STAPPA / ALAPCO

STATE AND TERRITORIAL
AIR POLLUTION PROGRAM
ADMINISTRATORS

ASSOCIATION OF
LOCAL AIR POLLUTION
CONTROL OFFICIALS

S. WILLIAM BECKER
EXECUTIVE DIRECTOR

TESTIMONY

of STAPPA and ALAPCO

Before the Title V Performance Task Force

Of the Clean Air Act Advisory Committee

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Good Morning. My name is Jack Broadbent and I am the Director of the Bay Area Air Quality Management District. I am here today on behalf of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officers (ALAPCO), the two national associations of air pollution control agencies in states, territories, and localities across the country. The members of our associations have primary responsibility under the Clean Air Act for implementing our nation's air pollution control laws and regulations and, moreover, for providing clean, healthful air for our citizens. As Co-Chair of the Monitoring Committee of STAPPA and ALAPCO, I appreciate the opportunity to present our associations' testimony on the Title V Operating Permit program.

At the outset, I would like to emphasize that the associations fully support a strong Title V program. The suggestions that we offer here should be seen as constructive criticisms and not taken out of context or used to justify sweeping revisions

444 North Capitol St. N.W. Washington, D.C. 20001 Tel. (202) 624-7864 Fax (202) 624-7863

that we do not support. We believe that much good has come out of Title V. Mid-course corrections are needed, however, if it is to achieve its original goals. Like a tree in need of pruning, Title V needs cutting back in some areas if it is to grow into a strong and sound program. Unnecessary requirements should be trimmed. Other requirements should be clarified and strengthened.

Enacted by Congress and signed into law in 1990, Title V—now fifteen years old—is due for examination. The current opportunity to evaluate what is—and is not—working with Title V is extremely important to us. A vast amount of our time, efforts, and financial resources are spent administering this program. Among the stakeholders, we are unmatched for our depth and breadth of experience, having developed, administered, and enforced thousands of permits during this fifteen-year period. We hope that our experience and recommendations will be translated into productive changes.

Some questions that we will address today are: Has consolidation of requirements led to excessive complexity and length of permits? Have compliance certifications, monitoring and record-keeping requirements actually enhanced enforcement efforts? Should changes be made in the public comment process? What kinds of basic programmatic changes can we make that will make permitting faster and more effective? We will convey our general concerns here, and will set forth more detailed recommendations for modifications to Title V in our written comments.

Consolidation of Requirements Is Beneficial, but Changes Are Needed

The Senate Report accompanying the 1990 Clean Air Act stated that the "first benefit of the Title V permit program is that, like the Clean Water Act program, it will

clarify and make more readily enforceable a source's pollution control requirements." At the time, the source's pollution control obligations were scattered throughout numerous, often hard-to-find provisions contained in the permit as well as in state and federal regulations. In theory, permit consolidation would be beneficial; in practice, there have been mixed results. Consolidation has resulted in more manageable permit programs in some cases. In New York State, for example, there were formerly 12,206 separate emission-point permits. Title V has whittled down that number to 498. Permit administration has generally been simplified. Detailed descriptions of operating conditions contained in permits allow regulated sources to consistently document compliance. Facility-wide requirements have been clarified. Uniformity of reporting, record-keeping time frames, testing and calibration schedules and averaging periods in permits has fostered consistency and fairness in regulatory treatment of sources. The Title V permits and their consolidated requirements are far more accessible to the regulated community. In addition, they help citizens understand the amount of pollutants allowed to be emitted under the regulations and the corresponding compliance assurance requirements. Other states have had different experiences, and note excessive permit length and increased complexity.

The process for developing operating permits has produced significant improvements in the accuracy of submittals by sources. The application process has resulted in facilities identifying undocumented sources and emissions and better quantifying previously known sources of emissions from facilities. Moreover, permitting agencies have identified new major facilities as well as those that no longer operate. In addition, permits have been made more accurate by deletion or revision of language in

old permits that was ambiguous, inapplicable, outdated, or simply erroneous. Non-compliant units were discovered during the application process and were the subject of corrective actions. Reexamination of requirements in old permits also led to enhanced "practical enforceability." In one specific example given by the state of Delaware, the old permit language, "spray gun must achieve 85% transfer efficiency" was replaced by new language specifying the types of spray guns and techniques, as well as training requirements.

