State of California
AIR RESOURCES BOARD

Resolution 80-49

July 23, 1980

WHEREAS, Section 39602 of the Health and Safety Code designates the Air Resources Board (ARB) as the air pollution control agency for all purposes set forth in federal law and designates the ARB as the state agency responsible for the preparation of the State Implementation Plan (SIP) required by the Clean Air Act;

WHEREAS, the Clean Air Act as amended in 1977 mandates the revision of the SIP in designated nonattainment areas of the state in order to assure the attainment and maintenance of national ambient air quality standards by specified deadlines;

WHEREAS, Health and Safety Code Sections 41500, 41504, 41650 and 41652 provide that the ARB shall adopt a locally prepared non-attainment plan and authorize the ARB to make such revisions to a nonattainment plan as are necessary to meet the requirements of the Clean Air Act;

WHEREAS, the ARB is the designated lead agency for the Los Angeles County nonattainment plan and has committed itself to a coordinated program for the development of the nonattainment plans for ozone with the active participation of other agencies possessing resources and expertise in the air quality and transportation fields;

WHEREAS, the California Environmental Quality Act and ARB implementing regulations require that an activity not be adopted if feasible alternatives and/or feasible mitigation measures are available which would significantly lessen any negative environmental impacts of the proposed activity;

WHEREAS, on November 29, 1979, the ARB resolved in Resolution 79-79, incorporated by reference herein, that the Los Angeles County APCD's nonattainment plan did not include New Source Review rules which would achieve and maintain state and national ambient air quality standards and do not meet the requirements of the federal Clean Air Act;

WHEREAS, on July 17, 1980, the Los Angeles County APCD Board adopted Regulation XIII, New Source Review, which among other provisions amended Sections (a)(2) and (3) and (e)(1) and (2) of Rule 1311, Power Plants, to purportedly facilitate the issuance of permits for the construction of power plants which would not require mitigation of potential adverse impacts.

WHEREAS, the ARB finds:

1. That the state and national ambient air quality standards for photochemical oxidant (ozone) are exceeded in the Los Angeles County portion of the SEDAB;

2. That organic gases have been demonstrated to be a chemical precursor to photochemical oxidant (ozone), and contribute to or are responsible for exceedance of the state oxidant standard and the national ozone standard within the SEDAB;

3. That further increases in emissions of precursors will interfere with progress toward achievement of the national ambient air quality standard for ozone and of the state air quality standard for oxidant;

4. That, except as provided herein, the major portions of the Los Angeles County APCD adopted Regulation XIII are adequate to meet the requirements of the Clean Air Act.

5. That the nonattainment plan adopted on November 29, 1979, for the Los Angeles County APCD by the ARB does not include in legally enforceable regulatory form all control measures needed to demonstrate attainment of the ozone NAAQS, and will be subject to revision in 1982 in order to adopt sufficient measures to demonstrate attainment by 1987 as required by the Clean Air Act.

6. That the adopted language in Rule 1311 - Power Plants in Regulation XIII contains unclear and imprecise requirements, and as a regulatory measure is meaningless and unenforceable;

7. That the requirements contained in Sections (a)(2) and (3) and (e)(1) and (2) of Rule 1311, by potentially facilitating new power plant construction without mitigation measures regarding emissions offsets based on speculations regarding future air quality do not meet the requirements of the Clean Air Act and the EPA implementing regulations (40 CFR Part 51, Appendix S) and EPA guidance set forth in 44 Fed. Reg. 51924, at 51958, September 5, 1970, including but not limited to the following:

   a. that exemptions of major new sources from offset requirements will be permitted only if it is certain that the area where the source is to locate will be an attainment area by the time the source commences operation; and

b. That the finding regarding attainment must be based upon an approved SIP which demonstrates attainment by the deadline specified in Clean Air Act Section 172 based exclusively on currently adopted, approved, and enforceable requirements; plans where approval under Part D is conditioned on submittal of additional material, plans containing schedules for submittal of additional material rather than enforceable regulatory measures, and plans where additional submittals are needed by July 1, 1982 in order to demonstrate attainment by 1987 do not fulfill this requirement.

8. That adoption of Regulation XIII, Rule 1311 as amended by the District would result in adverse environmental impacts on air quality by exempting certain major sources from offset requirements, contrary to CEQA and ARB regulations.

NOW THEREFORE BE IT RESOLVED, that the Los Angeles County APCD's Regulation XIII be amended as shown in Attachment A attached hereto. The Board hereby directs the Executive Officer to submit Regulation XIII, as amended, to the EPA as part of the State Implementation Plan for the Los Angeles County APCD.

BE IT FURTHER RESOLVED, that Los Angeles County APCD's Regulation XIII, Rule 1311- Power Plants, as amended may subsequently be amended by the District in accordance with the procedures set forth in 17 California Administrative Code Section 60008.1.

BE IT FURTHER RESOLVED, that to the extent that rules amended today are in conflict or are not consistent with any other provision of the affected Districts' rules and regulations, the provisions of the amended rules adopted July 23, 1980 shall prevail. The amended rules shall have the same force and effect as a program, rule or regulation adopted by the District and shall be enforced by the District.

I certify that the above is a true and correct copy of Resolution 80-49, as adopted by the Air Resources Board.

Sally Rump

Sally Rump, Board Secretary

ATTACHMENT A

Amend Los Angeles County APCD Regulation XIII, New Source Review, as follows. Specifically see Rule 1311, Power Plants. Deleted language is shown struck out, added language is shown underlined.

LOS ANGELES COUNTY AIR POLLUTION CONTROL DISTRICT

Rule 1300. State Ambient Air Quality Standards

For the purpose of this regulation, all references to the national ambient air quality standards shall be interpreted to include state ambient air quality standards. This rule shall not be enforceable as part of any revision to the Los Angeles County Air Pollution Control District's portion of the State Implementation Plan.

