

**REGULATION IV
AUTHORITY TO CONSTRUCT REGULATIONS**

Rule 401 **Permit Required**

Any person building, altering, or replacing any source of air contaminants shall first obtain an Authority to Construct from the Air Pollution Control Officer. An Authority to Construct shall remain in effect until the Permit to Operate for that source for which the application was filed is either granted or denied or until termination pursuant to other provisions of this Regulation.

Major sources subject to Title V of the Clean Air Act of 1990, shall also comply with the requirements of Rule 522 Title V - Federal Operating Permits. The applicant for a major source shall apply to the U.S. EPA for applicable federal requirements pursuant to Title I of the Clean Air Act of 1990, that have not been delgated to the District.

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Rule 402 **Exemptions to Rule 401**

Unless required or allowed elsewhere within the District rules, or by a ARB Airborne Toxic Control Measure, or any other State or Federal regulation, an Authority to Construct shall not be required for:

- A. (1) Any vehicle.
 (2) Any structure designed for and used exclusively as a dwelling for not more than four families.
 (3) An incinerator used exclusively in connection with a structure as described in A.(2).
 (4) Barbecue equipment that is not used for commercial purposes.
 (5) (a) Repairs or maintenance not involving structural changes to any equipment for which a Permit to Operate has been granted.
 (b) As used in this subdivision, maintenance does not include operation.
 (6) Nothing in this section shall affect any requirements imposed on a district or a source of air pollution, including, but not limited to, an agricultural source, pursuant to the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

- B. Any facility or source with a toxic prioritization score less than 1 as determined by the District and that emits less than 1000 pounds per year of any criteria pollutant, precursor or toxic air contaminant.

- C. Steam generators, steam superheaters, water boilers, water heaters, and closed heat transfer systems that have a maximum heat input rate of less than 3,000,000 British Thermal Units (BTU) per hour gross, and are fired exclusively with one of the following:
 - (1) Natural gas;
 - (2) Liquefied petroleum gas;
 - (3) A combination of natural gas and liquefied petroleum gas.

- D. Other sources that have not been deemed a nuisance or potential nuisance by the APCO and emit less than 1000 pounds per year of any one criteria pollutant or precursor or emit less than 2000 pounds of any combination thereof as determined by the APCO.

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Rule 403 **Applications**

Every application for an Authority to Construct required under this Regulation shall be filed in the manner and form prescribed by the Air Pollution Control Officer, and shall give all the information necessary to enable the Air Pollution Control Officer to make the determination on the approvability of the application. The Air Pollution Control Officer may require that such information be certified by a professional engineer registered in the State of California.

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Rule 404 **Application Criteria**

The Air Pollution Control Officer shall maintain, periodically review, and update a list of information which may be required of applicants seeking an Authority to Construct. The information list shall be transmitted to the applicant with the requested application for Authority to Construct. The Air Pollution Control Officer may conduct a pre-application conference with the applicant to ascertain the information to be required in the application.

For major sources subject to Title V of the Clean Air Act of 1990, Rule 522 Title V - Federal Operating Permits applies to application criteria.

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Rule 405 **Determination of Requirements**

Upon request for an application for an Authority to Construct, the Air Pollution Control Officer shall determine in which District zone the source is proposed for location and whether the facility or modification will be a major facility or major modification impacting attainment and nonattainment pollutants. The Air Pollution Control Officer shall advise the applicant on the basis of this preliminary determination which requirements of this Regulation will apply. Special studies necessary to provide information in the application shall be borne at the expense of the applicant. The Air Pollution Control Officer shall base a final determination of requirements under this Regulation upon information contained in the complete application for Authority to Construct.

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Rule 406 **Completeness of Application**

Within 30 days after receiving an application for Authority to Construct, the Air Pollution Control Officer shall advise the applicant in writing whether the application is complete. If an application is deemed incomplete, the Air Pollution Control Officer shall notify the applicant of the additional information requirements. Failure to notify the applicant in writing of the completeness of the application shall be deemed acceptance of the application as complete. If the applicant fails to submit such requested information, the Air Pollution Control Officer may deny the application. Upon resubmission of an application, a new 30 day review period shall commence. After the Air Pollution Control Officer accepts an application as complete, he shall not subsequently request of an applicant any new or additional information which was not specified in the application form and information list. While an application is being processed after being deemed complete, the Air Pollution Control Officer may require the applicant to clarify, amplify or supplement the information supplied.

For major sources subject to Title V of the Clean Air Act of 1990, subsection 5.1 of Rule 522 Title V - Federal Operating Permits applies to completeness reviews.

