FINAL STAFF REPORT

VENTURA COUNTY
AIR POLLUTION CONTROL DISTRICT

PROPOSED AMENDED RULE 33 – PART 70 PERMITS – GENERAL, RULE 33.1 – PART 70 PERMITS – DEFINITIONS, AND RULE 33.9 – PART 70 PERMITS – COMPLIANCE PROVISIONS

April 8, 2025

EXECUTIVE SUMMARY

Ventura County Air Pollution Control District (District or VCAPCD) staff propose amendments to Rule 33 – Part 70 Permits – General, Rule 33.1 – Part 70 Permits – Definitions, and Rule 33.9 – Part 70 Permits – Compliance Provisions to remove federal Tailoring Rule and emergency affirmative defense provisions, both of which are no longer enforceable due to court rulings. On July 30, 2024, District requested an extension with U.S. Environmental Protection Agency (EPA) to extend the deadline to remove emergency affirmative defense provisions until August 21, 2025.

BACKGROUND

Title V Program

Title V of the federal Clean Air Act (CAA) Amendments of 1990 required the implementation of a nationwide federal operating permit program. The specific requirements for the federal operating permit program were published as Part 70 of Title 40 of the Code of Federal Regulations (40 CFR Part 70). To satisfy the mandate to develop a Part 70 permit program for major sources of air pollution in Ventura County, VCAPCD adopted Rules 33 through 33.10 on October 12, 1993.

Since the adoption of Rule 33 all major sources of air pollution in Ventura County have been required to obtain a federal operating permit, referred to as a Title V permit. To be considered a major source of air pollution the facility must have emissions which exceed the thresholds determined by the non-attainment status of the area and codified in 40 CFR Part 70. Because these major sources have greater potential to emit pollution, they are subject to enhanced monitoring, recordkeeping, and reporting requirements.

At the time of adoption, 53 sources were expected to obtain a Title V permit. Currently there are 16 facilities subject to Title V permits in Ventura County.

Emergency Affirmative Defense

In 1992, EPA promulgated emergency affirmative defense provisions in 40 CFR 70.6(g). These provisions outlined a legal defense where permitted sources could avoid liability for noncompliance with technology-based emission limits contained in the Title V permit. To rely on emergency affirmative defense and avoid liability, a facility was required to demonstrate all excess emissions were the result of an "emergency", as outlined in the CAA, and included in VCAPCD Rules 33 through 33.10.

Tailoring Rule

Following the Supreme Court of the United States (SCOTUS) decision on Massachusetts v. EPA. 549 U.S. 497 (2007) an endangerment finding was issued which listed six greenhouse gases (GHGs) from mobile sources which constitute "air pollution" that endangers public health and welfare by contributing to climate change. Following the endangerment finding EPA set out to create emission standards governing GHG emissions beginning with requiring federal permits from the largest sources.

On June 3, 2010, EPA promulgated the final "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" (Tailoring Rule) which 'tailored' applicability requirements used to determine which sources were subject to permitting requirements for GHG emissions. Following this, VCAPCD adopted amendments to Rules 2, 23, 33, 33.1, 35, and 76 which enabled the district to implement the federal requirements as outlined in the Tailoring Rule. These amendments were approved and adopted by the Board on April 12, 2011, and enforcement was delayed until legal challenges were resolved.

Repeals

On June 23, 2014, the SCOTUS ruled in Utility Regulatory Group v. EPA, 573 U.S. 302 (2014) that although the general definition of "air pollutant" includes GHGs, it does not require the EPA to include GHG emissions every time the Clean Air Act uses the term "air pollutant". Doing so would overstep the threshold limits as dictated by Congress. This resulted in EPA being unable to treat GHGs as a pollutant for purposes of determining whether something is a major source that is required to obtain a PSD or Title V permit.

In NRDC v. USEPA, 749 F. 3d 1055 (2014) the D.C. Circuit vacated another affirmative defense provision contained in the Hazardous Air Pollutants National Emission Standards for the Portland Cement Industry. It was determined that providing an option to avoid civil liability oversteps EPA's authority and restricts the court's discretionary ability to decide whether a source has met its burden of demonstrating an emergency has occurred and whether civil penalties are appropriate.