Rule 1301. General

(a) Purpose

This regulation sets forth the requirements for the preconstruction review of new stationary sources or modifications to existing stationary sources, to ensure that the construction of such stationary sources does not interfere with the attainment of the national ambient air quality standards, without unnecessarily restricting future economic growth within the District.

(b) Applicability

The requirements of this regulation shall apply to all new stationary sources and modifications which are required pursuant to District rules, to obtain a permit to construct, or in the case of power plants, a Determination of Compliance.

(c) Existing Rules.

This regulation shall supersede Rules 213, 213.1, and 213.2, except that such rules shall apply to applications for permits to construct which have been accepted as complete and to applications for permits to operate facilities which received permits to construct under such rules, prior to the date of adoption of this regulation.

Rule 1302. Definitions

For the purpose of this regulation, the following definitions shall apply:

(a) Affected air contaminant means any non-attainment air contaminant for which the net emission increase from a stationary source of that air contaminant is greater than 68 kilograms (150 pounds) per day, except carbon monoxide, for which the value is an increase of more than 340 kilograms (750 pounds) per day.

(b) Affected Source means a new stationary source or modification to an existing stationary source which results in a net increase in the emissions of any non-attainment air contaminant of more than 68 kilograms (150 pounds) per day, except carbon monoxide, for which the value is an increase of more than 340 kilograms (750 pounds) per day.

(c) Air Contaminant means any air pollutant for which there is a national ambient air quality standard, or precursor to such air pollutant, including but not limited to: carbon monoxide, sulfur dioxide, nitrogen oxides, particulate matter, lead, and organic gases, but excluding methane, 1, 1, 1 trichloroethane, methylene chloride, or trichlorotrifluoroethane.

(d) Best Available Control Technology (BACT) means the more stringent of:

(1) The most effective emission control technique which has been achieved in practice, for such permit unit category or class of source; or

(2) The control technique which will result in the most stringent emissions limitation contained in any State Implementation Plan approved by the Environmental Protection Agency for such permit unit category or class of source.

A specific control technique shall not be required if the owner or operator of the proposed source demonstrates to the satisfaction of the Executive Officer that such control techniques are not available (i.e. that such emissions limitations are not presently achievable); or

(3) Any other emission control technique found by the Executive Officer to be technologically feasible and cost-effective for such class or category of sources or for a specific source.

No control technique, the application of which would result in emissions from a new or modified source in excess of the amount allowable under applicable new source performance standards specified in Regulation IX of these rules and regulations or promulgated by the Environmental Protection Agency pursuant to Section 111 of the Clean Air Act may be considered Best Available Control Technology.

(e) Cogeneration Project means a project which:

(1) makes use of exhaust steam, waste steam, heat or resultant energy from an industrial, commercial, or manufacturing plant or process for the generation of electricity, or,

(2) makes use of exhaust steam, waste steam, or heat from a thermal power plant, in an industrial, commercial, or manufacturing plant or process.

For the purposes of this definition, the "industrial, commercial or manufacturing plant or process" shall not be a thermal power plant or portion thereof. A cogeneration project shall not consist of steam or heat developed solely for electrical power generation. To qualify as a cogeneration project, the processes listed in (1) and (2) above must concurrently recover, for useful purposes, at the first stage of heat transfer, not less than 25 percent of the energy.

(f) Contiguous Property means two or more parcels of land in actual physical contact or separated solely by a public roadway or other public right-of-way.

(g) District means the Los Angeles County Air Pollution Control District.

(h) Executive Officer means Air Pollution Control Officer of the Los Angeles County Air Pollution Control District.

(i) Exempt Permit Unit means a specific article, machine, equipment, or other contrivance which may cause the issuance or control the issuance of air contaminants but which has been exempted from permit requirements by Rule 219.

(j) Intermittent Source means a stationary source which may operate annually, but which emits 80 percent or more of its annual emissions on less than 120 days per year.

(k) Mobile Source means a device by which any person or property may be propelled, moved, or drawn upon the surface, waterways, or through the atmosphere, and which emits air contaminants.

(l) Modeling means using an air quality simulation model based on specified assumptions and data, and which model, assumptions and data have been approved in advance and in writing by the Executive Officer.

(m) Modification means any physical change in, change in method of operation of, or addition to an existing stationary source, requiring an application for permit to construct or operate, except that routine maintenance or repair shall not be considered to be a physical change. A change in the method of operation, unless previously limited by an enforceable permit condition, shall not include:

(1) An increase in the production rate, if such increase does not exceed the maximum design capacity of the source.

(2) An increase in the hours of operation.

(3) A change in ownership of a source.

(n) Permit Unit means any article, machine, equipment, or other contrivance, or combination thereof, which may cause the issuance or control the issuance of air contaminants, and which requires a permit pursuant to these rules and regulations.

(o) Precursor means a substance that, when released to the atmosphere, forms or causes to be formed or contributes to the formation of another air contaminant for which a national ambient air quality standard has been adopted, or whose presence in the atmosphere will contribute to the violation of one or more national ambient air quality standards.

Precursors	Secondary Pollutants
Hydrocarbons and substituted hydrocarbons (reactive organic gases)	a) photochemical oxidant (ozone)
	b) the organic fraction of suspended particulate matter
Nitrogen oxides (NO_x)	a) nitrogen dioxide (NO_2)
	b) the nitrate fraction of suspended particulate matter
	c) photochemical oxidant (ozone)
Sulfur dioxides (SO_x)	a) sulfur dioxide (SO_2)
	b) sulfates (SO_4)
	c) the sulfate fraction of suspended particulate matter.

(p) Seasonal Source means a stationary source which operates during a period of less than 120 days and only within one five consecutive month period per year.

(q) Stationary Source means any structure, building, facility, or installation which emits or may emit any air contaminant. Structure, building, facility or installation means any grouping of air contaminant-emitting activities which is located on a single parcel of land or contiguous property within the District and which is owned or operated by the same person (or by persons under common control). For the purpose of this regulation, such above-described groupings, remotely located but connected only by land carrying a pipeline, shall not be considered one stationary source.

