



REGION 9

SAN FRANCISCO, CA 94105

Technical Support Document

**Proposed Revisions to the Clean Air Act
Operating Permit Program and the EPA's Final Action**

**South Coast Air Quality Management District
Rule 3001—Title V Permits—Applicability**

EPA Docket EPA-R09-OAR-2022-0916

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1 Introduction

This Technical Support Document (TSD) discusses the U.S. Environmental Protection Agency (EPA) analysis of proposed program revisions adopted by the South Coast Air Quality Management District (SCAQMD or “District”) and submitted by the California Air Resources Board (CARB) as an update to the District’s title V program. This TSD discusses the EPA’s rationale for its final action approving revisions to the title V program as codified in title 40, part 70, Appendix A of the Code of Federal Regulations (CFR).

The Clean Air Act (CAA or “Act”) Amendments of 1990 include title V, which requires states to develop an operating permits program that meets the federal criteria codified in 40 CFR part 70. The title V program requires certain sources of air pollution to obtain federal operating permits from their respective states. These federal operating permits improve enforcement and compliance by consolidating all applicable federal requirements into one federally enforceable document. Before a state can issue permits under 40 CFR part 70 (which are often referred to as “title V permits”), the EPA must approve the state’s program under Appendix A of 40 CFR part 70. All states within EPA Region IX have received initial and final EPA approval, however, states may request revisions to their approved program.

Title V of the CAA applies to “major stationary sources” as defined in part D of title I of the Act. 40 CFR 70.2 bases the definition of “major stationary source” on the nonattainment classification of the area where the source is located. Table 1 of this document shows the attainment/nonattainment/unclassified status for the applicable national ambient air quality standards (NAAQS) within the District’s jurisdictional boundary.

As shown in Table 1, the SCAQMD’s jurisdiction is classified as nonattainment for fine particulate matter with an aerodynamic diameter of less than or equal to 10 micrometers (PM₁₀), fine particulate matter with an aerodynamic diameter of less than or equal to 2.5 micrometers (PM_{2.5}), lead (Pb), and ozone. The SCAQMD’s jurisdiction is comprised of several air basins that have different nonattainment classifications. The District is designated attainment/unclassifiable for nitrogen dioxide (NO₂), carbon monoxide (CO), and sulfur dioxide (SO₂). 40 CFR 81.305.

Table 1—Air Quality Attainment Status

NAAQS Pollutant/Standard	Designation ^a	Classification	Basin/Air Quality Management Area
Annual NO ₂ (1971 Standard)	A/U	---	Los-Angeles-South Coast Air Basin
1-Hour NO ₂ (2010 Standard)	A/U	---	Los Angeles County (part)

NAAQS Pollutant/Standard	Designation^a	Classification	Basin/Air Quality Management Area
1-Hour NO ₂ (2010 Standard)	A/U	---	Orange County
1-Hour NO ₂ (2010 Standard)	A/U	---	Riverside County (part)
1-Hour NO ₂ (2010 Standard)	A/U	---	San Bernadino County (part)
CO (1971 Standard)	A/U	---	Los-Angeles-South Coast Air Basin Area
Pb (2008 Standard)	NA	---	Los Angeles County-South Coast Air Basin
1-Hour SO ₂ (2010 Standard)	A/U	---	South Coast Air Basin
24-Hour PM ₁₀ (1987 Standard)	NA	Serious	Coachella Valley Planning Area
24-Hour PM ₁₀ (1987 Standard)	A/U	---	South Coast Air Basin
Annual PM _{2.5} (1997 Standard)	NA	Moderate	Los-Angeles-South Coast Air Basin
24-Hour PM _{2.5} (1997 Standard)	NA	Moderate	Los-Angeles-South Coast Air Basin
24-Hour PM _{2.5} (2006 Standard)	NA	Serious	Los-Angeles-South Coast Air Basin
Annual PM _{2.5} (2012 Standard)	NA	Serious	Los-Angeles-South Coast Air Basin
1-Hour Ozone (1979 Standard) ^b	NA	Extreme	Los-Angeles-South Coast Air Basin Area
1-Hour Ozone (1979 Standard) ^b	NA	Severe-17	Southeast Desert Modified Air Quality Management Area
8-Hour Ozone (1997 Standard) ^c	NA	Extreme	Riverside County (Coachella Valley)
8-Hour Ozone (1997 Standard) ^c	NA	Extreme	Los-Angeles-South Coast Air Basin
8-Hour Ozone (2008 Standard)	NA	Extreme	Los-Angeles-South Coast Air Basin
8-Hour Ozone (2008 Standard)	NA	Severe-15	Riverside County (Coachella Valley)
8-Hour Ozone (2015 Standard)	NA	Extreme	Los-Angeles-South Coast Air Basin

