

**SACRAMENTO METROPOLITAN
AIR QUALITY MANAGEMENT DISTRICT**

STATEMENT OF REASONS

RULE 207 – TITLE V FEDERAL OPERATING PERMIT PROGRAM

**Proposed Amendments
June 19, 2025**

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INTRODUCTION

Title V of the federal Clean Air Act (CAA) requires states or districts to adopt a permitting program that provides:

- United State Environmental Protection Agency (EPA) veto authority over permit issuance;
- Greater opportunity for federal and citizen enforcement;
- Enhanced public participation during the permit issuance process;
- Clearer determination of applicable requirements; and
- Improved enforceability of applicable requirements.

Title V permitting applies to stationary sources of air pollution that emit air pollutants in excess of specified levels or that belong to specified categories. District Rule 207 – Federal Operating Permit Program was adopted on June 7, 1994, and amended in 1996, 1997, 2001, and 2011. Rule 207 established an operating permit system consistent with the requirements of Title V of the CAA (42 U.S.C. Section 7661 et seq.) and Title 40 of the Code of Federal Regulations (CFR) Part 70. 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.

BACKGROUND

Title V Applicability and Requirements

Stationary sources are required to obtain Title V permits if their potential emissions exceed the major stationary source thresholds established by the Clean Air Act (CAA). In addition, the CAA requires some non-major stationary sources to obtain a Title V permit as detailed below. Title V permitting is required for:

- Any major stationary source as defined by Rule 207, which includes:
 - Any source with a potential to emit 10 tons per year (tpy) or more of any hazardous air pollutant or 25 tpy or more of any combination of hazardous air pollutants.
 - Any source with a potential to emit equal to or exceeding¹:
 - 25 tpy of nitrogen oxides (NO_x);
 - 25 tpy of volatile organic compounds (VOC); or
 - 100 tpy of any other regulated air pollutant.
- Any source regulated under the CAA acid rain provisions (42 U.S.C. 7651 et seq.).
- Any source subject to Rule 203 – Prevention of Significant Deterioration (PSD).
- Any solid waste incineration unit required to obtain a Title V permit pursuant to the CAA.
- Any other stationary source in a source category designated by rule by EPA.
- Any stationary source subject to a New Source Performance Standard (NSPS) except for some instances where EPA excludes, by rule, non-major stationary sources.
- Any stationary source subject to National Emission Standards for Hazardous Air Pollutants (NESHAP) except for some instances where EPA excludes, by rule, non-major stationary sources.

¹ The thresholds of 25 tpy are established by the Clean Air Act based on the ozone nonattainment status. The District is currently designated as a severe nonattainment area for the 2008 and 2015 federal ozone standards.

Greenhouse Gas Title V Applicability and Vacated Elements

In June 2010, EPA promulgated a rule known as the Tailoring Rule² that defined Title V permitting requirements for greenhouse gases³ (GHGs), which became subject to regulation when EPA adopted GHG requirements for motor vehicles in May 2010. Provisions of the Tailoring Rule were incorporated into the District's 2010 amendments to Rule 207. However, in June 2014, the U.S. Supreme Court issued a decision in *Utility Air Regulatory Group (UARG) v. EPA*⁴ that EPA may not treat 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 permit⁵.

In July 2023, EPA promulgated a rule, *Removal of Title V Emergency Affirmative Defense Provisions From State Operation Permit Programs and Federal Operating Permit Program*, effective on August 21, 2023, that removed the emergency affirmative defense provisions⁶ from the Title V operating permit program regulations in 40 CFR Parts 70 and 71. As a result of this action, EPA is requiring agencies to submit program revisions to EPA to remove affirmative defense provisions from their EPA-approved Title V programs by August 21, 2024. EPA allowed for an extension request, which the District submitted, and the District was provided a one-year extension to submit a Title V program approval by August 21, 2025.

