

BOARD MEETING DATE: May 4, 2018

AGENDA NO. 34

PROPOSAL: Determine that Proposed Amendments to Rule 408 – Circumvention Are Exempt from CEQA and Amend Rule 408

SYNOPSIS: Proposed Amended Rule 408 would limit the existing exemption from the prohibition on suppressing emissions to cases in which the only violation is an odor nuisance. It otherwise prohibits suppressing or concealing emissions without reducing emissions that violate any air pollution requirement. The proposed amendments would also prohibit temporary alterations to normal business operations or equipment to suppress emissions for the purpose of evading detection or concealing emissions during monitoring or testing.

COMMITTEE: Stationary Source, March 16, 2018, Reviewed

RECOMMENDED ACTIONS:

Adopt the attached Resolution:

1. Determining that the proposed amendments to Rule 408 – Circumvention are exempt from the requirements of the California Environmental Quality Act; and
2. Amending Rule 408 – Circumvention.

Wayne Natri
Executive Officer

PF:SN:MK:HF:NS

Background

Rule 408 was adopted in 1976 to prohibit dilution of emissions to mask an air pollution problem. At the time of adoption, the only exemption to the rule were those cases in which Section 41700 of the Health and Safety Code or Rule 402 – Nuisance were the only rules violated. Under Title 40 of the Code of Federal Regulations (CFR) Section 63.4 – Prohibited activities and circumvention and Title 40 of the CFR Section 61.19 - Circumvention, one cannot conceal an emission that would constitute noncompliance with a relevant standard. The CFR authorizes states, and in turn, air districts, to adopt their own circumvention regulations. Rule 408 was adopted when the South Coast Air Quality Management District (SCAQMD) was the Southern California Air Pollution Control District. Rule 408 replaced the existing prohibitory rules that were in effect in each of the four counties for years prior to the formation of the SCAQMD. Rule 408 was adopted to prohibit the construction, installation, or use of any equipment designed

to conceal emissions without a concurrent reduction in the release of air contaminants to the atmosphere. Specifically, the current rule prohibits the circumvention of Chapter 3 (commencing with Section 41700) of Part 4, Division 26 of the California Health and Safety Code, or SCAQMD rules. Prohibitions from circumventing rules and regulations are part of several state implementation plans and are included in other California air agencies' regulatory programs. Many California air districts have a similar stand-alone rule or a circumvention clause as part of their general prohibition rules. To address compliance issues that have been raised during recent enforcement activities, amendments to Rule 408 are now being proposed.

Proposal

The purpose of PAR 408 is to restrict the current nuisance exemption to only apply to odor nuisances under Health and Safety Code Section 41700 or Rule 402. PAR 408 also prohibits temporarily altering normal business operations or equipment to evade detection of emissions during monitoring or testing. The following key amendments are also proposed to:

- Modify the language to indicate circumvention of any “law, regulation, rule, permit, order, or plan required by a rule” constitutes a violation of Rule 408;
- Add a provision that prohibits altering normal operations or equipment to suppress emissions for the purpose of evading detection or concealing emissions during monitoring or testing; and
- Retain the exemption for cases in which the only violation is a nuisance, but limit the exemption to odor nuisances.

Public Process

The public process for PAR 408 consisted of two public consultation meetings, held on January 11, 2018 and March 14, 2018, and one working group meeting, held on February 23, 2018.

Key Issues

Some stakeholders have requested guidelines to ensure PAR 408 is implemented consistently. Staff is developing a support document containing examples to assist stakeholders in understanding how the rule will be implemented. Staff can revise this document in the future as further circumvention examples are encountered. The support document will be made available on the SCAQMD Rule Support webpage (<http://www.aqmd.gov/home/rules-compliance/rules/scaqmd-rule-book/support-documents>).

California Environmental Quality Act

Pursuant to the California Environmental Quality Act (CEQA) and SCAQMD Rule 110, the SCAQMD, as lead agency for the proposed project, has reviewed the proposed amendments to Rule 408 pursuant to: 1) CEQA Guidelines Section 15002(k) - General Concepts, the three-step process for deciding which document to prepare for a project subject to CEQA; and 2) CEQA Guidelines Section 15061 - Review for Exemption, procedures for determining if a project is exempt from CEQA. SCAQMD staff has determined that it can be seen with certainty that there is no possibility that the proposed

project may have a significant adverse effect on the environment. Therefore, the project is considered to be exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) – Activities Covered by General Rule. Also, the proposed amendments to Rule 408 are categorically exempt because they are designed to further protect or enhance the environment pursuant to CEQA Guidelines Section 15308 – Actions by Regulatory Agencies for Protection of the Environment. A Notice of Exemption has been prepared pursuant to CEQA Guidelines Section 15062 - Notice of Exemption. If the project is approved, the Notice of Exemption will be filed with the county clerks of Los Angeles, Orange, Riverside and San Bernardino counties.

Socioeconomic Impact Assessment

PAR 408 clarifies the rule language and makes several revisions that are administrative in nature and will not impose any additional costs to facilities or result in other socioeconomic impacts. Implementation of PAR 408 will provide greater assurance that monitored air emissions are more representative of actual conditions by prohibiting alteration of normal operations or equipment to suppress emissions. The proposed amendments do not significantly affect air quality and emission limitations as they do not require installation of pollution controls, require material formulations or process changes, or establish an emission limit or standard, and therefore, no socioeconomic analysis is required under California Health and Safety Code Sections § 40440.8 and § 40728.5.

AQMP and Legal Mandates

The California Health and Safety Code requires the SCAQMD 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 California Health and Safety Code requires the SCAQMD to adopt rules and regulations that carry out the objectives of the AQMP but the proposed amendments are not control measures in the 2016 AQMP. However, PAR 408 will improve enforceability and enhance compliance with SCAQMD rules and regulations.

Resource Impacts

Existing SCAQMD resources will be sufficient to implement the proposed amendments to Rule 408 with minimal additional resource needs.

Attachments

- A. Summary of Proposal
- B. Key Issues and Responses
- C. Rule Development Process
- D. Key Contacts List
- E. Resolution
- F. Rule Language for Proposed Amended Rule 408
- G. Final Staff Report
- H. Notice of Exemption
- I. Board Meeting Presentation

ATTACHMENT A
SUMMARY OF PROPOSAL

Proposed Amended Rule 408 – Circumvention

Staff proposes the following amendments to improve enforceability and clarify rule language.

The following are proposed rule revisions:

1. Modify the language to indicate circumvention of any “law, regulation, rule, permit, order, or plan required by a rule” constitutes a violation of Rule 408.
2. Add a provision that prohibits altering normal operations or equipment to suppress emissions for the purpose of evading detection or concealing emissions during monitoring or testing.
3. Retain the exemption for cases in which the only violation is a nuisance, but limit it to odor nuisances.