NAAQS Pollutant/Standard	Designation ^a	Classification	Basin/Air Quality Management Area
8-Hour Ozone (2015 Standard)	NA	Severe-15	Riverside County (Coachella Valley)

^a NA=Nonattainment; A/U=Attainment or Unclassified

^b On August 3, 2005, the EPA revoked the 1979 1-hour ozone NAAQS; however, the EPA is retaining the listing of the designated areas for the revoked 1979 ozone NAAQS in 40 CFR part 81, for the sole purpose of identifying the anti-backsliding requirements that may apply to the areas at the time of revocation. 70 FR 44470 (August 3, 2005).

^c On March 6, 2015, the EPA revoked the 1997 8-hour ozone NAAQS; however, the EPA is retaining the listing of the designated areas for the revoked 1997 ozone NAAQS in 40 CFR part 81, for the sole purpose of identifying the anti-backsliding requirements that may apply to the areas at the time of revocation. 80 FR 12264 (March 6, 2015). On July 10, 2019, the Coachella Valley area was reclassified to Extreme ozone nonattainment for the 1997 ozone NAAQS. See Footnote 9.

The emissions thresholds, above which a title V operating permit is required pursuant to 40 CFR 70.3(a), are shown in Table 2.

Table 2—Title V Emissions Thresholds^a

Nonattainment Area Classification	VOC or NO _x (tpy)	CO (tpy)	PM-10 (tpy)
Marginal	100	100	100
Moderate	100	100	100
Serious	50	50	70
Ozone transport region (other than severe or extreme)	50 (VOC only)	---	---
Severe	25	---	---
Extreme	10	---	---

^a 40 CFR 70.2.

The emissions thresholds for PM_{2.5}, SO₂, and Pb are 100 tons per year (tpy) regardless of attainment classification. For hazardous air pollutants (HAPs), the title V threshold is 10 tpy for any individual HAP and 25 tpy for any combination of HAPs.

2 Title V Program Revision Submittal

Historical Perspective

The SCAQMD received full program approval on November 30, 2001, along with 33 other California agencies.¹ Several environmental and community groups challenged the EPA's final rulemaking, alleging that the full approval was unlawful based, in part, on an exemption in section 42310(e) of the California Health and Safety Code of major agricultural sources from

¹ 66 FR 63503 (December 7, 2001).

title V permitting. The EPA entered into a settlement of this litigation, which required, in part, that we propose to partially withdraw approval of its 34 fully approved title V programs.²

40 CFR 70.10(b) and (c) provide that the EPA may withdraw a 40 CFR part 70 program approval, in whole or in part, whenever the approved program does not comply with the requirements of part 70 and the permitting authority fails to take corrective action. To commence regulatory action to partially withdraw title V program approval, the EPA published a Notice of Deficiency (NOD) in the Federal Register for the 34 California agencies described in the previous paragraph that received full program approval on November 30, 2001.³ Pursuant to 40 CFR 70.10(b)(2), publication of the NOD commenced a 90-day period during which the State of California had to take significant action to assure adequate administration and enforcement of the local agencies' programs. As described in the EPA's NOD, we determined that "significant action" in this instance meant the revision or removal of California Health and Safety Code section 42310(e), so that the local air pollution control districts could adequately administer and enforce the title V permitting program for stationary agricultural sources that are major sources of air pollution. During the 90-day period provided to the State to take the necessary corrective action, the EPA proposed to partially withdraw title V program approval in each of the 34 California districts that had full program approval. Because the State did not take the necessary action to assure adequate administration and enforcement of the title V program within the specified time frame, the EPA took final action, pursuant to our authority under 40 CFR 70.10(b)(2)(i), to partially withdraw approval of the title V programs for the 34 local air districts listed above.⁴