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Rule 407 **Pollutant Modeling**

The Air Pollution Control Officer, in consultation with other Air Pollution Control Districts in the Mountain Counties Air Basin, shall designate air quality simulation models for use in determining air quality impacts of emissions from new and existing facilities and modifications. Each model shall utilize information relating to emission quantities and meteorological conditions for areas within and adjacent to the District. Each model designated shall be consistent with the requirements provided in the "Guidelines on Air Quality Models, OAQPS 1.2080", unless the Air Pollution Control Officer finds that such model is inappropriate for use in the District. After making such finding, the Air Pollution Control Officer may designate an alternate model only after allowing for public comment and only after consultation with other Air Pollution Control Districts in the Mountain Counties Air Basin, the Air Resources Board and the Environmental Protection Agency.

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Rule 408 **Attainment Pollutant Air Quality Analysis**

Utilizing the air quality simulation model designated in the Rule 407, the Air Pollution Control Officer shall determine the increases in attainment pollutant concentrations in downwind District zones and other Air Pollution Control Districts that will occur as a result of operation of proposed facilities or modifications. The Air Pollution Control Officer may require that the modeling cost be borne by the applicant. The model shall consider air quality impacts projected for the area as a result of general commercial, residential, industrial, and other growth associated with the facility if such facility or modification is proposed to employ more than 2,000 new residents. The applicant shall provide an analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the new or modified facility's associated growth, except that such analysis of impacts on vegetation having no significant commercial or recreational value need not be provided. The Air Pollution Control Officer may require the applicant to monitor applicable pollutants for a maximum of one year prior to consideration of an application for Authority to Construct, and for a period determined by the Air Pollution Control Officer to be necessary after issuance of the Permit to Operate for the facility or modification to determine compliance with national ambient air quality standards or attainment pollutant increments contained in Rule 413. Such monitoring shall comply with 40 CFR, Part 53, and the Air Resources Board Quality Assurance Plan for Ambient Air Monitoring.

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Rule 409 **Exemptions to Rule 408**

The Air Pollution Control Officer may exempt from the provisions of Rule 408 any of the following facilities or modifications, or portions thereof, with respect to attainment pollutants:

- A. Portable facilities being relocated which have received Permits to Operate after January 1, 1981, and temporary sources of emissions if:
 - 1. Emissions from the facility would not exceed emissions limitations provided in these Rules and Regulations and would not cause or contribute to a violation of a national ambient air quality standard; and
 - 2. Such operation would impact no Class I area and no area where an applicable increment is known to be violated; and
 - 3. Notice is given to the Air Pollution Control Officer at least 90 days prior to a relocation identifying the proposed new location and the probable duration of operation at such location.

- B. Modification of a source for the sole purpose of converting from the use of petroleum products, natural gas, or both, by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act or the Federal Energy Supply, and Environmental Coordination Act of 1974 (or any superseding legislation). An exemption for such a modification shall not apply for more than five (5) years after the effective day of such plan.

- C. Any modification which causes no net increase in the quantity of emissions from a facility, or any facility which causes no net increase in the quantity of emission within a District zone. Emission offset eligibility shall be determined through the provisions of Rule 411. No exemption shall be allowed if the facility or modification would impact a nonattainment area or an attainment pollutant increment violation area for such pollutant.

- D. Sources of fugitive dust.

- E. Any facility or modification which is not a major facility or major modification except any which would have the potential to emit an increase of emissions in excess of:
 - 1. 5.0 tons per year of lead;

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2. 0.02 tons per year of asbestos;
 3. 0.001 tons per year of beryllium;
 4. 0.3 tons per year of mercury;
 5. 3.0 tons per year of vinyl chloride;
 6. 3.0 tons per year of fluorides;
 7. 7.0 tons per year of sulfuric acid;
 8. 10.0 tons per year of hydrogen sulfide;
 9. 10.0 tons per year of total reduced sulfur.
- F. Any source of carbon monoxide which the Air Pollution Control Officer determines would not cause a violation of any national ambient air quality standard for such pollutant at the point of maximum ground level impact.

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Rule 410 **Calculation of Emissions**

- A. The maximum design capacity of a new facility or modification shall be used to determine the emissions from the new facility or modification unless the applicant, as a condition to receiving Authorities to Construct and Permits to Operate for such new facility or modification, agrees to a limitation on the operation of the new facility or modification. Such limitation shall be used to establish the maximum emissions from the new facility or modification and shall be attached as a condition to Permits to Operate. Allowable emissions shall be calculated on the basis of the emissions limitation contained in these Rules and Regulations as of the date the Air Pollution Control Officer deems the application for Authority to Construct complete.

- B. The maximum emissions for an existing facility shall be based on the actual operating conditions averaged over the two year period preceding the date of application, or such other averaging period as determined by the Air Pollution Control Officer if the source did not operate, or operated irregularly, during the preceding two year period. If violation of laws, rules, regulations, permit conditions or orders of the District, the Air Resources Board or the Environmental Protection Agency occurred during the period used to determine the operating conditions, then adjustments to the operating conditions shall be made to determine the emissions the existing facility would have caused without such violations.