The following are the proposed rule clarifications:

1. Rearrange the rule language to make the intent clear.
2. Replace the term “reduces” with “suppresses” as suppression is more indicative of circumvention.
3. Include the term “technique” to clarify that actions not involving equipment are also a violation of Rule 408.

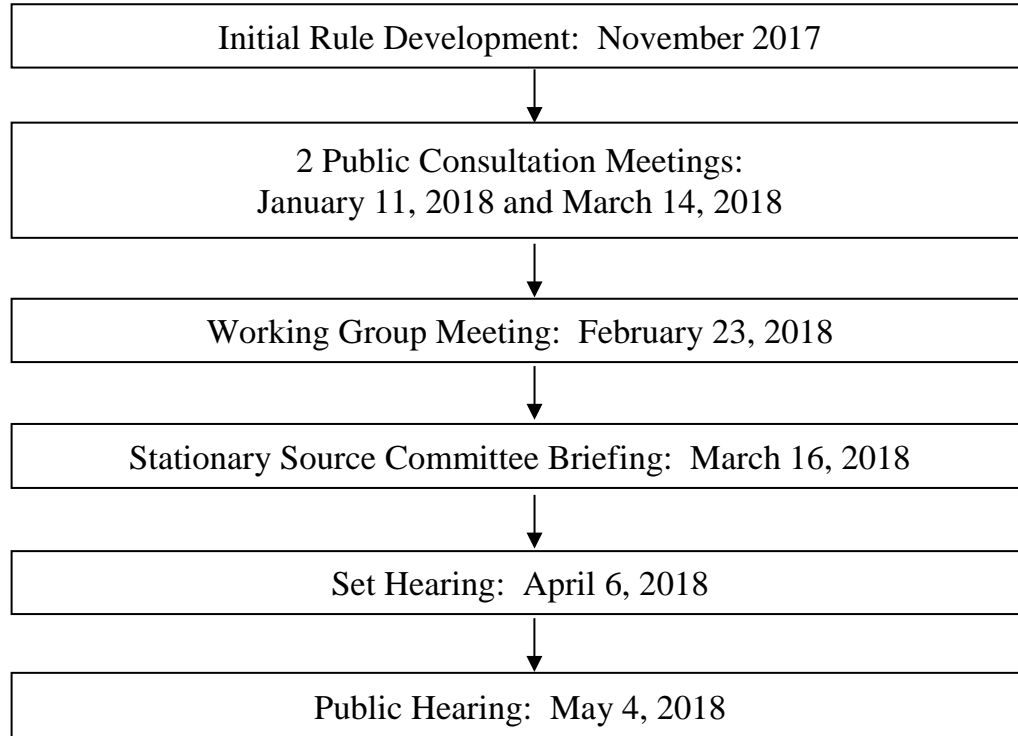
ATTACHMENT B
KEY ISSUES AND RESPONSES

Proposed Amended Rule 408 – Circumvention

Rule Enforcement

- Some stakeholders have requested guidelines to ensure PAR 408 is implemented consistently. Staff is developing a support document containing examples to assist stakeholders in understanding how the rule will be implemented. Staff can revise this document in the future as further circumvention examples are encountered. The support document will be made available on the SCAQMD Rule Support webpage (<http://www.aqmd.gov/home/rules-compliance/rules/scaqmd-rule-book/support-documents>).

ATTACHMENT C
RULE DEVELOPMENT PROCESS
Proposed Amended Rule 408 – Circumvention



6 months spent in rule development
2 Public Consultation Meetings
1 Working Group Meeting

ATTACHMENT D
KEY CONTACTS LIST

Amvac Chemical Corporation
Andeavor
BizFed
California Council for Environmental and Economic Balance
California Small Business Alliance
Del Amo Action Committee
FDI
Inland Empire Disposal Association
Keramida
Latham & Watkins
Los Angeles County Sanitation Districts
Metropolitan Water District
MicroVention
Oil Well Service
Orange County Sanitation District
Ramboll Environ
Republic Services
SA Recycling
Signal Hill Petroleum
Southern California Air Quality Alliance
Southern California Edison
Southern California Gas Company
Trihydro Corp.
Vopak
Western States Petroleum Association
Whittingham Public Affairs Advisors

ATTACHMENT E

RESOLUTION NO. 18-_____

A Resolution of the Governing Board of the South Coast Air Quality Management District (SCAQMD) determining that the Amendments to Rule 408 – Circumvention are exempt from the requirements of the California Environmental Quality Act (CEQA).

A Resolution of the SCAQMD Governing Board adopting Proposed Amended Rule 408 – Circumvention.

WHEREAS, the SCAQMD Governing Board finds and determines that Proposed Amended Rule 408 is considered a “project” pursuant to CEQA per CEQA Guidelines Section 15002(k) – General Concepts, the three-step process for deciding which document to prepare for a project subject to CEQA; and

WHEREAS, the SCAQMD has had its regulatory program certified pursuant to Public Resources Code Section 21080.5 and has conducted a CEQA review pursuant to such program (SCAQMD Rule 110); and

WHEREAS, the SCAQMD Governing Board finds and determines after conducting a review of the proposed project in accordance with CEQA Guidelines Section 15002(k) - General Concepts, the three-step process for deciding which document to prepare for a project subject to CEQA, and CEQA Guidelines Section 15061 - Review for Exemption, procedures for determining if a project is exempt from CEQA, that the proposed amendments to Rule 408 exempt from CEQA; and

WHEREAS, the SCAQMD Governing Board finds and determines that it can be seen with certainty that there is no possibility that the proposed project may have any significant effects on the environment, and is therefore, exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) – Activities Covered By General Rule; and

WHEREAS, the SCAQMD Governing Board finds and determines that the proposed project is also categorically exempt from CEQA requirements pursuant to CEQA Guidelines Section 15308 – Actions by Regulatory Agencies for Protection of the Environment, because the proposed amendments to Rule 408 are designed to further protect or enhance the environment; and

WHEREAS, the SCAQMD staff has prepared a Notice of Exemption for the proposed project that is completed in compliance with CEQA Guidelines Section 15062 – Notice of Exemption; and

WHEREAS, Proposed Amended Rule 408, the May 4, 2018 SCAQMD Governing Board letter, including the Final Staff Report, Notice of Exemption and other supporting documentation, were presented to the SCAQMD Governing Board and the SCAQMD Governing Board has reviewed and considered the entirety of this information, considered staff testimony and public comment prior to approving the project; and

WHEREAS, the SCAQMD Governing Board finds and determines, taking into consideration the factors in Section (d)(4)(D) of the Governing Board Procedures (codified as Section 30.5(4)(D)(i) of the Administrative Code), that if any modifications to Proposed Amended Rule 408 have been made since the notice of public hearing was published they are not so substantial as to significantly affect the meaning of the proposed amended rules within the meaning of Health and Safety Code Section 40726 because: (a) the changes do not impact emission reductions, (b) the changes do not affect the number or type of sources regulated by the rules, (c) the changes are consistent with the information contained in the notice of public hearing, and (d) the consideration of the range of CEQA alternatives is not applicable because Proposed Amended Rule 408 is exempt from CEQA; and

