

SANTA BARBARA COUNTY AIR POLLUTION CONTROL DISTRICT

Draft Staff Report for:

**Amended Rule 1304 - Part 70 Operating Permits –
Issuance, Renewal, Modification and Reopening**

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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.*

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1. EXECUTIVE SUMMARY

On November 10, 2016, the United States Environmental Protection Agency (EPA) issued a final rule in the Federal Register that revises the public notice provisions for major stationary sources of air pollution, which is a provision of the Part 70 operating permit program.¹ The final rule allows the District to meet the Part 70 public notice provisions by issuing an electronic notice (“e-notice”) of the permit action instead of issuing a hardcopy newspaper notice. For these e-notices, the draft permit and supplementary material will also be available online at the District’s website, which is termed electronic access (“e-access”).

The District has been using e-notices and e-access for the last decade, as it is an effective way to communicate permit actions to the public quickly and efficiently. E-notices provide cost savings over newspaper publications. Furthermore, these proposed amendments do not preclude the District from supplementing an e-notice with a newspaper publication or any other additional means of notification to the public.

2. BACKGROUND

2.1 Public Notice Background

The 1990 amendments to the federal Clean Air Act (CAA) enacted new requirements where major stationary sources of air pollution had to obtain a federally-approved operating permit. One of the requirements of this permit program, as codified in Title V of the CAA, is that it needs to provide “adequate, streamlined and reasonable procedures” including an opportunity for the general public to have informed participation in the air permitting process in the areas affected by a proposed permit. However, the statute does not specify the best or preferred method for providing public notice.

When the EPA finalized the rules that implemented the Title V requirements in 1992, the rule sections (as codified in 40 Code of Federal Regulations, Part 70) were written with more specificity regarding the methods of meeting the public notice requirements. The rules required that permitting authorities notify the public of permit actions by way of newspaper publication, which was the most effective way to advertise draft permits at the time.

In recent years, the circulation of newspapers and other print media has declined, making printed newspaper notice less effective in providing widespread public notice of permit actions. The EPA has recognized that newspaper notice is no longer the only, or in many cases the most effective, method of communicating permit actions to the public and has issued rules allowing alternate methods of communication.

¹ 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.”

2.2 District Public Noticing Procedures

For the majority of the Part 70 permit actions, the District is required to prepare a draft permit, publish a newspaper public notice about the availability of the draft permit, and provide the public access to the draft permit, the application, and supporting information.² The public notice provides an opportunity for public comment, as well as an opportunity to request a public hearing on the draft permit.

In addition to the newspaper notices, the District has been issuing e-notices for the last decade, as it is an effective way to communicate permit actions to the public quickly and efficiently. Over the years, availability of and access to the Internet and other forms of electronic media have increased significantly. Electronic posting of such notices has been demonstrated to be an efficient and cost-effective way to provide notice of Part 70 permit-related information to the public.

3. PROPOSED RULE AMENDMENTS

The proposed amendments are based on a model rule that was prepared jointly by EPA Region IX and the California Air Pollution Control Officers Association (CAPCOA). These amendments modernize, enhance and improve the consistency in the Part 70 public noticing provisions that are codified in the District's Rules & Regulations.

3.1 E-notice and E-access

On November 10, 2016, the United States Environmental Protection Agency (EPA) issued a final rule in the Federal Register that revised the public notice provisions for major stationary sources of air pollution. The final rule allows the District to meet the Part 70 public notice provisions by issuing an electronic notice ("e-notice") of the permit action instead of issuing a hardcopy newspaper notice. For these e-notices, the draft permit and supplementary material will also be available online at the District's website, which is termed electronic access ("e-access").

By having e-notice and e-access to the draft permit and key permit support documents, the public can easily participate in the permit process. The permit information can be accessed through the public notice section of the District's website for the duration of the public comment period and until the issuance of the final permit (or until the permit application has been denied or withdrawn). Also, the draft permit and support documents will be in a format that can be opened and viewed by the public using commonly accepted computer software, such as in portable document format (pdf) that can be opened with Adobe Acrobat Reader.

