

**PROPOSED AMENDED RULE 518.2. FEDERAL ALTERNATIVE
OPERATING CONDITIONS**

(a) Purpose

This rule establishes procedures by which a Title V facility, as defined in subdivision (b) of Rule 3000 - General, may obtain approval of an Alternative Operating Condition from the SCAQMD Hearing Board that would be recognized by the United States Environmental Protection Agency. Incorporation of an Alternative Operating Condition into a Title V permit pursuant to the requirements of this rule would shield the petitioner from enforcement pursuant to the federal Clean Air Act of otherwise applicable requirements specifically modified by the Alternative Operating Condition.

(b) Definitions

- (1) **ACTIVITY LEVEL** is the amount of activity of the source during the emission reduction strategy, expressed in units consistent with the units of baseline and post-reduction emission rate.
- (2) **ALTERNATIVE OPERATING CONDITION** is an order established by the Hearing Board pursuant to subdivision (e) of this rule which, if recognized by the United States Environmental Protection Agency, authorizes a source to be operated in a specified manner that would otherwise not comply with an applicable requirement of the State Implementation Plan or a permit term or condition based on any such applicable requirement.
- (3) **ALTERNATIVE OPERATING CONDITION CREDIT** means an emissions reduction credit or a mobile source emission reduction credit created pursuant to an EPA approved rule, or an alternative credit or allowance approved into the SIP by EPA, and held by the District for the purpose of offsetting excess emissions allowed under an Alternative Operating Condition.
- (4) **ALTERNATIVE OPERATING CONDITION CREDIT BANK** means the repository for the Alternative Operating Condition Credits that the District is holding to offset excess emissions pursuant to this rule.

- (5) APPLICABLE REQUIREMENTS means all requirements listed in paragraph (c)(1).
- (6) BASELINE EMISSION RATE means the lowest of:
 - (A) The emission rate allowed by the most stringent regulatory requirement applicable to the source; or
 - (B) The emission rate in an applicable Air Quality Management Plan Control Measure with implementation dates contemporaneous with the emission reduction; or
 - (C) The documented actual historical emission rate averaged over the two years preceding the emission reduction.
- (7) BREAKDOWN means a condition caused by a mechanical or electrical failure or the failure of a source to operate as designed.
- (8) EMERGENCY means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.
- (9) EMISSION REDUCTION DURATION is the length of time during which the emission reduction strategy results in verifiable and surplus emission reductions.
- (10) EXCESS EMISSIONS means the amount of emissions from a source, stated in pounds per month, that exceeds the amount of emissions that would be allowed if the source were operated in compliance with an applicable requirement, calculated pursuant to paragraph (h)(1) of this rule.
- (11) FACILITY means any permit unit or source, or grouping of permit units or sources, or other air contaminant-emitting activities which are located on one or more contiguous properties, in actual physical contact or separated solely by a public roadway or other public right-of-way, and are owned or operated by the same person (or by persons under common control), or an outer continental shelf (OCS) source as defined in 40 CFR Section 55.2. Such above-described groupings, if on noncontiguous properties, but connected only by land carrying a pipeline, shall not be considered one

facility. Equipment or installations involved in crude oil and gas production in Southern California coastal or OCS waters, and transport of such crude oil and gas in Southern California coastal or OCS waters, shall be included in the same facility which is under the same ownership or use entitlement as the crude oil and gas facility on shore.

- (12) INTRA-FACILITY EMISSION REDUCTION CREDIT is an amount of emission reduction from within a facility seeking an Alternative Operating Condition that is eligible for credit pursuant to the criteria set forth in this rule. Intra-facility Emission Reduction Credits may be used to reduce the amount of Alternative Operating Condition Credits needed to obtain an Alternative Operating Condition.
- (13) POST-REDUCTION EMISSION RATE means the emission rate of the source after implementation of the emission reduction strategy.
- (14) SOURCE means any discrete operation, unit or pollutant-emitting activity at a facility.
- (15) TITLE V FACILITY means any facility that meets the criteria set forth in subdivision (a), (b) or (c) of Rule 3001 - Applicability.

