

Title: Adopt Amendments to Rule 207 - Title V Federal Operating Permit Program

Recommendation: Conduct a public hearing for the adoption of amendments to Rule 207 – Title V Federal Operating Permit Program and: 1) determine that the adoption of amendments to Rule 207 is exempt from the California Environmental Quality Act (CEQA); 2) adopt a resolution approving amendments to Rule 207, 3) direct Staff to submit Rule 207 and all necessary supporting documents to the California Air Resources Board (CARB) for submittal to the U.S. Environmental Protection Agency (EPA).

Rationale for Recommendation: On July 21, 2023, EPA promulgated a rule that removed the emergency affirmative defense provisions from the Clean Air Act Title V operating permit program regulations in 40 Code of Federal Regulations (CFR) Parts 70 and 71. EPA is requiring state and local agencies to submit Title V program revisions to EPA to remove affirmative defense provisions from their EPA-approved Title V programs.

In June 2014, the U.S. Supreme Court issued a decision in Utility Air Regulatory Group (UARG) v. EPA that EPA may not treat greenhouse gases (GHGs) as an air pollutant for the specific purpose of determining whether a source is a major source (or a modification thereof) and thus required to obtain a Title V permit.

The proposed amendments to Rule 207 will remove the emergency defense provisions by EPA's required deadline and remove the court-vacated GHG Title V provisions (a.k.a., the "Tailoring Rule"). If adopted, the amended rule will be submitted to EPA for program approval.

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Presentation: Yes

Approvals/Acknowledgements

Executive Director or Designee: Alberto Ayala, Report Approved 7/18/2025

District Counsel or Designee: Kathrine Pittard, Approved as to Form 7/17/2025

Discussion / Justification: Title V of the federal Clean Air Act (CAA) requires states or local districts to adopt a permitting program that provides for clearer determination of applicable requirements, enhanced public participation during the permit issuance process, EPA veto authority over permit issuance, and greater opportunity for federal and citizen enforcement.

Stationary sources of air pollution are required to obtain Title V operating permits if they emit air pollutants above specified levels or if they belong to specified categories. Rule 207 was granted full approval by EPA effective November 30, 2001. The rule was subsequently amended on July 28, 2011, and submitted to EPA, but to date, EPA has not acted on this submittal.

Affirmative defense provisions allow a Title V source to avoid enforcement of an emission violation if the source can demonstrate that 1) excess emissions were the result of sudden and reasonably unforeseeable events beyond the control of the source, 2) the source was being properly operated, 3) all reasonable steps were taken to minimize emissions, and 3) the agency was properly notified. The U.S. Court of Appeals for the D.C. Circuit found that EPA lacked the authority to establish affirmative defenses under the Clean Air Act. Accordingly, EPA removed these provisions from the Title V operating permit program regulations in 40 CFR Parts 70 and 71. Consequently, states that have adopted similar affirmative defense provisions must revise their Title V programs to remove these provisions.

EPA's removal of the emergency affirmative defense provisions from the Title V operating permit program regulations required state and local jurisdictions to submit Title V program revisions by August 21, 2024. EPA

allowed for an extension request, which the District submitted, resulting in a one-year extension to submit a revised Title V program approval by August 21, 2025.

The proposed amendments to Rule 207 are necessary to retain the District's local Title V permitting authority by meeting EPA's requirements to submit a Title V permit program revision without the emergency affirmative defense provisions. Without amendments to Rule 207, EPA may issue a notice of deficiency (NOD) to the District for not adequately administering or enforcing the Title V permitting program. If the District fails to take a "significant action" within 90 days to correct the deficiencies, then EPA can take one or more of the following actions: 1) withdraw program approval, 2) apply sanctions, including withholding federal transportation funding, or 3) implement Title V for the District's sources.

Staff is also proposing to use this opportunity to remove the provision that requires stationary sources to obtain Title V permits solely based on their GHG emissions. This provision is no longer enforceable by the District because it was invalidated by the U.S. Supreme Court's decision in *UARG vs. EPA*.

The proposed amendments to Rule 207 align with EPA's current Title V permitting requirements, including the removal of emergency affirmative defense provisions and invalidated GHG requirements.

Summary of Plan / Rule / Amendment: Staff is proposing to amend Rule 207 to remove two vacated Title V elements. The removed elements are:

1. Emergency affirmative defense provisions (Section 414 of the existing rule). The removal of the emergency defense provisions does not change the reporting requirements for deviations. The amendments also clarify that all and any deviations from Title V permit conditions must be reported within 24 hours of detection, consistent with existing Section 501; and
2. GHG requirements associated with the Supreme Court ruling on EPA's GHG Tailoring Rule for Title V (Section 219.2 of the existing rule). These requirements previously required sources that were only major for GHG emissions to obtain a Title V permit. These requirements were invalidated by the Supreme Court in 2014 and have not been enforced since that time. The removal of these elements is consistent with the CFR and federal guidance and policies.

Financial Considerations: There are fourteen Title V sources in the District affected by the proposed amendments to Rule 207. The proposed amendments are administrative and do not impose costs on sources. Consistent with EPA requirements and guidance, Staff will remove affirmative defense provisions from each Title V permit during the next permit renewal period for each Title V source. No financial impacts to the District are expected.

Emissions Impact: The proposed amendments to Rule 207 are administrative and do not establish emission standards. There will be no impact on emissions.

Economic Impact: The proposed amendments to Rule 207 will not have a cost impact on any of the fourteen Title V sources in the District, as the amendments are purely administrative.

Public Outreach/Comments: Before the public hearing, a notice was emailed to each Title V stationary source, explaining the proposed rule amendments and offering to hold a meeting with each source. Staff followed up the emails with a call with each of the source contacts. As of (July 18, 2025), no source has requested to meet with Staff.

The noticing for today's hearing included:

- A public notice in the Sacramento Bee on June 19, 2025.
- A notice posted on the District website with links to the proposed rule and Statement of Reasons.
- Email notices to:
 - CARB and EPA
 - Interested parties and potentially affected Title V stationary sources
 - All persons who have requested rulemaking notices

As of July 18, 2025, no comments from members of the public have been received.

Environmental Review: Staff finds that the proposed amendments to Rule 207 are not subject to the California Environmental Quality Act because it is an activity that will not result in a direct or reasonably foreseeable indirect physical change in the environment. (Public Resources Code 21084(a) and Preliminary Review, Section 15060(c)(2) State CEQA Guidelines).