- C. When computing the net increases in emissions for modifications, the Air Pollution Control Officer shall take into account the cumulative net emissions changes which are represented by Authorities to Construct associated with the existing facility, and issued after January 1, 1981, excluding any emissions reductions required to comply with Federal, State, or District laws, rules or regulations.

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Rule 411 **Emission Offset Eligibility**

- A. Except in the case of seasonal sources, emission offset quantities shall be calculated on annual, and daily bases. For seasonal sources, emission offset quantities shall be calculated on the basis of the season date span of operation, and daily emission rate, either estimated for proposed sources or averaged over the two year period preceding the date of application, or other appropriate periods as determined by the Air Pollution Control Officer, for existing sources.
- B. Emission offsets may be developed by the reduction of emissions from existing stationary, and non-stationary sources. Offsets from stationary sources not exempt from the provisions of Rule 501 shall be certified by the Air Pollution Control Officer through conditions attached to the Permits to Operate of the emission-reducing sources. Offsets from non-stationary sources, and exempt stationary sources shall be certified by the Air Pollution Control Officer through new facility Permit to Operate conditions, contracts, or other means deemed adequate by the Air Pollution Control Officer. Such emission offsets shall take effect no later than 120 days after initial operation of the new facility or modification.
- C. The ratio of emissions offsets to the emission from a new facility or modification shall be:
1. 1.0:1 for offsets within the facility;
 2. 1.2:1 for offsets upwind in the same or adjoining Air Pollution Control District, or within a 15 mile radius of the proposed new facility or modification.
 3. Sufficient to demonstrate an air quality benefit through modeling in the area affected by emissions from the new facility or modification for offsets located in areas other than those of 1. or 2. above.
- D. If an applicant certifies that the proposed new facility or modification is a replacement for a facility or source which was shut down or curtailed after January 1, 1981, emission reductions associated with such shutdown or curtailment may be used as offsets for the proposed facility or modification. Sources which were shut down or curtailed prior to January 1, 1981, may be used to offset emissions increases for replacements for such sources, provided that:

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1. The shutdown or curtailment was made in good faith pursuant to an established plan approved by the Air Pollution Control Officer for replacement and emission control, and in compliance with air pollution laws, rules and regulations at the time; and
 2. The applicant demonstrates to the satisfaction of the Air Pollution Control Officer that there was good cause for delay in construction of the replacement sources.
- E. Notwithstanding any other provisions of this rule, any emissions reductions not otherwise authorized by this Rule may be used as offsets or emission increases from the proposed facility or modification provided the applicant demonstrates to the satisfaction of the Air Pollution Control Officer that such reductions will result in a net air quality benefit in the area affected by emissions from the new facility or modification.
- F. Emissions reductions resulting from measures required by adopted Federal, State, or District laws, rules or regulations shall not be allowed as emissions offsets unless a complete application incorporating such offsets was filed with the District prior to the date of adoption of the laws, rule or regulations.
- G. Emissions reductions of one precursor may be used to offset emissions increases of another precursor of the same secondary pollutant provided the applicant demonstrates to the satisfaction of the Air Pollution Control Officer that the net emission increase of the latter precursor will not cause a new violation, or contribute to an existing violation, of any national ambient air quality standard. The ratio of emission reductions between precursor pollutants of the same secondary pollutant shall be determined by the Air Pollution Control Officer based upon existing air quality data.

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Rule 412 **Emission Reduction Credit**

- A. The Air Pollution Control Officer shall allow emissions reductions which exceed those required by these Rules and Regulations to be banked for use in the future by a source owner or by others through agreement with the source owner. Reductions approved under this Rule shall be certified by the Air Pollution Control Officer and maintained for offset eligibility in an emission reduction bank. Banked emissions shall be used only for emission offsets pursuant to this Regulation.
- B. Emission reductions eligible for credit under this Rule shall be actual emissions averaged over a two year period from sources holding Permits to Operate, reduced through the modification of equipment, modification of operations schedules, or shutdown occurring after January 1, 1981. Eligible reductions shall be real, permanent, and enforceable, and shall not derive from enactment of more restrictive emission regulations. Emission reductions produced by modifications of operations schedules or equipment shall be secured by the Air Pollution Control Officer through conditions of Permits to Operate. No emission reduction shall be eligible for credit unless the applicant can demonstrate that the reduction will produce no corresponding emission increase within the District or impacting the District. Emission reductions shall be substantiated by source test, emission monitor, operating record or other data as required by the Air Pollution Control Officer. Engineering data may be substituted for source test data upon approval of the Air Pollution Control Officer.
- C. Eligible emission reductions shall be banked pursuant to the following provisions:
1. Applications for reduction credit shall be submitted on forms or pursuant to guidelines approved by the Air Pollution Control Officer. Failure to provide all required information shall constitute denial of the application.
 2. The Air Pollution Control Officer shall publish a Public Notice once in a newspaper of general circulation in the District at least thirty (30) days prior to making a final decision on an application. The notice shall state the location of the application available for public review, the quantity, and type of pollutant proposed for reduction, and instructions for submitting comments.

