

## RULE 518.2

### Federal Alternative Operating Conditions

(a) Purpose

This rule establishes procedures by which a Title V facility, as defined in subdivision (b) of Rule 3000 - General, obtaining a variance from the District Hearing Board may obtain approval of an Alternative Operating Condition (AOC) that would be recognized by the United States Environmental Protection Agency (USEPA). Hearing Board approval of an AOC pursuant to the requirements of this rule would shield the petitioner from enforcement pursuant to the federal Clean Air Act of otherwise-applicable requirements specifically addressed by the AOC.

(b) Definitions

- (1) ALTERNATIVE OPERATING CONDITION (AOC) means an order established by the Hearing Board pursuant to subdivision (e) of this rule which authorizes a source to be operated in a specified manner which would otherwise not comply with an applicable requirement of the State Implementation Plan (SIP) or a permit term or condition based on any such applicable requirement.
- (2) APPLICABLE REQUIREMENTS means all requirements listed in paragraph(c)(1).
- (3) EXCESS EMISSIONS means the amount of emissions from a source, stated in pounds per month, which exceeds the amount of emissions that would be allowed if the source were operated in compliance with an applicable requirement, calculated pursuant to paragraph (h)(1) of this rule.
- (4) FACILITY means any permit unit or source, or grouping of permit units or sources, or other air contaminant-emitting activities which are located on one or more contiguous properties within the District, in actual physical contact or separated solely by a public roadway or other public right-of-way, and are owned or operated by the same person (or by persons under common control), or an outer continental shelf (OCS) source as defined in 40 CFR 55.2. Such above-described groupings, if on noncontiguous properties, but connected only by land carrying a pipeline, shall not be considered one facility. Equipment or installations involved in crude oil and gas production in Southern California coastal or OCS waters, and transport of such crude oil and gas in Southern California coastal or OCS waters, shall be included in the same facility which is under the same ownership or use entitlement as the crude oil and gas facility on shore.
- (5) SOURCE means any discrete operation, unit or pollutant-emitting activity at a facility.

- (6) TITLE V FACILITY means any facility that meets the criteria set forth in subdivision (a), (b) or (c) of Rule 3001 - Applicability.

(c) Applicability

- (1) This rule authorizes the District Hearing Board to establish Alternative Operating Conditions (AOC) for Title V facilities. AOCs may be established for the following statute and District rules and regulations, and for federally-enforceable permit terms and conditions that are based on such statute, rules and regulations:

- (A) Health & Safety Code (H&S Code) §41701;
- (B) Rules 202, 203, 217, 218 and 221;
- (C) Regulation IV, except Rules 402 and 430;
- (D) Regulation VII;
- (E) Regulation XI;
- (F) Regulation XV; and
- (G) Regulation XX, except-
  - (i) any provisions which require Permits to Construct or which set forth requirements for Permits to Construct,
  - (ii) missing data provisions of Appendix A, Chapter 2 of Rule 2011 - Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO<sub>x</sub>) Emissions, and Appendix A, Chapter 2 of Rule 2012 - Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO<sub>x</sub>) Emissions, and
  - (iii) subdivisions (b) and (d) of Rule 2004 - Requirements, and any permit conditions which state annual Allocations.

- (2) No AOC shall be granted from any federally promulgated rule, regulation or permit condition, including but not limited to the following:

- (A) the requirement to apply for and obtain an operating permit under Rule 3002 - Requirements, or an authority to construct;
- (B) any requirement of NSPS, NESHAP or other standard promulgated by the USEPA under 42 U.S.C. §7411 and 7412 (Federal Clean Air Act §111 or §112 );
- (C) any standard promulgated by the USEPA under Title IV or Title VI of the Clean Air Act; or
- (D) any requirement contained in a permit issued by the USEPA.

- (3) No AOC shall be granted from any rule or provision for which a variance is not allowed under Rule 504 - Rules for Which Variances Are Not Allowed.

(d) **Modification of Applicable Requirements**

A source shall not be subject to a provision of an applicable requirement specified in paragraph (c)(1) of this rule if the source is subject to an AOC established for such provision. During its term, an AOC shall constitute a revision to the facility's Title V permit for the source.

