

BOARD MEETING DATE: January 8, 2027

AGENDA NO.

PROPOSAL: Determine That Proposed Amendments to Regulation XXX – Title V Permits, Are Exempt from CEQA; Amend Regulation XXX; and Submit as a Program Revision to the Title V Program

SYNOPSIS: Regulation XXX – Title V Permits establishes provisions for Title V facilities including obtaining a Title V permit and complying with the conditions of the permit. To be consistent with a decision made in 2025 by the U.S. Court of Appeals for the District of Columbia Circuit to reverse U.S. EPA’s 2023 Affirmative Defense Rule, Proposed Amended Regulation XXX will restore the emergency affirmative defense provisions and associated rule references.

COMMITTEE: Stationary Source, November 20, 2026, Pending

RECOMMENDED ACTIONS:

Adopt the attached Resolution:

1. Determining that the proposed amendments to Regulation XXX – Title V Permits, which includes Proposed Amended Rule 3002 – Requirements and Proposed Amended Rule 3004 – Permit Types and Content, are exempt from the requirements of the California Environmental Quality Act;
2. Amending Regulation XXX – Title V Permits, which includes Proposed Amended Rules 3002 and 3004; and
3. Directing staff to submit the proposed amendments to Regulation XXX – Title V Permits, which includes Proposed Amended Rules 3002 and 3004, to CARB and U.S. EPA as a program revision to the Title V program.

Wayne Nastri
Executive Officer

This Board letter serves as the Staff Report for Proposed Amended Regulation XXX – Title V Permits (PAR XXX), which includes Proposed Amended Rule 3002 – Requirements (PAR 3002) and Proposed Amended Rule 3004 – Permit Types and Content (PAR 3004).

Background

Regulation XXX – Title V Permits was adopted in 1993 to encompass the permitting process and requirements established by U.S. EPA in the 1990 amendments to the federal Clean Air Act. Title V facilities are defined as major sources that emit the largest quantities of pollutants in South Coast AQMD as determined by meeting and/or surpassing the applicable emission thresholds of any pollutants in Rule 3001 – Applicability (Rule 3001). Title V facilities are required to operate in compliance with all terms, requirements, and conditions specified in their respective Title V permit at all times. There are approximately 310 facilities in South Coast AQMD with Title V permits.

An affirmative defense can be used to mitigate or prevent emission violation penalties if certain conditions are met. On July 21, 2023, U.S. EPA removed the Title V emergency affirmative defense provisions from the Title V operating permit program regulations (2023 Affirmative Defense Rule). U.S. EPA also required air pollution control agencies to remove emergency affirmative defense provisions from their Title V permit programs. In response, South Coast AQMD, in January 2025, removed the emergency affirmative defense provisions and an associated reference from Rule 3002 – Requirements and removed references in Rule 3004 – Permit Types and Content (Rule 3004).

On September 5, 2025, the U.S. Court of Appeals for the District of Columbia Circuit vacated U.S. EPA’s 2023 Affirmative Defense Rule, concluding that the elimination of the emergency affirmative defense provisions from the Title V operating permit program regulations was not in accordance with law.¹ On June 1, 2026, U.S. EPA finalized a rule rescinding the 2023 Affirmative Defense Rule and restoring the emergency affirmative defense provisions in the federal Title V operating permit program regulations as they were prior to the 2023 Affirmative Defense Rule.² Therefore, South Coast AQMD is proposing to amend Regulation XXX to restore the emergency affirmative defense provisions previously removed from Rule 3002 and the corresponding references in Rule 3002 and Rule 3004.

¹ <https://www.federalregister.gov/documents/2026/06/01/2026-10875/rescission-of-title-v-emergency-affirmative-defense-rule>

² <https://www.federalregister.gov/documents/2026/06/01/2026-10875/rescission-of-title-v-emergency-affirmative-defense-rule>

Public Process

Staff will hold a Public Workshop for PAR XXX, on October 28, 2026.