On August 21, 2023, EPA finalized rulemaking, originally proposed in 2016, to remove all emergency affirmative defense provisions including the provision included in the Title V operating permit program. EPA established a deadline of August 21, 2024, for agencies with delegated Title V permit programs to either remove affirmative defense provisions or request an extension. On July 30, 2024, VCAPCD submitted a request to extend this deadline to August 21, 2025, which EPA granted on October 23, 2024.

PROPOSED RULE REVISIONS

ATTACHMENT 5

Rule 33, Subsection B.1 is amended to remove language which establishes Title V permitting requirements based on GHG emissions.

Rule 33.1, is amended to remove the definition of "CO2 Equivalent" and the reference to 40 CFR 70.6(g)(1) from the definition for "Emergency".

Rule 33.9, Section D, is removed which outlines steps required to demonstrate and claim an Emergency as outlined in 40 CFR 70(g).

COMPARISON OF PROPOSED RULE REQUIREMENTS WITH OTHER AIR POLLUTION CONTROL REQUIREMENTS

Amended Rules 33, 33.1, and 33.9 do not impose a new or more stringent emissions limit or standard, or a new or more stringent monitoring, reporting, or recordkeeping requirement. In accordance with California Health and Safety Code (CHSC) Section 40727.2(g), a comparative analysis is not required.

COST-EFFECTIVENESS AND IMPACT ANALYSES

Cost-Effectiveness Analysis

CHSC Section 40703 requires the District to consider and make public, in adopting a regulation, its findings related to the cost effectiveness of Air Quality Management Plan control measures. The proposed amendments to Rules 33, 33.1, and 33.9 are not related to any control measure. Therefore, a cost-effectiveness analysis is not required for the proposed amendments.

CHSC Section 40920.6 requires an incremental cost-effectiveness analysis for rules and regulations requiring Best Available Retrofit Control Technology (BARCT) and feasible control measures with multiple control options. The proposed amended Rules 33, 33.1, and 33.9 do not include BARCT standards or any control measure. Therefore, an incremental cost-effectiveness analysis is not required for the proposed amendments.

Socioeconomic Impact Analysis

California Health and Safety Code Section 40728.5 requires the District to assess the socioeconomic impact of any rule adoption or amendment if air quality or emission limits are significantly affected. The proposed amendments to Rules 33, 33.1, and 33.9 do not affect air quality or emission limits in Ventura County. Therefore, this analysis is not required for the proposed amendments.

Environmental Impacts

California Public Resources Code Section 21159 requires the District to perform an environmental analysis of the reasonably foreseeable methods of compliance if the proposed rule or regulation requires installation of pollution control equipment, a performance standard, or treatment requirement. The proposed amendments to Rules 33, 33.1, and 33.9 are administrative in nature and do not require control equipment. Therefore, this analysis is not required for the proposed amended rules.

California Environmental Quality Act

The proposed amendments to Rules 33, 33.1, and 33.9 are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) as the amendments have no possibility for causing a significant effect on the environment, and pursuant to California Code of Regulations Section 15307 due to being an action taken by (a) regulatory agency to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment.

PUBLIC ENGAGEMENT AND COMMENTS

Public Workshops

District staff held a public workshop on January 15, 2025, to discuss the proposed amendments to Rules 33, 33.1, and 33.9. All affected permitted sources within the District's jurisdiction were notified of the workshop by both email and written notification sent by U.S. Mail to the address on record. The notice and draft rule language were also available on the District's website. District staff did not receive any comments from the public prior to and at the workshop.

Advisory Committee

District staff have scheduled an Advisory Committee meeting to be held on February 18, 2025. All affected permitted sources within the District's jurisdiction were notified of the Advisory Committee meeting by written notification sent by U.S. Mail to the address on record.

Air Pollution Control Board Public Hearing

District staff plans to schedule a public hearing for the Air Pollution Control Board to consider the adoption of the proposed amendments to Rules 33, 33.1, and 33.9 on April 8, 2025. Staff will publish a public notice in the newspaper and notify all permitted sources of a 30-day formal public comment period to be completed prior to the public hearing.