On September 22, 2003, the Governor of California signed Senate Bill 700, which revised State law to remove the agricultural permitting exemption. The legislation eliminated the exemption, which corrected the deficiency we identified in the May 22, 2002 NOD. Consequently, on October 8, 2003, the EPA proposed to approve a revision to the 34 districts' title V programs because California's legislation gave districts the authority to permit all major stationary sources, including those agricultural sources that were formerly exempt from title V under State law.⁵ This change in State law and our receipt of a legal opinion from the California Attorney General confirmed that the elimination of the agricultural permitting exemption from State law provided the 34 districts with authority to issue title V permits for major stationary agricultural sources. The EPA finalized the program revision on November 21, 2003, approving 34 title V programs within the State of California, including the SCAQMD's.⁶ The SCAQMD's title V program has been revised once more since this approval.⁷

² 67 FR 35812 (May 21, 2002).

³ 67 FR 35990 (May 22, 2002).

⁴ 67 FR 63551 (October 15, 2002).

⁵ 68 FR 58055 (October 8, 2003).

⁶ 68 FR 65637 (November 21, 2003).

⁷ 77 FR 54382 (September 5, 2012).

Current Submittal

The SCAQMD title V program rules are contained in its Regulation XXX, “Title V Permits,” which consists of nine rules.

The SCAQMD, through CARB, which is the state agency responsible for submitting title V program revisions to the EPA, submitted the proposed revision listed in Table 3 and described in greater detail in Section 2.1 of this TSD.

Table 3—State Submittal

Rule #	Rule Title	Adopted	Submitted^a
Rule 3001	Applicability	12/4/2020	2/25/2021

^a CARB transmitted the submittal to the EPA by a letter dated February 24, 2021.

2.1 RULE 3001—TITLE V PERMITS—APPLICABILITY

District Rule 3001 establishes pollutant-specific applicability thresholds for its title V permit program based on the attainment status of the air basin in which the facility is located within the SCAQMD. Rule 3001 includes Phase One and Phase Two applicability thresholds. Phase One thresholds are compared against a facility’s reported annual emissions, while Phase Two thresholds are compared to a facility’s potential to emit (PTE). The Phase Two thresholds align with the federal thresholds that trigger title V permitting pursuant to 40 CFR 70.2.

On February 25, 2021, CARB submitted revisions to Rule 3001 that lowered the Phase Two PTE thresholds for volatile organic compounds (VOC) and oxides of nitrogen (NO_x) for the Riverside County portion of the Salton Sea Air Basin⁸ from 25 tpy to 10 tpy. This revision aligns with a recent reclassification for that area from Severe-15 to Extreme for the 1997 8-hour ozone NAAQS.⁹ See Rule 3001, Table 2. This reclassification action did not include the tribal lands located in the Coachella Valley. As a result of the area’s reclassification, a facility newly considered a “major stationary source” (i.e., a facility emitting or having the potential to emit between 10 and 25 tons per year of NO_x or VOC) has one year from the date of the EPA’s approval of the February 25, 2021 revisions to submit a title V application to the District. As of November 2022, there were 327 facilities within the District’s jurisdiction that have a title V

⁸ The area often referred to as the “Coachella Valley” consists of the Riverside County portion of the Salton Sea Air Basin.

⁹ On July 10, 2019, the EPA took final action to approve a request from the State of California to reclassify the Coachella Valley ozone nonattainment area from “Severe-15” to “Extreme” for the 1997 8-hour ozone NAAQS. Though the 1997 ozone NAAQS were revoked with the promulgation of the 2008 ozone NAAQS, the United States Court of Appeals for the District of Columbia Circuit’s decision in *South Coast Air Quality Management District v. EPA*, 882 F.3d 1138 (D.C. Cir. 2018) (“South Coast II”) addressed the EPA’s obligation to reclassify areas for the revoked 1997 ozone NAAQS. The Court held that the EPA is required to continue to reclassify areas that fail to attain by the relevant attainment deadlines because mandatory reclassification under CAA section 181(b)(2) must be retained as an anti-backsliding control after revocation. 84 FR 32841 (July 10, 2019).

permit.¹⁰ In its staff report, the SCAQMD indicated that it anticipates two additional facilities may be affected by the amended rule's lower Title V applicability threshold; however, both affected facilities are working with the District to limit their PTE for both NO_x and VOC to below the 10 tpy threshold.¹¹

The District made two additional revisions to Rule 3001: 1) clarifying the geographic areas for the Phase One and Phase Two facilities in Tables 1 and 2, respectively; and 2) including an applicability cutoff date of December 4, 2020, for Phase One facilities. For a change copy of this rule, see Attachment 1.