WHEREAS, Proposed Amended Rule 408 will not be submitted for inclusion into the State Implementation Plan; and

WHEREAS, the SCAQMD staff conducted public consultation meetings regarding Proposed Amended Rule 408 on January 11, 2018 and March 14, 2018 and a working group meeting on February 23, 2018; and

WHEREAS, Health and Safety Code Section 40727 requires that prior to adopting, amending or repealing a rule or regulation, the SCAQMD Governing Board shall make findings of necessity, authority, clarity, consistency, non-duplication, and reference based on relevant information presented at the public hearing and in the Final Staff Report; and

WHEREAS, the SCAQMD Governing Board has determined that a need exists to amend Rule 408 – Circumvention to clarify rule language, limit the existing exemption to odor nuisances, and prohibit alteration of normal business operations or equipment for the purpose of evading detection or concealing emissions during monitoring or testing; and

WHEREAS, the SCAQMD Governing Board obtains its authority to adopt, amend, or repeal rules and regulations from Sections 39002, 40000, 40001, and 40702 of the Health and Safety Code; and

WHEREAS, the SCAQMD Governing Board has determined that Rule 408, as proposed to be amended, is written and displayed so that its meaning can be easily understood by persons directly affected by them; and

WHEREAS, the SCAQMD Governing Board has determined that Rule 408, as proposed to be amended, is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations; and

WHEREAS, the SCAQMD Governing Board has determined that Rule 408, as proposed to be amended, does not impose the same requirements as any existing state or federal regulations, and the proposed amended rule is necessary and proper to execute the powers and duties granted to, and imposed upon, the SCAQMD; and

WHEREAS, the SCAQMD Governing Board, in amending the regulation, references the following statutes which the SCAQMD hereby implements, interprets or makes specific: Health and Safety Code Sections 40001 (rules and regulations), 40702 (adopt regulation to execute duties), and Title 40 of the Code of Federal Regulations Sections 61.19 (Circumvention) and 63.4 (Prohibited activities and circumvention); and

WHEREAS, the SCAQMD Governing Board has determined that a Socioeconomic Impact Assessment is not required, pursuant to Health and Safety Code Section 40440.8 or 40728.5, because Proposed Amended Rule 408 is administrative in nature and will not have a significant impact on air quality or emissions limitations; and

WHEREAS, the public hearing has been properly noticed in accordance with all provisions of Health and Safety Code Section 40725; and

WHEREAS, the SCAQMD Governing Board has held a public hearing in accordance with all provisions of law; and

WHEREAS, the SCAQMD specifies the Manager for Rule 408 as the custodian of the documents or other materials which constitute the record of proceedings upon which the adoption of the proposed amendments are based, which are located at the South Coast Air Quality Management District, 21865 Copley Drive, Diamond Bar, California; and

WHEREAS, stakeholders requested that the SCAQMD make available to the public a separate document consisting of various examples of circumvention that may be updated as necessary; and

NOW, THEREFORE BE IT RESOLVED, that the SCAQMD Governing Board does hereby determine, pursuant to the authority granted by law, that Proposed Amended Rule 408 is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) – Activities Covered by General Rule, and CEQA Guidelines Section 15308 – Actions by Regulatory Agencies for Protection of the Environment. This information was presented to the SCAQMD Governing Board, whose members reviewed, considered and approved the information therein prior to acting on Proposed Amended Rule 408; and

BE IT FURTHER RESOLVED, that the SCAQMD Governing Board does hereby amend, pursuant to the authority granted by law, Rule 408, by adopting Proposed Amended Rule 408 as set forth in the attached, and incorporated herein by this reference; and

BE IT FURTHER RESOLVED, that the SCAQMD Governing Board directs staff to develop a support document consisting of examples of circumvention that is available to the public.

Attachment

DATE: _____

CLERK OF THE BOARDS

ATTACHMENT F

(Adopted May 7, 1976)(Amended May 4, 2018)

PROPOSED AMENDED RULE 408. **CIRCUMVENTION**

- (a) A person shall not build, erect, install, or use any equipment or technique that suppresses or conceals an emission, the use of which, without resulting in a reduction in the total release of air contaminants to the atmosphere if that release of air contaminants, reduces or conceals an emission which would otherwise constitutes a violation of Chapter 3 (commencing with Section 41700) of Part 4, of Division 26 of the Health and Safety Code or of these rules any law, regulation, rule, permit, order, or plan required by rule. This rule shall not apply to cases in which the only violation involved is of Section 48700 of the Health and Safety Code, or Rule 402 of these Rules.
- (b) A person shall not alter normal business operations or equipment to suppress emissions for the purpose of evading detection or concealing emissions during monitoring or testing.
- (c) Subdivision (a) of this rule shall not apply to cases in which the only violation is nuisance odor under Section 41700 of the Health and Safety Code or nuisance odor under Rule 402.

ATTACHMENT G

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Final Staff Report Proposed Amended Rule 408 – Circumvention

May 2018

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**SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT
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VICE CHAIRMAN: DR. CLARK E. PARKER, SR.
Senate Rules Committee Appointee

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JANICE RUTHERFORD
Supervisor, Second District
County of San Bernardino

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Supervisor, First District
County of Los Angeles

EXECUTIVE OFFICER:

WAYNE NASTRI

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EXECUTIVE SUMMARY

Rule 408 was adopted in 1976 to prohibit dilution to mask an air pollution problem. At the time of adoption, the only exemption to the rule were those cases in which Section 48700¹ (sic) of the Health and Safety Code or Rule 402 – Nuisance were the only rules violated. The purpose of proposed amended rule (PAR) 408 is to restrict the current exemption to only odor nuisances under Health and Safety Code Section 41700 or Rule 402 and prohibit temporarily altering normal business operations or equipment to evade detection of emissions during monitoring or testing.

BACKGROUND

Under Title 40 of the Code of Federal Regulations (CFR) Section 63.4 – Prohibited activities and circumvention² and Title 40 of the CFR Section 61.19 - Circumvention³, one cannot conceal an emission that would constitute noncompliance with a relevant standard. The CFR authorizes states, and in turn, air districts, to adopt their own circumvention regulations. Rule 408 was adopted on May 7, 1976 when the South Coast Air Quality Management District (SCAQMD) was the Southern California Air Pollution Control District. This rule replaced the existing prohibitory rules that were in effect in each of the four county regions for years prior to the formation of the SCAQMD. Rule 408 was adopted to prohibit the construction, installation, or use of any equipment ~~or technique~~ designed to conceal emissions without a concurrent reduction in the release of air contaminants to the atmosphere. Specifically, the current rule prohibits the circumvention of Chapter 3 (commencing with Section 41700) of Part 4, Division 26 of the California Health and Safety Code (H&SC), or SCAQMD rules. Circumvention rules and regulations are part of several state implementation plans ~~as well as~~ and are included in many other California air districts' ~~rulebooks~~ agencies' regulatory programs. Many of the California air districts have a similar stand-alone rule or a circumvention clause as part of their general prohibition rules. The proposed amendments to Rule 408 will address compliance issues that have ~~been raised~~ arisen during recent enforcement ~~activity~~ activities.