(e) **Establishment of Alternative Operating Conditions**

- (1) AOCs may be established only by the District Hearing Board upon petition relating to a specified source.
- (2) A petitioner shall not receive an AOC unless all of the following circumstances exist:
  - (A) the petitioner is or will be in violation of any applicable requirement(s) listed in paragraph (c)(1) of this rule;
  - (B) due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either (1) an arbitrary or unreasonable taking of property or (2) the practical closing and elimination of a lawful business. In making those findings pursuant to paragraph (4) where the petitioner is a public agency, the Hearing Board shall consider whether or not requiring immediate compliance would impose an unreasonable burden upon an essential public service. For purposes of this subparagraph, "essential public service" means a prison, detention facility, police or fire-fighting facility, school, health care facility, landfill gas control or processing facility, sewage treatment works, or water delivery operation, if owned and operated by a public agency;
  - (C) the closing or taking would be without a corresponding benefit in reducing air contaminants;
  - (D) the petitioner for the AOC has given consideration to curtailing operations of the source in lieu of obtaining an AOC;
  - (E) during the period the AOC is in effect, the petitioner will reduce excess emissions to the maximum extent feasible;
  - (F) during the period the AOC is in effect, the petitioner will monitor or otherwise quantify emission levels from the source, and report these emission levels to the District pursuant to a schedule established by the District;

- (G) the AOC will not result in noncompliance with the requirements of any NSPS, NESHAP or other standard promulgated by the USEPA under 42 U.S.C. §§7411 and 7412 (Federal Clean Air Act §111 or §112 ), or any standard or requirement promulgated by the USEPA under Titles IV or VI of the Clean Air Act, or any requirement contained in a permit issued by the USEPA, or other requirement contained in paragraph (c)(2); and
  - (H) any emissions (calculated pursuant to subparagraph (h)(3)(B) of this rule) resulting from the AOC will not, in conjunction with emissions (calculated pursuant to subparagraph (h)(3)(B)) resulting from all other AOCs established by the Hearing Board and in effect at the time, cause an exceedance of the monthly or annual SIP Allowance established pursuant to subdivision (i) of this rule.
- (3) The Hearing Board shall not establish an AOC unless the Board establishes, as part of the AOC, enforceable alternative emission limits, operational requirements, and/or monitoring and record keeping provisions, as set forth in subdivision (g).
  - (4) The Hearing Board shall not establish an AOC unless it makes findings that the circumstances described in paragraph (e)(2) exist. The findings shall be based on evidence in the record of a public hearing which is noticed and conducted in compliance with H&S Code §§40820-40865, except in the case of an AOC established by the Board or a single member thereof under circumstances specified in H&S Code §42359 or §42359.5. An AOC established by the Board under circumstances specified in H&S Code §42359 shall be based on evidence in the record of a public hearing which is conducted pursuant to H&S Code §§40820, 40822, and 40828-40865. An AOC established by a single Board member under circumstances specified in H&S Code §42359.5 shall be based on evidence presented in the form of a petition and declaration signed under penalty of perjury, and may be supplemented by sworn oral testimony.
  - (5) The Hearing Board may deny a petition for an AOC if excess emissions resulting from operation of a source pursuant to the AOC would, by themselves, cause an exceedance of a National Ambient Air Quality Standard. The burden of proof on this issue, should it arise, shall be upon the APCO.
- (f) USEPA Objection; Effective Date of Alternative Operating Condition
- (1) Each AOC shall be subject to review for forty five (45) days by the public, any affected state, and the USEPA. The review period may commence prior to approval of the AOC by the Hearing Board and, in such event, will satisfy this subdivision if the terms of the AOC approved by the Hearing Board do not significantly deviate from the proposed terms which were made available to the public, affected states, and the USEPA.