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3. If after the review of public comments, the application is approved by the Air Pollution Control Officer, the emission reductions shall be certified by return of a certificate to the applicant identifying the pollutant type, and daily average, and annual quantities approved for banking.
 4. Certified emission reductions shall continue to be banked until withdrawn pursuant to the provisions of this Rule.
- D. Emission reductions certified for banking shall be withdrawn pursuant to the following provisions:
1. The use, sale, or exchange of certified reductions shall be at the discretion of the depositor, provided that exclusive right to use, and authorize use shall not constitute an unrestricted right. Certified reductions shall only be used as emission offsets within the District, or outside the District with the approval of the Air Pollution Control Officer, pursuant to the provisions of this Regulation. If the Air Quality Management District Board determines that emission reductions contained within an approved Nonattainment Plan or other applicable air quality maintenance plan are not being met within established schedules, the Air Pollution Control Board may declare a moratorium on or restrict the withdrawal of certified reductions until the applicable plan is modified or the reduction schedule is met. The Air Pollution Control Officer shall notify all affected depositors of the declaration of a moratorium or restriction and its cancellation.
 2. Certified reduction on deposit for less than two (2) years shall comply with offset requirements in existence on the date of deposit when withdrawn. The use of all other withdrawn reductions shall comply with offset requirements in existence on the date of issuance of an Authority to Construct.
 3. If there is more than one owner of the source of the certified reduction, initial title to that reduction shall be deemed to be owned by such co-owners in the same manner as they hold title to the source of the reduction at the time the reduction was certified by the Air Pollution Control Officer.
 4. Certified emission reductions shall be reduced by that quantity required by any applicable emission limitation adopted by the Air Quality Management District within two (2) years succeeding the issuance of the reduction certificate.

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5. Withdrawal of the certified reductions may be made in whole, or in part, upon application to, review, and determination of withdrawal availability by the Air Pollution Control Officer. Prior to the use of certified reductions, applicable certificates shall be surrendered by the depositor to the Air Pollution Control Officer.
- E. In the event that the Air Pollution Control Officer disapproves the certification or withdrawal of emission reductions, the affected applicant or depositor shall have the right to appeal such decision to the Hearing Board of the District within 30 days after receipt of the notice of disapproval. The Hearing Board shall conduct a public hearing to consider the appeal pursuant to the provision of Regulation VII, Procedure Before the Hearing Board.

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Rule 413 Attainment Pollutant Increments

The Air Pollution Control Officer shall deny an Authority to Construct for a proposed facility or modification which, pursuant to an analysis performed in accordance with the provisions of Rules 408 and 415, causes an ambient pollutant concentration to exceed the following increments of increase above the baseline concentration:

Pollutant	Monitoring Interval	Maximum Allowable Increase (micrograms per cubic meter)		
		Class I	II	III
Particulate Matter:	Annual Geometric Mean	5	19	37
	24-hour Maximum	10	37	75
Sulfur Dioxide:	Annual Arithmetic Mean	2	20	40
	24-hour Maximum	5	91	182
	3-hour Maximum	25	512	700
Ozone:	1-hour Maximum	20	40	80
Oxides of Nitrogen:	Annual Average	10	20	40
Hydrocarbons: (corrected for methane)	3-hour Maximum	20	40	80
Lead:	Calendar Quarter Average	0.60		

For any monitoring period other than an annual period, the applicable maximum allowable increase may be exceeded during one such monitoring period per year at any one location.

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Rule 414 **Sources Impacting Class I Areas**

- A. The Air Pollution Control Officer shall accept, and consider comments offered by the Federal Land Manager of any lands contained within a Class I area impacted by a proposed major facility or major modification. If the Federal Land Manager demonstrates that the emissions from a proposed major facility or major modification would have an adverse impact on the air quality related values (including visibility) of any federal mandatory Class I areas, notwithstanding that the change in air quality resulting from emissions from such facility or modification would not cause or contribute to concentrations which would exceed the maximum allowable increase for a Class I area, and if the Air Pollution Control Officer concurs with such demonstration, then he shall deny the Authority to Construct.