The District's Title V program was last approved by EPA effective January 1, 2004, as recorded in 40 CFR 70 Appendix A for California Section (w). Rule 207 was amended and submitted to EPA for program approval in 2011 to incorporate the Tailoring Rule for GHGs, but the submission was not acted on by EPA. The proposed rule revision will remove the emergency defense provisions by the required deadline and remove the court-vacated GHG Title V provisions. If adopted, the amended rule will be submitted to EPA for program approval.

Federal Mandates

EPA Removal of Title V Emergency Affirmative Defense Provisions From State Operating Permit Programs and Federal Operating Permit Program⁷: In response to prior court decisions from the U.S. Court of Appeals for the D.C. Circuit⁸, EPA removed the affirmative defense provisions from the Title V operating permit program regulations in 40 CFR Parts 70 and 71. The court found that EPA lacked the authority to establish an affirmative defense under the Clean Air Act. States that have adopted similar affirmative defense provisions must revise their Title V programs to remove these provisions.

² "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, Final Rule", Federal Register 75 (June 3, 2010) p. 31514.

³ Greenhouse gases are defined as the aggregate group of six gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

⁴ 134 S. Ct. 2427.

⁵ 80 FR 50199, August 19, 2015.

⁶ Emergency affirmative defense provisions allowed facilities to avoid liability for permit violations if they occurred during an "emergency" situation, providing a defense against enforcement actions meeting certain circumstances.

⁷ "Removal of Title V Emergency Affirmative Defense Provisions From State Operating Permit Programs and Federal Operating Permit Program, Final Rule" Federal Register 88 (July 21, 2023) p. 47029.

⁸ *NRDC v. EPA*, 749 F.3d 1055 (D.C. Cir. 2014).

Prevention of Significant Deterioration and Title V Permitting for Greenhouse Gases: Removal of Certain Vacated Elements⁹: The U.S. Supreme Court held that EPA may not consider GHG emissions for the specific purpose of determining whether a source is a major source (or a modification thereof) and thus required to obtain a Prevention of Significant Deterioration (PSD) or Title V permit. However, the Court also said that EPA could continue to require that PSD permits, for sources already subject to PSD or Title V for pollutants other than GHGs (such as NO_x, VOC, or particulate matter), could contain limitations on GHG pollutants based on the application of GHG Best Available Control Technology (BACT).

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

SUMMARY OF PROPOSED AMENDMENTS

The proposed amendments remove two vacated Title V elements from Rule 207. The removed elements are:

1. Emergency affirmative defense provisions (see Section 414). The removal of the emergency defense provisions does not change the reporting requirements for deviations. The amendments also clarify that 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. 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.

A detailed description of the amendments to Rule 207 is included in Appendix A.

ECONOMIC IMPACT

Impact on Businesses in Sacramento: The proposed amendments to Rule 207 remove two vacated Title V elements – affirmative defense provisions and portions of EPA's GHG Tailoring Rule – from the District's federal Clean Air Act Title V permit program.

Staff does not expect additional time will be required to remove affirmative defense provisions when reviewing Title V permits; therefore, costs will not increase for existing sources with Title V permits. Staff will remove affirmative defense provisions during the next permit renewal for each Title V source. The fourteen permitted Title V stationary sources in Sacramento County subject to Rule 207 are:

⁹ Prevention of Significant Deterioration and Title V Permitting for Greenhouse Gases: Removal of Certain Vacated Elements, Final Rule" Federal Register 80 (August 15, 2015) p. 50199.

- Chevron USA, Sacramento Terminal
- City of Sacramento Solid Waste Division (28th Street Landfill)
- County of Sacramento Department of Waste Management and Recycling (Kiefer Landfill)
- D & T Fiberglass
- Mitsubishi Rayon Carbon Fiber & Composites
- NTT Global Data Centers Americas, Inc.
- Procter and Gamble Manufacturing Company
- Santa Fe Pacific Pipelines, L.P. Bradshaw Terminal
- Silgan Can Company
- SMUD Financing Authority DBA Campbell Power Plant
- SMUD Financing Authority DBA Carson Power Plant
- SMUD Financing Authority DBA Cosumnes Power Plant
- SMUD Financing Authority DBA Procter and Gamble Power Plant
- UC Davis Medical Center

Cost to District: No costs are expected to the District to remove affirmative defense provisions from Title V permits when they are next renewed. As of August 21, 2023, the District has been removing affirmative defense provisions from Title V permits upon renewal, consistent with EPA's affirmative defense removal rulemaking¹⁰.