Proposed Rule 1303. Applicability and Analysis

(a) Applicability

The provisions of this rule shall apply to new stationary sources or modifications to existing stationary sources and relocation to non-contiguous property of existing stationary sources as provided in subsection (c) which result in a net emission increase from such stationary sources of any non-attainment air contaminant greater than 68 kilograms (150 pounds) per day, except carbon monoxide, for which the value is an increase of 340 kilograms (750 pounds) per day.

(b) Analysis

The Executive Officer shall deny the permits to construct for permit units subject to this regulation, except as Rule 1304 applies, as provided by Rule 1303(a) unless:

(1) The new source or modification complies with all applicable rules and regulations of the District; and

(2) The applicant certifies in writing, prior to the issuance of such permit, that all stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in the State of California are in compliance with all applicable emission limitations and standards under the Clean Air Act (42 USC 7401,

et. seq.) and all applicable emission limitations and standards which are part of the State Implementation Plan approved by the Environmental Protection Agency or on a compliance schedule approved by the appropriate federal, state or district officials.

The requirements of this subsection shall apply to stationary sources with allowable emissions of any air contaminant of 25 tons per year or more; and

(3) The new source or modification will be constructed using BACT for each affected air contaminant. In carrying out this provision, the Executive Officer shall annually publish a guideline of BACT for commonly processed permit unit categories or classes of sources. BACT for other permit unit categories or classes of sources shall be determined on a case-by-case basis; and

(4) The net increase in emissions for each affected air contaminant has been offset pursuant to Rule 1307; and

(5) The applicant has substantiated with modeling or other analysis approved by the Executive Officer that the new source or modification will not cause a violation or make measurably worse an existing violation of any national ambient air quality standard at the point of maximum ground level impact. However, modeling shall not be required if all offset sources are within a distance of eight kilometers (five miles) from the affected permit units, unless otherwise required by the Executive Officer.

The air quality methods used for the purposes of this subsection shall be from an approved list of models. Such model list shall be that prepared by the Executive Officer of the California Air Resources Board in consultation with the Executive Officer.

(6) The Executive Officer determines that the new source or modification will not result in emissions which interfere with the schedule of reasonable further progress set forth in the State Implementation Plan for the Los Angeles Air Pollution Control District, approved by the Environmental Protection Agency.

(c) The provisions of this regulation, except as provided in Rule 1304(f), shall apply to existing stationary sources relocated to non-contiguous properties, provided:

(1) The relocation distance is greater than eight kilometers (five miles) and the emissions of any non-attainment air contaminant, at the new location, are greater than 68 kilograms (150 pounds) per day, except carbon monoxide, for which the value is 340 kilograms (750 pounds) per day; or

(2) The relocation distance is less than eight kilometers (five miles) and there is a net emission increase of any non-attainment air contaminant greater than 68 kilograms (150 pounds) per day, except carbon monoxide, for which the value is an increase of 340 kilograms (750 pounds) per day.

Rule 1304. Exemptions from Regulation XIII

Upon approval by the Executive Officer, and provided BACT is employed on the subject permit units, an exemption from this regulation, for one or more non-attainment air contaminants as appropriate, shall be allowed for the permit unit or source which:

(a) Fuel Conversion

Is exclusively a modification to convert from use of gaseous fuels to liquid fuels because of a demonstrable shortage of gaseous fuels (for the purpose of this subsection, modification shall include the permit units for storing or transferring such fuel at the facility), provided:

(1) the applicant demonstrates that best efforts have been made to obtain the required emission offsets, and the applicant certifies that the required offsets will be sought until construction of the modification begins, and that all required offsets available shall be used; and

(2) the applicant agrees to conditions on the operating permit requiring conversion to gaseous or other equivalent low-polluting fuels, should they become available; or

(b) Portable Equipment

Is portable and used for not more than one 90 consecutive day period in any twelve consecutive month period within the District; or

(c) Essential Public Services

Will be used exclusively for providing essential public services; including but not limited to: schools, hospitals, or police and fire-fighting facilities; but specifically excluding sources of electrical power generation other than for emergency standby use at essential public service facilities; or

(d) Air Pollution Control Equipment

Is air pollution control equipment used solely to reduce the issuance of air contaminants from an existing stationary source, provided the applicant establishes with modeling that the affected source will not cause a new violation or make measurably worse an existing violation of any national ambient air quality standard at the point of maximum ground level impact; or

(e) Resource Conservation and Energy Projects

(1) Is a cogeneration project or other energy-related project using fossil fuels, but excluding such other energy-related projects at power plants or refineries, provided:

(A) the project produces 50 megawatts or less of electricity, and

(B) the applicant has provided all required offsets available by modifying facilities owned or operated by the applicant within the District;

(C) the applicant demonstrates to the satisfaction of the Executive Officer that the applicant owns or operates no facilities within the air basin which could be modified to provide offsets; or

(2) Is a resource recovery project using municipal waste, refuse-derived, biomass derived, or other non-fossil fuels for useful energy generation, provided:

(A) the project produces 50 megawatts or less of electricity, and

(B) the project is a modification to an existing source and

(i) the applicant has provided all required offsets available by modifying facilities owned or operated in the air basin by the applicant; or

(ii) the applicant demonstrates to the satisfaction of the Executive Officer that the applicant owns or operates no facilities within the air basin which could be modified to provide offsets; or

(C) the project is a new project, and the applicant demonstrates to the satisfaction of the Executive Officer that all available required offsets have been obtained and, if those offsets are not sufficient, that additional offsets are not available.