Affirmative Defense

On July 21, 2023, the EPA finalized the removal of “emergency” affirmative defense provisions from the EPA’s title V operating permit program regulations.¹² These provisions established an affirmative defense that sources could have asserted in enforcement cases brought for noncompliance with technology-based emission limitations in operating permits, provided that the exceedances occurred due to qualifying emergency circumstances. States with title V programs containing impermissible affirmative defense provisions must submit to the EPA either a program revision, or a request for an extension of time, by August 21, 2024. The District’s title V program contains an emergency affirmative defense provision in Rule 3002(g) of Regulation XXX. Although this does not impact the approvability of Rule 3001, the District should be aware that it will be expected to remove the language from its Regulation XXX, or request for an extension of time, by August 21, 2024.

3 Requirements for Approval of Revisions to Title V Programs

Pursuant to 70.4(i), either the EPA or the state may initiate a title V program revision “when relevant Federal or State statutes or regulations are modified or supplemented.” It is the responsibility of the state to keep the EPA apprised of any proposed modifications to its basic statutory or regulatory authority or procedures. Revision of a state program shall be accomplished as follows:

- a) The state submits a modified program description, Attorney General's statement (if necessary for expanded or additional authority), or other documents as the EPA determines to be necessary. 40 CFR 70.4(i)(2)(i).

¹⁰ A list of active title V facilities in the SCAQMD is available at <http://www.aqmd.gov/home/permits/title-v/title-v-permit-status>.

¹¹ SCAQMD, Final Staff Report, “Proposed Amended Regulation XIII—New Source Review; Proposed Amended Regulation XX—Regional Clean Air Incentives Market; Proposed Amended Regulation XXX—Title V Permits,” dated December 2020, page numbers 3-3 through 3-4.

¹² 88 FR 47029 (July 21, 2023).

- b) After the EPA receives a proposed program revision, it will publish a notice of the proposed change in the Federal Register and provide for a public comment period of at least 30 days. 40 CFR 70.4(i)(2)(ii).
- c) The Administrator shall approve or disapprove program revisions based on the requirements of 40 CFR part 70 and the Act. 40 CFR 70.4(i)(2)(iii).
- d) The EPA must publish a notice of approval in the Federal Register for any substantial program revisions. 40 CFR 70.4(i)(2)(iv).
- e) Approval of nonsubstantial revisions may be given by a letter from the Administrator to the Governor or a designee. 40 CFR 70.4(i)(2)(iv).
- f) A program revision shall become effective upon the approval of the Administrator. 40 CFR 70.4(i)(2)(iv).

4 Evaluation of Title V Program Revision Submittal

Table 2 in Rule 3001 was revised to decrease the title V “major source” emissions thresholds pursuant to 40 CFR 70.2, Definitions, for VOC and NO_x from 25 tpy to 10 tpy for the Riverside County portion of the Salton Sea Air Basin. This decrease in the major source emissions thresholds aligns with the reclassification in nonattainment from Severe to Extreme for this area.¹³ Thus, we find that revised Rule 3001 references the appropriate PTE thresholds for the SCAQMD nonattainment areas. By revising these thresholds, the SCAQMD meets the applicability requirements at 40 CFR 70.3, Applicability, to include all major sources within the District’s jurisdiction.

Additionally, as indicated in Section 2.1, “Rule 3001—Title V Permits—Applicability,” of this TSD, the SCAQMD added a cutoff date to Phase 1 applicability and made clarifying revisions to Tables 1 and 2. These revisions are non-substantive and thus do not affect our approvability determination pursuant to 40 CFR part 70 requirements. We therefore find all the proposed revisions to Rule 3001 approvable as a title V program revision.