- B. If the applicant demonstrates, and the affected Federal Land Manager of a Class I area concurs, that the emissions from a proposed major facility or major modification would have no adverse impact on the air quality-related values (including visibility) of such federal mandatory Class I area, and providing that all District Rules and Regulations are otherwise met, the Air Pollution Control Officer may issue an Authority to Construct with such emission limitations as he may deem necessary to assure that emissions of sulfur dioxide and particulate matter would not exceed the following maximum allowable increases over the baseline concentrations:

<u>Zone Pollutant</u>	<u>Maximum Allowable Increase (micrograms per cubic meter)</u>
Class I	
Particulate matter:	
Annual geometric mean	19
24-hour maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	325

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- C. If the applicant demonstrates, and the Air Resources Board, and affected Class I Federal Land Manager concur, that the proposed major facility or major modification cannot be constructed in compliance with Section B. above, as it relates to sulfur dioxide increments and that such facility or modification would not adversely affect air quality-related values (including visibility) of any affected federal mandatory Class I area, and provided that the District Rules and Regulations are otherwise met, the Air Pollution Control Officer may issue an Authority to Construct with such emission limitations as he may deem necessary to assure that emissions of sulfur dioxide would not exceed the following maximum allowable increase over the baseline concentration:

<u>Zone Pollutant</u>	<u>Maximum Allowable Increase (micrograms per cubic meter)</u>
Class I	
Sulfur dioxide:	
24-hour maximum	62
3-hour maximum	221

The emission limitation contained in the Authority to Construct under this Section shall also prohibit the exceedance of the maximum allowable increases contained in Rule 413 for period of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period.

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Rule 415 **Attainment Pollutant Increment Consumption**

Every two years, the Air Pollution Control Officer shall estimate emissions from all sources in the District, and utilize available information on emissions from upwind Air Pollution Control Districts to calculate the portion of each increment specified in Rule 413 having been consumed, provided the necessary computer resources are provided by the Air Resources Board or others. The Air Pollution Control Officer shall estimate the difference between actual emissions, averaged over the two year period prior to the date of calculation, or other reasonable period as determined by the Air Pollution Control Officer and maximum allowable emissions for each source operating under Permits to operate prior to January 1, 1981, and shall reserve that difference, and its attendant increment portion for use by the permitted source.

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Rule 416 **Violation of National Ambient Air Quality Standards**

- A. The Air Pollution Control Officer shall deny an Authority to Construct for a facility or modification or, pursuant to an analysis performed in accordance with the provisions of Rule 408, causes a violation of a national ambient air quality standard.

- B. The Air Pollution Control Officer shall deny an Authority to Construct for a facility or modification which, pursuant to an analysis performed in accordance with the provisions of Rule 408, contributes to a violation of a national ambient air quality standard in a downwind nonattainment area. The Air Pollution Control Officer may exempt sources from this Section that comply with the provisions of Rule 421, Sections A. and B.

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Rule 417 **Violation of Emission Limitation**

The Air Pollution Control Officer shall deny an Authority to Construct for a source unless the source as proposed complies with all District emission limitation and all other Rules and Regulations.

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Rule 418 **Attainment Pollutant Control Technology**

- A. The Air Pollution Control Officer shall deny an Authority to Construct for a facility or modification subject to review under the provisions of Rule 408 unless the facility or modification is designed to apply best available control technology for each applicable attainment pollutant or precursor. For an existing facility this requirement shall apply only to new or modified sources.

- B. For applicable phased construction projects, the determination of best available control technology shall be reviewed, and modified as appropriate, at the latest reasonable time prior to commencement of each independent phase of the proposed facility or modification.

- C. In the case of a major facility or major modification which the applicant proposed to construct in a Class III area, emissions from which would cause or contribute to air quality exceeding the maximum allowable increase that would be applicable if the area were a Class II area and where no new source performance standard under 40 CFR 60 has been promulgated for such source category, the Air Pollution Control Officer shall submit the determination of best available control technology to the Environmental Protection Agency for concurrence.

- D. For those facilities or modifications required to meet the provisions of Section A of this Rule, the Air Pollution Control Officer may approve with the consent of the Air Resources Board the use of innovative control technology in lieu of best available control technology, provided that:
 - 1. The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function, or cause emissions in excess of any standard contained in these Rules and Regulations or in 40 CFR Parts 60 and 61; and

 - 2. The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that achieved by the application of best available control technology by a date specified by the Air Pollution Control Officer. Such date shall not be later than 4 years from the time of startup or 7 years from the date of issuance of the Authority to Construct.

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- E. The Air Pollution Control Officer shall withdraw any approval to employ a system of innovative control technology approved under this Rule if:
1. The proposed system fails by the specified date to achieve the required continuous emission reduction rate; or
 2. The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or
 3. The Air Pollution Control Officer decides at any time that the proposed system is unlikely to achieve the required level of control, or to protect the public health, welfare, or safety.

If a source or modification fails to meet the required level of continuous emissions reduction within the specified time period, or its approval is withdrawn pursuant to this Section, the Air Pollution Control Officer may allow the source or modification up to an additional 3 years to meet the requirements of best available control technology through use of a demonstrated control system.

- F. In the event that the Air Pollution Control Officer withdraws approval of a system of innovative control technology, the affected operator shall have the right to appeal such decision to the Hearing Board of the District within 30 days after receipt of the notice of withdrawal or approval.