- (2) If the terms of the AOC approved by the Hearing Board significantly deviate from proposed terms released for review, the approved terms must be subjected to the notice requirements of paragraphs (f)(3) and (f)(4) and the process requirements of paragraph (f)(5).
- (3) The forty-five (45) day review period shall commence upon the USEPA's receipt of the following information:
  - (A) a copy of the proposed or issued AOC;
  - (B) information sufficient to support the findings set forth in subdivision (e); and
  - (C) the name of any affected state as defined in subdivision (b) of Rule 3000 - General.
- (4) Notification to the public and affected states shall commence upon the date of notice as specified in Rule 3006 - Public Participation, including publication in a daily newspaper of general circulation.
- (5) If USEPA objects to the AOC in writing within the forty-five (45) day review period, in the manner set forth in paragraph (k)(1) of Rule 3003 - Applications--
  - (A) the District shall notify the petitioner of USEPA's objection; and
  - (B) the AOC shall be ineffective unless the Hearing Board adopts and submits to USEPA a revised AOC which conforms to such objection or USEPA issues a written rescission to its objection.
- (6) If the USEPA does not object to the AOC, it shall become operative, effective as of the date of issuance by the Hearing Board, subject to the provisions of subdivision (l) of Rule 3003 - Applications. The effective date shall be the date of filing the petition with the Hearing Board if the Board determines that excess emissions during the period between the filing of the petition and the issuance of the AOC by the Hearing Board are quantifiable and that all circumstances specified in paragraph (e)(2) existed during this period.

(g) **Content of Alternative Operating Conditions**

Each AOC shall contain the following provisions, as applicable:

(1) **Emission Limits**

If an AOC allows emissions that are greater than an emission limit in an applicable requirement, the Hearing Board shall establish an enforceable alternative emission limit which requires the source to reduce excess emissions to the maximum extent feasible. The Hearing Board may establish an alternative emission limit for any source located at the facility which creates emissions of the subject pollutant that may feasibly be reduced.

(2) Operational Requirements

If an AOC allows deviation from an applicable operational requirement which is designed to limit or minimize emissions, the Hearing Board shall establish an enforceable alternative operational requirement or emission limit which requires the source to operate in a manner that reduces excess emissions to the maximum extent feasible. The Hearing Board may establish an alternative operational requirement or emission limit for any source located at the facility which creates emissions of the subject pollutant that may feasibly be reduced.

(3) Monitoring, Recordkeeping, and Reporting Requirements

If the AOC allows deviation from an applicable emissions monitoring, recordkeeping or reporting requirement, the Hearing Board shall establish an enforceable alternative requirement which, to the extent feasible:

- (A) mandates quantification, recordkeeping, and reporting of emissions as accurately, expeditiously, and verifiably as the applicable requirement,
- (B) complies with the requirements of paragraph (a)(4) of Rule 3004 - Permit Type and Content, and
- (C) for RECLAIM sources, complies with the RECLAIM protocols for monitoring, recordkeeping, and reporting.

(4) Conditions

The Hearing Board shall impose conditions, other than those imposed by applicable requirements, which are necessary to ensure quantifiability of emissions increases, and any decreases, resulting from the AOC.

(5) Stringency

Any alternative requirement or other condition imposed pursuant to this subdivision shall not be more stringent than an applicable requirement, except when consented to by the petitioner for purposes of excess emissions mitigation.

(6) Term

Each AOC established by the Hearing Board shall include a term during which the AOC shall be in effect. The term shall be determined in accordance with H&S Code §§42352 and 42358. Upon termination of the AOC, the source shall comply with all applicable requirements and the preexisting permit term(s) shall have full force and effect.

(7) USEPA Objection

Each AOC shall contain a provision stating that if the USEPA objects to the AOC within forty-five (45) days, the AOC is ineffective to protect the petitioner from USEPA or citizen enforcement under the federal Clean Air Act for any federally enforceable requirement.

(h) Emissions Calculations

For purposes of determining whether or not the SIP Allowance is exceeded, as set forth in subparagraph (e)(2)(H) of this rule, the amount of excess emissions resulting from establishment of an AOC, and the amount of any emission reductions resulting from conditions included in the AOC, shall be determined in the following manner:

(1) Excess Emissions

Excess emissions from the source which is or will be in violation of an applicable requirement shall be calculated as follows:

- (A) calculate calendar monthly mass emissions allowed by the applicable requirement based on the terms of the applicable requirement and projected activity during the term of the AOC;
- (B) calculate calendar monthly mass emissions allowed by the AOC based on any alternative emission limits, operational requirements and other conditions established pursuant to subdivision (g), and projected activity during the term of the AOC; and
- (C) subtract the calendar monthly mass emissions calculated pursuant to subparagraph (A) from the calendar monthly mass emissions calculated pursuant to subparagraph(B).

