a description of all reasonably anticipated operating scenarios for the Part 70 source as part of the permit application. The operating scenario descriptions shall contain emission information for each scenario and sufficient information for the District to develop reasonable permit conditions defining each scenario.

The owner or operator of any Part 70 source which is permitted to operate under different operating scenarios will be allowed to change between operating scenarios without any notice to the District but shall be required to maintain a log at the Part 70 source recording all changes of operating scenarios. All changes of operating scenarios must be recorded in the log contemporaneously with the change.

2. Voluntary Emission Caps

The owner or operator of any Part 70 source may request the District, as part of the permit application, to establish a federally enforceable emissions cap for the entire source. The proposed emissions cap may be independent of any federally enforceable requirement for any pollutant emitted by the source. The emissions cap request shall contain replicable procedures ensuring constant compliance verification of the emissions cap; and the proposed permit terms shall also ensure that the emissions trades between the emissions units at the source will be real, surplus, quantifiable and federally enforceable. The District shall not include in the emissions trading provisions any emissions units for which: (i) the emissions decreases are not real, surplus, quantifiable, (ii) the emissions increases are not quantifiable, or (iii) for which there are no replicable procedures to enforce the emissions trade on a constant compliance verification basis.

The owner or operator of any Part 70 source which is permitted to operate under an emissions cap will be allowed to trade emissions within the emissions cap with 30 days written notification to the District unless the District objects in writing to the emissions trade within the 30 day notice

period. The owner or operator shall also provide written notification to USEPA of emission trades made, a minimum of seven days in advance.

The written notice shall state when the emissions trade will occur, which emissions unit will be involved, and shall describe the changes in emissions that will occur. The written notice shall also demonstrate that the requested change meets all of the following criteria:

- a. The emissions trade will not violate any applicable requirement.
- b. The emissions trade is not a modification under any provision of Title I or of District Rules, and it is not a significant modification.
- c. The emissions trade does not result in exceeding the emissions allowable under the permit whether expressed as a rate of emissions or total emissions.
- d. If the emissions cap is exceeded, then each and every emissions unit operating under the cap shall be deemed to be operating in violation of the permit.
- e. The emissions trade will comply with all permit conditions.

The District shall object to the emissions trade only if one or more of these criteria is not satisfied.

### 3. Contravening Express Permit Conditions

The owner or operator of any Part 70 source required to obtain a Part 70 permit will be allowed to contravene an express permit condition provided the provisions set forth below are met. The owner or operator shall give the District 30 day written notification which shall include a brief description of the proposed change, the date on which the change will occur, any change in emissions caused by the change, and any permit condition that will no longer be applicable as a result of the change. The written notice shall also demonstrate that the requested change meets all of the following criteria. The owner or operator shall also provide written notification to USEPA, a minimum of seven days in advance, of express conditions contravened:

- a. The change will not violate any applicable requirement.
- b. The change is not a modification under any provision of Title I of the federal Clean Air Act or of District Rules.
- c. The change does not result in exceeding the emissions allowable under the permit whether expressed as a rate of emissions or in terms of total emissions.
- d. The change will not contravene federally enforceable permit conditions pertaining to monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

The owner or operator shall not implement the proposed changes if the District objects in writing to the proposal within the 30 day notice period. The notice period shall commence when the written notification is received by the District. The District shall object to the contravening of an express permit condition if any of the above criteria is not satisfied.

### 4. Permit Shield

- a. The owner or operator of a Part 70 source required to obtain a Part 70 permit may request the District, in writing, for a permit shield upon submittal of an application for Part 70 permit issuance or renewal. The owner/operator shall specify in the request, the following, in detail:

- 1) Specific process units for which a permit shield is sought; and,
- 2) Technical and/or administrative reason(s) that a permit shield is sought.

The District will grant a permit shield after confirming that the above information is complete. The owner/operator making the request must be in full compliance with all applicable requirements at the time of the request. After the request is granted, the permittee shall be deemed to be in compliance with any applicable requirements as of the date of final permit issuance, if the permittee is in compliance with all the conditions listed in the permit, and if the following condition is met:

- 3) All such applicable requirements are included and specifically identified in the permit; or,
- 4) The District has, prior to the permit issuance, determined in writing that other requirements have been specifically identified as not applicable to the source: and the District has included a copy of the determination (or a summary thereof) as a part of the permit.

b. The permit shield shall not apply to, nor alter or affect the following situations:

