

INSIGHTS

EPA Proposes Revisions to Public Petition Process for Title V Permits

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On August 24, 2016, the U.S. Environmental Protection Agency (EPA) published proposed revisions to the federal Title V operating permit rules, which govern pollutants at major sources under the Clean Air Act. The proposed revisions aim to streamline and clarify the processes related to the submittal and review of Title V petitions.

Petitions are a key element of the public participation process under the Title V program. The federal rules at 40 CFR Part 70 and equivalent state provisions allow members of the public to petition EPA to object to a state-issued Title V operating permit, if EPA did not object to the proposed permit during its 45-day review period. For most Title V permit actions, EPA has a 45-day review period, prior to permit issuance, in which it can review a state's proposed Title V permit to ensure that the permit complies with the requirements of the Title V program.

If a member of the public believes that a particular Title V permit does not comply with Title V program requirements, and has comments with the state when it published notice of the draft permit, that member of the public can continue to challenge the permit by petitioning EPA to object to the permit after EPA's 45-day review period. Such a petition would be filed when the member of the public believes that its comments were not addressed by the state in issuing the permit, or by EPA during its 45-day review period. A petition seeks that EPA reconsider its decision and EPA object to the state-issued permit. An EPA permit objection is significant, in that the state must resolve the objection. Under the Title V rules, if the state fails to timely resolve EPA's objection to a Title V permit, EPA is to take over as permitting authority and must revise or reissue the permit itself.

Title V petitions often raise nuanced and difficult permitting issues, resolution of which requires knowledge of both the source being permitted and the underlying state's regulatory program. For that and other reasons, Title V petitions filed with EPA are often left pending for an extended period. Today's proposal seeks to streamline and clarify the process in five ways:

- Rules that provide direction to the public as to how petitions should be submitted to EPA;
- Rules that describe the expected format and minimum required content for Title V petitions;

- A “clarification” that state permitting authorities are required to respond to significant comments on a draft Title V permit and provide that response to EPA for its 45-day review period;
- Guidance in the form of “recommended practices” to help ensure that Title V permits have complete administrative records; and
- An explanation from EPA regarding how it interprets its obligations with regard to responding to petitions filed for Title V permits.

Comments on the proposed rule must be received on or before October 24, 2016, for 60 days after today’s *Federal Register* publication.

For more information regarding the proposed rule and its potential implications for Title V permit holders, please contact us.

You can [click here](#) for the *Federal Register* publication of the proposed rule, and [here](#) to view a Fact Sheet prepared by EPA.