



# Proposed Rule: Clarifying the Scope of “Applicable Requirements” Under State Operating Permit Programs and the Federal Operating Permit Program

**Presentation for Stakeholder Groups**

January 2024

Matt Spangler

US EPA | Office of Air Quality Planning and Standards

# Overview

- Public Participation in this Rulemaking
- Background: Title V “Applicable Requirements”
- Title V & New Source Review Permitting Interface
- General Duty Clause
- Questions



# Public Participation in this Rulemaking

- Proposed rule published in the Federal Register on Jan. 9, 2024, 89 FR 1150.
  - Link: <https://www.federalregister.gov/documents/2024/01/09/2023-27759/clarifying-the-scope-of-applicable-requirements-under-state-operating-permit-programs-and-the>
  - Also available on EPA's website: <https://www.epa.gov/title-v-operating-permits/current-regulations-and-regulatory-actions>
- Comment period until March 11, 2024. Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2023-0401, at <https://www.regulations.gov>.
  - Link: <https://www.regulations.gov/docket/EPA-HQ-OAR-2023-0401>
- Virtual public hearing: Jan. 24, 2024, 9:00-3:00 ET
- Stakeholder outreach webinars: Jan. 22 and Jan. 25



# Background

- Title V operating permits are used to compile air quality control requirements from other Clean Air Act (CAA) programs, and for providing conditions necessary to assure compliance with such requirements (e.g., monitoring), **but not for creating or changing applicable requirements from those other programs.**
- State, local, and tribal permitting authorities issue most title V permits. The public and EPA have oversight roles:
  - The public (and EPA) can comment on “draft permits.”
  - Unique: EPA reviews “proposed permits” before they are finalized. EPA can object to the issuance of a title V permit if it does not assure compliance with applicable requirements of the CAA.
  - Unique: If EPA does not object, any person may petition the EPA Administrator to object.



# Background (cont.)

- **This proposed rulemaking is intended to codify EPA’s existing positions about how title V interacts with “applicable requirements” from other CAA programs.**
  - Focused on regulatory definition of “applicable requirements” in 40 CFR 70.2 and 71.2
- Preamble to proposed rule is intended to bring awareness to EPA’s positions.
  - Some programs establish “self-implementing” requirements that can be incorporated into title V permits without further review. Other programs contain only general requirements that can, in certain circumstances, be further defined through title V.
  - Preamble includes specific discussion about how National Ambient Air Quality Standards (NAAQS) and requirements in State Implementation Plans (SIPs) are/are not implemented or defined through title V permitting.
- This will allow the public, permitting authorities, and EPA to focus resources on using the title V process to address issues that can be most effectively resolved through title V



# Title V & New Source Review Interface

Title V Permits	New Source Review (NSR) Permits
<ul style="list-style-type: none"> <li>• Operating permits</li> <li>• Usually issued by states under EPA-approved rules</li> <li>• Do not impose or change substantive pollution control requirements</li> <li>• Include requirements established under other CAA programs</li> </ul>	<ul style="list-style-type: none"> <li>• Preconstruction permits</li> <li>• Usually issued by states under EPA-approved rules</li> <li>• Often impose substantive pollution control requirements</li> <li>• Terms of NSR permits must be included in title V permits</li> </ul>

- Issue addressed by proposed rule: When should unique title V oversight tools (e.g., EPA objection authority and public petition opportunity) be used to address alleged deficiencies in NSR permitting decisions?



# Title V & New Source Review Interface (cont.)

- Proposed rule would codify EPA's existing position (since 2017):
  - Provided a source obtains an NSR permit under EPA-approved or EPA-issued rules, with public notice and the opportunity for comment and judicial review, the NSR permit establishes the NSR-related “applicable requirements” for purposes of title V.
  - As with “applicable requirements” established under other CAA authorities, those applicable requirements should be incorporated into the title V permit **without further review**.
- In certain situations, title V permitting process **is** the appropriate venue for addressing NSR issues, including where:
  - NSR requirements have not been established through a title I permitting process w/ notice, opportunity for comment, opportunity for judicial review
  - NSR issues involve substantive overlap with title V requirements (e.g., monitoring)



# Title V & New Source Review Interface (cont.)

- The EPA's framework applies similarly regardless of:
  - Stage of the title V permitting process (comments, EPA review, petition, etc.)
  - Origin of NSR permit (from a SIP or a Federal Implementation Plan, FIP)
  - Type of substantive NSR requirement (e.g., content of NSR permit terms or applicability of major NSR)
  - Timing and procedures used to incorporate NSR permit into title V permit (e.g., sequentially or concurrently issued permits)





# Title V & New Source Review Interface (cont.)

- Proposed rule would not directly impact, or impose any requirements on, existing NSR permitting, oversight, or enforcement processes.
- Proposed rule would:
  - Incentivize permitting authorities to offer opportunities for meaningful public involvement in NSR permitting actions
  - Focus public and EPA resources on using the title V permitting process to address issues that can be most effectively resolved through title V (e.g., ensuring sufficient monitoring and compliance assurance measures)
  - Ensure that applicable requirements established in different CAA programs are treated consistently in title V permits across the nation
  - Respect the finality of NSR permitting decisions



# Title V & New Source Review Interface (cont.)

- The proposal solicits comment on three alternative approaches in which EPA would use title V permits to address substantive NSR issues in certain additional situations:
  - Use title V to review contemporaneous or recent NSR permitting decisions
  - Use title V to review issues related to major NSR applicability
  - Use title V to review contemporaneous or recent NSR permitting decisions related to major NSR applicability



# General Duty Clause

- “General Duty Clause” of CAA 112(r)(1) concerns the accidental release of hazardous substances.
  - It establishes a general duty for certain sources to identify hazards, to design and maintain a safe facility to prevent releases, and to minimize the consequences of accidental releases of hazardous substances.
- The rule proposes to codify EPA’s longstanding position that the “General Duty Clause” is not an “applicable requirement” and is not implemented through title V.
- Follows decisions from 2020 (Hazlehurst Order) and 2021 (Owens-Brockway Order).



# Questions?

- Reminder: please submit comments through <http://www.regulations.gov>, Docket EPA-HQ-OAR-2023-0401, by March 11, 2024.

