

# Revisions to the Petition Provisions of Title V Permitting Procedures

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# Overview

- ✓ Concurrent v Sequential Review
- ✓ Comments and Concerns
- ✓ Final Rule Changes Affecting DEQ





# The Rulemaking

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## ✓ Effective Date

April 6, 2020

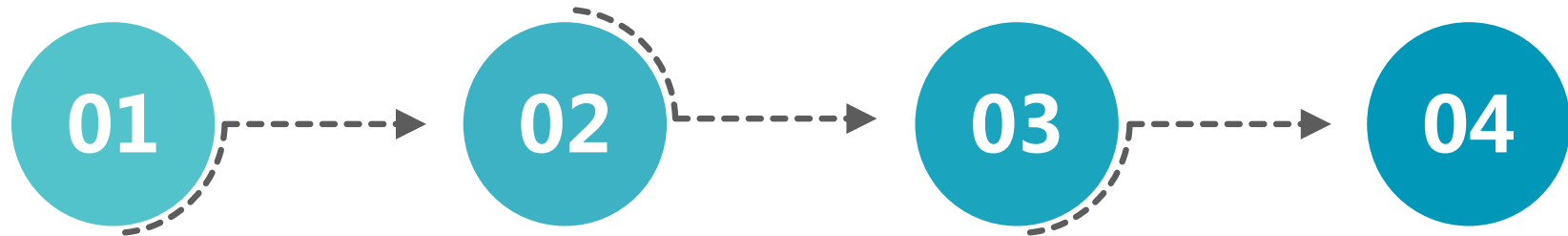
## ✓ Reason

“Following more than 20 years of experience with title V petitions, and taking into account feedback from various stakeholders, the agency proposed changes to 40 CFR part 70 that were intended to provide clarity and transparency to the petition process and to improve the efficiency of that process.”

## ✓ Citation

Revisions to the Petition Provisions of the Title V Permitting Program,  
85 FR 6431-01

# Concurrent or Parallel Review



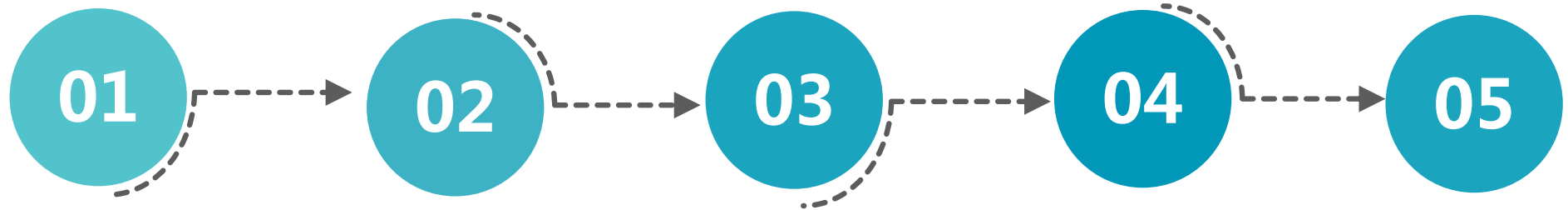
Draft Permit/  
“Proposed  
Permit” sent to  
EPA

EPA (45 days)  
and Public  
(30 days)  
Comment  
Periods  
run concurrently

No “significant  
comments”  
received

DEQ issues Final  
Permit

# Sequential Review (Significant Comments)



Draft Permit/  
“Proposed  
Permit” sent to  
EPA

Public comment  
period (30 days)

DEQ receives  
“significant  
comments”

DEQ sends  
“proposed  
permit” again for  
45-day comment  
period

DEQ issues  
Final Permit

# Comments and Concerns on the Proposed Rule



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# Comments and Concerns

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## ✓ Increase in permitting time

Running EPA and Public Comment periods consecutively for significant comments adds time.

## ✓ Delays caused by disagreements over issue resolution

EPA may disagree with the method of resolving a public comment, but DEQ will not know until after it has issued a “Proposed Permit” and waited for the conclusion of the 45-day EPA comment period.

## ✓ Support electronic submittal system

## ✓ Opposed public notice for transmittal (not finalized)

# Final Rule Changes Affecting Permitting Authorities

- ✓ Must respond to “significant comments” and provide EPA with the “proposed permit,” written responses to comments, and the statement of basis.
- ✓ Finalized mandatory petition content

## Positive Aspects of the Current Provisions

- ✓ Acknowledges the legality of concurrent review
- ✓ Provides for sequential review only when “significant comments” are received (rather than any comments)
- ✓ Permitting authority decides when a “significant comment” is received
- ✓ States EPA intent to post when the proposed permit is received



# Significant Comments

“interpretation of this phrase is informed by the D.C. Circuit's framing of the relevant inquiry in its review of regulatory actions by federal agencies.”

“only comments which, if true, raise points relevant to the agency's decision and which, if adopted, would require a change in an agency's proposed rule cast doubt on the reasonableness of a position taken by the agency.” *Home Box Office v. FCC*, 567 F.2d at 35 n. 58 (D.C. Cir. 1977).

The court has also explained that an agency's response to public comments is critical to enable the reviewing body “to see what major issues of policy were ventilated . . . and why the agency reacted to them as it did.” *Pub. Citizen, Inc. v. F.A.A.*, 988 F.2d 186, 197 (D.C. Cir. 1993).

“Significant comments in this **context include, but are not limited to, comments that concern whether the Title V permit includes terms and conditions addressing federal applicable requirements and requirements under part 70, including adequate monitoring and related recordkeeping and reporting requirements.**”



“It is the responsibility of the permitting authority to determine in the first instance whether a comment is significant.”



# DEQ Response to Changes

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- ✓ Case-by-case determination when comments are received
- ✓ Open dialogue with the permitting facility about process, requirements, and timeframes
- ✓ Minimize risk through robust permit writing that protects the community as well as the investments in the community

# KEEP IN TOUCH



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