

Why is Title V Important to the Public?

When Congress amended the Clean Air Act in 1990, it created the title V operating permit program. A central purpose of the program is to improve compliance with existing air regulations. In other words, Congress recognized that more could be done to ensure that industry obeyed the laws and regulations that were already on the books. Some sources were confused about which air regulations applied to them. Also, some air regulations did not require enough self-monitoring, so that industry, regulators, and the public could not really tell if the sources were obeying the regulations.

What does title V require?

- ▶ Congress required EPA to set minimum standards for State operating permit programs.
 - These minimum standards are found in the Code of Federal Regulations (CFR) at 40 CFR part 70. A copy is included in your workshop materials. (It is also available on the Internet at www.epa.gov/oar/oaqps/permits/requirem.html.)
 - Most title V permits are issued by State and local agencies based on State regulations that are modeled on the federal minimum standards.
- ▶ Title V requires that larger sources of air pollution and some smaller sources of hazardous air pollutants obtain a permit that includes all applicable requirements that apply to the source. The title V permit (also called a part 70 permit) is a single document that contains the federally-enforceable requirements that apply to the source.

How are part 70 permits different from preconstruction permits?

- ▶ Part 70 permits apply to the day-to-day operation of the source *after* it has been built. Pre-construction permits must be obtained *before* a source is built or before it can be modified. In general, they establish emission limits and control equipment requirements.
- ▶ If a source already has a pre-construction permit issued by the State, the terms of that permit will be incorporated into the part 70 permit if the preconstruction permit program has been approved by EPA.
- ▶ Major kinds of preconstruction permits:
 - New Source Review (NSR) permits are federally enforceable (which means enforceable by EPA and the public, in addition to the State) and are issued through a State permit program that is part of the SIP. Terms from these permits must be incorporated into the title V permit. There are 3 kinds of NSR permits:

- **Prevention of Significant Deterioration (PSD) permits:** This permit program applies to large (major) air pollution sources that are located in attainment areas where the air is cleaner than the minimum federal standards (called National Ambient Air Quality Standards or NAAQS). Sources are required to install stringent air pollution controls known as Best Available Control Technology (BACT).
- **Nonattainment New Source Review permits:** This permit program applies to large (major) air pollution sources that are located in nonattainment areas (where the air quality does not meet the minimum federal standards). Sources are required to install stringent air pollution controls known as lowest achievable emission rate (LAER) and must obtain emissions offsets to assure that the area's air quality will move towards attainment (i.e., will get closer to the minimum federal standards).
- **minor new source review (minor NSR):** This permit program applies to smaller sources and smaller changes at major sources.
- **State permits to install:** States sometimes have preconstruction permit programs that are not part of the SIP and are not approved by EPA. These programs result in permits that are not federally enforceable. Terms from these permits do not have to be incorporated into the title V permit.
- ▶ **Emission limits and requirements to install air pollution control equipment** are generally not created in the part 70 permit. Unlike pre-construction permits, Part 70 permits generally do not create new requirements for the source (but note that there are some important exceptions to this, such as monitoring requirements).

How are part 70 permits different from other operating permits?

- ▶ Many States were issuing operating permits before title V was enacted. Some States continue to issue these permits. These permits are generally less comprehensive than part 70 permits.
- ▶ If the State permit program has been approved by EPA, then the terms from State permits must be incorporated into the part 70 permit.

What is the role of the public in the title V program?

The public can use the title V program to ensure that sources are complying with the requirements that apply to them. Congress recognized that public oversight can improve compliance by industry. Title V gives the public the opportunity to:

- ▶ Comment on and have a public hearing on permits before they are issued, when they are renewed, and when important changes to permits are proposed. (These training materials focus on when and how the public can exercise its right to comment during the public comment period.)
- ▶ Appeal issued permits in State court, and petition the EPA Administrator to object to permits, so long as the public commented on the same issue during the public comment period.
- ▶ Keep track of whether facilities are complying with their permits.

Also, members of the public can bring enforcement actions in court against facilities that don't comply with their permits.

How do permits promote compliance with air quality requirements by individual sources?

1. *Permits reduce confusion by including all applicable requirements that apply to the source.*

- ▶ Applicable requirements are the guts of the permit
- ▶ Applicable requirements require sources to reduce or control pollution, such as to:
 - install and operate control devices (e.g., scrubber)
 - use less polluting fuels or materials (e.g., low sulfur coal)
 - limit hours of operation (e.g., one shift/day) or quantity of raw materials (e.g., amount of gas burned/day)
 - follow good work practices (operation and maintenance procedures) (e.g., leak detection)
 - meet emission limits
- ▶ Applicable requirements come from:
 - Federal regulations
 - State regulations that EPA has approved and which stem from the CAA (e.g. a State Implementation Plan or SIP)
 - Prior permits if the permits are from State permit programs that have EPA approval or are issued by EPA. (see 40 CFR 70.2 for definition of applicable requirements)
- ▶ Applicable requirements are federally enforceable (which means enforceable by EPA and citizens, in addition to the State). Title V permits can also include requirements that are not federally enforceable. These requirements are generally labeled “state enforceable” or “non-federally enforceable.” Permittees refer to these requirements as “state-only” requirements. Requirements that are in the SIP are always federally enforceable.