EMISSIONS IMPACT

There are no emission requirements associated with removing the unenforceable emergency defense or GHG provisions from the Title V permitting program. The CAA Title V permitting program was established to enhance compliance with air quality rules.

SOCIOECONOMIC IMPACT ANALYSIS

CHSC Section 40728.5 requires a district to perform an assessment of the socioeconomic impacts before adopting, amending, or repealing a rule that will significantly affect air quality or emission limitations. The proposed amendments to Rule 207 are administrative in nature and do not affect air quality or emissions limitations. Therefore, Section 40728.5 of the Health and Safety Code does not apply.

PUBLIC OUTREACH/COMMENTS

Prior to the public hearing, a notice was emailed to each major stationary source, and staff contacted by telephone for each source, and when requested, held meetings with company representatives.

This section will be updated as comments are received during the rule development process.

¹⁰ SMAQMD. Compliance Assistance Advisory #2023-03. September 2023.
<https://www.airquality.org/StationarySources/Documents/23-03%20Removal%20of%20Title%20V%20Emergency%20Affirmative%20Defense%20Provisions.pdf>

ENVIRONMENTAL REVIEW

Staff finds that the proposed rule is 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).

FINDINGS

The California Health and Safety Code (HSC), Division 26, Air Resources, requires local districts to comply with a rule adoption protocol as set forth in §40727 of the HSC. This section contains six findings that the District must make when developing, amending, or repealing a rule. These findings and their definitions are listed in the following table.

Rule 207 – Required Findings

Finding	Finding Determination
Authority: The District must find that a provision of law or of a state or federal regulation permits or requires the District to adopt, amend, or repeal the rule.	The District is authorized to adopt and amend Rule 207 by HSC Sections 40001, 40702, 41010 and 42300. [HSC Section 40727(b)(2)].
Necessity: The District must find that the rulemaking demonstrates a need exists for the rule, or for its amendment or repeal.	It is necessary to amend Rule 207 to comply with the federal Clean Air Act, 42 U.S.C. 7661 et seq. (Title V), and 40 CFR Part 70. [HSC Section 40727(b)(1)].
Clarity: The District must find that the rule is written or displayed so that its meaning can be easily understood by the persons directly affected by it.	Staff has reviewed the proposed rule and determined that it can be understood by the affected parties. In addition, the record contains no evidence that people directly affected by the rule cannot understand the rule. HSC Section 40727(b)(3)].
Consistency: The rule is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations.	The proposed rule does not conflict with, and is not contradictory to, existing statutes, court decisions, or state or federal regulations. [HSC Section 40727(b)(4)].
Non-Duplication: The District must find that either: 1) The rule does not impose the same requirements as an existing state or federal regulation; or (2) that the duplicative requirements are necessary or proper to execute the powers and duties granted to, and imposed upon the District.	The proposed rule duplicates federal regulations for permitting programs. The duplicative requirements are necessary in order to execute the powers and duties imposed upon the District under 42 U.S.C. 7661 et seq. (Title V) and 40 CFR Part 70. [HSC Section 40727(b)(5)].
Reference: The District must refer to any statute, court decision, or other provision of law that the District implements, interprets, or makes specific by adopting, amending or repealing the rule.	By amending the rule, the District is implementing the requirements of the Federal Clean Air Act (42 U.S.C. 7661 et seq. (Title V), 40 CFR Part 70 and the Tailoring Rule (75 FR 31514). [HSC Section 40727(b)(6)]
Additional Informational Requirements: In complying with HSC Section 40727.2, the District must identify all federal requirements and District rules that apply to the same equipment or source type as the proposed rule or amendments.	Appendix B includes a comparison with federal requirements. [HSC Section 40727.2].