We anticipate that the requirement that permits be renewed every five years will, like the original application process, necessitate internal review by sources of their compliance status, resulting in evaluation of and, in many cases, changes in facilities' practices.

Another benefit of the operating permit program has been that a significant number of major sources have voluntarily restricted their operating conditions, and, in some cases, installed pollution controls in order to reduce emissions and avoid Title V altogether. This development, which may not have been anticipated by the drafters of Title V, is similar to the environmental benefit that is achieved when sources install controls or take other limiting actions in order that their emissions not subject them to new source review requirements. A legitimate, documented facility choice to avoid Title V achieves reduced emissions—the ultimate goal for all of us.

But these successes tell only one side of the story. There are also problems with Title V. The admirable goal of consolidation has often resulted in huge and complex—indeed, supersized—permits. Far from resulting in simplicity and clarity, some operating permits have become daunting and virtually incomprehensible to the interested citizen as

well as frustrating for the permit holder and the permitting authority. These operating permits must be downsized and made more manageable if the original program goals of clarity, accessibility and enforceability are to be fully realized. I will touch on several problem areas and suggested solutions that have been suggested by state and local permit specialists.

First, incorporation of MACT standards and requirements into operating permits is causing problems. Many permitting authorities, warned of the risks of any other course of action, are appending the entire MACT rule—which frequently runs to 100 or more pages—to the Title V permit. The opposite approach, however, of including only citations to the MACT requirements, requires interested members of the public to undertake research and cross-referencing in order to understand the source's obligations and hardly furthers the goal of increased clarity. We recommend that the Task Force examine this issue in detail and develop a recommendation that results in an improved approach that addresses the needs of permitting agencies, citizens, and permit holders.

Second, there needs to be serious consideration of whether insignificant emissions units should be included in Title V permits at all. In particular, emissions units such as air conditioning units and small space heaters are inherently compliant and do not provide much added value by being included in the permit. Benefits attributable to their inclusion are dramatically outweighed by the costs of hours spent by staff on essentially unproductive paperwork. We need rather to maximize our limited staff-hours by sending our permit engineers out into the field and into the facilities where their expertise can and will result in reduced emissions and environmental benefits. At a minimum, permitting authorities should have the option of identifying insignificant emissions source

categories, and including the applicable requirements for each category. Detailed information on each insignificant source is not necessary.

Third, to the greatest extent possible, permits should be written clearly and simply if we are to communicate with the regulated community and the public effectively. When esoteric regulatory jargon is systematically included in these permits, the goal of permit clarity cannot be met. Nor can clarity be achieved when we are required to include irrelevant details. Other sectors, such as insurance companies, have responded to public demands and made progress in substituting plain language for arcane regulatory and legal language. If these permits are to have value, all involved in generating them—industrial applicants and EPA reviewers as well as our own programs—must collaborate on drafting them better.

Fourth, we are willing to expand the development of short-form General Permits for common small source categories that have no dedicated staff to manage permit issues. Application, reporting and certification requirements can be organized, classified, and streamlined without affecting emissions limitations and other requirements that involve direct environmental benefits. Such alternatives would enable us to focus on permits for the larger sources of air pollution.

Fifth, using the full-blown modification process only because a change is considered a "Title I modification" can be excessively burdensome. In the words of one permitting specialist, "We shouldn't have to go through the entire public notice procedure if a facility wants to add one small printing press." Currently, such a modification would require a period of at least 75 days before the source could begin to operate the press. We strongly encourage EPA to streamline the current process for significant modifications.

Finally, the reopening provisions of the program can be extremely burdensome. Permits are required to be reopened to add any new applicable requirements to permits that have a remaining term of three or more years. Identifying the appropriate permits when new applicable requirements go into effect is an extra, time-consuming task for permit reviewers. The work of actually reopening permits diverts resources from issuing the remaining initial permits and from issuing timely renewals. Reopening of permits should be a lower priority. Sources are obligated to comply with new applicable requirements without reopening and modifying the permit. New requirements should be incorporated into all permits during routine renewal.

Turning from the general issues raised by permit consolidation, the rest of our testimony will address: 1) monitoring, record-keeping and reporting; 2) compliance and enforcement; 3) public participation; and 4) programmatic issues.