(c) Applicability

- (1) This rule authorizes the District Hearing Board to establish Alternative Operating Conditions for Title V facilities. Alternative Operating Conditions may be established for the following statute and District rules and regulations, and for federally-enforceable permit terms and conditions that are based on such statute, rules and regulations:
 - (A) Health and Safety Code Section 41701;
 - (B) Rules 202, 203, 217, 218 and 221;
 - (C) Regulation IV, except Rules 402 and 430;
 - (D) Regulation VII;
 - (E) Regulation XI;
 - (F) Rule 2202; and
 - (G) Regulation XX, except-
 - (i) any provisions which require Permits to Construct or which set forth requirements for Permits to Construct,
 - (ii) missing data provisions of Appendix A, Chapter 2 of Rule 2011 – Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_x) Emissions, and

Appendix A, Chapter 2 of Rule 2012 – Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_x) Emissions, and

- (iii) subdivisions (b), (d), (o), and (p) of Rule 2004 – Requirements, and any permit conditions which state annual Allocations.
- (2) No Alternative Operating Condition shall be granted from any federally promulgated rule, regulation or permit condition, or any District rule that substitutes for such requirements under section 112(l), including but not limited to the following:
 - (A) the requirement to apply for and obtain an operating permit under Rule 3002 – Requirements, or an authority to construct;
 - (B) any requirement of NSPS, NESHAP or other standard promulgated by the U.S. EPA under Sections 111 or 112 of the Clean Air Act;
 - (C) any standard promulgated by the U.S. EPA under Title IV or Title VI of the Clean Air Act; or
 - (D) any requirement contained in a permit issued by the U.S. EPA.
 - (3) No Alternative Operating Condition shall be granted from any rule or provision for which a variance is not allowed under Rule 504 - Rules for Which Variances Are Not Allowed.
 - (4) Except in the case of an emergency or a breakdown of technology, no Alternative Operating Condition shall be granted from the requirement to implement Best Available Control Technology as required by Rule 1303(a) or 2005 or from a permit condition that was imposed to avoid application of Best Available Control Technology as required by Rule 1303(a) or 2005.
 - (5) Except in the case of an emergency or a breakdown of technology, no Alternative Operating Condition shall be granted from a permit condition which was imposed to avoid the applicability of a requirement from which a variance may not be granted pursuant to paragraphs (c)(1) and (c)(2).
- (d) **Modification of Applicable Requirements**
- A source shall not be subject to a provision of an applicable requirement specified in paragraph (c)(1) of this rule if the source is subject to an Alternative Operating Condition established for such provision that has been incorporated into its Title V permit in accordance with paragraph (f) of this rule.

- (e) Establishment of Alternative Operating Conditions
- (1) Alternative Operating Conditions may be established only by the District Hearing Board upon petition relating to a specified source.
 - (2) A petitioner shall not receive an Alternative Operating Condition unless all of the following circumstances exist:
 - (A) the petitioner is or will be in violation of any applicable requirement(s) listed in paragraph (c)(1) of this rule;
 - (B) due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either (1) an arbitrary or unreasonable taking of property or (2) the practical closing and elimination of a lawful business. In making the above findings, where the petitioner is a public agency, the Hearing Board shall consider whether or not requiring immediate compliance would impose an unreasonable burden upon an essential public service. For purposes of this subparagraph, "essential public service" means a prison, detention facility, police or fire-fighting facility, school, health care facility, landfill gas control or processing facility, sewage treatment works, or water delivery operation, if owned and operated by a public agency;
 - (C) the closing or taking would be without a corresponding benefit in reducing air contaminants;
 - (D) the petitioner for the Alternative Operating Condition has given consideration to curtailing operations of the source in lieu of obtaining an Alternative Operating Condition;
 - (E) during the period the Alternative Operating Condition is in effect, the petitioner will reduce excess emissions to the maximum extent feasible;
 - (F) during the period the Alternative Operating Condition is in effect, the petitioner will monitor or otherwise quantify emission levels from the source, and report these emission levels to the District pursuant to a schedule established by the District;
 - (G) the Alternative Operating Condition will not result in noncompliance with the requirements of any NSPS, NESHAP or other standard promulgated by the U.S. EPA under Sections 111 or 112 of the Clean Air Act, or any District rule that substitutes for such requirements under section 112(1), or any standard or requirement