PROPOSED AMENDMENT

The purpose of proposed amended rule (PAR) 408 is to clarify the rule language and make several revisions. The following are the proposed rule clarifications:

1. Rearrange the rule language to make the intent clear.
2. Replace the term “reduces” with “suppresses” as suppression is more indicative of circumvention.
3. Include the term “technique” to clarify that actions not involving equipment is also a violation of Rule 408.

The following are the proposed rule revisions:

¹ Inclusion of Health and Safety Code Section 48700 in the current version of the rule is an error. It should reference Section 41700.

² 40 CFR 63.4 Prohibited activities and circumvention.

³ 40 CFR 61.19 Circumvention.

1. Modify the language to indicate circumvention of any “law, regulation, rule, permit, order, or plan required by a rule” constitutes a violation of Rule 408.
2. Add a provision that prohibits altering normal operations or equipment to suppress emissions for the purpose of evading detection or concealing emissions during monitoring or testing.
3. Retain the exemption for cases in which the only violation is a nuisance, but limit it to odor nuisances.

The purpose of the first revision is to amend the language to ~~indicate~~ specify that circumventing a “law, regulation, rule, permit, order, or plan required by a rule” constitutes a violation of Rule 408; the current rule language only states that circumventing the Health and Safety Code or SCAQMD rule constitutes a violation. This proposed amendment clarifies the SCAQMD’s authority; the SCAQMD already has the authority to issue a citation for circumventing a “law, regulation, rule, permit, order, or plan required by a rule.” Looking at each term individually:

- Plan includes any plan required by SCAQMD rules, including but not limited to:
 - Air monitoring plan (e.g., Rule 1420.2 - Emissions Standard for Lead),
 - Compliance plan (e.g., Rule 1146 - Emissions of Oxides of Nitrogen from Industrial, Institutional and Commercial Boilers, Steam Generators, and Process Heaters),
 - Emission control plan (e.g., Rule 1110.2 - Emissions from Gaseous_ and Liquid-Fueled Engines), or
 - Risk Reduction Plan (e.g., Rule 1402 - Control of Toxic Air Contaminants from Existing Sources).
- Order may include, but is not limited to, a stipulated order for abatement or a standard order for abatement, pursuant to SCAQMD Regulations ~~5 and 12~~ and 8.
- Permit includes any permit condition in a SCAQMD issued air quality permit or equipment description.
- Rule includes requirements in any SCAQMD rule.
- Regulation or law includes any regulation or law that the SCAQMD has authority to enforce.

The second proposed amendment prohibits altering normal business operations or equipment to evade detection of emissions during monitoring or testing. This is to address facilities that might, for example, block emission stacks, reduce their throughput, redirect throughput to other locations, or block monitors during monitoring or testing.

To prove a business altered their normal business operation to *evade detection* necessitates proving the intent. Normal business operations can change for a variety of reasons that would not indicate circumvention. Routine changes may include, but are not limited to, seasonal increase or decrease of work, large projects or work orders that may temporarily change emissions levels, or improving the efficiency of an operation that could change emissions. To prove intent, the onus is on enforcement staff, who will assess ~~all~~ the available facts. For example, staff may be able to prove a facility is purposely reducing their work load or altering equipment to suppress emissions by reviewing operator logs, fuel usage, production records, purchase records, work orders, and interviewing employees, etc. Another factor enforcement staff would take into consideration is the length of time an operation was altered. Alteration of business operations or equipment for

purposes other than evading detection or concealing emissions during monitoring and testing, such as enhancements to business practices to facilitate the sustained reduction of emissions or to reduce potential impacts on neighboring communities and other sensitive receptors would not be viewed as circumvention.

The purpose of subdivision (b) is to prevent a facility from suppressing emissions or evading detection during ~~source~~ testing or monitoring. Stakeholders expressed concern with the monitoring requirement because of the availability of low cost sensors and future community monitoring requirements. Assembly Bill 617, adopted on July 26, 2017, requires community air monitoring systems to be established to assist in the development of a strategy to reduce community exposure to air contaminants in affected communities.⁴ In addition, SCAQMD Rule 1180 – Refinery Fenceline and Community Air Monitoring, adopted on December 1, 2017, requires petroleum refineries to develop fenceline air monitoring plans and deploy fenceline monitoring. Circumventing monitoring is included in PAR 408, not only to address a facility ~~possibly~~ avoiding monitoring required by an existing rule or order, but also ~~because~~ to address future community monitorings. ~~will read~~ Community monitors would measure ambient air pollution concentrations and the data from those monitors ~~will~~ would be evaluated to determine potential sources of emissions. Accurate and complete data is critical to obtain a comprehensive understanding of the emissions affecting impacted communities.

The last proposed revision is to the existing exemption that allows concealing emissions when mitigating nuisances. Field inspections found facilities attempting to use that exemption to violate SCAQMD rules. That exemption is being limited to only include mitigating nuisance *odors*. The current exemption also references an incorrect section of the Health and Safety Code. Current rule language references Section 48700 instead of Section 41700. Staff has corrected the Health and Safety code reference and has also moved the exemption to a separate subdivision to improve clarity.

CIRCUMVENTION EXAMPLES

As stated earlier, PAR 408 was initiated to address recent enforcement issues. The following hypothetical examples are provided to assist in understanding the proposed amendments, but are not intended to be an exhaustive list of examples of cases where this rule may or may not be applicable. These examples are a snapshot of enforcement scenarios to ~~further help stakeholders~~ understand the applicability of the rule and its amendments. More examples will be compiled in a support document that will be made available on the SCAQMD Rule Support webpage (<http://www.aqmd.gov/home/rules-compliance/rules/scaqmd-rule-book/support-documents>) and will be updated when necessary.

Example 1

A facility routes their exhaust gas through a bypass stack to conceal an emission exceedance from an installed emission monitoring system, flow monitoring system, or air pollution control device. Enforcement staff identifies the bypass stack and cites the facility for violating Rule 408.

⁴ Assembly Bill No. 617 as referenced in https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB617.

This example illustrates a violation of Rule 408(a) because the facility concealed emissions that would have been a rule violation.

Example 2

A person may use dust suppressants on a variety of surfaces with particulate matter accumulation to comply with Rule 403 – Fugitive Dust. A person using compliant dust suppressants to comply with Rule 403 *would not be in violation of the rule* Rule 408 since the technique to suppress the dust is also suppressing or reducing air pollutant emissions; and therefore, would result in an overall reduction in the total release of air contaminants to the atmosphere.

This example illustrates compliance with Rule 408(a) because the facility used a Rule 403 compliant technique to suppress and reduce the total release of air contaminants to the atmosphere.