We Need Flexibility in Imposing Monitoring—and Fewer Nonessential Reporting Requirements

One of the benefits of Title V has been greater consistency in monitoring, recordkeeping and reporting—all of which has, we feel, led to enhanced compliance. Monitoring requirements are more detailed and specific. Sources focus more on achieving and maintaining compliance. Moreover, compliance reports aid permitting authorities in various ways, serving as useful checklists during inspections, as tools for exploring compliance status, and as the basis for documenting violations.

But there is more to do to improve these tools. We need to arrive at optimum monitoring requirements—whether inspections, pollutant monitoring, opacity observations, or parametric monitoring—that will reasonably and accurately assure compliance for various industry sectors. Not only should we arrive at consistent

approaches for standard air pollution sources, but we need also to have criteria to ascertain what periodic monitoring should be applied to nonstandard air pollution sources. Over the last fifteen years, state and local agencies have developed many good monitoring, recordkeeping and reporting protocols that can serve as models for other agencies.

Questions about monitoring frequency and stringency in Title V have so far spawned several lawsuits, and, most recently, an EPA regulatory response (called the "Four-Part Strategy"), by which EPA plans to, among other things, insert monitoring requirements into old statutory provisions that have none. Meanwhile, reinterpretation of Part 70 monitoring provisions pursuant to settlement of a lawsuit has left permitting authorities with no federal "gap-filling monitoring" for permits or renewals of permits when, in the judgment of the permitting agency, such monitoring requirements might be needed. This should be remedied promptly. And, over the longer term, EPA should systematically reevaluate and revise new source performance standards (NSPS) in order that these standards are strengthened to reflect advances in technology, with monitoring requirements added as necessary.

Regarding compliance assurance monitoring (CAM), it is too soon to tell what its long-range success will be. It appears to hold considerable promise for those facilities that choose to insure the reliability and accuracy of emissions control equipment through development of CAM protocols, rather than installation of continuous emissions monitors (CEMs). This is a reasonable, and sometimes superior, option for minimizing emissions.

In general, we support the statement that was given by Scott Evans from Clean Air Engineering in which he said, "compliance can be achieved through source owners

putting as much care and attention and effort into pollution control devices as they do into the reaction vessels and things [they] use to make money every day." And we think that we can help source owners to get to this point if we arrive at good, clear sector-based monitoring "sufficient to achieve compliance" and if we give appropriate flexibility to permit writers to determine time frames for periodic monitoring.

Another area that should be addressed by EPA is excessive numbers of compliance reports. Right now, some sources are generating—and permitting authorities are receiving—hundreds of reports annually. Deviation reports that are related to emissions and control equipment should be reported expeditiously. Minimal departures from permit conditions that are unrelated to emissions should be required to be included only in the semi-annual monitoring report and the annual compliance certification. This sort of pruning of excessive paper requirements from Title V is necessary in order to free up the permitting agency staffs to focus on areas having greater environmental benefit.

Similarly, the increasing costs and diminishing benefits of excessive Title V reporting of compliance-related data in the Air Facility Subsystem (AFS) should also be recognized and corrected. We are concerned that EPA plans to require that some partial compliance evaluations (PCEs) be inputted into the AFS system. This has been, to date, a voluntary activity. Data reporting may also be required every 60 days rather than on a quarterly basis. It also appears likely that several new data elements—high priority violator (HPV) violation discovery date, HPV Violation code, stack test pollutants, and air program subparts—will also be required. STAPPA and ALAPCO opposed all of these data requirements on the grounds that the cost of such additional time-consuming staff work vastly outweighs any possible benefits. We continue to believe that these data

reporting requirements should be eliminated or reinstated as voluntary. Our staffs can only increase the amount of time that they spend in the field when they decrease the time they spend reporting data to EPA.

As for annual compliance certifications, we believe that they will come into their own as important tools for enforcing Title V requirements. They have elevated facility accountability to the corporate officer level. Annual statements of compliance signed under penalty of perjury have appeared to spur internal compliance reviews and have led to increased operator training and improvements in facility housekeeping practices, such as control of fugitive emissions and insuring that degreasers have lids. Compliance certifications, however, should also be trimmed and refocused. They should not be as long as permit applications, as they sometimes are now. And they should focus on deviations, rather than comprising a lengthy rehash of every permit term and condition.