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Rule 419 **Nonattainment Pollutant Air Quality Analysis**

- A. Utilizing the air quality simulation model designated pursuant to Rule 407, the Air Pollution Control Officer shall determine the increases in ambient nonattainment pollutant concentrations in downwind District zones and other Air Pollution Control Districts that will occur as a result of operation of the proposed facility or modification. Also, the Air Pollution Control Officer may require that the cost of modeling be borne by the applicant. The model shall consider air quality impacts projected for the area from source emissions and secondary emissions.

- B. Where a facility or modification is constructed in phases which individually do not emit more than 100 tons per year of a nonattainment pollutant or precursor, the allowable emissions from all such phases granted an Authority to Construct after December 21, 1976, shall be added together and this Rule shall be applicable when a proposed phase would cause the sum of the allowable emissions to exceed 100 tons per year of such nonattainment pollutant or precursor.

- C. For sources of nitrogen oxides, the initial determination of whether a facility or modification would cause or contribute to a violation of the national ambient air quality standard for nitrogen dioxide shall be made using the model designated pursuant to the provisions of Rule 407 and assuming that all nitric oxide emitted is oxidized to nitrogen dioxide by the time the plume reaches ground level. The initial concentration estimates may be adjusted by the Air Pollution Control Officer if adequate data are available to account for the expected oxidation rate.

- D. The determination as to whether a facility would cause or contribute to a violation of the national ambient air quality standards shall be made as of the new or modified facility's startup date.

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Rule 420

Exemptions to Rule 419

The Air Pollution Control Officer may exempt from the provisions of Rule 419 any of the following facilities or modifications with respect to a particular nonattainment pollutant or precursor:

- A. Any new facility or modification which is not a major facility or major modification, providing such facility or modification will meet all other District Rules and Regulations, any applicable new source performance standard in 40 CFR Part 60 and any applicable national emission standard for hazardous air pollutants in 40 CFR Part 61.
- B. Any source of nonmethane hydrocarbons, providing the owner or operator can demonstrate to the satisfaction of the Air Pollution Control Officer that the emissions from the proposed source will have no impact upon any area that exceeds the national ambient air quality standard for ozone. This exemption shall be considered only for sources locating in rural areas where source emissions would not be likely to interact with other significant sources of non-methane hydrocarbons or nitrogen oxides to form additional ozone.
- C. Any new facility or modification, providing the applicant can demonstrate to the satisfaction of the Air Pollution Control Officer that the proposed facility location will not be in violation of an applicable national ambient air quality standard as of the new facility or modification startup date. Such an exemption shall be granted by the Air Pollution Control Officer only if the applicant presents a substantial and relevant argument (including any necessary monitoring data gathered in compliance with the provisions of 40 CFR Part 53) to substantiate the attainment status of the proposed source location. To qualify for such exemption, the applicant must notify the Air Pollution Control Officer no less than 30 days prior to the initiation of any air quality monitoring effort.
- D. Any temporary source of emissions.
- E. Any source of carbon monoxide which the Air Pollution Control Officer determines would not cause a violation of any national ambient air quality standard for such pollutant at the point of maximum ground level impact.

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Rule 421

Contribution to Violation of National Ambient Air Quality Standard

The Air Pollution Control Officer shall deny an Authority to Construct for a new facility or modification for which an analysis was required and performed in accordance with the provisions of Rule 419 and which would contribute to concentrations which exceed a national ambient air quality standard as of the new or modified facility's startup date unless the following conditions are met:

- A. Each new source or modification within the facility shall meet an emission limitation which is equivalent to the lowest achievable emission rate for such source and such nonattainment pollutant or precursor.
- B. The applicant shall certify that all existing major facilities owned or operated by the applicant in the State of California are in compliance, or are on approved schedules or compliance with all applicable emission limitations and standards which are part of the State Implementation Plan approved by the Environmental Protection Agency.
- C. Emission reductions (offsets) from existing facilities in the area of the new facility or modification shall be secured pursuant to the provisions of Rule 411. The emission reductions shall be sufficient to provide a net positive air quality benefit consistent with the provisions of the approved Nonattainment Plan.

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Rule 422 **Exemptions to Rule 421**

The Air Pollution Control Officer may exempt from any of the requirements of Rule 421.C. any of the following facilities or modifications: (1) Resource recovery sources burning refuse derived or biomass derived solid waste fuels, (2) sources which must switch fuels due to a lack of adequate fuel supplies, and (3) sources required to be modified as a result of Environmental Protection Agency regulations where no exemption from such regulation is available to the source. An exemption under this Rule shall not be granted unless:

- A. The applicant demonstrates that it made its best efforts to obtain sufficient emission offsets to comply with Rule 421.C. and that such efforts were unsuccessful; and

- B. The applicant has secured all available emission offsets and will continue to seek the necessary offsets and apply them when they become available.

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Rule 423 **Power Plants**

This Rule 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 Commission. The Air Pollution Control Officer, pursuant to Section 25538 of the Public Resources Code, may apply for reimbursement of all costs, including lost fees, incurred in order to comply with the provisions of this Section.