- promulgated by the U.S. EPA under Titles IV or VI of the Clean Air Act, or any requirement contained in a permit issued by the U.S. EPA, or other requirement contained in paragraph (c)(2);
- (H) any emissions (calculated pursuant to subparagraph (h)(3)(B) of this rule) resulting from the Alternative Operating Condition will not, in conjunction with emissions (calculated pursuant to subparagraph (h)(3)(B)) resulting from all other Alternative Operating Conditions established by the Hearing Board and in effect at the time, exceed the amount of Alternative Operating Condition Credits held in the Alternative Operating Condition Credit Bank; and
 - (I) operation under the Alternative Operating Condition will not result in the source discharging such quantities of air contaminants or other material which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health, or safety of any such persons or to the public, or which cause, or have a natural tendency to cause, injury or damage to business or property.
- (3) In addition to the circumstances specified in paragraph (e)(2) of this rule, if the violation of the applicable requirement is caused by a breakdown of technology, a petitioner shall not receive an Alternative Operating Condition unless all of the following circumstances exist:
- (A) the violation could not have been prevented through careful planning or design;
 - (B) the breakdown could not reasonably have been foreseen and avoided;
 - (C) at all times the equipment, including air pollution control equipment, or processes were maintained and operated in a manner consistent with good practice for minimizing emissions;
 - (D) repairs were or will be made in an expeditious fashion using off-shift labor and overtime, to the extent practicable, to ensure that such repairs are made as expeditiously as practicable; and
 - (E) the breakdown is not part of a recurring pattern indicative of inadequate design, operation, or maintenance.
- (4) If the violation occurs during startup or shutdown, the frequency and duration of operation in startup or shutdown mode must be minimized to the maximum extent practicable.

- (5) The Hearing Board shall not establish an Alternative Operating Condition unless the Board establishes, as part of the Alternative Operating Condition, enforceable alternative emissions limits, operational requirements, and/or monitoring and recordkeeping provisions, as set forth in subdivision (g).
 - (6) The Hearing Board shall not establish an Alternative Operating Condition unless it makes its findings that the circumstances described in paragraphs (e)(2), (e)(3) and/or (e)(4), as applicable, exist. The petitioner bears the burden of proof. The findings shall be based on evidence in the record of a public hearing which is noticed and conducted in compliance with Health and Safety Code Sections 40820-40865, except in the case of an Alternative Operating Condition established by the Board or a single member thereof under circumstances specified in Health & Safety Code Section 42359 or 42359.5. An Alternative Operating Condition established by the Board under circumstances specified in Health & Safety Code Section 42359 shall be based on evidence in the record of a public hearing which is conducted pursuant to Health & Safety Code Sections 40820, 40822, and 40828-40865. An Alternative Operating Condition established by a single Board member under circumstances specified in Health & Safety Code Section 42359.5 shall be based on evidence presented in the form of a petition and declaration signed under penalty of perjury, and may be supplemented by sworn oral testimony.
 - (7) The Hearing Board shall deny a petition for an Alternative Operating Condition if excess emissions resulting from operation of a source pursuant to the Alternative Operating Condition would, by themselves, cause an exceedance of a National Ambient Air Quality Standard. The burden of proof on this issue, should it arise, shall be upon the source.
- (f) EPA Objection; Effective Date of Alternative Operating Condition
- (1) Each Alternative Operating Condition shall be subject to review for 30 days by the public and any affected state, and, concurrently, for 45 days by the U.S. EPA. The review period may commence prior to approval of the Alternative Operating Condition by the Hearing Board and, in such event, will satisfy this subdivision if the terms of the Alternative Operating Condition approved by the Hearing Board do not significantly deviate from the proposed terms that were made available to the public, affected states, and the U.S. EPA.

