

**AIR POLLUTION CONTROL DISTRICT
COUNTY OF SAN DIEGO**

**DRAFT PROPOSED AMENDMENTS TO
RULE 24 – TEMPORARY PERMIT TO OPERATE**

WORKSHOP REPORT

A workshop notice on the draft proposed amendments to Rule 24 – Temporary Permit to Operate, was mailed to all permit and registration certificate holders in San Diego County. Notices were also mailed to all economic development corporations and chambers of commerce in San Diego County, the U.S. Environmental Protection Agency (EPA), the California Air Resources Board (ARB), and other interested parties.

The workshop was held on January 20, 2016, and was attended by 22 people. The Air Pollution Control District (District) received oral and written comments before, during, and after the workshop. A summary of the comments and the District's responses to these comments are as follows:

1. WORKSHOP COMMENT

Will the draft proposed rule amendments affect existing permitted backup engine generators that may be replaced, and new engines that may be installed at a future date?

DISTRICT RESPONSE

No, the draft proposed amendments to Rule 24 will not change the District's current permitting requirements or application process for replacement engines or new engines. The draft proposed amendments only affect existing equipment that was installed and operated without prior authorization from the District. The owner or operator of any existing unpermitted equipment will need to submit an application as a new emission unit and will require issuance of an Authority to Construct/Start-Up Authorization prior to the continued operation of such equipment.

2. WORKSHOP COMMENT

Is a facility required to notify the District if an engine part needs replacement?

DISTRICT RESPONSE

District Rule 11(d)(5) – Exemptions from Rule 10 Permit Requirements, specifies the conditions under which a facility may be exempt from permitting requirements for replacement of an engine or an engine component. If the replacement meets the requirements of Rule 11(d)(5), then the owner or operator shall notify the District and provide all necessary information regarding the replacement for District review.

If the replacement does not meet the requirements of Rule 11(d)(5), an owner or operator shall apply for a modification of an existing Permit to Operate prior to the installation and operation of the replacement. See the District's response to Comment No. 3 below regarding the permit application process.

3. WORKSHOP COMMENT

What is the process for applying for an Authority to Construct and Permit to Operate for a new piece of equipment?

DISTRICT RESPONSE

Permit application forms are available on the District's website. The District's general permit application form, the appropriate supplemental application form, any pertinent additional information, and application fee must be submitted to the District. Applications may be submitted via mail, fax, e-mail, or delivered to the District. Applications for coating operations and emergency engines (and, in the future, additional equipment types) may be completed and managed online, with instructions and a link available on the District's website.

When an application is received by the District, it is logged and reviewed for completeness. The District may require additional information from the applicant before the application can be deemed complete. Once the application is deemed complete by the District, the applicant is notified and a final evaluation of the application is commenced. This evaluation includes quantifying the proposed emissions and identifying applicable District rules and how the proposed operation will comply. Additionally, if applicable, the evaluation will include a determination of whether the source complies with Rule 1200, the District's toxics New Source Review rule, and a Health Risk Assessment to determine the health impact the proposed operation may have on the surrounding population.

Upon District approval, an Authority to Construct is issued to the applicant authorizing the installation of equipment. Once the equipment is installed, the applicant submits a Construction Completion Notice to the District notifying that the installation has been completed. The equipment may begin operation after the Construction Completion Notice is submitted, with the Authority to Construct serving as the temporary Permit to Operate until a Start-Up Authorization is issued. If needed, the District may perform an inspection of the equipment prior to issuing a Start-Up Authorization. The final step is the issuance by the District of the Permit to Operate.

4. WORKSHOP COMMENT

The District should add language to draft proposed Subsection (d)(5) to clarify that the 10-day response period to provide additional information to the District starts from the date the applicant receives the request. For large facilities or companies, mail can arrive within three days of being mailed by the District, but be delivered to the appropriate person after a week or more has

elapsed. This can occur especially if the correct mail zone or address is not used. Thus, the timeframe between mailing from the District to receipt by the addressee may exceed the 10-day response period allowed in Subsection (d)(5) of draft proposed amended Rule 24.

DISTRICT RESPONSE

Section (d) – Existing Emission Unit, has been deleted from draft proposed amended Rule 24 at the request of EPA. See EPA Comment No. 9 and the District's response below.