- 1) Minor permit modifications;
- 2) Process or operation changes at the source, including feed/fuel and equipment changes and changes of operating hours or rates, that are neither addressed nor prohibited by the permit;
- 3) Contravening express permit conditions (CAA, Section 502(b)(10) changes);
- 4) Emission trading under the generic provisions of the state implementation plan (note, emission trading allowed by permit condition changes are covered under permit shield);
- 5) Provisions of Section 303 (Emergency Orders) of the CAA;
- 6) The liability of the owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;
- 7) The applicable requirements of Title IV (Acid Rain) of the CAA and its implementing regulations; ~~or~~;
- 8) The implementation of the provisions of Section 114 (Entry, Sampling, and Records Examination) of the CAA by the USEPA and the District; ~~;~~
- 9) Applicable requirements that are promulgated or become effective after the issuance of the Part 70 permit; ~~or~~ or
- 10) Applicable requirements excluded altogether from the Part 70 permit without identifying the reason for exclusion.

c. A Part 70 permit that does not expressly state that a permit shield exists for that permit shall not have any such shield.

d. A Part 70 permit shield clarifies the federal compliance responsibilities of Part 70 sources state or District compliance responsibilities.

**F. ~~[Reserved]~~ Emergency Provisions in Permits**

~~An emergency constitutes an affirmative defense to an enforcement action brought for noncompliance with a technology based emission limitation violated as a result of the emergency if all of the following actions have been taken by the permittee:~~

- ~~1. The permittee can document with properly signed, contemporaneous operating logs that an emergency occurred and can identify the cause(s) of the emergency;~~
  - ~~2. The permittee can document that the source was being properly operated at the time the emergency occurred;~~
  - ~~3. The permittee can demonstrate that all reasonable steps were taken to minimize emissions in excess of permit conditions or other permit requirements; and~~
  - ~~4. The permittee submitted a description of the emergency and all mitigating and corrective actions taken to the District within two (2) working days of the emergency.~~
  - ~~5. The permittee can demonstrate that the emergency was not due to the permittee's negligence or willful misconduct.~~
- ~~In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.~~

**G. General Part 70 Permits**

1. General

The Control Officer may issue a general Part 70 permit for numerous similar sources. Examples of sources for which a general permit may be issued are perchloroethylene drycleaning facilities or motor vehicle gasoline dispensing facilities. A general Part 70 permit will be issued to a source by the Control Officer as a supplement, and not in lieu of, a Permit to Operate issued pursuant to Rule 201 or other applicable District Rules. When a general Part 70 permit is proposed, the Control Officer shall identify criteria by which sources may qualify for the general permit.

2. Application Contents

A complete application to be covered by a general Part 70 permit shall contain all the information required by Rule 1302 except that information required by Rule 1302 D.1.c-g. In addition, the application shall contain all information necessary to determine qualification for, and to assure compliance with, the general permit.

3. Permit Content

The Control Officer will only include in a general Part 70 permit all information required by this rule regarding federally enforceable requirements as applicable to the general permit category.

4. Timeframes for Applications, Review and Issuance

An application subject to a general Part 70 permit shall be submitted within 12 months after a source becomes subject to a federally enforceable requirement covered by the permit. The Control Officer shall accept for processing or deny an application subject to the general Part 70 permit, or request clarifying information, within 30 days after receipt of an application. Unless the Control Officer requests more information or denies the application within 30 days, the application shall be deemed to have been accepted for processing.



5. Permit Term and Permit Reissuance

The Control Officer shall reissue a general Part 70 permit within a period not exceeding five years. All facilities eligible to be covered by the general permit must submit an application to be covered by the general Part 70 permit within 6 months after the general permit is reissued.

6. General Part 70 Permits - Notification

The Control Officer shall issue notification of a decision to issue or reissue a general Part 70 permit following the provisions of Rule 1304. An application of a source to be covered by a general permit and the Control Officer's decision on that application are not subject to the public and USEPA review provisions of Rule 1304.

7. Reopening of General Part 70 Permits

General Part 70 permits may be reopened for cause pursuant to the provisions of Rule 1304, Sections D.~~9~~10 and D.~~10~~11.

8. Compliance Provisions

The compliance provisions in Rule 1302 are applicable to any person covered by a general Part 70 permit. A source shall be in violation of this rule for not having a regular Part 70 permit if, after a general Part 70 permit is issued, the source is determined not to qualify for the general Part 70 permit.

**H. Compliance Schedule**

All Part 70 sources subject to this rule, except the outer continental shelf (OCS) sources, shall comply with this rule on the date they become subject to the Part 70 operating permit program as approved by the USEPA for the District. All OCS sources shall comply with this rule either on the USEPA's approval date for this rule or on the date USEPA delegates the OCS program to the District, whichever is later. Specific dates for compliance, if applicable, are provided in relevant sections of this rule.

**I. Effective Date of Rule**

The requirements of this rule shall become effective on the date of approval by USEPA.