



Eastern Kern

Air Pollution Control District

Gary Ray, Jr.
Air Pollution Control Officer

July 25, 2024

Matthew Lakin, Director
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

SUBJECT: Eastern Kern Air Pollution Control District Extension Request for Removal of the Emergency Affirmative Defense Provisions from Rule 201.1, Permits to Operate for Sources Subject to Title V of the Federal Clean Air Act Amendments of 1990 (1990 FCAA)

Dear Mr. Lakin:

Title V of the Clean Air Act (CAA) requires major sources of air pollutants, and certain other sources, to obtain and operate in compliance with an operating permit (Title V). Historically, a stationary source could use affirmative defense in an enforcement case to avoid liability for noncompliance with technology-based emission limits contained in the Title V permit. This is provided that the exceedances occurred due to qualifying emergency circumstances.

On July 12, 2023, the U.S. Environmental Protection Agency (EPA) removed the emergency affirmative defense provisions from 40 CFR 70.6(g) and 71.6(g) of their Title V regulations (88 FR 47029). These “emergency” provisions have been removed because they are inconsistent with the EPA's interpretation of the enforcement structure of the CAA, considering prior court decisions from the U.S. Court of Appeals for the D.C. Circuit. As a result, air districts must remove emergency affirmative defense provisions from their local Title V rules or request EPA grant an extension to do so by August 21, 2024.

The Eastern Kern Air Pollution Control District (District) last amended Rule 201.1, Permits to Operate for Sources Subject to Title V of the Federal Clean Air Act Amendments of 1990 (1990 FCAA) (Rule 201.1), on September 9, 2022. The rule action package was submitted to CARB on December 19, 2022, requesting it be forwarded to the EPA as a revision to the District's State Implementation Plan (SIP). This amendment was adopted before the EPA removed the emergency affirmative defense provisions from their Title V regulations. Therefore, language and conditions for such provisions were included in the September 9, 2022 amendment.

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The rule amendment process is generally very lengthy. After staff revises a rule, the proposed draft requires multiple stakeholder meetings, public workshops, public and governmental agency review/comment periods, a public hearing, and finally CEQA noticing. The rule amendment process can often take over a year to complete. Rule 201.1 is a major source rule that regulates large facilities with many emissions sources and has historically required a substantial amount stakeholder participation during the rulemaking process.

Therefore, the District requests that the EPA grant an extension to allow sufficient time for Rule 201.1 to go through the formal rulemaking process to remove all emergency affirmative defense provisions. Additionally, the District will make all necessary Title V Permit changes to the individual source operating permits during the ordinary course of business (i.e., during periodic permit renewals or other unrelated permit modifications) and remove emergency affirmative defense provisions from such permits.

Thank you in advance for your cooperation in this matter. If you have any questions or would like to discuss the above item, please contact Jeremiah Cravens, Senior AQS, or myself by telephone at 661-862-5250 or by e-mail at cravensj@kerncounty.com or RayG@kerncounty.com, respectively.

Sincerely,

Gary Ray, Jr.
Air Pollution Control Officer

GR: JC: cb