REFERENCES

42 United States Code Section 7661 et seq. (Title V).

“Prevention of Significant Deterioration and Title V Permitting for Greenhouse Gases: Removal of Certain Vacated Elements”, Federal Register 80 (August 19, 2015), p. 50199.

“Removal of Title V Emergency Affirmative Defense Provisions From State Operating Permit Programs and Federal Operating Permit Program”, Federal Register 88 (July 21, 2023), p. 47029.

U.S. Environmental Protection Agency, 40 CFR Part 70, State Operating Permit Programs.

U.S. Environmental Protection Agency, “PSD and Title V Permitting Guidance for Greenhouse Gases,” November 2010.

APPENDIX A LIST OF CHANGES TO RULE

Proposed Amendments to Rule 207 – Federal Operating Permit Program

NEW SECTION NUMBER	EXISTING SECTION NUMBER	PROPOSED CHANGES
N/A	111	Revised section reference to the correct section reference within Rule 902.
N/A	212	Removed definition of “emergency” consistent with EPA’s requirement to remove the affirmative defense provisions.
212 – 218	213 – 219	Sections Renumbered.
N/A	219.2	Removed Tailoring Rule requirements for GHG subject to regulation for sources not already subject to Title V for another pollutant.
218.2 – 218.4	219.3 – 219.5	Sections Renumbered.
219 – 238	220 – 239	Sections Renumbered
N/A	414	Removed Emergency Provisions administrative procedures consistent with EPA’s requirement to remove the affirmative defense provisions.
Same	501.1	Added 30-day time period to submit periodic reports, consistent with current permitting practices.
N/A	501.2	Removed specific reference to reporting requirements for emergency situations. All deviations of Title V permit conditions must still be reported including what were considered emergency situations.
501.2	501.3	Removed specific reference to emergency defined deviations. All deviations from Title V permit conditions must be reported.

APPENDIX B COMPARISON OF PROPOSED RULE REQUIREMENTS WITH OTHER AIR POLLUTION CONTROL REQUIREMENTS

California Health and Safety Code (CHSC) §40727.2 requires air districts to provide a written analysis to: 1) identify all existing federal air pollution control requirements, including Best Available Control Technology (BACT) for new or modified equipment, that apply to the same equipment or source type as the proposed rule, and 2) identify any of the District's existing or proposed rules that apply to the same equipment or source type. The analysis shall compare the following elements:

- Averaging provisions, units, and any other pertinent provisions associated with emission limits.
- Operating parameters and work practice requirements.
- Monitoring, reporting, and recordkeeping requirements, including test methods, format, content, and frequency.
- Any other element that the air district determines warrants review.

There are no other proposed or existing District rules that apply to this source category. Table B-1 contains the required analysis identifying federal BACT air pollution control requirements.

Elements of Comparison	Specific Provisions	Proposed Rule 207	40 CFR Part 70
Exemptions		Same as federal requirements	Source category exemptions for: residential wood heaters, asbestos demolition and renovation.
Averaging Provisions		Not Applicable	Not Applicable
Units		Same as federal requirements	Tons/year, CO _{2e} , µg/m ³
Emissions Limits	Emissions Reduction	Not Applicable	Not Applicable
	Compliance alternatives	Not Applicable	Not Applicable
Permit Conditions		Same as federal requirements	Federally enforceable permit conditions
Operating Parameters		Not Applicable	Not Applicable
Work Practice Requirements		Same as federal requirements	Monitor emissions; Recordkeeping for hours of operations, throughput, and emissions.
Monitoring/Records	Recordkeeping	Same as federal requirements.	Recordkeeping is required to ensure compliance with Title V permit conditions
	Frequency	Not Applicable	Not Applicable

Elements of Comparison	Specific Provisions	Proposed Rule 207	40 CFR Part 70
Monitoring/Testing	Test Methods	Same as federal requirements.	This rule requires testing to verify compliance, but does not specify what test methods are required. The test methods are based on specific rules that the source is subject to.
	Frequency	Same as federal requirements.	No testing frequency is specified in the rule. The Title V permit, however, must specify the testing frequency based on applicable federally enforceable requirements. The testing frequency will vary depending on the applicable regulation.