

BOARD MEETING DATE: January 10, 2025

AGENDA NO.

PROPOSAL: Determine That Proposed Amended Regulation XXX – Title V Permits is Exempt from CEQA; and Amend Regulation XXX

SYNOPSIS: Regulation XXX – Title V Permits 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 U.S. EPA’s Greenhouse Gas Tailoring Rule and U.S. EPA’s Title V operating permit program regulations, Proposed Amended Regulation XXX will remove the emergency affirmative defense and certain greenhouse gas provisions.

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

RECOMMENDED ACTIONS:

1. Determining that Proposed Amended Regulation XXX – Title V Permits is exempt from the requirements of the California Environmental Quality Act; and
2. Amending Regulation XXX – Title V Permits.

Wayne Natri
Executive Officer

SR:MK:MM:IS:AO

This Board letter is intended to serve as the staff report for the proposed amendments to Regulation XXX – Title V Permits (Regulation XXX).

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 (Rule 3001). 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 – Requirements (Rule 3002), when facing an action alleging non-compliance with a technology-based limitation, Title V facilities can assert an affirmative defense of an emergency if they satisfy the conditions of subdivision (g) – Emergency Provisions. 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 – U.S. EPA reevaluated its interpretation of the federal Clean Air Act with respect to affirmative defense provisions. On August 21, 2023, U.S. EPA removed the Title V emergency affirmative defense provisions from Title V operating permit program regulations. U.S. EPA also required air pollution control agencies to remove emergency affirmative defense provisions from their Title V permit programs within one year after final rule effective date.¹ U.S. EPA granted South Coast AQMD a one-year extension from the August 21, 2024, deadline.

Rules 3001 and 3002 also include greenhouse gas (GHG) emission provisions that trigger requirements for a facility to obtain a Title V permit. GHG provisions were included in Regulation XXX 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.² Therefore, certain provisions of Regulation XXX relative to greenhouse gases are proposed to be deleted.

Public Process

Staff held a Public Workshop on October 2, 2024.

Proposal

Proposed Amended Rule 3002 (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 Proposed Amended Regulation XXX (PAR XXX) as a revision to the approved Title V program, 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,

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

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

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, to be consistent with the U.S. Supreme Court's decision, 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.

Four additional Regulation XXX rules will also be amended to remove or update provisions related to the deletion of the emergency affirmative defense and certain GHG provisions. Proposed Amended Rule 3001 – Applicability (PAR 3001) will remove a provision triggering Title V permit applicability when GHG emission thresholds are exceeded as well as associated rule language in subdivision (d) – Exemptions. Proposed Amended Rule 3003 – Applications (PAR 3003) will correct a reference to Rule 3002. Proposed Amended Rule 3004 – Permit Types and Content (PAR 3004) will remove references to the emergency affirmative defense provisions in Rule 3002. Proposed Amended Rule 3008 – Potential to Emit Limitations (PAR 3008) will remove the GHG emission threshold for Title V permit applicability and GHG emission limits derived from the GHG Tailoring Rule.

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, PAR XXX is exempt from CEQA pursuant to CEQA Guidelines Sections 15061(b)(3), 15308, and 15321. Further, there is no substantial evidence that 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

The proposed amendments to Regulation XXX are administrative in nature, do not affect air quality or emission limitations, and thus, will not result in socioeconomic impacts. Therefore, a socioeconomic impact assessment is not required under Health and Safety Code Sections 40440.8 and 40728.5.

Comparative Analysis

Health and Safety Code Section 40727.2(g) is applicable to PAR XXX. Therefore, a comparative analysis is not required because PAR XXX 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 XXX 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 Regulation XXX 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 Proposed Amended Regulation XXX 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 Proposed Amended Regulation XXX is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, and federal or state regulations.

Non-Duplication – The South Coast AQMD Governing Board has determined that Proposed Amended Regulation XXX does not impose the same requirements as any existing state or federal regulation, and the proposed amendments are necessary and proper to execute the powers and duties granted to, and imposed upon, the South Coast AQMD.

Reference – In amending Regulation XXX, 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.

Public Workshop Comments

Staff held a Public Workshop on October 2, 2024, to provide a summary of the proposed amendments. The following is a summary of the verbal comments received and staff's responses.

Commenter #1 David Rothbart – Clean Water SoCal

Commenter inquired if the proposed amendments would result in changes to South Coast AQMD's enforcement policy.

Staff Response to Commenter #1

Staff responded by clarifying that enforcement policy will not be impacted for future instances of non-compliance during an emergency, which consists of a wholistic approach when deciding a course of action.

Commenter #2 Greg Busch – Air Products Manufacturing

Commenter asked about the potential impact of the proposed amendments on enforcement during instances of equipment breakdowns.

Staff Response to Commenter #2

The proposed amendments will not impact rules related to equipment breakdowns and will not impact enforcement during breakdowns.

Commenter #3 Christie Sawires – PBF Energy

Commenter asked if the proposed amendments would impact fines associated with emission violations during mechanical breakdowns.

Staff Response to Commenter #3

The proposed amendments will not impact fines issued for emission violations during mechanical breakdowns. See response to Commenter #2.

Comment Letters

Comment Letter #1

Dear Mr. Ochoa,

This is Joan Gaerlan from Glendale Water & Power – Power Plant/Generation division. We would like to pose a question regarding the removal of the emergency provisions on Rule 3002. If this is removed, how would the electric generation facility be covered when there is force majeure that is either declared state of emergency or not and the facility must generate to support the power demand in the City? Is there provision from another Rule that would cover this?

1-1

Thank you.

-Joan Gaerlan



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Staff Response to Comment 1-1

See response to Commenter #1. Rule 1135 – Emissions of Oxides of Nitrogen from Electricity Generating Facilities and Rule 701– Air Pollution Emergency Contingency Actions contain provisions related to force majeure natural gas curtailment.