- (2) Copies of any adverse comments shall be forwarded to EPA by the District within two (2) working days of receipt.
- (3) If the terms of the Alternative Operating Condition approved by the Hearing Board significantly deviate from proposed terms released for review, the approved terms must be subjected to the notice requirements of paragraphs (f)(4) and (f)(5) and the process requirements of paragraph (f)(6).
- (4) The U.S. EPA's 45-day review period shall commence on the latter of the date of public notification or upon the U.S. EPA's receipt of the following information:
 - (A) a copy of the proposed or issued Alternative Operating Condition;
 - (B) information sufficient to support the findings set forth in subdivision (e); and
 - (C) the name of any affected state as defined in subdivision (b) of Rule 3000 – General.
- (5) Notification to the public and affected states shall commence upon the date of public notice as specified in Rule 3006 – Public Participation, including ~~publication in a daily newspaper of general circulation~~ posting the notice on the District public website.
- (6) If EPA objects to the Alternative Operating Condition in writing within its 45 day review period, in the manner set forth in paragraph (k)(1) of Rule 3003 – Applications--
 - (A) the District shall notify the petitioner of U.S. EPA's objection; and
 - (B) the Alternative Operating Condition shall be ineffective unless the Hearing Board adopts and submits to U.S. EPA a revised Alternative Operating Condition which conforms to such objection or EPA issues a written rescission to its objection.
- (7) If the U.S. EPA does not object to the Alternative Operating Condition, it shall become operative, effective as of the date of issuance by the Hearing Board, subject to the provisions of subdivision (l) of Rule 3003 – Applications. The effective date shall be the date of filing the petition with the Hearing Board if excess emissions during the period between the filing of the petition and the issuance of the Alternative Operating Condition by the Hearing Board are quantifiable and all circumstances specified in paragraph (e)(2) existed during this period.

(g) Content of Alternative Operating Conditions

Each Alternative Operating Condition shall contain the following provisions, as applicable:

(1) Emission Limits

If an Alternative Operating Condition allows emissions that are greater than an emission limit in an applicable requirement, the Hearing Board shall establish an enforceable alternative emission limit that requires the source to reduce excess emissions to the maximum extent feasible. The Hearing Board may establish an alternative emission limit for any source located at the facility that creates emissions of the subject pollutant that may feasibly be reduced.

(2) Operational Requirements

If an Alternative Operating Condition allows deviation from an applicable operational requirement that is designed to limit or minimize emissions, the Hearing Board shall establish an enforceable alternative operational requirement or emission limit that requires the source to operate in a manner that reduces excess emissions to the maximum extent feasible. The Hearing Board may establish an alternative operational requirement or emission limit for any source located at the facility which creates emissions of the subject pollutant that may feasibly be reduced.

(3) Monitoring, Recordkeeping, and Reporting Requirements

If the Alternative Operating Condition allows deviation from an applicable emissions monitoring, recordkeeping or reporting requirement, the Hearing Board shall establish an enforceable alternative requirement which, to the extent feasible:

(A) mandates quantification, recordkeeping, and reporting of emissions as accurately, expeditiously, and verifiably as the applicable requirement,

(B) complies with the requirements of paragraph (a)(4) of Rule 3004 – Permit Type and Content, and

(C) for RECLAIM sources, complies with the RECLAIM protocols for monitoring, recordkeeping, and reporting.