The District will provide evidence of each e-notice and e-access in the permit record. This will generally encompass providing an electronic screenshot or printout of the applicable website pages, a "Memorandum to the File" by the permit writer documenting the posting, the website

² The types of Part 70 permit actions subject to public noticing include: initial permit issuance, permit renewal, significant permit modifications, and reopenings for cause.

address where the e-notice was posted, and the date through which the posting remained available.

3.2 Subscription List

The District currently maintains a subscription list that a member of the public can subscribe to if they want to stay informed of all District news and notices. Any member of the public that is on this list will be notified when a new public notice is issued via email. This direct method of noticing the public guarantees that interested parties can remain aware of all new Part 70 permit actions that occur at the District.

3.3 Supplement to the E-notice

Even though the District will be using e-notices as the main tool to inform the public, the draft rule language still allows for the District to use other methods to effectively communicate with the public about Part 70 permit actions. The District shall provide notice by other means if necessary to assure adequate notice to the affected public. For these instances, the District will consider specific circumstances of the permit application, such as the location of the proposed project and the accessibility of information sources in the community. Newspaper publications can still be performed to provide permit information to these communities.

4. Rule Discussion

4.1 Benefits of Electronic Media

The District has recognized the following benefits of e-noticing for some time, which include:

- Significantly improving communication with the public on permit actions in comparison to a one-day newspaper notice;
- Improved public access by making permit actions immediately available through convenient and reliable electronic media outlets; and
- Broader and better informed public participation.

Internet publishing provides the potential to reach unknown interested parties. Residents in a local jurisdiction may not subscribe to a local paper or happen to see a one-day posting in the legal notices section of the newspaper. At any given time, residents may be out of town or relying on the Internet for news. The fact that e-notices will remain on the Internet for the duration of the public comment period vastly increases the likelihood that interested parties will receive notice about draft permits.

Also, people can easily share these electronic notices with neighbors or other interested parties, and they would not have the burden of traveling to a physical location to review a copy of the draft permit since it would be posted on the Internet. Furthermore, the public has access the Internet through their local library. All communities throughout the County have public libraries with computers that provide access to the online permit notices and draft permits.

4.2 Other Newspaper Notices

The District is also required to publish newspaper notices for some permit actions that are subject to Regulation VIII, New Source Review. For example, if a stationary source submits an application to exceed the 25 ton per year offset threshold, a newspaper publication is required pursuant to Regulation VIII.

At this time, the District does not propose to amend Regulation VIII to remove the newspaper notice requirements and codify the e-notice and e-access procedures. This is because the public noticing requirements aren't triggered very frequently for New Source Review projects. The District will reevaluate the need to update the New Source Review rules at a later date. In the meantime, the District will continue to make the information regarding these New Source Review projects readily available by posting the supplementary materials online on the District's website in order to ensure that the public has a consistent and reliable location for all permit notices.

5. IMPACTS OF THE PROPOSED RULE

5.1 Emission Impacts

There will be no emission impacts associated with the proposed changes to the administrative public noticing procedures.

5.2 Cost-Effectiveness

Health and Safety Code section 40703 requires the District, in the process of adopting or amending a rule, to consider and make public its findings related to the cost-effectiveness of a control measure. Cost-effectiveness, for rule-making purposes, is calculated by taking the estimated compliance costs of the rule and dividing it by the amount of air pollution reduced.

Since these amendments are not implementing a control measure that reduces emissions, there are no cost-effectiveness calculations for this project.

5.3 Incremental Cost-Effectiveness

Health and Safety Code section 40920.6 requires the assessment of incremental cost-effectiveness for a regulation that identifies more than one control option to meet the same emission reduction objectives. The incremental cost-effectiveness is the difference in cost between two successively more effective control strategies, divided by the additional emission reductions achieved for each of the control strategies.