(2) Emission Reduction

The amount of emission reduction from a source other than the source which is or will be in violation of an applicable requirement, shall be calculated as follows:

- (A) (i) calculate the sum of actual emissions from the source, as determined from emission fee reports filed pursuant to Rule 301 - Permit Fees, or other credible evidence provided by the petitioner and approved by the Hearing Board, whichever is less, which have occurred during the highest three of the last five (5) years immediately preceding the date of petition, or other appropriate period approved by the Hearing Board if the source had not operated consistently during the preceding five (5) years; and
- (ii) calculate the monthly mass emissions for the three (3) years or other appropriate period by dividing the sum of actual emissions calculated pursuant to clause (i) by thirty-six (36) or by the number

of months in the other appropriate period approved pursuant to clause(i);

- (B) calculate the calendar monthly mass emissions allowed by the AOC based on any alternative emissions limits, operational requirements and other conditions established pursuant to subdivision (g) and projected activity during the term of the AOC; and
  - (C) subtract the calendar monthly mass emissions determined pursuant to subparagraph (B) from the monthly mass emissions calculated pursuant to subparagraph (A).
- (3) SIP Allowance Balance Determination
- (A) The Hearing Board will maintain a record of the balance of emissions in the SIP Allowance for each calendar month.
  - (B) The amount of emissions that will be debited as a result of an AOC will be determined by subtracting the emission reduction calculated pursuant to paragraph (2), and the amount of any emission reduction credits temporarily surrendered by the petitioner pursuant to paragraph (5), from excess emissions calculated pursuant to paragraph (1). Emissions calculated pursuant to this subparagraph shall be subtracted from the monthly and annual SIP Allowance balance for the applicable period.
- (4) The petitioner shall notify the Hearing Board within five (5) days after achieving continuous compliance with an applicable requirement for which an AOC has been issued. Upon notification, the AOC for that applicable requirement shall expire. Any unused emissions previously allocated to a petitioner will be restored by the Hearing Board to the SIP Allowance balance for the same period from which they were originally debited.
- (5) For non-RECLAIM sources, and non-RECLAIM pollutants at RECLAIM sources, the amount of excess emissions calculated pursuant to paragraph (h)(1) may be reduced by the amount of emission reduction credits or offsets approved pursuant to Regulation XIII - New Source Review, which the facility voluntarily relinquishes for the term of the AOC. Relinquishment of ERCs shall not be deemed to satisfy the requirements of subparagraph (e)(2)(E). APCO will not issue a Permit to Construct which relies upon ERCs relinquished pursuant to this paragraph during the period for which such ERCs have been relinquished. The APCO shall not discount the value of ERCs due to relinquishment pursuant to this paragraph.
- (6) An AOC applicable to RECLAIM pollutants emitted by a RECLAIM source shall be deemed to not result in any excess emissions for purposes of this subdivision. This paragraph does not relieve a RECLAIM facility of any obligation pursuant to Regulation XX - RECLAIM.



(i) SIP Allowance

The monthly and annual SIP Allowance for each air contaminant shall be the following amounts:

Air Contaminant	Maximum Annual Allowance Lb.	Maximum Monthly Allowance Lb.
VOC	197,000	34,000
NO <sub>x</sub>	7,000	650
PM <sub>10</sub>	28,000	7,000
SO <sub>x</sub>	4,200	350
CO	19,000	1,200

(j) Compliance with Alternative Operating Condition

Any source which is subject to an AOC shall comply with such condition at all times during its term. Any violation of a permit term or condition implementing an AOC shall constitute a separate violation of this rule for each day of violation.

(k) Fees

Fees for AOCs will be assessed pursuant to Regulation III - Fees.

(l) Effective Date of Rule

This rule shall be effective upon approval by the USEPA of Regulation XXX - Title V Permits, under Title V of the Clean Air Act, and USEPA approval into the SIP of this rule and a revision to the SIP establishing SIP Allowance for AOCs.

[SIP: Not SIP. See AV Full SIP Table at <https://avaqmd.ca.gov/rules-plans>]

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