Example 3

A facility moves the stack of their permitted air polluting equipment to redirect air pollutant emissions away from a nearby sensitive receptor with the intent to reduce exposure without increasing or decreasing the level of emissions.

This example illustrates compliance with Rule 408(a) because the move was permanent, but the facility would be required to file a permit modification before making the change per Rule 203 – Permit to Operate, or submit a modification to any affected monitoring plan, to ensure the modification to the exhaust stacks are properly reflected in ~~affected~~ its monitoring plan.

If the facility moved the stack to evade detection from a nearby monitor, this example would illustrate a violation of Rule 408(b) because the facility changed equipment to conceal the emissions from the monitoring device.

Example 4

Many rules, plans, or permit conditions require facilities to control emissions. A facility may attempt to conceal an emission violation by blocking the exhaust stack or altering the equipment to bypass the equipment's sensor that takes criteria pollutant or toxic emissions readings. This would conceal the total emissions released from the facility without reducing the total release of air contaminants.

This example illustrates a violation of Rule 408(a) because the facility ~~used a technique to alter~~ equipment to conceal a violation and Rule 408(b) for bypassing the sensor.

~~If Further, if~~ the facility blocked the exhaust stack to prevent an ambient air monitor from detecting accurate emissions, this example would illustrate a violation of Rule 408(b) because the facility was altering equipment to evade detection during monitoring.

Example 5

A rule requires monitoring outside of the facility. Due to odor complaints, the facility installed fans at their equipment's exhaust points to mitigate odors released to the surrounding community. The fans were also directing regulated emissions away from the air monitoring equipment and concealing emissions that would have exceeded permit conditions.

This example illustrates a violation of Rule 408(a) and (b) because the odor mitigation concealed regulated emissions that would have violated a permit condition during monitoring.

If the only emission was an odor, the facility could suppress or conceal that odor emission using equipment or techniques and not be in violation of Rule 408 because the action is exempt pursuant to Rule 408(c).

Example 6

A facility was found in violation of a rule for exceeding criteria pollutant or toxic emission allowances. The SCAQMD Hearing Board required the facility to meet certain emissions limits. To ensure the facility corrects their violation, pursuant to the Hearing Board's order, enforcement staff placed air monitoring equipment outside the facility. The facility altered its normal business operation by outsourcing part of their production to avoid higher emission readings during monitoring and resumed normal business operation after monitoring ceased.

This example illustrates a violation of Rule 408(b) because the facility altered normal business operations for the purpose of suppressing emissions during monitoring.

Example 7

A facility complying with ambient air monitoring requirements ~~received~~receives a large work order. The blower on the facility's spray booth breaks down and the facility documents that the equipment cannot be repaired or replaced until after the work order is scheduled for completion. The facility maintains supporting documentation for this breakdown. The facility outsources the work order to another facility so the job may be completed on schedule.

This example illustrates compliance with Rule 408(b) because the facility did not alter their normal business operations to conceal emissions and had documents to support the legitimate reason for outsourcing.

Example 8

A facility that produces digester gas is required to source test its flare. In order to follow the source test protocol correctly, the source test requires a 60 minute test run time at a specified load. After 45 minutes, the facility has to stop the source test because there was not a sufficient amount of gas. The facility will be required to wait until there is an adequate quantity of gas to complete the source test at the specified load and duration. The facility also maintains proper documentation to demonstrate why the source test could not be completed.

This example illustrates compliance with Rule 408-(b) because the facility was not trying to conceal emissions during a source test; the facility had a valid reason to stop the source test and maintained proper documentation to support the reason for its failure to complete the source test.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Pursuant to the California Environmental Quality Act (CEQA) and SCAQMD Rule 110, the SCAQMD, as lead agency for the proposed project, has reviewed the proposed amendments to Rule 408 pursuant to: 1) CEQA Guidelines Section 15002(k) - General Concepts, the three-step process for deciding which document to prepare for a project subject to CEQA; and 2) CEQA

Guidelines Section 15061 - Review for Exemption, procedures for determining if a project is exempt from CEQA. Since the proposed project is comprised of updates to the existing rule for the purpose of clarifying the meaning of circumvention, SCAQMD staff has determined that it can be seen with certainty that there is no possibility that the proposed project may have a significant adverse effect on the environment. Therefore, the proposed project is considered to be exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) – Activities Covered by General Rule. Also, the proposed amendments to Rule 408 are categorically exempt because they are designed to further protect or enhance the environment pursuant to CEQA Guidelines Section 15308 – Actions by Regulatory Agencies for Protection of the Environment. A Notice of Exemption will be prepared pursuant to CEQA Guidelines Section 15062 - Notice of Exemption. 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.

SOCIOECONOMIC ASSESSMENT

The proposed amendments to Rule 408 clarify the rule language and make several revisions that are administrative in nature and will not impose any additional costs to the affected facilities or result in other socioeconomic impacts. In addition, the proposed amendments do not significantly affect air quality emission limitations, and therefore, no socioeconomic analysis is required under California Health and Safety Codes § 40440.8 and § 40728.5.

COMMENTS

Key Comments from Public Meetings

Public Consultation Meeting #1 General Comment:

Stakeholders expressed concern that the proposed amendment will change enforcement practices.

Response to General Comment:

SCAQMD enforcement practices will not change. Circumvention will be assessed on a case-by-case basis, evaluating whether the actions taken by a facility was to circumvent any law, order, permit, rule, or plan required by a rule.

Public Consultation Meeting #2: Bill LaMarr – California Small Business Alliance

Will businesses be notified if a community monitor is placed near their facility? Is it possible that a business will not know a monitor is near their site?

Response to Mr. LaMarr:

Public notifications will be part of the community monitoring program but there may be instances where a facility is not aware of a monitor placed near their facility. The burden will be on the SCAQMD to prove if a facility violated subdivision (b) by altering their normal business operation or equipment in order to evade detection by a community monitor.

Final Staff Report

Public Consultation Meeting #2: Susan Stark – Andeavor

What if a facility reduces emissions for an extended period of time, such as five years, due to the presence of a monitor? Would that be considered a violation of subdivision (b)?

Response to Ms. Stark:

The length of time a business alters their operations is one factor enforcement staff takes into consideration when determining whether detection is being evaded and a violation occurred. Further, the question assumes enforcement staff would not notice a reduction in emissions before five years. Enforcement staff may discover that the facility reduced their emissions before the five years in question during routine inspection or investigation. Enforcement staff reviews operating logs and speak with facility staff to gain insight as to why the facility may have altered their business operations. It would not be a violation of PAR 408 if the facility permanently reduces their emissions due to business reasons or a community concern, even with the presence of a monitor.

Public Consultation Meeting #2: Kenneth Pacheco – Andeavor

Staff clarified that normal business operations may include changes due to seasonal work, but for our business, it is not really seasonal. Operations may change on a daily basis depending on a series of factors, for example, what is driving the market at that time. How would SCAQMD view that as altering business operations?

