

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Preliminary Draft Staff Report for

PROPOSED AMENDED RULE 408 – CIRCUMVENTION

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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 an operation or equipment to evade detection of emissions during monitoring or testing.

BACKGROUND

Under Title 40 of the Code of Federal Regulations (CFR) Part 63 – National Emission Standards for Hazardous Air Pollutants for Source Categories, one cannot conceal an emission that would constitute noncompliance with a relevant standard.² 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 included in many California air districts’ rulebooks. 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 during recent enforcement activity since the rule’s adoption.

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. 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.

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.

2. Add a provision that prohibits alteration of 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 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 District’s authority; the District 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 - 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 includes a stipulated order for abatement or a standard order for abatement.
- Permit includes any permit condition in a SCAQMD issued air quality permit.
- 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 alterations to normal business operations or equipment to evade detection of emissions during monitoring or testing. This is to address facilities that might block emission stacks, reduce their throughput, redirect throughput to other locations, or block monitors to circumvent a law, regulation, rule, permit, order, or plan required by a rule.

The last proposed amendment 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.

Comments and Concerns

During rule development, staff initially proposed requiring facilities to notify the District prior to suppressing emissions to mitigate nuisance odors. This requirement would allow the District to vet those measures to ensure that any odor mitigating equipment or technique was not used to conceal emissions. However, that provision was removed due to stakeholder concerns that it

would adversely affect their ability to timely mitigate nuisance odors. SCAQMD inspectors will address instances of odor mitigation on a case-by-case basis to determine if that mitigation was used to conceal emissions to circumvent a law, regulation, rule, permit, order, or plan required by a rule.

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.

Example 1

Many rules, plans or permit conditions require facilities to control emissions. A facility may attempt to circumvent the emissions limits by blocking the exhaust stack or altering the equipment to bypass the monitoring equipment 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, thus violating Rule 408.

Example 2

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 conceal emissions that would have exceeded permit conditions. The odor mitigation concealed regulated emissions without reducing the amount of air contaminants released to the atmosphere, thus violating Rule 408. 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.

Example 3

A facility is found in violation for exceeding criteria pollutant or toxic emission allowances for their site. The SCAQMD Hearing Board requires the facility to meet certain emissions limits. To ensure the facility corrects their violation, pursuant to the Hearing Board's order, enforcement staff places air monitoring equipment outside the facility. The facility alters its normal business operation by outsourcing part of their production to avoid higher emission readings during monitoring and resumes normal business operation after monitoring ceased. The facility violated Rule 408.

Example 4

A facility utilizes a bypass stack to directly vent emissions to the atmosphere, instead of limiting the use of the unit for emergency situations as required by a SCAQMD rule. Flue gases are then routed through that bypass stack to avoid detection from an installed emission monitoring system, flow monitoring system, and air pollution control device. During a routine compliance verification, enforcement staff found the bypass stack led to an incomplete and inaccurate accounting of all emissions, thus violating Rule 408.

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 requirements 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

A socioeconomic analysis will be conducted and released for public review and comment at least 30 days prior to the SCAQMD Governing Board Hearing on PAR 408, which is anticipated to be considered for approval on May 4, 2018.

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.

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, 40440, 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, 40440, 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>