5. WORKSHOP COMMENT

Can an applicant request an extension to the 10-day period in proposed Subsection (d)(5) to submit the requested information to the District?

DISTRICT RESPONSE

See EPA Comment No. 9 and the District's response below.

6. WORKSHOP COMMENT

The District should send an e-mail to the applicant in conjunction with any hard copy mailings.

DISTRICT RESPONSE

The District uses various means to communicate with an applicant, including phone and e-mail. However, official District correspondence is sent via U.S. mail.

7. WORKSHOP COMMENT

If an application is cancelled, will the applicant receive written notification from the District?

DISTRICT RESPONSE

Yes, written notification will be sent from the District to the applicant stating that the application has been cancelled. However, before the application is cancelled, the District will contact the applicant to discuss the status of the application and confirm whether or not the applicant intends to continue with the application process.

8. WORKSHOP COMMENT

Will an existing temporary Permit to Operate for a unit be cancelled once the draft proposed amended Rule 24 is approved by the Board and goes into effect? Currently, a facility has an existing unit with an open application being evaluated by the District, and it may operate with the application serving as a temporary Permit to Operate per the requirements of existing Rule 24, Section (d). However, the unit does not meet the new definition of “existing emission unit” as defined in the draft proposed rule, and seemingly would no longer have temporary authority to operate per the draft proposed rule.

DISTRICT RESPONSE

If a permit application for an existing unit is received by the District prior to the adoption of proposed amended Rule 24, then it will be evaluated per the requirements of existing Rule 24. If a temporary Permit to Operate is then granted for that unit, it will stay in force pursuant to the provisions of existing Rule 24 under which it was granted.

9. EPA COMMENT

The provisions in draft proposed Rule 24, Section (d), are not approvable, and must be removed from Rule 24 prior to submitting the proposed amended rule to EPA for State Implementation Plan (SIP) approval. The proposed Section (d) – Existing Emission Unit, is inconsistent with the Clean Air Act (CAA), and creates confusion regarding enforcement of the requirements of District Rule 10. The proposed Section (d) allows facilities with existing emission units, constructed, erected or installed and operated in San Diego County without first obtaining an Authority to Construct or a Permit to Operate, to submit a substantially complete application, which then serves as a temporary Permit to Operate. In effect, proposed Section (d) provides a variance in the form of a temporary Permit to Operate, without any prior evaluation by the District regarding the sources’ compliance with District regulations or its impact on air quality. In addition, Section 116 of the CAA does not allow variances in federal programs, and does not recognize variances issued by the District. EPA cannot approve a rule into the SIP that would prevent enforcement of another SIP provision through a de facto variance. While EPA retains independent authority to enforce the CAA, proposed Section (d) would prevent EPA and citizen enforcement of the SIP.

DISTRICT RESPONSE

The District agrees and Section (d) – Existing Emission Unit, in draft proposed amended Rule 24 has been deleted in its entirety. Accordingly, proposed amended Rule 24 will be applicable to new, modified, and previously permitted emission units only.

Existing unpermitted equipment requiring a Permit to Operate will consequently be considered as new emission units under the proposed amended rule. In accordance with current District requirements for new equipment, facilities with existing unpermitted equipment will be required

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to apply for and obtain an Authority to Construct/Start-Up Authorization prior to operation of the equipment. The District will work closely with such facilities to complete the application process as expeditiously as possible.

10. ARB COMMENT

ARB had no official comments at this time.

RR:AMO:jl
02/22/16

RULE 24. TEMPORARY PERMIT TO OPERATE

(Adopted ~~and~~ Effective 3/20/96; Rev. Adopted & Effective *(date of adoption)*)