Furthermore, some areas of ambiguity should be clarified. Uncertainty should be resolved concerning the extent of protection that is afforded by the permit as a shield from liability and concerning when and how credible evidence can be invoked as the basis for an enforcement action when a facility has received a Title V permit.

On the whole, however, Title V has had a beneficial effect on enforcement. Appropriate civil penalties, criminal penalties, and citizen suits are now potential consequences of noncompliance. Inspections have been improved because of consolidation of requirements in one permit and compliance report "checklists." And some state and local permitting authorities have seen increases in compliance rates in complex operations subject to multiple requirements because of the consolidation of all requirements into one operating permit.

Public Participation Should Be Encouraged When Interest is High, but Public Process Requirements Should Be Relaxed When There is No Interest

The potential for public participation has been dramatically enhanced by Title V. Many states post draft permits on their websites for easier public access, and we believe that these efforts should be expanded. Public comments on permits are received and hearings are often held. Public oversight generally improves the permit process and the permit.

From a national perspective, however, there is tremendous variability in public participation. Many permitting authorities indicate that there has been virtually no public interest in Title V permits—even when, for example, large utilities' permits are in issue. Others have stated that public hearings are routinely requested for every single permit, and, further, that such hearings are sometimes contentious and unproductive. As the regional planning organization, CenSARA, noted in its testimony, encouraging participation in the few areas where public interest is high while conserving scarce governmental resources in the vast majority of Title V cases is a challenge faced by every permitting authority. Moreover, when the public does take an active interest in a permit, it is often frustrated by the limited scope of the Title V program. Generally there is little room for change in a proposed permit. Nor would adjustments in one permit achieve the results sought by community groups. Some of our members note that meaningful public participation has at times been successfully addressed by industry outreach efforts, as when a facility invites the public to a facility to discuss its operations and compliance efforts. Other solutions should also be sought by all stakeholders.

Delays Can Be Mitigated by Complete Applications and Expedited Review

Turning to the question of delays in permit issuance, we note that delays are avoided when facilities submit complete and thorough permit applications and renewals. Conversely, when applications must be returned repeatedly to facilities to fill information gaps, the process bogs down. And when EPA permit reviews are prolonged, the process also comes to a halt. When permitters consult SIPs for inclusion in permits, moreover, they face a tangle of outdated and conflicting requirements. In order for us improve the issuance of these permits, we ask that EPA take on the difficult, but ultimately productive, task of culling through the SIP requirements, region by region, and organizing them into a currently applicable grouping with a coherent organizational structure. Some substantial delays in permitting have also been attributed to the public review process. We believe that EPA regions that allow for concurrent public (30-day) and EPA (45-day) review help expedite the process and this should continue where possible. Most importantly, we must all, at this juncture, renew our joint efforts to minimize delays in both renewals and in issuance of the outstanding 10 per cent of sources that are not yet permitted.

We emphasize that none of the successes of Title V—consolidation, increased compliance, public access—could have occurred without the Title V emission-based fees that provide the revenue that fund these efforts. The successes of the program go hand and hand with these fees.

In sum, we would like to see this basically sound program improved by trimming the dead wood requirements and clarifying areas of uncertainty. Some of the changes that should be made in Title V are:

- elimination or, at least, streamlining, of insignificant emissions units in permits;
- revision of overly burdensome modification procedures;
- consolidation of minor deviation reports into semiannual compliance reports;
- focusing compliance certifications on deviations;
- voluntary, rather than mandatory, AFS data reporting requirements;
- utilization of short-form permits or General Operating permits for smaller sources;
- EPA evaluation and revision of NSPS standards and overhaul and organization of SIPs;
- Improvements in public access that nonetheless avoid unnecessary, time-consuming public access requirements when no interest exists.

Finally, a Title V Permit Guidance Manual would speed and improve these permits, as would training opportunities for permit writers. Some EPA Regions are visiting permitting agencies and are providing training on Compliance Assurance Monitoring and renewals. This useful activity should be encouraged for all EPA Regions. Thank you and I will be happy to take any questions.

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