Since these amendments are not implementing a control measure that reduces emissions, there are no incremental cost-effectiveness calculations for this project.

5.4 Socioeconomic Impacts

Health and Safety Code section 40728.5 requires the Board to consider the socioeconomic impact of any new rule if air quality or emission limits are significantly affected. However, Districts with a population of less than 500,000 persons are not required to do this socioeconomic analysis. Using 2010 census data and the expected growth rates for the County from the Santa Barbara County Association of Governments, the current population of 450,000 is below the 500,000 person threshold. Therefore, the District is not required to consider the socioeconomic impacts of the proposed rule amendment.

5.5 Impact to Industry

There are currently 17 stationary sources within the District that have Part 70 permits. The proposed amendments will slightly decrease the permitting fees for these stationary sources, as all staff time and publishing costs incurred by the District for organizing the newspaper notice are passed through to the stationary source in accordance with District Rule 210, Fees.

5.6 Impact to the District

The District issues approximately 6 public notices per year for the Part 70 permit program. By removing the requirement to issue newspaper notices, the District will save staff time. The effort and cost to post a notice on the District's website is generally lower than the effort to arrange for a newspaper advertisement. Staff time will still be used to have a complete e-access record for the permit action, but this is necessary to effectively communicate all pertinent information to the public and it is already incorporated into the current District procedures.

6. ENVIRONMENTAL IMPACTS – CEQA

The California Environmental Quality Act (CEQA) requires environmental review for certain actions. This rulemaking project consists of revisions to District staff administrative public notification procedures. This administrative change will not affect emissions in Santa Barbara County. The project is an action taken by the District for public notification and does not involve any physical changes to the environment. There will also be no relaxation of standards, as the public will be notified of permit actions through a more effective means of communication.

Pursuant to §15061(b)(3) of the State CEQA Guidelines, the project is not subject to CEQA as it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment. A CEQA determination will be made when the proposed rule amendments are brought to the District Board for adoption. Any subsequent changes to the project description during the public review period will undergo additional environmental review under CEQA.

7. PUBLIC REVIEW

Community Advisory Council

To facilitate the participation of the regulated community and the public in the development of the District's regulatory program, the District created the Community Advisory Council (CAC). The CAC is comprised 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.

The CAC will meet and discuss the amendments to District Rule 1304 on December 13, 2017. The draft rule and draft staff report were made available on the District's website prior to the CAC meeting.

Public Hearing

In accordance with Health and Safety Code section 40725, the proposed amendments to Rule 1304 will be publicly noticed and made available on the District's website prior to the public hearing. The public will be invited to provide comments prior to the public hearing for the adoption of the proposed rule amendments.

8. REFERENCES

- 1) Revisions to Public Notice Provisions in Clean Air Act Permitting Programs, 81 Federal Register 71613 (October 18, 2016)
- 2) EPA Fact Sheet: Revisions to the Public Notice Provisions in Clean Air Act Permitting Programs, located at <https://www.epa.gov/nsr/nsr-regulatory-actions>
- 3) CAPCOA Title V Electronic Noticing Model Rule, Prepared by EPA Region 9 (October 25, 2017)

9. ATTACHMENTS

9.1 Attachment A. FAQs and Rule Clarification

ATTACHMENT A

FAQs and Rule Clarification

FAQs and Rule Clarification

The following text provides rule clarifications in the format of frequently asked questions:

1. **Question:** What does the word “copy” mean in the rule when it references sending a copy to the EPA?

Response: In the context of this rule, “copy” means sending either a hardcopy or an electronic copy. Potential items that may need to be sent to EPA include the permit application, the draft and final permits, the public notice, and any necessary supporting information.

2. **Question:** Do you envision supplementing the e-notice with a newspaper notice in any communities in Santa Barbara County?

Response: Communities that may still benefit from the supplemental newspaper notice include Cuyama and residents living in remote areas of the Los Padres National Forest. The District will evaluate the need to supplement the e-notice with a newspaper notice on a case-by-case basis.