A. Within fourteen days of receipt of an NOI, the Air Pollution Control Officer shall notify the Air Resources Board and the Energy Commission of the District's intent to participate in the NOI Proceeding. If the Air Pollution Control Officer chooses to participate in the NOI proceeding, he shall prepare and submit a report to the Air Resources Board and the Energy 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 of best available control technology and where applicable, lowest achievable emission rate for the proposed facility;
2. A preliminary discussion of whether there is a substantial likelihood that the requirement of these Rules and Regulations can be satisfied by the proposed facility;
3. A preliminary list of conditions which the proposed facility must meet in order to comply with these Rules and Regulations.

The preliminary determinations contained in the report shall be as specific as possible within the constraints of the information contained in the NOI.

B. Upon receipt of an Application for Certification (AFC) for a power plant, the Air Pollution Control 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 an Authority to Construct had been received for the power plant. If the information contained in the AFC does not meet the requirements of Rule 403, the Air Pollution Control Officer shall, within 20 calendar days of receipt of the AFC, so inform the Energy Commission, and the AFC shall be considered incomplete and returned to the applicant for resubmittal.

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- C. The Air Pollution Control Officer shall consider the AFC to be equivalent to an application for an Authority to Construct during the Determination of Compliance review, and shall apply all provisions of this Regulation.
- D. The Air Pollution Control Officer may request from the applicant any information necessary for the completion of the Determination of Compliance review. If the Air Pollution Control Officer is unable to obtain the information, the Air Pollution Control Officer may petition the presiding Commissioner for an order directing the applicant to supply such information.
- E. Within 180 days of accepting an AFC as complete, the Air Pollution Control 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
 - 2. In the event of compliance, what permit conditions will be required including the specific emission control requirements and a description of required emission offset measures.
- F. The preliminary written decision made under Section E. above shall be treated as a preliminary decision under Rule 424.A., and shall be finalized by the Air Pollution Control Officer only after being subject to the notice and comment requirements of Rule 424. The Air Pollution Control Officer shall not issue a Determination of Compliance unless all requirements of this Regulation are met.
- G. Within 240 days of the filing date of the complete AFC, the Air Pollution Control 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 an Authority to Construct only when and if the Energy Commission approves the AFC, and the Energy Commission certificate includes all conditions of the Determination of Compliance.

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Rule 424 **Authority to Construct Decision**

- A. The Air Pollution Control Officer shall issue a preliminary decision on whether the Authority to Construct should be approved, approved with conditions, or disapproved no later than one year after an application has been deemed complete by the Air Pollution Control Officer. The preliminary decision, together with a copy of all materials the applicant submitted and a copy or summary of all other materials, if any, considered in making the preliminary decision, shall be made available in at least one location in the District for public inspection. The Air Pollution Control Officer may exempt from the provisions of this Section any source with the potential to emit less than 100 tons per year of each criteria pollutant or precursor.

- B. Within ten (10) calendar days following the preliminary decision in the case of an Authority to Construct for a facility or modification with the potential to emit 100 tons per year or more of any criteria pollutant or precursor, the Air Pollution Control Officer shall publish a notice in at least one newspaper of general circulation in the District stating the preliminary decision and where the public may inspect the information required to be available in Section A. above. The notice shall provide 30 days from the date of publication for the public to submit written comments on the preliminary decision. For a major facility or major modification of attainment pollutants or precursors, the notice shall include (1) the degree of increment consumption that is expected from the facility or modification, and (2) the date and place of a public hearing to accept public comment on the preliminary decision.

- C. The Air Pollution Control Officer shall send copies of any notice of preliminary decision to the applicant, the Air Resources Board, the Environmental Protection Agency, and to any appropriate Federal Land Manager and Air Pollution Control District affected by emissions from the proposed source or modification.

- D. The Air Pollution Control Officer shall consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing in making a final decision on the approvability of the application. Such comments shall be made available for public inspection in the same location as available application information relating to the proposed facility or modification are located.

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- E. The Air Pollution Control Officer shall make a final decision as to whether an Authority to Construct should be approved, approved with conditions or disapproved. Such decision shall be transmitted to the applicant and made available for public inspection. If the application is denied, the Air Pollution Control Officer shall not accept a further application unless the application has complied with the objections or deficiencies specified by the Air Pollution Control Officer as reasons for denial of the Authority to Construct.

- F. Within ten (10) days after notice by the Air Pollution Control Officer of a denial or conditional approval of an Authority to Construct, the applicant may petition the Hearing Board, in writing, for public hearing. The Hearing Board, after notice and public hearing held within 30 days after filing the petition, may sustain or reverse the action of the Air Pollution Control Officer, provided that in reversing an action the Hearing Board shall make the finding that the action of the Air Pollution Control Officer was not proper. Such orders of the Hearing Board may be made subject to specified conditions.

