

EXPLANATION & EXAMPLES OF RULE 408 – CIRCUMVENTION

This document is not a regulatory document and/or does not change the interpretation of Rule 408 or other associated rules or regulations. It is not an exhaustive list of examples of cases regarding circumvention. For specific cases where a facility plans to build, erect, install, use any equipment, technique, or alter normal business operations or equipment which would suppress or conceal emissions, SCAQMD recommends that the facility contact SCAQMD before such work or operation begins.

Table of Examples for Rule 408:

The following examples illustrate the application of the principles contained within Rule 408. These examples are not an exhaustive list of examples of cases where Rule 408 could apply.

Rule 408 section	Examples	Compliance determination & explanation
<p>(a) A person shall not build, erect or install, or use any equipment or technique that suppresses or conceals an emission, without reducing the total release of air contaminants to the atmosphere if that release of air contaminants, constitutes a violation of regulation, rule permit, order, or plan required by rule.</p>	<ul style="list-style-type: none"> A facility is operating equipment where emissions pass through a monitoring device for the purposes of demonstrating compliance with a rule. The facility reroutes the emissions so that the emissions no longer pass through the monitoring device. 	<ul style="list-style-type: none"> This example illustrates a violation of Rule 408 (a) because the facility did not reduce emissions but concealed emissions from the monitoring device.
	<ul style="list-style-type: none"> A facility plans to install an air quality control device to reduce emissions from a piece of equipment. The control device requires a SCAQMD permit to operate. The facility submits the necessary applications to obtain a permit to construct and permit to operate to the SCAQMD prior to installation of the device. 	<ul style="list-style-type: none"> Rule 408 (a) is not violated because the facility reduced the total release of air contaminants to the atmosphere.
	<ul style="list-style-type: none"> A facility installed a required continuous emission monitor that accurately reads actual emissions, but developed and uses a software algorithm program that automatically reduces any original non-compliant reading so that the final reading is modified to show a compliant reading. 	<ul style="list-style-type: none"> This example illustrates a violation of Rule 408 (a) because the facility used the software program to conceal and falsify readings without reducing the overall emissions from the equipment.

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<p>(a) A person shall not build, erect or install, or use any equipment or technique that suppresses or conceals an emission, without reducing the total release of air contaminants to the atmosphere if that release of air contaminants, constitutes a violation of regulation, rule permit, order, or plan required by rule.</p>	<ul style="list-style-type: none"> A facility utilizes non-compliant cleaning solvent “A” stored in a larger drum labeled with solvent “A” product information. The facility stores the solvent “A” drum in a remote area. It uses another container labeled for a compliant solvent “B” product to store smaller quantities of the non-compliant solvent “A” for use around the facility. Instead of accurately maintaining records for the non-compliant solvent “A” product information, the facility’s Rule 109 recordkeeping logs list the product information for the compliant solvent “B” product. It falsified records. 	<ul style="list-style-type: none"> This example illustrates a violation of Rule 408 (a) because the facility switch non-compliant containers to conceal the non-compliant solvent “A” product information. Further, it falsified records to conceal emissions that demonstrated a violation of another SCAQMD rule.
<p>(b) A person shall not alter normal business operations or equipment to suppress emissions for the purpose of evading detection or concealing emissions during monitoring or testing.</p>	<ul style="list-style-type: none"> A monitoring device has been placed near a facility to verify compliance of a rule that limits emissions. The facility moves its operation that produces the emission to another location away from the monitor during testing. Once the monitor has been removed the facility returns the operation to the original location. 	<ul style="list-style-type: none"> This example illustrates a violation of Rule 408 (b) because the facility altered its normal business operation in order to conceal emissions from the monitoring device.
	<ul style="list-style-type: none"> A facility subject to source testing uses raw materials to manufacture a product. During manufacturing, the raw material produces emissions. Before the required source test, the facility permanently changes the manufacturing process to use a different raw material during operation. The new raw material produces less emissions than the original raw material, resulting in a permanent overall reduction in the facility’s emissions, which was demonstrated in the source test results. 	<ul style="list-style-type: none"> Rule 408 (b) was not violated because the facility reduced the overall emissions by permanently switching to another raw material even after the source test was completed.

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<p>(b) A person shall not alter normal business operations or equipment to suppress emissions for the purpose of evading detection or concealing emissions during monitoring or testing.</p>	<ul style="list-style-type: none"> A facility produces a product that contains a residual amount of off-gassing emissions. The SCAQMD limits this residual amount of off-gassing emissions and requires periodic compliance verification testing of the final product marketed for sale. The facility is informed that an upcoming compliance verification test will be conducted and the facility alters their normal manufacturing operations to produce an alternative final product to ensure compliance with the limit during the testing. After the testing is completed, the facility discards the alternative product and resumes normal production of their original product marketed for sale. 	<ul style="list-style-type: none"> This example illustrates a violation of Rule 408 (b) because the facility changed the operation in order to conceal the emissions during testing with no intention of selling the alternative product.
	<ul style="list-style-type: none"> A facility permanently moves a piece of polluting equipment within their plant to redirect air pollutant emissions away from a nearby sensitive receptor to reduce exposure. 	<ul style="list-style-type: none"> Rule 408 (b) is not violated because the facility altered equipment permanently to reduce the impact from emissions.
<p>(c) Subdivision (a) of this rule shall not apply to cases in which the only violation is nuisance odor under Section 41700 of the Health and Safety Code or nuisance odor under Rule 402.</p>	<ul style="list-style-type: none"> A facility has a process that produces an odor and another emission, regulated by SCAQMD rule. The facility is cited for a nuisance violation under Section 41700 of the Health and Safety Code and/or Rule 402. In response, the facility uses a technique to mitigate the odor, which also masks the other emission so that the rule exceedance is undetected. The technique used by the facility conceals the exceedance of the emission. 	<ul style="list-style-type: none"> This example illustrates a violation of Rule 408 (a) because the facility is concealing or disguising non-odor emissions.
	<ul style="list-style-type: none"> A facility has a process that produces an odor. The facility receives a violation for nuisance under Section 41700 of the Health and Safety Code and/or Rule 402. The facility uses equipment or a technique that suppresses or conceals the odor emissions. The equipment or technique does not affect non-odor regulated emissions. 	<ul style="list-style-type: none"> Rule 408 (a) is not violated because the facility only conceals odor emissions and not other regulated emissions (e.g. criteria pollutants, toxics).