

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Attachment 1 to the Governing Board Resolution for the Re-Adoption of Rule 1315 – Federal New Source Review Tracking System:

Statement of Findings, Statement of Overriding Considerations and Mitigation Monitoring Plan

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ATTACHMENT 1

Introduction

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INTRODUCTION

Rule 1315 was previously adopted by the South Coast Air Quality Management District (SCAQMD) Board in September 2006 and was considered to be exempt from CEQA, because it was either not a project under CEQA; or if it was a project, it was one whose impacts could be determined with certainty would have no significant effect on the environment. Those determinations were challenged by environmental groups. SCAQMD disagrees with the environmental group's position. However, because Rule 1315 is urgently needed due to U.S. EPA's demands for a federally-enforceable offset credit accounting mechanism, SCAQMD has decided to propose re-adoption of Rule 1315 – Federal New Source Review Tracking System, and treat it as a "project" as defined by the California Environmental Quality Act (CEQA) (Cal. Public Resources Code §§21000 et seq.). In addition, while SCAQMD continues to believe Rule 1315 clearly has no significant impacts, SCAQMD has decided to conservatively treat this project as one with potential significant effects.

As a result, SCAQMD is the lead agency for the proposed project and, therefore, has prepared a Program Environmental Assessment (PEA) pursuant to CEQA Guidelines §§15252 and 15168(a)(1), (3) and (4), and SCAQMD Rule 110. The purpose of the PEA is to describe the proposed project and to identify, analyze, and evaluate any potentially significant adverse environmental impacts that may result from adopting and implementing the current and future proposed projects. The Draft PEA was circulated to the public for a 45-day review and comment period from May 16, 2007, to June 29, 2007. Minor changes were necessary to make the Draft PEA into a Final PEA. However, these minor modifications and updates do not constitute "significant new information"¹ and, therefore, do not require recirculation of the document pursuant to CEQA Guidelines §15088.5. The Final PEA was prepared and will be presented to the Governing Board at its July 13, 2007 public hearing.

SUMMARY OF THE PROPOSED ACTIVITY

Proposed re-adopted Rule 1315 (PRR 1315) formalizes SCAQMD's accounting methodology for its offset accounts, equivalency demonstration and reporting procedures solely for purposes of meeting federal Clean Air Act requirements. The SCAQMD has been maintaining a tracking system for federal NSR offsets since 1990 and initiated discussions with U.S. EPA regarding tracking and accounting emissions using the procedure in PRR 1315 since 2002. The purpose of PRR 1315 is not to govern availability of credits, but to incorporate the federal NSR offsets accounting procedures into a rule. In addition to formalizing the federal NSR offsets tracking system, PRR 1315 makes the NSR offsets program more stringent by

¹ "Significant new information" requiring recirculation include, for example, a disclosure showing that:

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it.
- (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

providing backstop measures, as requested by U.S. EPA, in case there are any shortfalls in SCAQMD's federal NSR offset accounts. However, the occurrence of any shortfall is speculative, as SCAQMD has never experienced such an event.

POTENTIAL DIRECT SIGNIFICANT ADVERSE IMPACTS THAT CANNOT BE REDUCED BELOW A SIGNIFICANT LEVEL

As previously noted, SCAQMD maintains that PRR 1315 clearly has no significant effects because it merely formalizes a procedure to account for offsets allowed under federal requirements. Nevertheless, environmental groups have argued that because PRR 1315 now identifies certain offset credits allowed under federal law, but not previously used by SCAQMD, PRR 1315 increases the availability of credits that were not used prior to the original adoption of Rule 1315 in September 2006. While the SCAQMD disagrees with this assertion, the SCAQMD has determined to take the most conservative approach and assume direct adverse environmental impacts to one environmental topic area, air quality. Therefore, the analysis concludes that VOC, CO, PM10, SOx, and NOx emissions from adopting PRR 1315 could potentially exceed the daily operational significance threshold.

Air Quality

The September 2006 staff report for Rule 1315 reveals the change in available running balances as of 2002, comparing the balance available before the rule adoption with the balance available after the rule adoption. The staff report shows net reductions for all pollutants except NOx, and for the total pounds of pollutants. Thus, under Rule 1315's accounting mechanism, there would be a respective 36 percent decrease in VOC offset credits, a 43 percent decrease in SOx offset credits, a 68 percent decrease in CO offset credits, and an 81 percent decrease in PM10 offset credits allowed under federal requirements. The information in the staff report also shows a 39 percent increase in NOx offset credits allowed under federal requirements. That is, with the exception of NOx, the increases in annual net activity do not translate into higher offset account balances in any year through 2002 and are unlikely to do so for the foreseeable future. Also, as indicated earlier, NOx is not even a pollutant that is available to power plants under existing or proposed Rule 1309.1. Finally, because historically the availability of offsets in SCAQMD's offset accounts has always been greater than the demand for those offsets, an increase in the supply for NOx, and even hypothetically for other pollutants, does not imply that there will be an increase in use of such offsets.