Response to Mr. Pacheco:

Staff cited seasonal changes as just one example of a change in normal business operations that would not be considered circumvention. Staff recognizes that business operations may change on a daily basis and understands that some businesses are market driven or dependent on the amount of work orders received. The purpose of subdivision (b) was to address those instances in which a facility alters their business to evade detection by monitors or a source test.

Stationary Source Committee: Curt Coleman – Southern California Air Quality Alliance

The commenter suggested developing guidelines, outside of the staff report, containing various circumvention scenarios that could be available to the regulated community to serve as guidance for affected stakeholders and, if needed, periodically updated.

Response to Mr. Coleman:

Staff provided a variety of examples in the staff report to assist in a better understanding of the rule. Due to the vast number of different sources regulated in our region, it would not be possible to list all scenarios that would or would not apply to this rule. Instead, staff provided examples within this staff report as a point of reference to address the stated concerns of stakeholders during this rule development. Staff will also develop a separate document outside of the staff report that will be published on the SCAQMD's Support Documents webpage for rules (<http://www.aqmd.gov/home/rules-compliance/rules/scaqmd-rule-book/support-documents>).

Comment Letters Received

Comment Letter 1

Comment Letter - 1



California Council for Environmental and Economic Balance

101 Mission Street, Suite 1440, San Francisco, California 94105
415-512-7890 phone, 415-512-7897 fax, www.cceeb.org

March 22, 2018

Nicole Silva
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765
Submitted electronically to nsilva@aqmd.gov

RE: Proposed Amended Rule 408: Circumvention

Dear Ms. Silva,

We submit the following comments on behalf of the California Council for Environmental and Economic Balance (CCEEB) on Proposed Amended Rule: Circumvention (PAR 408). CCEEB is a nonpartisan, nonprofit coalition of business, labor, and public leaders that advances strategies for a healthy environment and sound economy. CCEEB represents many facilities that operate in the South Coast Air Quality Management (District) and that are subject to PAR 408.¹

Since the release of preliminary rule language, staff has committed to working with stakeholders on the proposed amendments. We would like to acknowledge the significant improvements made in addressing stakeholder concerns regarding PAR 408. While many of the concerns raised by CCEEB's have been addressed, additional comments have developed through the District's public process.

Our primary, high-level comments are:

- **Provide additional examples of when PAR 408 would not be applicable** – Staff should provide additional examples of when a facility would not be in violation of PAR 408.
- **Develop a checklist or a related document for standardized enforcement review** – Additional guidance for enforcement staff should be developed to ensure standardize interpretation of PAR 408 and that the rule writer's intent is clearly understood.

What follows is a more detailed discussion of each of these points.

Examples of Non-Applicability of PAR 408

CCEEB asks that the District clarify the intended applicability of PAR 408 by providing additional examples of when a facility would not be in violation of the rule. We are

1-1

¹ SCAQMD PAR 408 referenced as presented at March 14, 2018 Public Consultation Meeting.

RE: PAR 408

March 22, 2018

Page 2 of 3

particularly interested in better understanding how enforcement would apply to proposed subsection (b), which currently states that “[a] person shall not alter normal business operations or equipment to suppress emissions for the purpose of evading detection or concealing emissions during monitoring or testing.” Enforcement of this provision requires two subjective inquiries – 1) what are “normal business operations or equipment,” and 2) what is the “purpose” of altering those operations or equipment. Additional examples will provide necessary clarification to guide both facility operators and enforcement staff. The current draft staff report includes four examples of circumvention.² Only one of these is when a facility would not be in violation of PAR 408. The other three are examples of when a facility would be in violation of the rule. CCEEB believes additional examples of when PAR 408 would not be applicable are needed.

1-1
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Enforcement Guidance

Similarly, guidance, in the form of a standardized check-list or a set of questions or factors, will also support District implementation of PAR 408 in two main ways. First, enforcement staff will be better able to understand the rule writer's intent of PAR 408, while still considering enforcement on a case-by-case basis. Second, it will provide greater consistency by defining and standardizing how sections of PAR 408 can be interpreted. For example, different inspectors may interpret different activities as altering of normal business operations or require testing or monitoring of varying durations under PAR 408(b).

1-2

A check-list or set of questions with respect to circumvention involving alteration of normal business practices or equipment to suppress emissions for the purpose of evading detection or concealing emissions during monitoring or testing should include a requirement that the inspector (1) describe the alteration, (2) explain how the alteration enabled the facility to avoid detection during monitoring or testing, and (3) provide any alternative explanation from the facility regarding the rationale for the alteration. Requiring that inspectors factually outline the elements of a circumvention violation will promote consistency in the interpretation and application of this rule, since a conclusory statement from the inspector that the facility altered to avoid detection or to conceal emissions would not be sufficient.

Ultimately, enforcement guidance will support staff in fully realizing the rule writer's intent of PAR 408, given the amendments are based upon recent enforcement issues.³ CCEEB requests that this additional guidance be included in the Staff Report so that it memorializes staff's intent contemporaneous with rule adoption.

We appreciate the opportunity to provide these comments on PAR 408. Should you have any questions or wish to discuss our comments further, please contact me (billq@cceb.org or 415-512-7890 ext. 115), Janet Whittick (janetw@cceb.org or ext. 111), or Devin Richards (devinr@cceb.org or ext. 110).

² SCAQMD. Draft Staff Report. "Proposed Amended Rule 408: Circumvention." February 2018.

³ SCAQMD. Public Consultation Meeting. "Proposed Amended Rule 408: Circumvention." March 14, 2018.

RE: PAR 408

March 22, 2018

Page 3 of 3

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Quinn". The signature is fluid and cursive, with the first name "Bill" and last name "Quinn" clearly distinguishable.

Bill Quinn
CCEEB Vice President
South Coast Air Project Manager

cc: Philip Fine, SCAQMD
Jerry Secundy, CCEEB
Janet Whittick, CCEEB
Devin Richards, CCEEB
CCEEB South Coast Air Project Members

Response to Comment 1-1:

Staff included additional examples of circumvention in the staff report, section “Circumvention Examples,” to address this request. It is not possible to address all types of sources and potential violation scenarios. Enforcement staff will implement this rule on a case-by-case basis. The scenarios included in this staff report will not be a comprehensive list of rule violations; however, they should serve as a guide to assist stakeholders’ understanding of the examples of applicability of, or compliance with, the rule and its implementation.

Response to Comment 1-2:

Due to the diversity and complexity of the industries regulated within the SCAQMD, it is not possible to develop a standardized checklist or set of questions for enforcement staff to rely. Most inspections vary depending on the type of facility and rules with which the facility must comply.

~~In~~ With regards to subdivision (b) of this rule, if there was an alteration of business operations or equipment that enforcement staff observed or noted, staff would have to provide evidence that the alteration was made to evade detection or conceal emissions. If the facts obtained demonstrated that the facility altered their business operation to evade detection or conceal emissions, the facts that lead to that conclusion would be detailed by staff.