The Executive Officer shall notify the Executive Officer of the Air Resources Board upon receipt of an application for a permit to construct a project for which an exemption under this subsection may be appropriate; or

(f) Relocations

Is a relocation of an existing stationary source within a distance of eight kilometers (five miles) and the net increase in emissions of any air contaminant is less than 68 kilograms (150 pounds) per day, except carbon monoxide, for which the value is a net increase of 340 kilograms (750 pounds) per day; or

(g) Innovative Technology

Is innovative equipment or a process which:

(1) the applicant demonstrates will likely result in a significantly lower emission rate from the affected source than would have occurred with the use of previously recognized BACT; and

(2) can be expected to serve as a model for emission reduction technology; and

(3) the applicant establishes by modeling that the affected source will not cause the violation of, or make measurably worse an existing violation of any national ambient air quality standard at the point of maximum ground level impact. This exemption shall apply only to air contaminants which are reduced by the innovative equipment or process.

The Executive Officer shall notify the Executive Officer of the Air Resources Board this when an application is received for which such an exemption may be appropriate.

(h) Replacement is a permit unit replacing a functionally identical permit unit, provided there is no increase in maximum rating.

Rule 1305. Special Permit Provisions

(a) Modifications to Equipment Under Existing Permits.

Any person operating permit units who plans to make modifications to those permit units for the purpose of effecting emission reductions required by Rule 1307, Emission Offsets, shall submit applications for new permits to construct or operate for both the basic and control equipment involved in such emissions reductions, regardless of whether modifications or additions are to be made to the basic or control equipment, or both.

(b) Surrender of Permits.

Existing permits to operate pertaining to the basic and control equipment as specified above shall be surrendered and canceled at the time such new permits to operate are issued. Permits to operate for equipment taken out of service to effect an emission reduction under Rule 1307 shall be surrendered at the time the affected permit unit or source is issued a permit to operate.

(c) Evaluation.

In evaluating the applications submitted pursuant to this rule, the Executive Officer shall:

(1) Determine completeness of the application and inform the applicant of such pursuant to Rules 210 and 1310(a); and

(2) Evaluate only those portions of the applicant's operations which pertain to the emission reduction to be made under the provisions of this regulation. No other review or analysis shall be made for the purpose of issuing new permits pursuant to this rule; and

(3) Consider emission reductions only if before the applications are determined to be complete, rules or regulations have not been adopted which would require the same emission reductions from the same equipment type as those proposed by the applicant.

Rule 1306. Emission Calculations

This rule shall be used as the basis for calculating applicability to Regulation XIII as delineated in Rule 1303. This rule shall also be the basis for calculating emission increases and decreases used for offset calculations in Rule 1307.

(a) Accumulation of Emissions

(1) Emission increases and decreases for each air contaminant, including the emission increases or decreases directly associated with the permit units or source, shall be summed either (A) within the last five years prior to the date of submittal of application for permits to construct or (B) from October 8, 1976. Whichever time period of (A) or (B) is less will be the basis for accumulating emission increases or decreases.

In those cases where (B) is the appropriate time period for determination, emission increases of any air contaminants occurring from October 8, 1976 to date of adoption shall be forgiven up to a maximum amount of 45 kilograms (100 pounds) per day.

(2) Such sum of accumulated emissions, after proper calculations, shall be the basis for the threshold determination of Rule 1303 and for the offset requirements of Rule 1307.

(3) Emission increases or decreases occurring during the period described in subsection (a)(1) are those associated with a new or modified permit to operate or a permit to construct issued during the same period, excluding any emissions reductions required to comply with federal, state, or district laws, rules, or regulations.

(4) Emission reductions required to comply with federal, state, or District laws, rules or regulations shall be excluded from the accumulation of emissions pursuant to subsection (a)(2) of this rule; however, emission reductions in excess of those required by this regulation may be accumulated.

(5) the following mobile source emissions directly associated with a modification to an existing source or with a new source shall be accumulated:

(A) On-premise vehicles; and

(B) All emissions resulting from the loading or unloading of cargo at the source

(b) If in calculating emission increases and decreases, it is determined that violations of district, state or federal laws, rules, regulations, permit conditions, or orders would occur under the conditions specified in subsection (c), adjustments to the emissions shall be made to determine the emissions the existing source would have caused without such violations. The provisions of this subsection shall not apply to ambient air quality standards.

(c) Calculation of Emissions for Threshold Determination.

This subsection provides the method for calculating emission increases and reductions at a stationary source in order to determine if such source is subject to New Source Review as specified in Rule 1303(a).

(1) Emission increases or reductions from permit units in a stationary source shall be calculated using the permit conditions restricting the operation of the subject permit units. In those cases where there are no permit conditions, which directly limit emissions, the emission increase or reduction shall be determined as follows:

(A) For new permit units, the emission increase shall be calculated from:

(i) the maximum rated capacity; and

(ii) the maximum proposed daily hours of operation; and

(iii) the actual materials processed; or

(B) For modified permit units, the emission increase or reduction shall be the difference in emissions before and after modification, determined as follows:

(i) the emissions after modification shall be calculated from:

(a) the maximum rated capacity; and

(b) the maximum proposed daily hours of operation after modification; and

(c) the actual materials processed; and

(ii) the emissions before modification shall be calculated from the sum of actual emissions, determined from company

records or other data approved by the Executive Officer, which have occurred during the highest three years of the last five-year period, divided by the total number of actual operating days in those three years, provided the applicant demonstrates that such permit units have been operated at least 90 days during each of such three years; or

(C) For permit units removed from service, the emission reductions shall be calculated from the sum of actual emissions, determined from company records or other data approved by the Executive Officer, which have occurred during the highest three years of the last five-year period, divided by the total number of actual operating days in those three years, provided the applicant demonstrates that such permit units have been operated at least 90 days during each of such three years.

(2) In those cases where the applicant is unable to furnish use records to the satisfaction of the Executive Officer, the emissions for subsections (l)(B)(ii) and (l)(C) of this rule shall be calculated using:

(A) Fifty percent of the maximum rated capacity; and

(B) the maximum daily hours of operation; and

(C) the actual materials processed; provided the applicant demonstrates to the satisfaction of the Executive Officer that the subject permit units operated at least 90 days within each of three of the last five years.

(3) Emission reductions appropriate to the air pollution reduction equipment or process shall be used in the calculations of subsection (c)(1) and (c)(2).

