

**Disclaimer:**

This document was prepared as a guidance, providing a summary of key title V requirements. The purpose of the booklet is to provide an overview of the title V requirements so that community residents can develop a comfort with using title V requirements to monitor pollution activities in their neighborhoods. THE AUTHORS ARE NOT PROVIDING LEGAL ADVISE AND READERS SHOULD NOT RELY THE INFORMATION IN THE BOOKLET AS SUCH.

**Purpose**

The purpose of this booklet is to help community members monitor pollution sources in their neighborhoods. The new permitting requirements of the Clean Air Act provide unique opportunities for public oversight and enforcement of environmental laws. The public can only participate meaningfully if it has an understanding of the permitting requirements. This booklet is a citizen's guide to the Title V process.

## Introduction

The Clean Air Act is one of the nation's most important health protection laws. The intent of the Clean Air Act is to develop a partnership between state governments and the federal government in protecting public health by developing programs to reduce air pollution.

Under the Clean Air Act, the federal government, through the United States Environmental Protection Agency (EPA), sets health standards for certain pollutants. As of 1998, the EPA has set national ambient (outside) air quality standards (NAAQS) for carbon monoxide, sulfur dioxide, oxides of nitrogen, ozone, particulates, fine particulates and lead. The federal government determines the maximum amount of that pollutant that will be allowed in the ambient air. The standard is a health- based standard designed to protect public health.

<b>Pollutant</b>	<b>Description</b>	<b>Sources</b>	<b>Effects</b>	<b>Primary Standard</b>
Particles (PM)	Soot, dust, sprays, smoke, etc.	incinerators, power plants, construction, road and agricultural, dust, open burning	Respiratory and lung ailments, sometimes cancer, soiling	150 $\mu\text{g}/\text{m}^3$ (24-Hour average) 50 $\mu\text{g}/\text{m}^3$ (annual arithmetic mean)
Lead	Metallic	Leaded	Damage to	1.5 $\mu\text{g}/\text{m}^3$

	element	gasoline, some industrial processes	brain, lungs, kidneys and blood forming system possibly causes cancer	(arithmetic mean averaged quarterly)
Sulfur Dioxide (SO <sub>2</sub> )	Poisonous gas formed by burning coal and oil and by some industrial processes. Reacts in atmosphere to form sulfuric acid	Power plants, factories burning coal or oil	Irritates eyes, nose and throat, damages lungs, increases respiratory problems, such as asthma attacks, kills plants, rusts metals, contributes to acid rain	0.140 ppm (365 $\mu\text{g}/\text{m}^3$ ) (24-Hour average) .03 ppm (80 $\mu\text{g}/\text{m}^3$ ) (annual arithmetic mean)
Ozone (O <sub>3</sub> )	Smog	Formed in atmosphere when sunlight acts on hydrocarbons, such as gasoline vapors, and oxides of nitrogen from automobiles	Irritates eyes, nose and throat, hampers breathing, damages crops and materials	0.120 ppm (235 $\mu\text{g}/\text{m}^3$ ) (1-hour average)
Carbon Monoxide (CO)	poisonous gas formed by burning fossil fuels	auto emissions and some industrial processes	Inhibits the blood's ability to absorb oxygen (reducing a person's ability to exercise)	9 ppm (10 $\mu\text{g}/\text{m}^3$ ) (8-hour average) 35 ppm (40 $\text{mg}^3$ ) (1-hour average)

Explanation:

ppm: parts per million.

UG/M<sup>3</sup>—micrograms per meter of air cubed.

A geographic area where the air quality meets the health standard is said to be in “attainment of the standard”. If the area’s air quality has not yet met the health standard it is said to be in “non-attainment”. It is possible for an area to be an attainment area for some of the ambient air quality standards and in non-attainment of others at the same time.

Once the EPA has established the national air quality standard, the Clean Air Act leaves it up to each state to devise a plan on how that state will attain and maintain the national health standard. Congress, in drafting the Clean Air Act, felt that states understood what mix of emission controls on their corporate and individual citizens made the most economic sense for their state. The attainment plan submitted by the state is known as a state implementation plan (SIP). The SIP has to be approved by the EPA and once approved it becomes federally enforceable.

The right of the public to participate in the development and approval of the SIP is an important part of the Clean Air Act. Throughout the Act, the public is given opportunities to take part in determining how the state’s program will be developed and implemented. Citizens, and others, can take

part in commenting on proposed rules or testify at hearings on how the air will be cleaned up. In fact, the Clean Air Act allows citizens to sue the federal and state government or a pollution source itself if the EPA or state are not properly implementing or enforcing the SIP requirements or other Clean Air Act requirements

Until the Act was amended in 1990, the Clean Air Act did not create a national program whereby individual facilities were required to obtain permits that describe how much pollution the facility is allowed to emit and under what conditions. A number of states such as Pennsylvania, had developed their own permit programs, but each program was unique to that state. This resulted in an air program for the country with a mix of requirements.