In addition to the above analysis, staff compared what would be the number of available credits under the pre-September 2006 accounting system with the number of credits available under the post-September 2006 accounting system Table 1.

TABLE 1
Net Difference Between Net Activity Reported to Board in
Indicated Year and Net Activity Reported to Board February 2, 2007

	VOC (tons/day)	NOx (tons/day)	SOx (tons/day)	CO (tons/day)	PM10 (tons/day)
1997-1998	-3.92	0.92	0.24	-0.58	-2.05
1998-1999	1.49	1.12	0.06	1.61	-1.63
1999-2000	0.96	1.11	0.13	1.53	1.54
2000-2001	1.77	0.70	0.76	0.38	1.25
2001-2002	0.29	0.44	0.16	1.17	0.58

As already noted, PRR 1315 only reflects accounting values, and does not allow these credits to be used. Their use would be governed by such rules as PAR 1309.1, which was separately analyzed in the PEA and has been determined to be significant under CEQA. Nevertheless, to again be conservative, As shown in Table 1 SCAQMD assumes that PRR 1315 could be significant for VOC, CO, PM10, SOx, and NOx emissions because the potential daily credit increase in some years exceeds the SCAQMD’s significance threshold for all pollutants even though the increase in offset credits for these pollutants merely reflects an accounting value.

No feasible mitigation measures were identified that would reduce significant adverse direct air quality impacts to less than significant. No significant adverse direct impacts from the proposed project were identified for any other environmental topic area besides air quality.

STATEMENT OF FINDINGS

Public Resources Code §21081 and CEQA Guidelines §15091(a) state that no public agency shall approve or carry out a project for which a CEQA document has been completed which identifies one or more significant adverse environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. Additionally, the findings must be supported by substantial evidence in the record (CEQA Guidelines §15091(b)). The SCAQMD Governing Board, therefore, makes the following findings regarding the proposed project. The findings are supported by substantial evidence in the record as explained in each finding. This Statement of Findings will be included in the record of project approval and will also be noted in the Notice of Decision. The Findings made by the SCAQMD Governing Board are based on the following significant adverse impacts identified in the Final PEA.

1. Significant direct air quality impact from implementing PRR 1315 is assumed to occur from accounting methods that have accounted for additional credits allowed under federal requirements, such as minor source orphan shutdowns, etc., not used prior to September 8, 2006. This impact is assumed to be significant for the following pollutants: VOC, NOx, SOx, CO, and PM10.

Finding and Explanation: Under Rule 1315 as adopted on September 8, there were a large number of previously-accounted for credits that were removed from the SCAQMD's offset balances, because they were not accepted under federal requirements. Thus, Rule 1315 resulted in a 36 percent decrease in VOC, a 43 percent decrease in SOx, a 68 percent decrease in CO, and an 81 percent decrease in PM10, which is the pollutant most involved in Rule 1309.1's power plant amendments. These pre-1990 credits are no longer being accounted for because the SCAQMD no longer retained records relating to the generation of the credits as federally required. However, these credits are all valid credits in that they had been properly assessed at the time they were deposited in the account based upon complete records that the SCAQMD simply no longer has. The SCAQMD has always used a robust and sophisticated NSR tracking system, which tracked both emission increases and emission decreases since the adoption of NSR rules in 1976.

EPA has also requested that, under Rule 1315, credits generated prior to 1990 and for all years after 2005 be completely discounted, as well as any credits based on the SCAQMD's use of a more stringent BACT discount of ERCs even though EPA had at one time specifically approved use of these credits based on a BACT-discount. (See Technical Support Document for EPA's Notice of Final Rulemaking for the California State Implementation Plan SCAQMD New Source Review, October 24, 1996). Ultimately, these EPA-imposed requirements have substantially reduced the amount of credits for some or all pollutants that the SCAQMD may account for under federal requirements.

To determine whether PRR Rule 1315's accounting procedures would account for more or less credits than under the pre-Rule 1315 accounting procedure, the SCAQMD examined offset credit and debit activities for the years 1997 through 2002 using both procedures. The results of this calculation showed that for some years, there would be an increase in accounted for credits, and for some years, there would be a decrease in accounted for credits (see Table 1). Thus, it is not possible to predict accurately whether there would be an increase or a decrease of accounted for credits for each year based on PRR 1315's accounting procedure. However, taking the most conservative approach, and assuming the maximum calculated increase in accounted for credits for any year would result each year, there would be a positive increase for VOC, CO, PM10, SOx, and NOx credits.