2. *Where the underlying requirement does not contain periodic testing or monitoring, permits add periodic monitoring requirements.*

3. *Permits require the source to submit reports that show whether the source is complying with the permit, and this information assists the permitting authority, EPA and the public in determining whether the source is in compliance. Permits require sources to submit:*

- ▶ certified self-monitoring reports at least semi-annually
- ▶ certified deviation reports and annual compliance certifications
- ▶ certified semi-annual progress reports for sources that are not in compliance when the permit is issued

On what issues can citizens make a difference by reviewing a permit?

1. Determining what requirements apply to the source

2. Determining if applicable requirements are correctly recorded in the permit

- ▶ accuracy
- ▶ completeness
- ▶ statement of origin and authority

3. Resolving ambiguous and conflicting permit terms

4. Reviewing issues involving judgement or discretion of the State

- ▶ Periodic monitoring
 - If an applicable requirement does not contain adequate monitoring to assure compliance, the title V permit must “fill in the gap” by including sufficient monitoring, record keeping, reporting, or periodic testing to assure compliance.
- ▶ Practical enforceability/Understandability
 - When an inspector goes to the facility, the requirements in the permit must be clear enough so that he or she can determine whether the source is in compliance with each permit term (e.g., by doing a test, by reviewing the source’s monitoring data and records).
- ▶ Schedules of compliance for sources that are not in compliance with their applicable requirements when their permit is issued
 - For some sources, the title V application process (including the initial compliance certification) has uncovered non-compliance issues. Where the source cannot get into compliance by the time the permit is issued, then the permit must contain a schedule of steps to be taken to get the source into compliance. This schedule is often negotiated between the source and the permitting authority. You can review the schedule to determine if it is reasonable or not.

- ▶ Alternative emission limits in the permit (not covered in these materials)

5. Reviewing issues involving preconstruction permits (major and minor NSR and PSD permits)

- ▶ If a source already has a major NSR or PSD permit
 - The permitting authority has already made decisions about what requirements (such as emissions limits) apply and what control equipment must be installed as part of the preconstruction permit process. Citizens can comment on these preconstruction permit decisions during the public comment period for draft major NSR and PSD permits and can appeal the issuance of these permits. Federal regulations also require a public comment period for minor NSR permits. If the preconstruction permit has been issued, it cannot be appealed through the public participation procedures for a title V permit. However, there are some situations in which the public can use the title V public comment period to raise significant problems with a preconstruction permit (or the failure to obtain one).
 - Title V permits must assure compliance with the requirement to obtain preconstruction permits that comply with the preconstruction review requirements under the Act, EPA regulations, and SIPs. In other words, if the requirements of the Clean Air Act, federal regulations or the SIP have not been met with respect to an NSR or PSD permit, then that issue can be raised in the title V public comment period. Flaws in the NSR permit may be addressed during the title V permit review process if the prior NSR decision was arbitrary or capricious, beyond statutory authority, or failed to comply with applicable legal procedures. Examples of such flaws include:
 - an emissions unit with or without a minor NSR permit that should have obtained a major NSR or PSD permit;
 - an unpermitted unit that should have obtained a minor NSR permit;
 - a preconstruction permitting decision that reflects arbitrary substantive determinations or that resulted from unlawful procedures.

This means that it is valid for citizens to comment on these kinds of flaws during the comment period on the draft title V permit, and EPA may object to the title V permit on these grounds. For example, if the major NSR or PSD permit was not subject to review and comment by the public, the permit would have resulted from unlawful procedures.

- Flaws in prior preconstruction permit decisions must be corrected through the preconstruction permit process. The preconstruction permit would need to be changed either before or at the same time that the title V permit was issued.
- ▶ If the source failed to get a required preconstruction permit
- This issue can be raised during the public comment period on the title V permit. (Note that submitting a late preconstruction permit application does not excuse the source from an enforcement action for failing to meet the appropriate deadline for obtaining the preconstruction permit.) The permitting authority would then incorporate the preconstruction requirements into the title V permit. It may:
 - put a schedule of compliance in the title V permit, which requires the source to submit a preconstruction permit application. (This would mean the title V permit would be reopened once the requirements of the preconstruction permit were established, e.g., once BACT was established).
 - put a schedule of compliance in the title V permit, which requires the source to install appropriate control equipment or meet the relevant standard by a specific deadline (e.g., install an electrostatic precipitator by a certain date, or install BACT by a certain date).
- ▶ If the State is issuing a NSR or PSD permit at the same time as the title V permit
- ▶ This is called a “merged” program. Some States combine the public comment period for both the preconstruction permit and the title V permit. You will generally have a 30 day public comment period.

5. Determining if the permit inappropriately limits the evidence that can be used to establish a violation (“credible evidence” issue)

Title V permit conditions must not limit the type of data or information (i.e., credible evidence) that may be used to prove a violation of any permit term.