Comment Letter #2

Comment Letter 2

John C. Heintz
Direct Dial: 213.891.7395
john.heintz@lw.com

LATHAM & WATKINS LLP

March 23, 2018

Philip Fine, Ph.D
Deputy Executive Officer
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

355 South Grand Avenue, Suite 100
Los Angeles, California 90071-1560
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Re: Regulatory Flexibility Group Comments on the South Coast Air Quality Management District's Proposed Amended Rule 408

Dear Dr. Fine:

Thank you for the opportunity to provide these comments regarding the District's Proposed Amended Rule ("PAR") 408, Circumvention. We submit these comments on behalf of the Regulatory Flexibility Group ("RFG"), a coalition of California entities whose operations are subject to regulation under the Clean Air Act and corresponding state and regional air quality programs. RFG members have participated in the review of and comment on SCAQMD regulations since its formation in the fall of 1990, and we have appreciated the opportunity to work with Staff and other stakeholders over the last several months on PAR 408. RFG is appreciative that, following several public meetings and the receipt of comments from a wide variety of stakeholders, the District has made a number of changes to its initial draft rule that more appropriately tailor the rule to achieve its intended purposes while minimizing unintended consequences. RFG further appreciates the District's revisions to the initial draft rule that preserves facilities' ongoing ability to proactively address and manage potential nuisance odors.

RFG does, however, request an additional confirmation regarding PAR 408 subsection (b), which currently states that "[a] person shall not alter normal business operations or equipment to suppress emissions for the purpose of evading detection or concealing emissions during monitoring or testing." RFG recognizes and supports the District's goal to address facilities that intentionally set out to game testing or evade monitoring, but we are concerned with the potential for inconsistent enforcement given the rule's subjective language. We therefore request that the District clarify in the staff report that this rule is a "specific intent" rule and that, to establish a violation, the District will need to demonstrate a facility engaged in willful and intentional actions for the express purpose of evading detection or concealing emissions during monitoring or testing. We assume that alteration of business practice for purposes other than evading detection or concealing emissions and enhancements to business practices to facilitate the sustained reduction of emissions or reduce potential impacts on neighboring communities and

2-1

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March 23, 2018
Page 2

LATHAM & WATKINS^{LLP}

other sensitive receptors would not be viewed as circumvention, and we request the District's confirmation of the same.

Thank you for the opportunity to submit these comments, and thank you for putting forward a robust stakeholder process that has resulted in a rule language that will help protect our air quality while appropriately considering the unique operational challenges across business sectors.

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Best regards,

/s John Heintz

John C. Heintz
Of LATHAM & WATKINS LLP

Cc: Michael A. Krause, SCAQMD
Robert A. Wyman, Latham & Watkins
Michael J. Carroll, Latham & Watkins
Regulatory Flexibility Group

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Response to Comment 2-1:

Altering normal business operations or equipment for purposes other than evading detection or concealing emissions during monitoring or testing is not a violation of subdivision (b). A facility can alter their business to enhance their operations or to reduce potential impacts on neighboring communities and sensitive receptors. In such cases, that would not be viewed as circumvention. The facility may be asked to demonstrate that the alteration of their normal business operation was not to evade detection or conceal emissions during monitoring or testing. Ultimately, the burden of proof is on SCAQMD to prove a violation of subdivision (b).

DRAFT FINDINGS UNDER THE CALIFORNIA HEALTH AND SAFETY CODE

Health and Safety Code Section 40727 requires that prior to adopting, amending or repealing a rule or regulation, the SCAQMD Governing Board shall make findings of necessity, authority, clarity, consistency, non-duplication, and reference based on relevant information presented at the hearing. The draft findings are as follows:

Necessity –Proposed amended Rule 408 – Circumvention is necessary to prevent a facility from using the nuisance exemption to conceal the release of excess emissions or evade detection from testing or monitoring.

Authority - The SCAQMD Governing Board obtains its authority to adopt, amend, or repeal rules and regulations from Health and Safety Code Sections 39002, 40000, 40001, and 40702.

Clarity - The SCAQMD Governing Board has determined that Proposed Amended Rule 408 – Circumvention, is written and displayed so that the meaning can be easily understood by persons directly affected by them.

Consistency - The SCAQMD Governing Board has determined that Proposed Amended Rule 408 - Circumvention, is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, federal or state regulations.

Non-Duplication - The SCAQMD Governing Board has determined that Proposed Amended Rule 408 - Circumvention does not impose the same requirement 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 SCAQMD.

Reference - In adopting this regulation, the SCAQMD Governing Board references the following statutes, which the SCAQMD hereby implements, interprets, or makes specific: California Health and Safety Code sections 40001; and 40702; and Title 40 of the Code of Federal Regulations Sections 61.19 and 63.4.

REFERENCES

1. Prohibited Activities and Circumvention, 40 CFR 63.4, available at <https://www.law.cornell.edu/cfr/text/40/63.4>.
2. Circumvention, 40 CFR 61.19, available at <https://www.law.cornell.edu/cfr/text/40/61.19>.
3. District Rules Database, California Air Resources Board. <https://www.arb.ca.gov/drdb/drdb.htm>.
4. AB-617 Nonvehicular air pollution: criteria air pollutants and toxic air contaminants. California Legislative Information, available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB617.

ATTACHMENT H



South Coast Air Quality Management District

21865 Copley Drive, Diamond Bar, CA 91765-4178
(909) 396-2000 • www.aqmd.gov

SUBJECT: NOTICE OF EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

PROJECT TITLE: PROPOSED AMENDED RULE 408 - CIRCUMVENTION

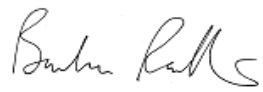
Pursuant to the California Environmental Quality Act (CEQA) Guidelines, the South Coast Air Quality Management District (SCAQMD) is the Lead Agency and has prepared a Notice of Exemption for the project identified above.

The proposed project is comprised of amendments to Rule 408 – Circumvention. SCAQMD staff has reviewed the proposed project pursuant to: 1) CEQA Guidelines Section 15002(k) - General Concepts, the three-step process for deciding which document to prepare for a project subject to CEQA; and 2) CEQA Guidelines Section 15061 - Review for Exemption, procedures for determining if a project is exempt from CEQA.

Since the proposed project is comprised of updates to the existing requirements on circumvention, SCAQMD staff has determined that it can be seen with certainty that there is no possibility that the proposed amendments to Rule 408 may have a significant adverse effect on the environment. Therefore, the project is considered to be exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) – Activities Covered by General Rule. In addition, the proposed amendments to Rule 408 are categorically exempt because they are designed to further protect or enhance the environment pursuant to CEQA Guidelines Section 15308 – Actions by Regulatory Agencies for Protection of the Environment. A Notice of Exemption has been prepared pursuant to CEQA Guidelines Section 15062 – Notice of Exemption. If the project is approved, the Notice of Exemption will be filed with the county clerks of Los Angeles, Orange, Riverside and San Bernardino counties.