(4) Conditions

The Hearing Board shall impose conditions, other than those imposed by applicable requirements, that are necessary to ensure quantifiability of

emissions increases, and any decreases, resulting from the Alternative Operating Condition.

(5) Stringency

Any alternative requirement or other condition imposed pursuant to this subdivision shall not be more stringent than an applicable requirement, except when consented to by the petitioner for purposes of excess emissions mitigation.

(6) Term

Each Alternative Operating Condition established by the Hearing Board shall include a term during which the Alternative Operating Condition shall be in effect. The term shall be determined in accordance with Health and Safety Code Sections 42352 and 42358. Upon termination of the Alternative Operating Condition, the source shall comply with all applicable requirements and the preexisting permit term(s) shall have full force and effect.

(7) EPA Objection

Each Alternative Operating Condition shall contain a provision stating that if the U.S. EPA objects to the Alternative Operating Condition within its 45-day review period or in response to a citizen petition, the Alternative Operating Condition is ineffective to protect the petitioner from U.S. EPA or citizen enforcement under the federal Clean Air Act for any federally enforceable requirement.

(h) Emissions Calculations

For purposes of determining whether or not the amount of excess emissions resulting from an Alternative Operating Condition exceeds the amount of Alternative Operating Condition Credits in the Alternative Operating Condition Credit Bank, as set forth in subparagraph (e)(2)(H) of this rule, the amount of excess emissions resulting from establishment of an Alternative Operating Condition, and the amount of any emission reductions resulting from conditions included in the Alternative Operating Condition, shall be determined in the following manner:

(1) Excess Emissions

Excess emissions from the source that is in violation of an applicable requirement shall be calculated as follows:

(A) calculate calendar monthly mass emissions allowed by the applicable requirement based on the terms of the applicable

requirement and projected activity during the term of the Alternative Operating Condition;

- (B) calculate calendar monthly mass emissions allowed by the Alternative Operating Condition based on any alternative emission limits, operational requirements and other conditions established pursuant to subdivision (g), and projected activity during the term of the Alternative Operating Condition; and
- (C) subtract the calendar monthly mass emissions calculated pursuant to subparagraph (A) from the calendar monthly mass emissions calculated pursuant to subparagraph (B).

(2) Intra-Facility Emission Reductions

A Title V facility may reduce the amount of Alternative Operating Condition Credits it needs to obtain an Alternative Operating Condition by reducing emissions internally from a source other than the source which is in violation of an applicable requirement. The reduction shall meet the following requirements:

- (A) The emission reduction duration shall be contemporaneous with the period during which the Alternative Operating Condition is in effect;
- (B) The emission reduction shall be:
 - (i) *real* (meaning the emission reduction reflects an actual decrease in air emissions);
 - (ii) *quantifiable* (meaning the quantity of emission reductions can be measured by accurate and replicable techniques. These techniques shall be at least as accurate and replicable as the emission testing methods accepted by the U.S. EPA for State Implementation Plan rule purposes);
 - (iii) *permanent* (meaning the emission reduction will exist for the duration of the Alternative Operating Condition);
 - (iv) *enforceable* (meaning that credible and relevant evidence exists throughout the emission reduction duration with which to evaluate compliance with the terms and conditions of the Alternative Operating Condition governing the reduction); and
 - (v) *surplus* (meaning that throughout the duration of the Alternative Operating Condition, the emission reduction: is

not required by any local, state, or federal rule, regulation, law or ordinance; has not been assumed to occur in the Air Quality Management Plan; and no credit has been or shall be taken for the emission reduction under any other program, rule, or regulation).

(vi) The source providing the emission reduction shall be in compliance with all applicable EPA, ARB, and District rules and regulations, except that in the case of a source which performs multiple processes, emission reductions may be provided from a process that is in compliance with all applicable EPA, ARB, and District rules and regulations even if other processes performed by the same source are not in compliance with such requirements.

