



# REMOVAL OF TITLE V EMERGENCY AFFIRMATIVE DEFENSE PROVISIONS

Air Quality Control Advisory Council  
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# Background

- Title V of the Clean Air Act requires major sources of air pollutants to obtain and operate in compliance with an operating permit.
- EPA first promulgated the emergency affirmative defense provisions when it finalized its title V regulations for state operating permit programs in 1992 and in the regulations for the federal operating permit program in 1996.
- 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.

# EPA Repeals Affirmative Defense Rule

- On July 21, 2023, EPA published a final rule repealing the affirmative defense provisions.
- The affirmative defense provisions are being removed because they are inconsistent with EPA's interpretation of the enforcement structure of the Clean Air Act in light of prior court decisions from the D.C. Circuit.
- It is necessary for states whose Title V (part 70) programs contain impermissible affirmative defense provisions to submit program revisions to EPA to remove such provisions from their EPA-approved part 70 programs.

Questions?