(4) Emission increases and reductions from mobile and other sources shall be determined from records or other usage information approved by the Executive Officer, calculated as a daily emission, using the calculation methods of subsection (c)(1), except that light-duty motor vehicles' emissions shall be based upon the make and model year of the vehicles and 30 miles per day driven for each vehicle.

(d) Calculation of Emissions for Offset

This subsection provides the method for calculating the quantities of emissions used in the offset determination of Rule 1307.

(1) Emission increases or reductions from permit units in a stationary source shall be calculated using the permit conditions restricting the operation of the subject permit units and the total days of operation per year. In those cases where there are no permit conditions which directly limit emissions, the emission increase or reduction shall be determined as follows:

(A) For new permit units, the emission increase shall be calculated from:

(i) the maximum rated capacity; and

(ii) the maximum proposed annual hours of operation; and

(iii) the actual materials processed; or

(B) For modified permit units, the emission increase or reduction shall be the difference in emissions before and after modification determined as follows:

(i) the emissions after modification shall be calculated from:

(a) the maximum rated capacity; and

(b) the maximum proposed annual hours of operation after modification; and

(c) the actual materials processed; and

(ii) the emissions before modification shall be calculated from the sum of actual annual emissions, determined from company records or other data approved by the Executive Officer which have occurred during the highest three years of the last five-year period, divided by three, provided the applicant demonstrates that such permit units have been operated at least 90 days during each of such three years;

(C) For permit units removed from service, the emission reductions shall be calculated from the sum of actual annual emissions, determined from company records or other data approved by the Executive Officer, which have occurred during the highest three years of the last five-year period, divided by three, provided the applicant demonstrates that such permit units have been operated at least 90 days during each of such three years;

(2) In those cases where the applicant is unable to furnish use records to the satisfaction of the Executive Officer, the emissions for subsections (2)(B)(ii) and (2)(C) of this rule shall be calculated using:

(A) Fifty percent of the maximum rated capacity; and

(B) the maximum annual hours of operation; and

(C) the actual materials processed, provided the applicant demonstrates to the satisfaction of the Executive Officer that the subject permit units operated at least 90 days within each of three of the last five years.

(3) Emission reductions appropriate to the air pollution reduction equipment or process shall be used in the calculations of subsection (d)(1) and (d)(2).

(4) Emission increases and reductions from mobile and other sources shall be determined from records or other usage information approved by the Executive Officer calculated as an annual emission, using the calculation methods of subsection (d)(1), except that light-duty motor vehicles' emissions shall be based upon the make and model year of the vehicles and 11,000 miles per year driven for each vehicle.

(5) Notwithstanding Rule 1307, the offset factor for mobile source emission reductions shall be 2.0.

Rule 1307. Emission Offsets

(a) Offset Calculation

Affected sources shall offset emission increases of non-attainment air contaminant greater than 68 kilograms (150 pounds) per day, except carbon monoxide, for which the value is an increase greater than 340 kilograms (750 pounds) per day, as determined pursuant to Rule 1306, times the offset factor determined as follows:

Offset factor = 1.2 + b(x).

where: x = the distance in kilometers between the affected source permit unit and the offset source permit unit;

b = 0; when x is less than eight kilometers (five miles);

b = 0.01; when x is equal to or greater than eight kilometers (five miles);

(b) Seasonal Sources

In addition to the requirements of section (a) above, seasonal emissions used for offset shall generally occur during the same five consecutive month period as the new source or modification operates. Seasonal offset sources shall not offset any other affected source other than a seasonal source.

(c) Intermittent Sources

In addition to the requirements of section (a) above, for affected intermittent sources and intermittent offset sources, the emission increases and reductions shall be shown on annual emission profiles. Separate profiles for the affected and offset source shall be constructed by plotting on the same graph the absolute value of the source emissions and offset reductions in order of descending magnitude. The abscissa shall show the number of days in the year and the ordinate shall show the source emissions and offset reductions. Separate profiles shall be constructed for each affected air contaminant. The offset profile shall at no point fall below the profile of the affected intermittent source. Intermittent offset sources shall not offset any affected source other than an intermittent source.

Rule 1308. Eligibility of Emission Offsets

(a) Source Eligibility

All offset sources and offset emissions shall be subject to the aproval of the Executive Officer. In determining the eligibility of emission offsets pursuant to this regulation, the Executive Officer shall consider reductions of the same air contaminant as the result of:

(1) For stationary sources, the additional control of air contaminants from or removal from service of:

(A) Existing permit units, provided that in accordance with Rule 1305, new applications for permits to construct and operate are submitted for modified permit units or are surrendered for permit units taken out of service; or

(B) Existing exempt permit units, excluding equipment used in conjunction with any structure designed and used exclusively as a dwelling and excluding mobile sources. If modified or controlled in order to be used as an offset source, such equipment shall lose its exempt status and such permit unit will be subject to the requirements of Rule 203; or

(2) For mobile source emission reductions, provided the applicant demonstrates sufficient control over the mobile sources to assure the claimed reductions are realized, and provided the emission reductions are the result of:

(A) substitution and usage of high occupancy vehicles for low occupancy vehicles; or

(B) installation of additional emission control devices not otherwise required by federal or California law; or

(C) any other means, upon prior written approval of the Executive Officer; or

(3) Emission reductions which result from energy conservation projects; or

(4) Emission reductions by any other means, upon prior written approval of the Executive Officer.

(b) Offset Eligibility Requirements

The Executive Officer shall disallow an emission offset unless:

(1) the Executive Officer determines the offset is enforceable; and

(2) the affected source applicant demonstrates the degree of emission reduction.

(3) in cases where the offset permit units are located more than 24 kilometers (15 miles) in the prevailing downwind direction from the affected source permit units, the applicant demonstrates, through modeling, to the satisfaction of the Executive Officer that the offsets will result in a net air quality benefit in the area impacted by the affected source.

