

BOARD MEETING DATE: January 10, 2025

AGENDA NO.

**PROPOSAL:** Determine That Proposed Amended Rule 3002 – Requirements is Exempt from CEQA; and Amend Rule 3002

**SYNOPSIS:** Rule 3002 – Requirements establishes provisions for Title V facilities including obtaining a Title V permit and complying with the conditions of the permit. To be consistent with a decision made by the U.S. Supreme Court on the United States Environmental Protection Agency’s Greenhouse Gas Tailoring Rule and U.S. EPA’s Title V operating permit program regulations, Proposed Amended Rule 3002 will remove the emergency affirmative defense and certain greenhouse gas provisions.

**COMMITTEE:** Stationary Source, November 15, 2024, Pending

**RECOMMENDED ACTIONS:**

1. Determining that Proposed Amended Rule 3002 – Requirements is exempt from the requirements of the California Environmental Quality Act; and
2. Amending Rule 3002 – Requirements.

Wayne Natri  
Executive Officer

SR:MK:MM:IS:AO

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This Board letter is intended to serve as the staff report for the proposed amendments to Rule 3002 – Requirements (Rule 3002).

**Background**

Regulation XXX – Title V Permits was adopted in 1993 to encompass the permitting process and requirements established by the United States Environmental Protection Agency (U.S. EPA) in the 1990 amendments to the federal Clean Air Act. Title V facilities are defined as major sources that emit the largest quantities of pollutants in South Coast AQMD as determined by meeting and/or surpassing the applicable

emission thresholds of any pollutants in Rule 3001– Applicability. Title V facilities are required to operate in compliance with all terms, requirements, and conditions specified in their respective Title V permit at all times. There are approximately 320 facilities in South Coast AQMD with Title V permits.

In Rule 3002, when facing an action alleging non-compliance, Title V facilities can assert an affirmative defense of emergency if they satisfy the conditions of subdivision (g). An affirmative defense can be used to mitigate or prevent emission violation penalties if certain conditions are met.

Following court decisions of the U.S. Court of Appeals for the D.C. Circuit – primarily the court’s 2014 decision in *NRDC v. EPA*, 749 F.3d 1055 – the U.S. EPA reevaluated its interpretation of the federal Clean Air Act with respect to affirmative defense provisions. On August 21, 2023, the U.S. EPA removed the Title V emergency affirmative defense provisions from the Title V operating permit program regulations, which also required air pollution control agencies to remove these provisions from their Title V permit programs within a year after final rule effective date.<sup>1</sup> South Coast AQMD requested a one-year extension from the August 21, 2024, deadline.

Rule 3002 also includes greenhouse gas (GHG) emission provisions that trigger requirements for a facility to obtain a Title V permit. The GHG provisions were included in Rule 3002 to address U.S. EPA’s Greenhouse Gas Tailoring Rule. However, in *Utility Air Regulation Group v. EPA*, 573 U.S. 302 (2014), the U.S. Supreme Court held that U.S. EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source that is required to obtain a Prevention of Significant Deterioration or Title V permit.<sup>2</sup>

### **Public Process**

Staff will hold a Public Workshop for Proposed Amended Rule 3002 (PAR 3002) on October 2, 2024.

### **Proposal**

PAR 3002 will remove the emergency affirmative defense provisions to be consistent with U.S. EPA’s Title V operating permit program regulations. Following U.S. EPA approval of PAR 3002 as a Title V permit revision, Title V permits that reference or contain the emergency affirmative defense provisions will be updated to remove such provisions during regular permit renewal or other permit revision, consistent with U.S. EPA guidance. After removal of the emergency affirmative defense provisions, staff still retains the discretion and authority, on a case-by-case basis, to consider emergency circumstances in evaluating ongoing non-compliance and possible violations. PAR 3002

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<sup>1</sup> <https://www.federalregister.gov/d/2023-15067>

<sup>2</sup> <https://www.epa.gov/nsr/clean-air-act-permitting-greenhouse-gases>

will also remove provisions related to U.S. EPA's Greenhouse Gas Tailoring Rule that trigger requirements for a facility to obtain a Title V permit to be consistent with the U.S. Supreme Court's decision.

### **Key Issues**

Staff is not aware of any key remaining issues.

### **California Environmental Quality Act (CEQA)**

Pursuant to the California Environmental Quality Act (CEQA) Guidelines Sections 15002(k) and 15061, the proposed project (PAR 3002) is exempt from CEQA pursuant to CEQA Guidelines Sections 15061(b)(3), 15308, and 15321. Further, none of the exceptions to the categorical exemptions, as set forth in CEQA Guidelines Section 15300.2, apply to the proposed project. A Notice of Exemption will be prepared pursuant to CEQA Guidelines Section 15062, and if the proposed project is approved, the Notice of Exemption will be filed with the county clerks of Los Angeles, Orange, Riverside, and San Bernardino counties, and with the State Clearinghouse of the Governor's Office of Planning and Research.

### **Socioeconomic Impact Assessment**

No socioeconomic impact assessment is required pursuant to Health and Safety Code Sections 40440.8 and 40728.5 because the proposed amendments to Rule 3002 are administrative in nature and do not affect air quality or emissions limitations. Further, no socioeconomic impacts will result from the proposed project.

### **Comparative Analysis**

Health and Safety Code Section 40727.2(g) is applicable to PAR 3002. Therefore, a comparative analysis is not required because PAR 3002 does not impose a new or more stringent emissions limit or standard, or a new or more stringent monitoring, reporting, or recordkeeping requirement.

### **AQMP and Legal Mandates**

The Health and Safety Code requires the South Coast AQMD to adopt an Air Quality Management Plan (AQMP) to meet state and federal ambient air quality standards in the South Coast Air Basin. In addition, the Health and Safety Code requires the South Coast AQMD to adopt rules and regulations that carry out the objectives of the AQMP. PAR 3002 is not part of any control measure in the 2022 AQMP.

### **Resource Impacts**

Existing staff resources are adequate to implement the recommended actions.

### **Draft Findings under Health and Safety Code 40727**

Before adopting, amending, or repealing a rule, Health and Safety Code Section 40727 requires the South Coast AQMD Governing Board make findings of necessity,

authority, clarity, consistency, nonduplication, and reference based on relevant information presented at the Public Hearing, this written analysis, and the rulemaking record. The draft findings are as follows:

**Necessity** – A need exists to amend PAR 3002 to address U.S. EPA’s mandate for regulatory agencies to remove emergency affirmative defense provisions in the Title V operating permit program regulations, as well as the U.S. Supreme Court’s decision regarding the U.S. EPA’s GHG provisions.

**Authority** – The South Coast AQMD Governing Board obtains its authority to adopt, amend, or repeal rules and regulations from Health and Safety Code Sections 39002, 40000, 40001, 40440, 40702, 40725 through 40728, 41508, and 41700.

**Clarity** – The South Coast AQMD Governing Board has determined that PAR 3002, is written and displayed so that the meaning can be easily understood by persons directly affected by it.

**Consistency** – The South Coast AQMD Governing Board has determined that PAR 3002 is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, federal or state regulations.

**Non-Duplication** – The South Coast AQMD Governing Board has determined that PAR 3002 does not impose the same requirement as any existing state or federal regulation, and the proposed amendment is necessary and proper to execute the powers and duties granted to, and imposed upon, the South Coast AQMD.

**Reference** – In amending this rule, the South Coast AQMD Governing Board references the following rule, which the South Coast AQMD hereby implements, interprets, enforces, or makes specific: U.S. Environmental Protection Agency 40 CFR Parts 52.21, 70, and 71.