Any questions regarding this Notice of Exemption should be sent to Diana Thai (c/o Planning, Rule Development and Area Sources) at the above address. Ms. Thai can also be reached at (909) 396-3443. Ms. Nicole Silva is also available at (909) 396-3384 to answer any questions regarding the proposed amended rule.

Date: April 24, 2018

Signature: 
Barbara Radlein
Program Supervisor, CEQA Section
Planning, Rules, and Area Sources

Reference: California Code of Regulations, Title 14, Division 6, Chapter 3, Sections 15000-15387

NOTICE OF EXEMPTION

To: County Clerks
Counties of Los Angeles, Orange,
Riverside, and San Bernardino

From: South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Project Title: Proposed Amended Rule 408 - Circumvention

Project Location: The SCAQMD has jurisdiction over the four-county South Coast Air Basin (all of Orange County and the non-desert portions of Los Angeles, Riverside and San Bernardino counties), and the Riverside County portions of the Salton Sea Air Basin (SSAB) and Mojave Desert Air Basin (MDAB). The SCAQMD's jurisdiction includes the federal nonattainment area known as the Coachella Valley Planning Area, which is a sub-region of Riverside County and the SSAB.

Description of Nature, Purpose, and Beneficiaries of Project: SCAQMD staff is proposing amendments to Rule 408 to address specific circumstances where facilities may attempt to avoid compliance by prohibiting a facility from altering business operations or equipment to evade detection or conceal emissions during monitoring and testing, and by limiting the existing exemption for cases in which the only violation is an odor nuisance.

Public Agency Approving Project:
South Coast Air Quality Management District

Agency Carrying Out Project:
South Coast Air Quality Management District

Exempt Status:

CEQA Guidelines Section 15061(b)(3) – Activities Covered by General Rule

CEQA Guidelines Section 15308 – Actions by Regulatory Agencies for Protection of the Environment

Reasons why project is exempt: SCAQMD staff has reviewed the proposed amendments to Rule 408 pursuant to: 1) CEQA Guidelines Section 15002(k) - General Concepts, the three-step process for deciding which document to prepare for a project subject to CEQA; and 2) CEQA Guidelines Section 15061 - Review for Exemption, procedures for determining if a project is exempt from CEQA. Since the proposed project is comprised of updates to the existing requirements on circumvention, SCAQMD staff has determined that it can be seen with certainty that there is no possibility that the proposed project may have a significant adverse effect on the environment. Therefore, the proposed project is considered to be exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) - Activities Covered by General Rule. Also, the proposed amendments to Rule 408 are categorically exempt because they are designed to further protect or enhance the environment pursuant to CEQA Guidelines Section 15308 - Actions by Regulatory Agencies for Protection of the Environment.

Date When Project Will Be Considered for Approval (subject to change):

SCAQMD Governing Board Hearing: May 4, 2018; SCAQMD Headquarters - Auditorium

CEQA Contact Person:

Ms. Diana Thai

Phone Number:

(909) 396-3443

Email:

dthai@aqmd.gov

Fax:

(909) 396-3982

Rule Contact Person:

Ms. Nicole Silva

Phone Number:

(909) 396-3384

Email:

nsilva@aqmd.gov

Fax:

(909) 396-3807

Date Received for Filing: _____

Signature: _____

Barbara Radlein
Program Supervisor, CEQA Section
Planning, Rule Development & Area Sources

Proposed Amended Rule 408: Circumvention

GOVERNING BOARD MEETING

May 4, 2018

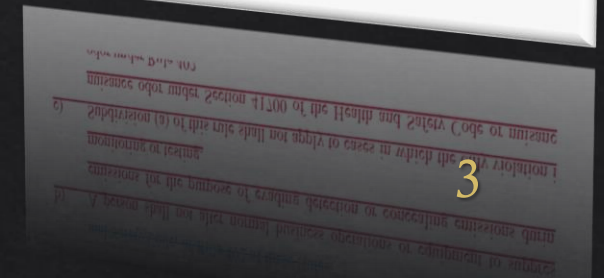
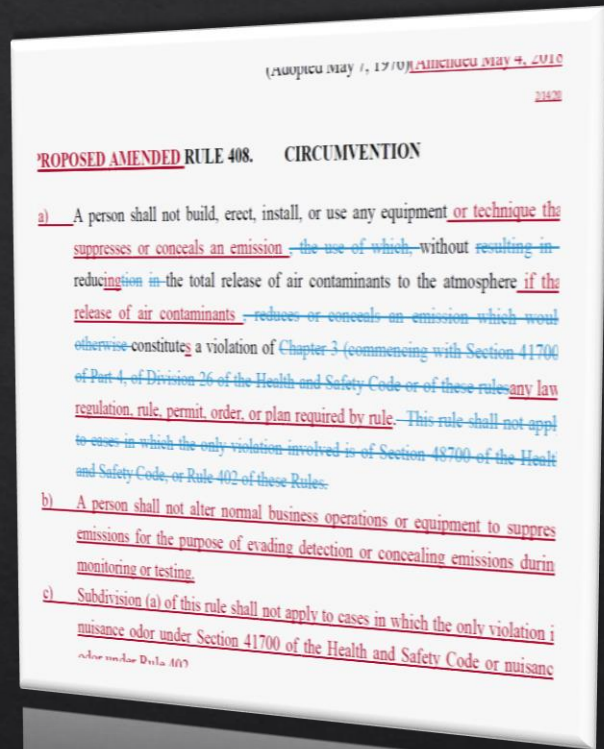
Background



- Predates SCAQMD
All four county air agencies prohibit “dilution as a solution” to air pollution
- Rule 408 - *Circumvention* adopted by predecessor to SCAQMD in May 1976
- Recent enforcement issues triggered this proposed amendment
- Amendment supports current enforcement practices

Proposed Amendment

- Modify the language to further specify circumvention of any “law, regulation, rule, permit, order, or plan required by a rule” constitutes a violation
- Prohibit altering operations or equipment to evade detection of emissions during monitoring or testing
- Retain the exemption for cases in which the only violation is a nuisance, but limit it to odor nuisances
- Clarify rule language
 - Example guidance document will be developed to provide more clarification for stakeholders



Key Issues

Comment	Response
<ul style="list-style-type: none">▪ Stakeholders are concerned that the proposed amendment will modify current enforcement practices, therefore suggesting staff develop an enforcement support document	<ul style="list-style-type: none">▪ SCAQMD enforcement practices will not change▪ There are a variety of scenarios, examples provided in staff report▪ Staff is developing a support document containing hypothetical examples to assist in understanding rule implementation and will provide online

Staff Recommendations



- Determine that Proposed Amendments to Rule 408 – Circumvention Are Exempt from CEQA
- Adopt Resolution
- Amend Rule 408 - Circumvention