For the purpose of this subsection, the prevailing downwind direction shall be determined by the Executive Officer on the basis of meteorological records.

(c) Changes in Operating Hours

For the purpose of this rule, reductions in emissions due to changes in the hours of operation shall not qualify as an offset.

(d) Interpollutant Offsets

For the purpose of offsetting increases in particulate emissions, the Executive Officer may allow offsets of reactive hydrocarbons, SO_2, or NO_x, provided the applicant demonstrates to the satisfaction of the Executive Officer that required particulate emission offsets are not available. The ratio of emission reductions between hydrocarbons, SO_2, or NO_x and particulate matter shall be determined by the Executive Officer from a list prepared by the Executive Officer of the Air Resources Board in consultation with the Executive Officer.

(e) Emission reductions of methane, 1, 1, 1-trichloroethane, methylene chloride, or trichlorotrifluoroethane shall not qualify as offsets for increases in emissions of reactive hydrocarbons.

(f) Notwithstanding the provisions of this regulation, the Executive Officer shall deny the permits to construct for permit units which result in a net emission increase from a stationary source of any combination of 1, 1, 1-trichloroethane, methylene chloride, or trichlorotrifluoroethane totaling 68 kilograms (150 pounds) per day or more, unless:

Rule 1309. Banking

Reserved.

Rule 1310. Analysis, Notice, and Reporting

(a) Completeness of Application

The Executive Officer shall determine whether the application is complete not later than 30 calendar days after receipt of the application, or after such longer time as both the applicant and the Executive Officer may agree. Such determination shall be transmitted in writing immediately to the applicant at the address indicated on the application. If the application is determined to be incomplete, the determination shall specify which parts of the application are incomplete and how they can be made complete. Upon receipt by the Executive Officer of any resubmittal of the application, a new 30-day period in which the Executive Officer must determine completeness, shall begin. Completeness of an application or resubmitted application shall be evaluated on the basis of the guideline for such, published by the Executive Officer.

After acceptance of an application as complete, the Executive Officer shall not subsequently request of an applicant any new or additional information which was not specified in the Executive Officer's list of items to be included within such applications. However, the Executive Officer may, during the processing of the application, request an applicant to clarify, amplify, correct, or otherwise supplement the information required in such list in effect at the time the complete application was received. Making any such request does not waive, extend, or delay the time limits in this rule for decision on the completed application, except as the applicant and Executive Officer may both agree.

(b) Requirements for Public Notice

For those sources subject to this regulation or exempt pursuant to Rule 1304(a), (c), (d), (e), or (g), following acceptance of an application as complete, the Executive Officer shall:

(1) Perform the evaluations required to determine compliance with this regulation and make a preliminary written decision as to whether a permit to construct should be approved, conditionally approved, or disapproved, or exempt. The decision shall be supported by a succinct written analysis; and

(2) Within ten calendar days following such decision, publish a notice by prominent advertisement in at least one newspaper of general circulation in the District stating the preliminary decision of the Executive Officer and where the public may inspect the information required to be made available under subsection (b)(3). The notice shall provide 30 days from the date of publication for the public to submit written comments on the preliminary decision; and

(3) At the time notice of the preliminary decision is published, make available for public inspection at the District office the information submitted by the applicant, the supporting analysis for the preliminary decision, and the preliminary decision to grant or deny the permit to construct, including any proposed permit conditions, and the reasons therefor. The confidentiality of trade secrets shall be considered in accordance with Section 6254.7 of the Government Code; and

(4) No later than the date of publication of the notice required by subsection (b)(2), forward the analysis, the preliminary decision, and copies of the notice to the Air Resources Board (attention: Chief, Stationary Source Control Division) and the Regional Office of the United States Environmental Protection Agency; and

(c) Comments

The Executive Officer shall consider all written comments submitted during the 30-day public comment period; and

(d) Final Action

Within 180 days after acceptance of the application as complete, the Executive Officer shall take final action on the application after considering all written comments. The Executive Officer shall provide written notice of the final action to the applicant, the Environmental Protection Agency, and the California Air Resources Board, shall publish such notice in a newspaper of general circulation, and shall make the notice and all supporting documents available for public inspection at the District office.

Rule 1311. Power Plants

This section shall apply to all power plants proposed to be constructed in the District and for which a Notice of Intention (NOI) or Application for Certification (AFC) has been accepted by the California Energy Commisssion (Commission).

(a) Intent to Participate and Preliminary Report

Within fourteen days of receipt of an NOI, the Executive Officer shall notify the California Air Resources Board and the Commission of the District's intent to participate in the NOI proceeding. If the District chooses to participate in the NOI proceeding, the Executive Officer shall prepare and submit a report to the California Air Resources Board and the Commission prior to the conclusion of the nonadjudicatory hearings specified in Section 25509.5 of the Public Resources Code. That report shall include, at a minimum:

(1) a preliminary specific definition or description of BACT for the proposed facility; and

(2) a preliminary discussion of whether there is substantial likelihood that the requirements of this regulation and all other District regulations can be satisfied by the proposed facility; and

(3) a preliminary list of conditions which the proposed facility must meet in order to comply with this regulation or any other applicable District regulation. The preliminary determinations contained in the report shall be as specific as possible within the constraints of the information contained in the NOI.

(b) Determination of Compliance Review

Upon receipt of an AFC for a power plant, the Executive Officer shall conduct a Determination of Compliance review. This Determination shall consist of a review identical to that which would be performed if an application for a permit to construct had been received for the power plant. If the information contained in the AFC does not meet the requirements which would otherwise comprise a complete permit to construct application pursuant to these regulations, the Executive Officer shall, within 20 calendar days of receipt of the AFC, so inform the Commission, and the AFC shall be considered incomplete and returned to the applicant for resubmittal.

(c) Application for Permit to Construct

The Executive Officer shall consider the AFC to be equivalent to an application for a permit to construct during the Determination of Compliance review, and shall apply all provisions of these regulations which apply to applications for a permit to construct.