(a) New Emission Unit – A person shall provide written notification to the Air Pollution Control Officer that construction is complete in accordance with ~~the~~ a currently valid Authority to Construct before operating a new emission unit ~~that has been granted a currently valid Authority to Construct~~. Upon such notification, the Authority to Construct shall serve as a temporary Permit to Operate the emission unit and the emission unit shall be operated in accordance with the conditions specified in the Authority to Construct. This temporary Permit to Operate shall be valid until the emission unit is inspected by the Air Pollution Control Officer and a revised temporary Permit to Operate is issued or a Permit to Operate is granted or denied. If the Air Pollution Control Officer determines that construction has not been completed in accordance with the Authority to Construct and the emission unit has been operated under a temporary Permit to Operate, the Air Pollution Control Officer may grant a reasonable period of time for the construction to be completed in accordance with the Authority to Construct before acting on the application for a Permit to Operate. If, at the end of such reasonable period of time, the Air Pollution Control Officer determines that construction is not in accordance with the Authority to Construct, the Air Pollution Control Officer shall deny the Permit to Operate. If the Air Pollution Control Officer cancels the application for a Permit to Operate or denies the Permit to Operate, the Authority to Construct shall no longer serve as a temporary Permit to Operate. For the purpose of this section, a new emission unit is defined as an emission unit not previously authorized by the District to operate in San Diego County ~~not previously authorized by the District to operate in San Diego County and for which a currently valid Authority to Construct has been issued that is not a modified emission unit or an existing a previously permitted emission unit as described in Sections (b) and (c) below.~~ Emission units which were installed without a valid Authority to Construct may be operated only upon issuance of a valid Authority to Construct/Startup Authorization.

(b) Modified Emission Unit – A person shall provide written notification to the Air Pollution Control Officer that an emission unit having a valid Permit to Operate has been modified in accordance with the Authority to Construct granted for such modification before operating such modified emission unit. Upon such notification, the Authority to Construct

granted to modify the emission unit shall serve as a temporary Permit to Operate the emission unit and the emission unit shall be operated in accordance with the conditions specified in the Authority to Construct and Permit to Operate unless the Authority to Construct conditions modify the Permit to Operate conditions in which case the Authority to Construct conditions shall take precedence. This temporary Permit to Operate shall be valid until the emission unit is inspected by the Air Pollution Control Officer and a revised temporary Permit to Operate is issued or until a modified Permit to Operate is granted or denied. If the Air Pollution Control Officer determines that the modification has not been completed in accordance with the Authority to Construct and the emission unit has been operated under a temporary Permit to Operate, the Air Pollution Control Officer may grant a reasonable period of time for the construction to be completed in accordance with the Authority to Construct before acting on the application for a Permit to Operate. If, at the end of such reasonable period of time the Air Pollution Control Officer determines that construction is not in accordance with the Authority to Construct, the Air Pollution Control Officer shall deny the modified Permit to Operate. If the Air Pollution Control Officer cancels the application for a Permit to Operate or denies the modified Permit to Operate, the Authority to Construct shall no longer serve as a temporary Permit to Operate. In such event, the owner or operator may return the emission unit to its premodified condition and operate the emission unit under the Permit to Operate that existed prior to the modification. This provision shall not apply if the modification was intended, in whole or in part, to bring the equipment into compliance with these Rules and Regulations and to return the emission unit to its pre-modified condition would result in a violation of these Rules and Regulations.

(c) Previously Permitted Emission Unit Requiring a New Permit – When a substantially complete application (including applicable fees and supplemental information forms) for a Permit to Operate is filed for an existing emission unit that had a valid Permit to Operate within the previous 18 months and the ownership of such emission unit has not been transferred to another person, the application shall serve as a temporary Permit to Operate the equipment. Such temporary Permit to Operate shall not be applicable to an emission unit that is a portable emission unit, as defined in Rule 20.1, or to an emission unit that has been relocated to a different stationary source or that has been altered or modified since a Permit to Operate was previously held. This temporary Permit to Operate shall be valid until the emission unit is inspected by the Air Pollution Control Officer and a revised temporary Permit to Operate is issued or until the Permit to Operate is granted or denied. Operation of such existing emission unit under a temporary Permit to Operate shall not be contrary to the conditions specified in the previous Permit to Operate. Operation of such emission unit shall be in compliance with all applicable provisions of these Rules and Regulations. Where operation of an existing emission unit under a previously valid Permit to Operate, pursuant to this section, would result in a violation of an applicable provision of these Rules and Regulations, compliance with these Rules and Regulations shall take precedence. If the Air Pollution Control Officer cancels the application for a Permit to Operate or denies the Permit to Operate, the application shall no longer serve as a temporary Permit to Operate.