5 The EPA’s Proposed Action

As described in Section 4 of this TSD, the EPA finds that the proposed changes to Rule 3001 align with 40 CFR part 70 program elements and are therefore approvable as title V program revisions.

Section 2 of this TSD describes these proposed revisions, which were submitted to the EPA on February 25, 2021. Pursuant to 40 CFR 70.4(i), we are approving the proposed title V revisions

¹³ Id. at footnote 9.

and will update 40 CFR part 70, Appendix A, "Approval Status of State and Local Operating Permits Programs," with this status. We intend to publish a notice of our approval in the Federal Register concurrent with a 30-day public notice of the District's proposed revisions. Our approval of these part 70 revisions is a final action and will become effective upon publication.

Abbreviations and Acronyms

Act	Clean Air Act [42 U.S.C. § 7401, <i>et seq.</i>]
CAA	Clean Air Act [42 U.S.C. § 7401, <i>et seq.</i>]
CARB	California Air Resources Board
CFR	Code of Federal Regulations
CO	carbon monoxide
District	South Coast Air Quality Management District
EPA	United States Environmental Protection Agency
HAP	hazardous air pollutants
NAAQS	national ambient air quality standards
NO ₂	nitrogen dioxide
NOD	Notice of Deficiency
NO _x	oxides of nitrogen
PM ₁₀	fine particulate matter with an aerodynamic diameter of less than or equal to 10 micrometers
PM _{2.5}	fine particulate matter with an aerodynamic diameter of less than or equal to 2.5 micrometers
Pb	lead
PSD	Prevention of Significant Deterioration
PTE	potential to emit
SCAQMD	South Coast Air Quality Management District
SO ₂	sulfur dioxide
tpy	tons per year
TSD	Technical Support Document
VOC	volatile organic compounds

Attachment 1—Change Copy of the SCAQMD Rule 3001

(Adopted October 8, 1993)(Amended August 11, 1995)
 (Amended November 14, 1997)(Amended November 5, 2010)
(Amended December 4, 2020)

RULE 3001. APPLICABILITY

(a) Phase One Title V Permits

Prior to [Date of Adoption], Operators of facilities that have, in 1992 or later, reported annual emissions equal to or greater than any of the threshold amounts shown in Table 1 shall submit initial Title V applications to the Executive Officer and obtain Title V permits in accordance with the timelines specified in Rule 3003 - Applications.

TABLE 1

Emission Threshold Levels for Facilities During Phase One

Based on Actual Reported Emissions in tons per year (tpy) per Facility Location

Pollutant	Actual Reported Emission Threshold Levels Per Facility Location		
	South Coast Air Basin (SOCAB) (tpy)	Riverside County Portion of Salton Sea Air Basin (SSAB) and Los Angeles County Portion of Mojave Desert Air Basin (MDAB) (tpy)	<u>Non-Palo Verde,</u> Riverside County Portion of Mojave Desert Air Basin (MDAB) (tpy)
VOC	8	20	80
NO _x	8	20	80
SO _x	80	80	80
CO	40	80	80
PM-10	56	56	80
Single HAP	8	8	8
Combination of HAPs	20	20	20

(b) Phase Two Title V Permits

(1) Operators of facilities, not subject to the provisions of subdivision (a) of this rule, with the potential to emit any regulated air pollutant at, or greater than,

any of the threshold amounts shown in Table 2 shall submit to the Executive Officer applications for initial Title V permits in accordance with the timelines specified in Rule 3003 - Applications, and obtain Title V permits within five years after the effective date, as defined in paragraph (b)(8) of Rule 3000.

- (2) For the purpose of this subdivision, the potential to emit for a RECLAIM pollutant from a RECLAIM facility is the higher of:
 - (A) the starting allocation plus nontradeable credits; or
 - (B) RECLAIM Trading Credits (RTC) held in the allocation account after any trading.

RTCs held in the certificate account are not part of the allocation.