(d) Additional Information

The Executive Officer may request from the applicant any information necessary for the completion of the Determination of Compliance review. If the Executive Officer is unable to obtain the information, the Executive Officer may petition the presiding Commissioner for an order directing the applicant to supply such information.

(e) Preliminary Decision

Within 180 days of accepting an AFC as complete, the Executive Officer shall make a preliminary decision on:

(1) whether the proposed power plant meets the requirements of this regulation and all other applicable District rules and regulations ~~at the time the facility is to commence operations~~; and

(2) in the event of compliance, what permit conditions will be required, including the specific BACT requirements and ~~those conditions necessary to ensure that the facility will comply with all applicable rules and regulations in the assumptions or predictions used in subsection (e)(1) are not accurate~~ and a description of required mitigation measures.

(f) Preliminary Decision Public Notice Requirements

The preliminary written decision made under subsection (e) shall be treated as a preliminary decision under Rule 1310(b)(1) and shall be finalized by the Executive Officer only after being subject to the public notice and comment requirements of Rule 1310.

(g) Determination of Compliance

Within 240 days of the filing date, the Executive Officer shall issue and submit to the commission a Determination of Compliance or, if such a determination cannot be issued, shall so inform the Commission. A Determination of Compliance shall confer the same rights and privileges as a permit to construct only when and if the Commission approves the AFC, and the Commission certificate includes all conditions of the Determination of Compliance.

Rule 1312. Alternative Siting

Reserved.

Rule 1313. Permits to Operate

(a) Analysis

The Executive Officer shall analyze the effects on air quality of sources subject to this regulation as determined in Rule 1303(a) and shall deny the permit to operate unless:

(1) the owner or operator of the source has submitted a completed application for permit to construct. Such application is deemed complete upon receipt by the applicant of the notice from the Executive Officer pursuant to Rule 1310; and

(2) it is determined that the new source or modification, and any sources which provide offsets, have been taken out of service or constructed, are operated in a manner consistent with the conditions of the permit to construct; and

(3) it is determined that any offsets required as a condition of the permit to construct will commence at the time of or prior to initial operations of the new source or modification. For a new source or modification which will be a replacement, in whole or part, for an existing source on the same or contiguous property, a maximum of 90 days may be allowed as a start-up period for simultaneous operation of the subject sources; and

(4) it is determined that all conditions specified in the permit to construct have been or will be complied with by any dates specified in such permits.

(b) Permit Conditions

The Executive Officer shall require as a condition for the issuance of any permit to operate for a new or modified source, that the source and any offset source be operated consistent with any conditions imposed on their respective permits to construct.

(c) Change of Ownership

The Executive Officer shall exempt from the provisions of this rule any stationary source which is a continuing operation, without modification or change in operating conditions, when a permit to operate is required solely because of permit renewal or change in ownership.

(d) No Permit to Construct Issued

For new or modified permit units or sources which are constructed without the required permit to construct, the application for permit to operate shall, for the purposes of this regulation, be considered an application for permit to construct. The Executive Officer shall deny the permit to operate unless the new source or modification complies with all rules in this regulation whether the rules pertain to a permit to construct or permit to operate.

State of California

Memorandum

To : Huey D. Johnson
Secretary
Resources Agency

Date : August 11, 1980

Subject : Filing of Notice of Decision of the Air Resources Board

From : Air Resources Board

Pursuant to Title 17, Section 60007(b), and in compliance with Air Resources Board certification under section 21080.5 of the Public Resources Code, the Air Resources Board hereby forwards for posting the attached notice of decision and response to environmental comments raised during the comment period.

Sally Rump

Sally Rump
Board Secretary

attachments
Resolution 80-38
[redacted]

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Office of the Secretary
AUG 12 1980
Resources Agency of California

State of California
AIR RESOURCES BOARD

Resolution 80-49

July 23, 1980

WHEREAS, Section 39602 of the Health and Safety Code designates the Air Resources Board (ARB) as the air pollution control agency for all purposes set forth in federal law and designates the ARB as the state agency responsible for the preparation of the State Implementation Plan (SIP) required by the Clean Air Act;

WHEREAS, the Clean Air Act as amended in 1977 mandates the revision of the SIP in designated nonattainment areas of the state in order to assure the attainment and maintenance of national ambient air quality standards by specified deadlines;

WHEREAS, Health and Safety Code Sections 41500, 41504, 41650 and 41652 provide that the ARB shall adopt a locally prepared nonattainment plan and authorize the ARB to make such revisions to a nonattainment plan as are necessary to meet the requirements of the Clean Air Act;

WHEREAS, the ARB is the designated lead agency for the Los Angeles County nonattainment plan and has committed itself to a coordinated program for the development of the nonattainment plans for ozone with the active participation of other agencies possessing resources and expertise in the air quality and transportation fields;

WHEREAS, the California Environmental Quality Act and ARB implementing regulations require that an activity not be adopted if feasible alternatives and/or feasible mitigation measures are available which would significantly lessen any negative environmental impacts of the proposed activity;

WHEREAS, on November 29, 1979, the ARB resolved in Resolution 79-79, incorporated by reference herein, that the Los Angeles County APCD's nonattainment plan did not include New Source Review rules which would achieve and maintain state and national ambient air quality standards and do not meet the requirements of the federal Clean Air Act;

WHEREAS, on July 17, 1980, the Los Angeles County APCD Board adopted Regulation XIII, New Source Review, which among other provisions amended Sections (a)(2) and (3) and (e)(1) and (2) of Rule 1311, Power Plants, to purportedly facilitate the issuance of permits for the construction of power plants which would not require mitigation of potential adverse impacts.

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AIR RESOURCES BOARD

Response to Significant Environmental Issues

Item: Public Hearing to Consider Amending the Rules and Regulations of Imperial County Air Pollution Control District, Los Angeles County Air Pollution Control District and San Bernardino County Air Pollution Control District

Public Hearing Date: July 23, 1980

Response Date: July 23, 1980

Issuing Authority: Air Resources Board

Issue: No adverse environmental impacts identified in staff report or in public testimony.