(C) Reductions of RECLAIM pollutants at RECLAIM facilities shall not be eligible to generate emission reductions.

(D) Intra-facility Emission Reduction Calculation Methodology

The quantity of emission reductions generated by an emission reduction strategy within a facility shall be calculated according to the following formula:

$$IER_{\text{month } i} = [\text{Baseline Emission Rate}_{\text{month } i}] - \text{Post-reduction Emission Rate}_{\text{month } i} \times \text{Activity Level}_{\text{month } i}$$

Where:

$IER_{\text{month } i}$ = Intra-facility Emission Reductions for month i

$\text{Baseline Emission Rate}_{\text{month } i}$ = Baseline emission rate in month i

$\text{Post Reduction Emission Rate}_{\text{month } i}$ = Post Reduction emission rate in month i

$\text{Activity Level}_{\text{month } i}$ = Activity Level of the source in month i

(3) Alternative Operating Condition Credit Bank Balance Determination

(A) The Hearing Board will maintain a record of the balance of emissions in the Alternative Operating Condition Credit Bank on a daily basis.

(B) The amount of emissions that will be debited from the Alternative Operating Condition Credit Bank as a result of an Alternative Operating Condition will be determined by subtracting the emission reduction calculated pursuant to paragraph (2), and the amount of any emission reduction credits temporarily surrendered by the petitioner pursuant to paragraph (5), from excess emissions

calculated pursuant to paragraph (1). Any remaining excess emissions calculated pursuant to this subparagraph shall be subtracted from the balance of the Alternative Operating Condition Credit Bank for the applicable period.

- (4) The petitioner shall notify the Hearing Board within five days after achieving continuous compliance with an applicable requirement for which an Alternative Operating Condition has been issued. Upon notification, the Alternative Operating Condition for that applicable requirement shall expire. Any unused emissions previously allocated to a petitioner will be restored by the Hearing Board to the balance of the Alternative Operating Condition Credit Bank for the same period from which they were originally debited.
- (5) For non-RECLAIM sources, and non-RECLAIM pollutants at RECLAIM sources, the amount of excess emissions calculated pursuant to paragraph (h)(1) may be reduced by the amount of excess emissions credits or offsets approved pursuant to Regulation XIII - New Source Review, which the facility voluntarily relinquishes for the term of the Alternative Operating Condition. Relinquishment of ERCs shall not be deemed to satisfy the requirements of subparagraph (e)(2)(E). Executive Officer will not issue a Permit to Construct which relies upon ERCs relinquished pursuant to this paragraph during the period for which such ERCs have been relinquished. The Executive Officer shall not discount the value of ERCs due to relinquishment pursuant to this paragraph.
 - (i) **Tracking of Alternative Operating Condition Credits**

The District shall use generally accepted accounting principles for the establishment and implementation of a system for tracking, on a daily basis, the balance of the Alternative Operating Condition Credit Bank. The District shall provide for an annual audit of the tracking system. If the audit shows that the District has failed to establish or implement that tracking system described above, issuance of future Alternative Operating Conditions shall be suspended until such tracking system has been established and implemented.
 - (j) **Compliance with Alternative Operating Condition**

Any source that is subject to an Alternative Operating Condition shall comply with such condition at all times during its term. Any violation of a permit term or

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condition implementing an Alternative Operating Condition shall constitute a separate violation of this rule for each day of violation.

(k) Fees

Fees for Alternative Operating Conditions will be assessed pursuant to Regulation III - Fees.

(l) Effective Date of Rule

This rule shall be effective upon approval by the U.S. EPA of Regulation XXX - Title V Permits, under Title V of the Clean Air Act, and U.S. EPA approval into the SIP of this rule.

(m) Notice to U.S. EPA

All notices required by this rule to be sent to EPA shall be sent to the Permits Office Chief, Air Division, U.S. EPA Region 9.