### **Title V : One Stop Shopping**

In 1990 the Clean Air Act was amended. One of the biggest changes was the inclusion of a section of the Act which deals exclusively with permits for activities that cause substantial air pollution. A permit issued Title V requires that each facility creating more than a certain amount of air pollution have a permit listing all the requirements (limitations and

conditions) of operation that apply to the facility under the Clean Air Act and most state law restrictions as well. A Title V permit is also called an operating permit.

Title V is unique, because for the first time, a single document will contain all air pollution control requirements applicable to the plant. This makes the job of assessing the impact of a plant on a community's air and the plant's compliance with the air laws much easier for citizens. Title V also provides essential opportunities for citizens to have input in the process of permitting facilities. This citizen's guide will discuss these public participation opportunities in the following pages.

This guide is designed to help community members understand how the Title V permit process can be a great tool for concerned citizens to participate in decisions that will impact their neighborhood's quality of life. In addition to describing the contents of the Title V permit process and providing a brief background on Clean Air Act programs that must be addressed in the permits, this guide will describe three distinct activities:

- Public input into the issuance of a Title V permit for a new plant or existing facility.

- Citizen monitoring of compliance with the terms of an existing Title V permit.
- Citizen challenges to the renewal of a Title V permit, which comes up every 5 years.

**Background:**

Congress has allowed the EPA to delegate much of the implementation and enforcement of the Clean Air Act to the states. Each state must develop its own State Implementation Plan (SIP). This is the state's commitment with the EPA as to the programs it is implementing in order to meet its Clean Air Act requirements. The EPA has the duty to approve or disapprove a state's SIP or any revision to that SIP. One of the programs EPA has delegated to the states is the Title V permitting program. Pennsylvania's Title V Program has been fully approved by the EPA. This guide discusses the universal (federal) Title V operating permit requirements and then refers the readers to the Pennsylvania regulations implementing the federal requirements.

**Major Clean Air Act Programs Found in Title V Permits:**

It is important to understand how various sections of the Clean Air Act are incorporated into the Title V requirements. The Clean Air Act is divided into six major sections called Titles.

- Title I contains most of the requirements for controlling air pollution from the types of sources of greatest interest to communities.
- Title II addresses controls on vehicle emissions, or “mobile sources”.
- Title III deals with hazardous air pollutants.
- Title IV contains specific control programs for air pollutants which cause acid rain.
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- Title V establishes a permitting system for major polluters.
- Title VI contains programs designed to preserve and restore the Earth’s protective ozone layer.
- Title VII contains provisions for citizen and government enforcement of all the sections of the Clean Air Act.

## **Title I**

Title I addresses pollution problems that are widespread throughout the country. These kinds of pollution are known as criteria pollutants and are the pollutants for which the EPA has established a national health standard. These pollutants, at elevated levels, injure health, harm the environment, and cause property damage. The criteria pollutants are oxides of nitrogen,

sulfur dioxide, lead, ozone (smog), carbon monoxide, particulates and fine particulates.

Under the Clean Air Act, the EPA establishes ambient health standards for each of these pollutants. These pollutants are produced mostly from power generation and everyday activities such as driving. Under Title I, the EPA also regulates precursor pollutants, the emission of which will eventually result in the creation of criteria pollutants. The best example is volatile organic compounds (VOCs) which mixes with oxides of nitrogen (NO<sub>x</sub>) in sunlight to make ground level ozone. VOCs come from emissions from cars, paint, solvents and gasoline. NO<sub>x</sub> come from power plants and driving cars.

An area will be designated as “attainment” or “non-attainment” for each criteria pollutant depending upon whether it has levels of air pollution which are below the standards or above them. Each designation imposes certain Clean Air Act obligations, but being non-attainment carries restrictions on new industrial operations and can also require state and local authorities to take steps to curtail pollution from automobiles in the area by

requiring gasoline powered automobiles to submit to an automobile emission inspection and maintenance program.

Nationally ozone is the pollutant that the highest number of areas still do not meet the federal health standard. Ozone non-attainment areas are broken down into five levels; marginal, moderate, serious, severe and extreme. (The Philadelphia area is “severe”. The only “extreme” area in the country is Los Angeles).

