

RHODE ISLAND GOVERNMENT REGISTER
PUBLIC NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Title of Rule: Air Pollution Control Regulation No. 29 - Operating Permits

Rule Identifier: 250-RICR-120-05-29

Rulemaking Action: Proposed Amendment

Important Dates:

Date of Public Notice: December 1, 2023

End of Public Comment: January 3, 2024

Rulemaking Authority:

R.I. Gen. Laws § 42-17.1-2(19)

R.I. Gen. Laws Chapter 23-23

R.I. Gen. Laws Chapter 42-35

Summary of Rulemaking Action:

250-RICR-120-05-29 (Part 29) specifies operating permit requirements for major stationary sources. RIDEM OAR is proposing to remove §29.10(K) which currently allows sources to exceed permitted emissions levels during an emergency.

Additional Information and Public Comments:

All interested parties are invited to request additional information or submit written or oral comments concerning the proposed amendment until January 3, 2024 by contacting the appropriate party at the address listed below:

David DeSesto
Department of Environmental Management
Office of Air Resources
235 Promenade St
Providence, RI 02908
DEM.AirRegComments@dem.ri.gov

In accordance with R.I. Gen. Laws § 42-35-2.8, an oral hearing will be granted if requested by twenty-five (25) persons, by a governmental agency or by an association having at least twenty-five (25) members. A request for an oral hearing must be made within ten (10) days of the publication of this notice.

Regulatory Analysis Summary and Supporting Documentation:

On July 12, 2023 the Environmental Protection Agency (EPA) finalized the removal of the “emergency” affirmative defense provisions from the EPA’s title V operating permit program regulations. These provisions allowed sources to avoid liability in enforcement proceedings by demonstrating that violations of certain emissions limitations in a title V permit were caused by an “emergency” situation. The title V affirmative defense provisions are inconsistent with EPA’s interpretation of the Clean Air Act’s enforcement structure, following the 2014 D.C. Circuit’s *NRDC v. EPA* (749 F.3d 1055) decision, and are considered a violation of the Clean Air Act. This decision published July 12 2023, effective August 21, 2023, requires states to remove affirmative defense provisions from EPA-approved state operating permit programs by August 21, 2024. It is not anticipated that the proposed revisions will have any significant adverse economic impact on regulated entities including small businesses or any city or town.

For full regulatory analysis or supporting documentation contact the agency staffperson listed above.