



# Proposed Amended Rule 408: Circumvention

PUBLIC CONSULTATION MEETING #2

MARCH 14, 2018

# Background

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



# Amendment Process

- Public Process
  - Preliminary rule language - December 14, 2017
  - First public consultation meeting - January 11, 2018
  - Preliminary Draft Staff Report
  - Proposed Rule Language
- Working Group Meeting – February 23rd
- Second Consultation Meeting – March 14th
- Public Hearing - May 4th



# January 11<sup>th</sup> Proposed Amendments

Distributed at the  
first Public  
Consultation  
Meeting

(Adopted May 7, 1976) (Amended March 2, 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 constitute~~ 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 plan required by rule, order, permit, rule, regulation, or law.
- (b) A person shall not alter normal business operations or equipment to suppress or conceal emissions during monitoring or testing.
- (c) A person shall notify the SCAQMD prior to using equipment or techniques to mitigate nuisance odors in compliance with subdivisions (a) and (b) of this rule.



# Current Proposed Amendments

- Removed odor mitigation notification requirement
- Corrected Health and Safety Code reference from original rule

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

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- (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.

# Proposed Amendment

- 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.
- 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. Prohibit alterations to operations or equipment to evade detection of 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.

# Proposed Amendments (Cont.)

- Plans may include:
  - Air Monitoring Plan (*Rule 1420*)
  - Compliance Plan (*Rule 1146, Rule 1404*)
  - Emission Control Plan (*Rule 1110.2*)
  - Odor Mitigation Plan (*Rule 415*)
- Order for Abatement (Stipulated or not)
- Law:
  - Health and Safety Code
- Normal business operations may include:
  - Seasonal increase or decrease of work flow
  - Large projects or work orders that may temporarily increase emissions
  - Improving the efficiency of an operation that could decrease emissions
- Determining intent to alter business operations
  - Review operator logs, fuel usage, production records, purchase records, work orders, employee interviews, etc.

# Remaining Concerns

- Proposed amendment will modify current enforcement practices
  - SCAQMD enforcement practices will not change, circumvention will be assessed on a case-by-case basis.
- Proposed addition of terms “law, regulation, rule, permit, order, or plan required by rule” broadens the rule’s applicability
  - Language does not broaden the rule’s applicability. Circumvention of any law, regulation, rule, permit, order, or plan required by rule is currently a violation.
  - Included only for clarity.





# Remaining Concerns (Cont.)

*Proposed subdivision (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.*

## Concern:

- A facility suppressing emissions near a community monitor required under AB617 would constitute a violation of proposed language
- Proving a facility altered normal business operations to evade detection on sampling days is subjective and will lead to inconsistent enforcement

## Staff's Response:

- The intent of community monitoring is to provide an accurate reflection community exposure. Suppressing emissions to avoid detection would be a violation of PAR408
- Staff will request records and interview facility staff to assess normal business operation with the understanding that businesses have normal fluctuation in workload/process

# Circumvention Examples

- A facility blocks the exhaust stack or alters equipment to bypass monitoring equipment. This conceals the emissions released from the facility without reducing the total release of air contaminants.
- A facility installs building ventilation fans to “mitigate odors.” In doing so, this also conceals air contaminants by directing the emissions away from ambient air monitors, and does not control or reduce emissions. This would be allowed if the facility was **only** concealing odors.
- The District monitors air quality at or near a facility to verify a violation was corrected. The facility alters their normal business operations to decrease their output by outsourcing operations to avoid higher readings during monitoring.
- A facility utilizes a bypass stack to reroute flue gases away from the equipment's emission monitoring system, flow monitoring system, or air pollution control device.

# Circumvention Examples (Cont.)

- A person uses dust suppressants to comply with Rule 403 - *Fugitive Dust*. This would not be a violation of the rule since the technique to suppress dust is also suppressing emissions.
- A facility moves the stack of their permitted ICE to redirect emissions away from a nearby sensitive receptor without resulting in an increase or decrease of emissions. This would not be a violation of this rule, but would still have to comply with other district rules.
- An ambient air monitor is installed near a facility so they move their stack to evade detection. This would be a violation of proposed subdivision (b).

# District Staff Contact

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# Schedule

- Stakeholder Meetings
  - Ongoing
- Stationary Source Committee
  - March 16, 2018
- Comments Due
  - March 23, 2018
- Set Hearing
  - April 6, 2018
- Governing Board Meeting
  - May 4, 2018