As a result, the SCAQMD has chosen to take the most conservative approach and concluded that the project will have a significant impact on all the following pollutants: VOC, NOx, SOx, CO, and PM10. All feasible mitigation measures have been required to reduce these impacts, yet the impacts remain significant after mitigation.

2. No feasible mitigation measures were identified that would reduce significant adverse direct impacts to less than significant.

Findings and Explanation: No feasible mitigation measures were identified to reduce potential significant adverse impacts from PRR 1315 and the potential impacts remain significant after mitigation. The objectives of PRR 1315 include taking credit for all surplus reductions available under federal law (Draft PEA, p. 2-

18). This objective is important because of the restrictions on creditable reductions imposed by EPA caused substantial reductions in credit balances in SCAQMD's accounts. Also, taking credit for all surplus reductions allows the maximum flexibility for establishing offset equivalency under federal law. Therefore, restricting the types of reductions for which credit is taken would not be a feasible alternative or mitigation measure because it would not fulfill the project objectives.

The Governing Board finds that aside from the No Project Alternative, the Final PEA considered alternatives pursuant to CEQA Guidelines §15126.6, but no project alternatives would reduce to insignificant levels the significant air quality impacts identified for the proposed project and still achieve the objectives of the proposed project.

All of the above findings are supported by substantial evidence in the record for the proposed project. The record of approval for this project may be found in the SCAQMD's Clerk of the Board's Office located at SCAQMD Headquarters in Diamond Bar, California.

STATEMENT OF OVERRIDING CONSIDERATIONS

If significant adverse impacts of a proposed project remain after incorporating mitigation measures, or no measures or alternatives to mitigate the adverse impacts are identified, the lead agency must make a determination that the benefits of the project outweigh the unavoidable adverse environmental effects if it is to approve the project. CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project (CEQA Guidelines §15093(a)). If the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable" (CEQA Guidelines §15093(a)). Accordingly, a Statement of Overriding Considerations regarding potentially significant adverse air quality impacts resulting from the proposed project has been prepared. This Statement of Overriding Considerations is included as part of the record of the project approval for the proposed project. Pursuant to CEQA Guidelines §15093(c), the Statement of Overriding Considerations will also be noted in the Notice of Decision for the proposed project.

Despite the inability to incorporate changes into the proposed project that will mitigate potentially significant adverse impacts to a level of insignificance, the SCAQMD's Governing Board finds that the following benefits and considerations outweigh the significant unavoidable adverse environmental impacts:

1. The analysis of potential adverse environmental impacts incorporates a "worst-case" approach. This entails the premise that whenever the analysis requires that assumptions be made, those assumptions that result in the greatest adverse impacts are typically chosen. This method likely overestimates the actual impacts from the proposed project. Specifically in this case, SCAQMD believes PRR 1315 does not in fact have adverse impacts, but is treating it as though it does to take a conservative approach.

2. U.S. EPA has requested that SCAQMD incorporate the accounting procedures into a rule to formalize the tracking system. If PRR 1315 were not implemented and adopted, SCAQMD could not establish equivalency with federal offset requirements and would no longer have an approved NSR program. This could ultimately result in the inability to issue federally-approvable permits. Moreover, PRR 1315 takes credit for all reductions considered surplus under federal law and, thus, allows SCAQMD to continue to implement its existing NSR program despite substantial reductions in credit balances mandated by EPA. This provides a significant economic benefit by allowing the NSR program to continue unchanged. In addition to formalizing the federal NSR offsets tracking system, PRR 1315 makes the NSR offsets program more stringent by providing backstop measures, as requested by U.S. EPA, in case there are any shortfalls in SCAQMD's federal NSR offset accounts.

The SCAQMD's Governing Board finds that the above-described economic and technological considerations outweigh the unavoidable significant effects to the environment as a result of the proposed project.

MITIGATION MONITORING PLAN

Pursuant to the requirements of Public Resources Code §21081.6(a)(1) and CEQA Guidelines §15097, when a public agency conducts an environmental review of a proposed project in conjunction with approving a project, the lead agency shall adopt a program for monitoring or reporting on the measures it has imposed to mitigate or avoid significant adverse environmental effects. Further, CEQA Guidelines §15097 states that when a public agency has made the finding of significant adverse impacts [pursuant to CEQA Guidelines §15091(a)(1)], the agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects.

As indicated in the "Findings" section above, the Governing Board finds that no feasible mitigation measures have been identified to eliminate or minimize the potentially significant adverse impact to air quality. CEQA defines feasible as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological facts" (Public Resources Code §21061.1).

Based on the foregoing information, the SCAQMD is not required to prepare a mitigation monitoring plan because no mitigation measures were identified that could minimize or reduce impacts to less than significant.