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Title V/Clean Air Act: U.S. Environmental Protection Agency Clarifies Scope of "Applicable Requirements"

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The United States Environmental Protection Agency ("EPA") published a September 25th Federal Register notice containing a final rule that is described as updating the Clean Air Act Title V Operating Permit regulations. See 91 Fed. Reg. 61026.

EPA states that the final rule codifies the agency's:

... existing interpretations and policies concerning when and whether "applicable requirements" established in other Clean Air Act (CAA) programs may be reviewed, modified, and/or implemented through the title V operating permit program.

Congress in 1990 added Title V to the Clean Air Act to assure stationary sources were subject to a comprehensive air permit. The Title V Operating Permit Program generally does not impose new substantive air quality control requirements.

Title V of the Clean Air Act requires certain stationary sources of air pollutants to obtain operating permits. The Clean Air Act provides that States administer Title V through adopted implementation plans. The intent of a Title V permit is to organize in a single document all the requirements that apply to the permit holder.

States are provided the opportunity to develop their own Title V programs. They are required to submit them to the EPA for approval. For example, Arkansas' Title V Operating Program was approved by EPA many years ago.

The federal Clean Air Act Title V program includes a provision that allows EPA To object to a Title V permit issued by a delegated state. In other words, Congress provided EPA a Clean Air Act oversight role while mandating that every Title V permit be subject to a 45-day review period before the Title V permit is finalized.

The EPA Administrator can object to a Title V permit at two points.

An objection may be made during the 45-day review period and in response to a public petition within 60 days after the end of the 45-day review period. Further, even if EPA fails to object to a proposed Title V permit, a right to petition the agency to reconsider its failure to object to the permit is potentially available. However, only those persons who have submitted comments to the draft permit during the applicable comment period have a right to petition.

The right to petition EPA arises at the close of the agency's 45-day review period.

The September 25th Federal Register notice states that the final rule clarifies what it describes as limited situations in which the requirements under the Clean Air Act New Source Review ("NSR") preconstruction permitting program would be reviewed using the EPA's title V oversight authorities. The final rule also provides what EPA describes as a clarification that requirements related to an owner or operator's general duty to prevent accidental releases of hazardous substances are not "applicable requirements" for Title V purposes. Therefore, EPA describes them as not implemented through Title V.

Besides a general information and executive summary, key explanatory components of the Federal Registers preamble include:

- Background on Title V Operating Permits and CAA "Applicable Requirements"
- The Title V Permitting Process, Public Participation, and the EPA's Oversight Role
- Purpose and Function of Title V Permits
- Regulatory Definition of "Applicable Requirements"
- Requirements That Are Not "Applicable Requirements" for Purposes of Title V Permitting
- Self-Implementing Applicable Requirements (e.g., NSPS, NESHAP)
- Requirements Defined Through Title V Permitting
- Applicable Requirements Related to the NAAQS and SIPs
- Interface Between NSR and Title V Permitting
- Background: Historical and Current EPA Approaches
- Summary of the EPA's Approach and Final Action
- Rationale for the EPA's Approach and Final Action
- Application of the EPA's Approach to Different Fact Patterns
- Impacts of the EPA's Approach and Final Action
- The General Duty Clause Concerning the Prevention of Accidental Releases of Hazardous Substances
- Background and Summary of Final Action
- Rationale for Final Action

A copy of the Federal Register notice can be found [here](#).