

## DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF PROPOSED RULEMAKING**Removal of Clean Air Act Title V Emergency Affirmative Defense Provisions**

The Director of the Department of Energy and Environment (“Department”), in accordance with the authority set forth in the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code 8-151.01 *et seq.*); the District of Columbia Air Pollution Control Act of 1984, effective March 15, 1985 (D.C. Law 5-165; D.C. Official Code § 8-101.01 *et seq.*); Mayor’s Order 2006-61, dated June 14, 2006; and Mayor’s Order 2018-044, dated May 2, 2018, hereby gives notice of his intent to adopt the following amendments to Chapter 3 (Air Quality - Operating Permits and Acid Rain Programs) of Title 20 (Environment) of the District of Columbia Municipal Regulations (“DCMR”) in not less than thirty (30) days after the date of publication of this notice in the *District of Columbia Register*.

Through this rulemaking, the Department proposes to repeal Subsection 302.7 and amend Subsection 302.1 of 20 DCMR § 302 (Permit Content). The Department also proposes to amend Chapter 3 to correct a grammatical error in subparagraph 302.1(a)(2) and citation error in paragraph 303.8(c).

In 1993, the District adopted the emergency affirmative defense provisions in Section 302 when it adopted the Clean Air Act Title V State Operating Program. On July 21, 2023, the United States Environmental Protection Agency (“EPA”) finalized a rulemaking entitled “*Removal of Title V Emergency Affirmative Defense Provisions from State Operating Permit Programs and Federal Operating Permit Program*”, which removed all emergency affirmative defense provisions from the CAA Title V program. 88 Fed. Reg. 47029 (July 21, 2023). The Department must now remove all emergency affirmative defense provisions in order to properly implement the CAA as delegated to the District under 40 CFR § 60.4(b)(10). In the cited Federal Register notice, the EPA provided guidance to states on the implementation and revision process to remove Clean Air Act Title V emergency affirmative defense provisions from state operating permit programs. This proposed rulemaking seeks to implement that guidance.

**Summary of Proposed Changes**

The following changes are being proposed to 20 DCMR §§ 302 and 303.

- Amend subparagraph 302.1(a)(2) to correct a grammatical error;
- Amend subparagraph 302.1(c)(3)(C)(i) to remove the language pertaining to emergency affirmative defenses;
- Repeal Subsection 302.7 to remove the language pertaining to emergency affirmative defenses; and
- Amend paragraph 303.8(c) to correct a citation error.

**Chapter 3, AIR QUALITY - OPERATING PERMITS AND ACID RAIN PROGRAMS, of Title 20 DCMR, ENVIRONMENT, is amended as follows:**

**Section 302, PERMIT CONTENT, is amended as follows:**

**Subparagraph (a)(2) of Subsection 302.1 is amended to read as follows:**

- (2) When an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by the Administrator; and

**Subparagraph (c)(3)(C)(i) of Subsection 302.1 is amended to read as follows:**

- (i) Any deviation resulting from an emergency as defined in § 399.1 shall be reported within two (2) working days of the date on which the permittee first becomes aware of the deviation;

**Subsection 302.7 is repealed and replaced with the following:**

302.7 [RESERVED]

**Section 303, PERMIT ISSUANCE, RENEWAL, REOPENINGS, AND REVISIONS, is amended as follows:**

**Paragraph (c) of Subsection 303.8 is amended to read as follows:**

- (c) Within thirty (30) days following receipt of the notice for permit revocation, the permittee may submit written comments concerning the proposed revocation and may request a hearing pursuant to § 107;

Parties wishing to provide comments on this proposed rulemaking must submit their comments in writing within thirty (30) days after publication of this notice in the *District of Columbia Register* to Mr. Joseph Jakuta by email at [AirQuality.Planning@dc.gov](mailto:AirQuality.Planning@dc.gov) or by mail or hand delivery to the following address:

DOEE Air Quality Division  
ATTN: Joseph Jakuta: Affirmative Defense Removal  
1200 First Street NE, Fifth Floor  
Washington, DC 20002

DOEE requests that each comment include the name, address, telephone number, and affiliation (if any) of the commenter.