- G. For major sources subject to Title V of the Clean Air Act of 1990, Part 5.0 of Rule 522 Title V - Federal Operating Permits applies to Authority to Construct decisions.

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Rule 425 **Cancellation of Authority to Construct**

An Authority to Construct shall be cancelled one year from the date of issuance unless reasonable progress on facility or modification construction can be demonstrated to the satisfaction of the Air Pollution Control Officer.

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Rule 426 **Transfer of Authority to Construct**

An Authority to Construct shall not be transferable, whether by operation of law or otherwise, either from one location to another or from one piece of equipment to another.

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**RULE 427 MACT REQUIREMENTS FOR MAJOR SOURCES OF HAZARDOUS
AIR POLLUTANTS**

1.0 PURPOSE

The purpose of this rule is to provide a program that implements Section 112(g) of the Clean Air Act of 1990. The rule requires the installation of best available control technology for toxics (T-BACT) at any constructed or reconstructed major source of hazardous air pollutants (HAPs). All T-BACT determinations shall ensure a level of control that the Air Pollution Control Officer (APCO) has determined to be, at a minimum, no less stringent than new source maximum achievable control technology (MACT) as required by the Federal Clean Air Act (CAA), § 112 (g)(2)(B) and implemented through 40 CFR, subpart B §§ 63.40-63-.44.

2.0 APPLICABILITY

The requirements of this rule shall apply to all owners or operators that construct or reconstruct a major source of HAPs, unless the major source is exempt pursuant to section 4.0 of this rule.

Compliance with this rule does not relieve any owner or operator of a major source of HAPs from complying with all other District rules or regulations, any applicable State airborne toxic control measure (ATCM), or other applicable State and Federal laws.

3.0 EFFECTIVE DATE: This Rule was effective on June 11, 1998.

Note: 40 CFR section 63.41 defines an effective date of section 112(g)(2)(B) as the date the permitting authority specifies when it adopts a program to implement section 112(g)(2)(B) or June 29, 1998 whichever is earlier.

4.0 EXEMPTIONS: The provisions of this rule do not apply to:

- 4.1 any major source that is subject to an existing National Emissions Standard (NESHAPs) for HAPs pursuant to sections 112(d), 112(h), or 112(j) of the CAA.
- 4.2 any major source that has been specifically exempted from regulation under a NESHAP issued pursuant to sections 112(d), 112(h) or 112(j) of the CAA.
- 4.3 any major source that has received all necessary air quality permits for such construction or reconstruction project before June 29, 1998,
- 4.4 any electric utility stem generating units, unless and until such time as these units are added to the source category list pursuant to section 112(c)(5) of the CAA,
- 4.5 any stationary sources that are in a source category that has been deleted from the source category list pursuant to section 112(c)(9) of the CAA,

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- 4.6 research and development activities as defined in 40 CFR section 63.41, and
- 4.7 any other stationary source exempted by section 112 of the CAA.

5.0 DEFINITIONS

Terms used in this Rule that are not defined in this section have the meaning given to them in District Rule 522.

5.1 **Best Available Control Technology for Toxics (T-BACT)**

T-BACT means the most effective emissions limitation or control technique which:

5.1.1 has been achieved in practice for such permit unit category or class of sources, or

5.1.2 is any other emissions limitation or control technique, including process and equipment changes of basic control equipment, found by the Air Pollution Control Officer to be technologically feasible for such category or class of sources, or for a specific source.

5.2 **Construct a Major Source** means the same as defined in 40 CFR section 63.41 Definitions.

5.3 **Hazardous Air Pollutants (HAPs)** means any air pollutant in or pursuant to CAA, section 112(b).

5.4 **Major Source of HAPs** means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of hazardous air pollutants or 25 tons per year or more of any combination of hazardous air pollutants.

5.5 **Potential to Emit (PTE)** means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitations or the effect it would have on emissions are incorporated into the applicable permit as enforceable permit conditions.

5.6 **Reconstruct a Major Source** means the same as defined in 40 CFR section 63.41 Definitions.

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6.0 REQUIREMENTS

No person shall construct a major source or reconstruct a major source of HAPs unless the air pollution control officer determines that the T-BACT requirements of this rule will be met.

7.0 CALCULATION PROCEDURES

The potential to emit for a source of HAP emissions shall equal the sum of the potentials to emit of the constructed or reconstructed source of HAPs. All fugitive HAP emissions associated with the construction or reconstruction shall be included in the potential to emit determination.

8.0 ADMINISTRATIVE PROCEDURES

An application for authority to construct a major source or reconstruct a major source of HAPs shall be subject to the administrative procedures contained in Rule 522, Part 5.0, as pertains to the requirements that provide for public participation in the T-BACT determination and ensure that construction may not begin until the permitting authority determines that emission limitation equivalent to T-BACT will be met.