~~(d) Existing Emission Unit~~

~~(1) For the purpose of this Section, an existing emission unit is defined as:~~

~~(i) An emission unit for which a Permit to Operate is required solely due to a change in Rule 11; or~~

~~(ii) An emission unit which was constructed, erected or installed, and operated in San Diego County prior to (3 years prior to the date of adoption), and for which a valid Authority to Construct or Permit to Operate has never been issued; and~~

~~(iii) An emission unit that is not located within 1,000 feet from the outer boundary of a school (K through 12 inclusive), with the distance measuring from the property line where the emission unit is located to the property line of the school; and~~

~~(iv) An emission unit that does not require public notice prior to issuance of an Authority to Construct.~~

~~(2) The owner or operator of an existing emission unit shall file a substantially complete application, including but not limited to, the applicable fees and supplemental information forms, for an Authority to Construct and Permit to Operate.~~

~~(3) The substantially complete application shall serve as a temporary Permit to Operate for the emission unit for no longer than 60 days or until the application is deemed complete (in accordance with the requirements of Rules 14, 18(a) and 40) in writing by the District, whichever comes first.~~

~~(4) Except as provided in Section (e), once the application is deemed complete, the application shall continue to serve as a temporary Permit to Operate for the emission unit until an Authority to Construct, Startup Authorization or Permit to Operate is issued, or the application is denied or cancelled.~~

~~(5) If additional information is required after the application is deemed complete, the applicant shall submit the information within 10 calendar days, or such other time frame as approved by the Air Pollution Control Officer. If the requested information is not submitted within that time period, the application shall be cancelled by the District.~~

~~(6) Submission of an application for an Authority to Construct and Permit to Operate for an existing emission unit does not preclude the District from taking enforcement action against a stationary source for noncompliance with Rule 10(a) and 10(b). With the exception of Rule 10(a) and 10(b), operation of the existing emission unit shall be in compliance with all applicable provisions of these Rules and Regulations.~~

—When a substantially complete application (including the applicable fees and supplemental information forms) for an Authority to Construct and Permit to Operate is filed for an existing emission unit, the application shall serve as a temporary Permit to Operate the emission unit. Such temporary Permit to Operate shall not be applicable to an emission unit that is a portable emission unit, as defined in Rule 20.1 nor to any emission unit constructed, erected or installed within 1,000 feet from the outer boundary of a school (K through 12

~~inclusive) and subject to the public notification requirements of Section 42301.6 of the Health and Safety Code. This temporary Permit to Operate shall be valid until the Authority to Construct is granted or denied. If the Authority to Construct is denied, the application shall no longer serve as the temporary Permit to Operate. If the Authority to Construct is granted it shall serve as the temporary Permit to Operate and operation of the emission unit shall be in accordance with the conditions specified in the Authority to Construct. The temporary Permit to Operate will remain valid until the emission unit is inspected by the Air Pollution Control Officer and a revised temporary Permit to Operate is issued or the Permit to Operate is granted or denied. Operation of such emission unit shall be in compliance with all applicable provisions of these Rules and Regulations. If the Air Pollution Control Officer cancels the application for a Permit to Operate or denies the Permit to Operate, the application or Authority to Construct, whichever is in effect at the time, shall no longer serve as a temporary Permit to Operate. This section shall not apply to new or modified major stationary sources as defined in Rule 20.1 of these Rules and Regulations. For the purpose of this section, existing emission unit is defined as an emission unit which has been constructed, erected or installed in San Diego County and for which a currently valid Authority to Construct has not been issued.~~

(~~e~~d) Withdrawal of Temporary Permit to Operate - Except as provided in Sections (a) and (b) above allowing the granting of a reasonable period of time for construction to be completed in accordance with the Authority to Construct before acting on the application for a Permit to Operate, the Air Pollution Control Officer shall modify or withdraw, in writing, the temporary Permit to Operate if the Air Pollution Control Officer determines that operation of the emission unit under a temporary Permit to Operate ~~is~~ may be expected to be in violation of any condition of the temporary Permit to Operate or an applicable provision of these Rules and Regulations.