TABLE 2

Emission Threshold Levels for Facilities During Phase Two

Based on Potential to Emit in tons per year (tpy) per Facility Location

Pollutant	Potential to Emit Emission Threshold Levels Per Facility Location		
	South Coast Air Basin (SOCAB)	Riverside County Portion of Salton Sea Air Basin (SSAB) and Los Angeles County Portion of Mojave Desert Air Basin (MDAB)	<u>Non-Palo Verde,</u> Riverside County Portion of Mojave Desert Air Basin (MDAB)
	(tpy)	(tpy)	(tpy)
VOC	10	25 <u>10</u>	100
NO _x	10	25 <u>10</u>	100
SO _x	100	100	100
CO	50	100	100
PM-10	70	70	100
Single HAP	10	10	10
Combination of HAPs	25	25	25

(c) Additional Facilities Requiring Title V Permits

In addition to subdivisions (a) and (b) of this rule, operators of the following facilities shall submit applications to the Executive Officer to obtain Title V permits

in accordance with the timelines specified in Rule 3003 - Applications, or with federal regulations:

- (1) All new facilities that have a potential to emit any regulated air pollutant at, or greater than, any of the levels specified in Table 2 of subdivision (b) of this rule, and for which applications for permits to construct and permits to operate are deemed complete after March 31, 2000;
- (2) All facilities initially not subject to Title V requirements, that after installation or modification of equipment would have a potential to emit any regulated air pollutant at, or greater than, any of the levels specified in Table 2 of subdivision (b) of this rule, and for which applications for permits to construct or permits to operate are deemed complete after March 31, 2000;
- (3) All "affected sources" as defined under the acid rain provisions of Title IV of the federal Clean Air Act and 40 CFR Part 70, Section 70.2;
- (4) Solid waste incineration units required to obtain a permit pursuant to Section 129(e) of the federal Clean Air Act;
- (5) All facilities subject to a standard, limitation, or other requirement of the New Source Performance Standards in 40 CFR Part 60 or National Emission Standards for Hazardous Air Pollutants in 40 CFR Part 61 or Part 63 that are specifically required by federal regulation to obtain a Title V permit; and,
- (6) All other facilities so designated by the EPA by future amendments to 40 CFR Part 70, Section 70.3.
- (7) All facilities that have obtained a District facility permit with a condition limiting facility emissions for the purpose of being exempt from Title V permit requirements pursuant to paragraph (d)(2) of this rule, and that have reported annual emissions, calculated in accordance with permit terms and conditions under normal operating conditions, equal to or greater than any of the threshold amounts specified in Table 2 of subdivision (b) of this rule.
- (8) On and after January 2, 2011, applicable requirements for greenhouse gases shall be included in Title V permits for any facility that is otherwise required, after that date, to obtain a new, renewed, or revised Title V permit pursuant to subdivision (a) of this rule.
- (9) On and after July 1, 2011, any facility with a potential to emit $\geq 100,000$ tpy CO₂e, on a CO₂e basis (Global Warming Potential applied) and a Potential to Emit GHGs > 100 tpy GHGs on a mass basis (no Global

Warming Potential applied) shall apply for a Title V permit within 180 days after July 1, 2011, unless a Title V permit has already been applied for.

(d) Exemptions

(1) Notwithstanding subdivision (b) of this rule, facilities that would be required to obtain a Title V permit solely because they are subject to one or more of the following regulations are exempt from Title V permit requirements:

(A) 40 CFR Part 60, subpart AAA - Standards of Performance for New Residential Wood Heaters;

(B) 40 CFR Part 61, subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145 - Standard for Demolition and Renovation.

(2) Facilities subject to the requirements of subdivision (a) (b) or (c) of this rule, that demonstrate to the satisfaction of the Executive Officer that the facility's potential to emit has been reduced, either through a facility modification or by accepting an enforceable condition in the District facility permit, to less than the levels for all air contaminants specified in Table 2 of subdivision (a) of this rule, and the PTE is less than 100,000 tpy CO_{2e} GHGs, are exempt from Title V permit requirements.

(e) Phase One Exclusions

(1) Except in the case of an affected source under the acid rain program, an applicant may request, and the Executive Officer may grant an exclusion from subdivision (a) of this rule, Phase One Title V Permits, provided that the facility can demonstrate to the satisfaction of the Executive Officer that:

(A) the most recent, validated, reported emissions are less than the thresholds in subdivision (a); and

(B) a permanent change has occurred at the facility to explain the reduction in reported emissions.

(2) All requests for exclusion shall be in a form specified by the Executive Officer, shall include copies of reported emissions data and are subject to approval by the Executive Officer.