

Title V Permitting Update

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NACAA 2011 Permitting and Enforcement Workshop
Chicago, Illinois
June 14, 2011

Overview

- Title V Petition Responses
 - Citizens Petition Process
 - EPA Responses
 - Significance of Petition Responses
 - Recent Responses
 - Common Themes

Citizens Petition - Regulatory Background

- Under the CAA and the Part 70 regulations, states are required to submit each proposed title V permit, and certain revisions to such permits, to EPA for review.
- EPA has 45 days to object to final issuance of the permit if it is determined not to be in compliance with applicable requirements or the requirements of title V.
- If EPA does not object to a permit on its own initiative, the CAA provides that any person may petition the Administrator, within 60 days of the expiration of EPA's 45-day review period, to object to the permit.
- The CAA requires the Administrator to issue an objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the CAA.
- The CAA requires that the Administrator shall grant or deny such petition within 60 days after the petition is filed.

Citizens Petition – Regulatory Background (continued)

- Only the Administrator can sign the response (this is a non-delegable duty).
- Petition orders (responses) may be treated as providing EPA definitive guidance/interpretation of regulations.
- Petitioners are increasingly aggressive in filing notices of intent (NOI) to sue the Agency for failure of a timely response (60 days from petition filing date).
- This is resulting in negotiations with petitioners that ultimately result in consent decree deadlines for responding to the petitions.

Citizens Petitions Handling Process

- Title V veto petitions are typically received in the Administrator's office and assigned to the Regional Office where the permit in question is located.
- A cross-office team made up of staff from the Region, OAQPS, OGC, and OECA is assembled to work on the petition.
- The Region is in charge of summarizing the petition claims and obtaining the necessary background information (i.e., permit, public comments, comment responses, etc.) to analyze the claim and develop a response.

Citizens Petitions Handling Process (continued)

- All issues are summarized and discussed at the staff level. Preliminary positions (grant/deny) are developed at this stage.
- Division Directors for OAQPS, OGC, OECA, and the Region are then briefed on the positions to ensure consistency and to identify any issues that are unresolved and require elevation.
- After the Division Director level briefing is completed, the recommendations are then briefed to OAR management for final “approval” or resolution of any unresolved issues before drafting the response.
- The draft order document is drafted and goes through a series of reviews (staff, middle management, Division Director, Office Director, Assistant Administrator).

Citizens Petitions Handling Process (continued)

- Once concurrence is obtained from all offices, the order is ready to enter the signature process.
- The regional office briefs the Regional Administrator to obtain the final approval before transmitting the order to HQ's for signature.
- Once the order is signed, an electronic version of the order is sent to the region for transmission to the state, petitioner, and facility.
- Final orders are posted on the following website:
 - <http://www.epa.gov/region7/air/title5/petitiondb/petitiondb.htm>

EPA Petitions Responses Status

- Petition Responses are available at:
 - <http://www.epa.gov/region7/air/title5/petitiondb/petitiondb.htm>
- The website also contains the incoming petition(s).
- In recent years, EPA has been responding to about 12 - 15 petitions per year.
- Petitioners continue to file petitions aggressively and to pursue court related deadlines.

Significance of EPA Petitions Responses

- Petition orders (responses) may be treated as providing EPA definitive guidance/interpretation of regulations.
 - Kerr McGee / Anadarko Oil and Gas Aggregation
 - Citgo and Premcor Monitoring
- EPA denials are final Agency action and subject to judicial review.
- EPA grants are not final Agency action.

Recent Responses

- Anadarko Frederick Compressor Station, Weld Co., CO – 10/09
- BP Whiting Refinery, Whiting, IN – 10/09
- Xcel Hayden Station, Hayden, CO – 3/10
- Wheelabrator MSWI, Baltimore, MD – 4/10
- Woodside Landfill Recycling Center, Walker, LA – 5/10
- JP Pulliam Power Plant, Brown Co, WI – 6/10
- Alliant Power Edgewater Plant, WI – 8/10
- Luke Paper, Luke, MD – 10/10
- US Steel, Granite City, IL – 1/11
- TransAlta Centralia Power Plant, WA – 4/11
- Tennessee Valley Authority, Paradise Plant, KY – 5/11

Common Themes

- PSD Applicability
- Failure to Include Major NSR requirements
- Failure to provide periodic monitoring sufficient to assure compliance
- Inadequate rationale for monitoring required to assure compliance
- Failure to respond to comments
- Oil and Gas Aggregation