Proposal

PAR 3002 will restore the emergency affirmative defense provisions and an associated rule reference to be consistent with U.S. EPA's Title V operating permit program regulations. PAR 3002 allows for an emergency to constitute an affirmative defense provided that specific conditions are met, including maintaining contemporaneous records, taking reasonable steps to minimize excess emissions, and complying with applicable breakdown provisions. Title V permits will be updated to restore emergency affirmative defense provisions during regular permit renewal or other permit revision. Existing rule language support documents adopted prior to the 2025 Regulation XXX amendment are applicable for the purposes of interpreting rule language and the intent of the emergency affirmative defense provisions restored through PAR XXX.

PAR 3004 will restore corresponding references to emergency affirmative defense provisions.

Key Issues

Staff is not aware of any key remaining issues.

California Environmental Quality Act (CEQA)

Pursuant to the CEQA Guidelines Sections 15002(k) and 15061, the proposed project (PAR XXX) is exempt from CEQA pursuant to CEQA Guidelines Sections 15061(b)(3), 15308, and 15321. Further, there is no substantial evidence that any of the exceptions, as set forth in CEQA Guidelines Section 15300.2, apply to the proposed project. A Notice of Exemption will be prepared pursuant to CEQA Guidelines Section 15062. 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, and with the State Clearinghouse of the Governor's Office of Land Use and Climate Innovation.

Socioeconomic Impact Assessment

A socioeconomic impact assessment is not required by Health and Safety Code Sections 40440.8 and 40728.5 and has not been prepared because PAR XXX contains administrative changes that will not significantly affect air quality or emission limitations, and thus, will not result in significant socioeconomic impacts.

Comparative Analysis

Health and Safety Code Section 40727.2(g) is applicable to Proposed Amended Regulation XXX. Therefore, a comparative analysis is not required because Proposed Amended Regulation XXX does not impose a new or more stringent emissions limit or

standard, or a new or more stringent monitoring, reporting, or recordkeeping requirement.

AQMP and Legal Mandates

The Health and Safety Code requires the South Coast AQMD 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 Health and Safety Code requires the South Coast AQMD to adopt rules and regulations that carry out the objectives of the AQMP. PAR XXX is not part of any control measure in the 2022 AQMP.

Resource Impacts

Existing staff resources are adequate to implement the recommended actions.

Draft Findings under Health and Safety Code 40727

Before adopting, amending, or repealing a rule, Health and Safety Code Section 40727 requires the South Coast AQMD Governing Board make findings of necessity, authority, clarity, consistency, nonduplication, and reference based on relevant information presented at the Public Hearing, this written analysis, and the rulemaking record. The draft findings are as follows:

Necessity – A need exists to amend Regulation XXX, which includes Proposed Amended Rules 3002 and 3004, to be consistent with a decision made by U.S. Court of Appeals for the District of Columbia Circuit to reverse U.S. EPA’s 2023 Affirmative Defense Rule and to restore emergency affirmative defense provisions.

Authority – The South Coast AQMD Governing Board obtains its authority to adopt, amend, or repeal rules and regulations from Health and Safety Code Sections 39002, 40000, 40001, 40440, 40702, 40725 through 40728, and 41508.

Clarity – The South Coast AQMD Governing Board has determined that PAR XXX, which includes Proposed Amended Rules 3002 and 3004, is written and displayed so that the meaning can be easily understood by persons directly affected by it.

Consistency – The South Coast AQMD Governing Board has determined that PAR XXX, which includes Proposed Amended Rules 3002 and 3004, is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, and federal or state regulations.

Non-Duplication – The South Coast AQMD Governing Board has determined that PAR XXX, which includes Proposed Amended Rules 3002 and 3004, does not impose the same requirements 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 South Coast AQMD.

Reference – In amending Regulation XXX, which includes Proposed Amended Rules 3002 and 3004, the South Coast AQMD Governing Board references the following rule, which the South Coast AQMD hereby implements, interprets, enforces, or makes specific: U.S. Environmental Protection Agency 40 CFR Parts 70 and 71.