Response: N/A

CERTIFIED: Sally Rump

Date:

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AIR RESOURCES BOARD

OPPOSING CONSIDERATIONS AND AGENCY RESPONSE

July 23, 1980

Public Hearing to Consider Amending the Rules and Regulations
of Imperial County Air Pollution Control District,
Los Angeles County Air Pollution Control District and
San Bernardino County Air Pollution Control District

1. Opposing Consideration: The Los Angeles County Air Pollution Control District adopted amendments to Rule 1311 of Regulation XIII, referring to Power Plants, to purportedly allow a power plant with a projected date of operation subsequent to December 31, 1987 to be exempt from the emission offset requirements of the regulation. The rationale is that by that date the area will be attaining the ambient air quality standards for ozone, since the Clean Air Act requires the SIP to so provide, thus obviating the necessity to provide offsets. ("Offsets" provide a mechanism whereby a major source can locate in a polluted area by assuring a net air quality benefit as a result of reducing emissions from other sources in the impacted area).

Response: The adopted language in Rule 1311 is unclear and imprecise and as a regulatory measure is meaningless. As such, it changes the complexion of the previous language in Sections (a)(2) and (3) and (e)(1) and (2) of the rule, alters and confuses its applicability and intent, and should be deleted. While the Clean Air Act, the EPA Emission Offset Interpretive Ruling (40 CFR Part 51, Appendix S), and EPA's proposed rule amending the Interpretive Ruling in response to the ruling of the U.S. Supreme Court in Alabama Power Co. vs. Costle, 13 ERC 1225 (1979) allow the determination of whether a source would cause or contribute to exceedances of a NAAQS to be made as of the new source's start-up date, certain conditions must be met before such source can be exempt from providing offsets when obtaining a permit to construct.

The purpose of the conditions is to assure that exemptions from offset requirements will be permitted only if it is certain that the area where the source is to locate will be an attainment area by the start-up date. Even if the language adopted by the District clearly set forth what it is intended to accomplish, which it certainly does not do, provision of such an exemption would be impermissible in this region becuase the conditions are not met.

It is initially assumed in reviewing a permit application that every location within a designated nonattainment area will exceed the NAAQS as of the source start-up date and that any major source would significantly contribute to a violation, thus requiring offsets. If the applicant presents a "substantial and relevant argument," including necessary analysis and documentation to prove that this assumption is incorrect, the applicability of the Interpretive Ruling and any state SIP offset requirement would be determined by the specific facts of the case. The amended language does not reflect this.

Further, the source must be located in an area which is projected to be an attainment area as part of an approved SIP control strategy by the source's start-up date. The plan must show attainment by the deadline specified in Clean Air Act Section 172 based exclusively on currently adopted, approved, and enforceable requirements. Plans where approval under Part D is conditioned on submittal of additional material, plans containing schedules for submittal of additional material rather than enforceable regulatory measures, and plans where additional submittals are needed by July 1, 1982 in order to demonstrate attainment by 1987 do not fulfill this requirement. This is because such plans do not definitely provide for attainment by the source's start-up date. In these cases, attainment is more of a goal than a probability, and is based on the adoption and implementation of measures not yet developed. Attainment is also based on other variables such as source compliance with adopted measures as opposed to extensive litigation and recalcitrance.

The present exemption of many major sources from offset requirements would cause difficulties even if the area were to attain the standards by 1987, because it would be impossible to calculate how many and which new sources could operate and contribute new pollutants without the area again exceeding standards. The time and resources necessary for obtaining acceptable offsets logically require that they be obtained under enforceable contractual arrangement early in the process, before construction commences. This will obviate any vested rights problems which could arise at the operation stage and will avoid last-minute

scrambling for offsets.

Only where attainment of the NAAQS is a certainty does the law allow these considerations to be overridden by an exemption. Under the circumstances, the adopted provisions do not meet the requirements of the Clean Air Act and must be deleted and the original language and meaning restored.

2. Opposing Consideration: The representative from Southern California Edison Company stated the opinion that when a project like a power plant applies for an AFC, the lead time to commencing operation can be 10 years. It is their opinion therefore that applying present day regulations to a project which will not "start-up" for another 10 years is not practical or justifiable. It is their contention that the Clean Air Act allows considering future air quality to determine conditions of the permit to construct. Therefore, they would support not amending the language adopted by the Los Angeles County APCD Board concerning power plants in Rule 1311 -Power Plants.

Response - See response given in number 1 for the action taken by the Los Angeles County APCD.

3. Opposing Consideration: The Western Oil and Gas Association written testimony states that there is no authority under either California law or the Clean Air Act which requires that the Executive Officer of the Air Resources Board have concurrent authority with the district Executive Officer for determining BACT, appropriate air quality models, and exemptions for innovative technology. Inclusion of such provisions into the San Bernardino

County and Los Angeles County APCD's new source review regulations represents an unwarranted interference with local permitting processes.

Response: The Air Resource Board will not be adopting the language objected to by the WOGA.

4. Opposing Consideration: In addition, WOGA's testimony contends that the EPA's criteria for approval only requires adoption of new source review rules such as the staff proposed rule, for nonattainment areas. (PSD rules govern new major sources in attainment areas.) Therefore, the rules adopted need not apply to all new and modified sources in both attainment and nonattainment areas. (note SCAQMD Reg. XIII, New Source Review addresses nonattainment pollutants only)

Response: The Air Resources Board will not be adopting the language objected to by the WOGA.

5. Opposing Consideration: The Union Pacific Railroad Company representative objected to the inclusion of cargo carrier emissions emitted while operating within the air basin which is specified in the San Bernardino Regulation XIII.

Response: The Air Resource Board will not be adopting the language objected to by the Union Pacific Railroad Company. The San Bernardino County APCD Board adopted Regulation XIII, New Source Review, for themselves.