

THE JOURNAL RECORD

Gavel to Gavel: D.C. Circuit restores Title V emergency defense

By: [Tyler Self](#) // GableGotwals // September 24, 2025



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In a significant decision for the [oil and gas](#) industry, the D.C. Circuit recently restored the [Clean Air Act](#) (“CAA”) Title V “emergency affirmative defense” in *SSM Litigation Group v. EPA* (Sept. 5, 2025). This ruling struck down EPA’s 2023 rescission of the long-standing defense, which had shielded facilities from liability for excess [emissions](#) caused by sudden and unforeseeable emergencies.

For over three decades, [Title V permits](#) included this narrow defense, allowing operators to avoid violations if a genuine emergency occurred, the facility was properly maintained and operated, and all reasonable steps were taken to minimize emissions. EPA’s 2023 rule eliminated the defense, claiming it unlawfully interfered with judicial authority to impose civil penalties and rendered emission standards “non-continuous.” The D.C. Circuit disagreed, clarifying that affirmative defenses address liability without altering enforceable emission limits.

The decision has immediate implications for Oklahoma’s upstream and midstream operators. Facilities subject to Title V permitting, such as gas processing plants, compressor stations, and certain production sites, now regain a critical tool to defend against enforcement actions arising from unforeseen operational events, equipment failures, or natural disasters. While the defense does not excuse negligence, it provides legal certainty in narrow, emergency-related circumstances.

Key takeaways for operators include:

- **Emergency Defense Restored:** Operators may again invoke the Title V defense to contest liability for emissions from sudden, unforeseeable events.
- **Affirmative Defense vs. Exemption:** The ruling confirms that emission standards remain enforceable. The defense does not change legal limits; it only allows facilities to avoid liability when strict criteria are met.
- **Compliance Considerations:** Facilities should review Title V permits, internal reporting protocols, and operational procedures to ensure documentation supports any future emergency defense claims.

The ruling underscores the limits of EPA authority: agencies cannot remove entrenched defenses without both legal and policy justification. Operators should recognize that courts remain the ultimate arbiters of the defense's applicability. While EPA may consider an appeal, the decision currently restores clarity and stability for Oklahoma operators navigating CAA compliance risks.

For Oklahoma upstream and midstream facilities, this case serves as both a regulatory update and a reminder to ensure internal emergency response and reporting protocols are well-documented and aligned with Title V permit obligations.

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