

Public Workshop for Amendments to:

Rule 2520 (Federally Mandated Operating Permits)

March 21, 2024

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Title V Background

- The Clean Air Act (CAA) is the comprehensive federal law that regulates air emissions from stationary and mobile sources
- Title V of the CAA requires major sources of air pollutants, and certain other sources, to obtain and operate in compliance with an operating permit of which the requirements are codified in 40 CFR parts 70 and 71
- 40 CFR part 70 is applicable to state/local/tribal permitting authorities and 40 CFR part 71 is applicable when EPA is the permitting authority
- The District's EPA-approved Title V program (part 70 program) is contained in District Rule 2520
 - Permits issued in accordance with Rule 2520 are referred to as a Title V permit.

Emergency Affirmative Defense Provisions

- EPA first promulgated the **emergency affirmative defense provisions** when it finalized its Title V regulations in 1992
- District Rule 2520 incorporated these emergency affirmative defense provisions (Section 13.4)
- A stationary source could use the **emergency affirmative defense provisions** in an enforcement case to avoid liability for noncompliance with their permitted emission limits
 - The source must also demonstrate that any excess emissions occurred as the result of an “emergency,” as well as other requirements

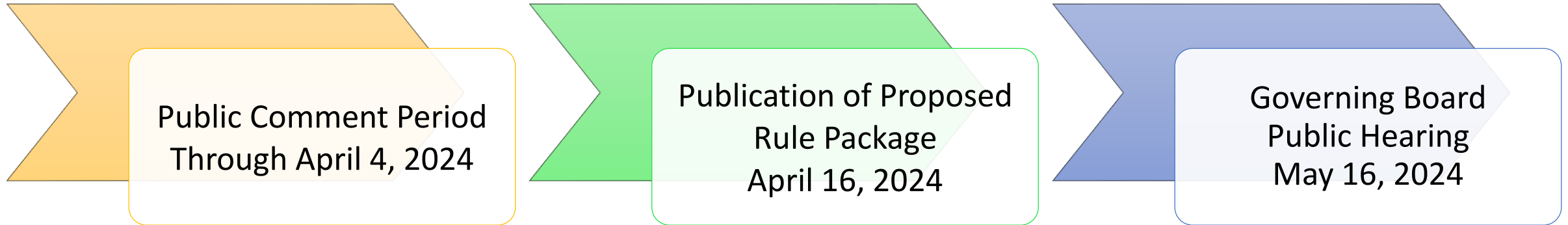
Removal of the Emergency Affirmative Defense Provisions

- The U.S. Court of Appeals for the D.C. Circuit issued a 2014 decision on *Natural Resources Defense Council v. EPA* concluding emergency affirmative defense exceeds EPA's statutory authority (749 F.3d 1055)
- EPA has since removed affirmative defense provisions in numerous programs and regulations (e.g. SIP, NESHAP, NSPS)
- On July 21, 2023, EPA removed the emergency affirmative defense provisions from the EPA's Title V operating permit program regulations effective August 21, 2023
 - Local permitting authorities must submit program revisions to EPA to remove Title V emergency affirmative defense provisions by August 21, 2024

Proposed Amendments to Rule 2520

- Remove Section 13.4 - emergency affirmative defense provisions
 - Ensures Rule 2520 conforms with EPA's Title V operating permit program regulations in light of prior court decisions
- Administrative Update
 - Change definition of Title I Modification to Federal Major Modification for consistency between District and federal regulations

Next Steps: Public Engagement Process for Rule 2520 Amendment



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Comments/Questions

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