**Title II** - Deals with mobile sources and is not relevant to the Title V permitting program.

**Title III** - Deals with hazardous air pollutants, commonly referred to as HAPs. These pollutants tend to be less widespread, though more immediately dangerous to public health than criteria pollutants. HAPs have been associated with cancer, fertility problems and other serious illnesses. Many industries emitting hazardous pollutants will be required to implement additional controls to limit their HAP emissions

The hazardous air pollution requirements are the same for all facilities of a specific industrial category regardless of whether they are located in an attainment or non-attainment area. Hazardous air pollution is emitted from large industrial plants, but also from small stationary sources such as dry cleaners and auto body paint shops. Large sources of hazardous air pollution are required to use maximum available control technology (MACT) to reduce emissions. MACT are a technology based emission reduction requirement, not a health based standards such as the criteria pollutants. More stringent standards are created for new facilities than for existing ones.

The 1990 Amendments to the Clean Air Act require that factories and other businesses develop plans to prevent accidental releases of highly toxic materials. This is the accidental release prevention program of Section 112 (r) of the Clean Air Act Amendments.

#### **Title IV**

The acid rain program outlined in Title IV of the Clean Air Act Amendments applies only to facilities that combust fossil fuel (oil, gas, and coal) and generate electricity for wholesale or retail sale. These provisions

require utility sources to reduce emissions of sulfur dioxide (SO<sub>2</sub>) and oxides of nitrogen (NO<sub>x</sub>) - pollutants which form acid rain.

All power plants under the acid rain program are required to install continuous emission monitoring systems (CEMS), technology that continually monitors how much sulfur dioxide and oxides of nitrogen the plant is releasing. A power plant's program for meeting its sulfur dioxide and oxides of nitrogen limits will be incorporated into the Title V Permit. This means that utilities are regulated under Title IV need to comply with the permit applications of both Title IV and Title V.

**Title VI**

The 1990 Clean Air Act sets a schedule for ending production of chemicals that destroy stratospheric ozone. Chemicals that cause the most damage are required to be phased out first.

<b>Ozone-destroying chemicals</b>		
Name	Use	When US production ends*
CFCs (chlorofluoro-carbons)	solvents, aerosol sprays (most sprays can uses banned in 1970s), foaming agents in plastic manufacture	January 1, 1996
Halons	fire extinguishers	January 1, 1994

Carbon tetrachloride	solvents, chemical manufacture; carbon tetrachloride causes cancer in animals	January 1, 1996
Methyl chloroform (1,1,1-trichloroethane)	very widely-used solvent; in many workplace and consumer solvents, including auto repair maintenance products	January 1, 1996
HCFC's (hydro CFCs)	CFC substitutes; chemicals slightly different from CFCs	January 1, 2003**
<p>*The 1990 Clean Air Act includes a schedule for ending United States production of ozone-destroying chemicals, and provisions for speeding up the phase-out schedule if that is necessary. The dates in this table are "speeded-up" dates, proposed by EPA in early 1993.</p> <p>**Production of the HCFC with the most severe ozone-destroying effects will end by January 1<sup>st</sup>, 2003. Production of the rest of the HCFCs will end by January 1, 2030.</p>		

The table on this page of **Ozone-destroying chemicals** includes "speed-up" phase-out dates which were proposed by EPA in early 1993.

CFCs, Halons, HCFCs (hydrochlorofluorocarbons) and other ozone-destroying chemicals were listed by Congress in the 1990 Clean Air Act and must be phased out.

## Title VII

Since 1970 the Clean Air Act has allowed citizen suits against

1. Persons constructing new or modified sources without a permit, or who violate an emission standard or limitation, or order issued by a state or EPA; and
  2. The EPA Administrator for failure to perform any nondiscretionary duty.
- The first of these causes of action includes suits against states for failure to implement SIP requirements. Section 304, 42 U.S.C § 7604. The 1990 Amendments expanded both of these causes of action.

Under the amendments, **private citizens are now authorized to seek civil penalties** in citizen suits. In combination with the new business self-reporting requirements, this has the potential to result in a vast increase in citizen suits, similar to the experience under the Clean Water Act during the 1980's. See § 304(a).

### **Public Participation in Settlements**

EPA is required to provide a reasonable opportunity by notice in the Federal Register for the general public to comment on any agreement to settle a case (sometimes called a consent order) to which the federal government is a party. The notice must be given thirty days before the consent decree or settlement agreement is filed with the court. EPA and the United States

Attorney General are to consider written comments in determining whether to approve the proposed written agreement.

### **Other Elements in a Title V Permit**

Besides all of the above mentioned major requirements of the Clean Air Act that may be folded into a facility's Title V permit, another large category of "other elements" may also be included. Particular operating requirements that arise out of an enforcement consent decree may become part of a facility's Title V permit.

States that have been managing their own operating permit programs over the years may have substantial additional requirements that may be listed in a "state requirements" section of a company's permit. Such requirements may include issues as odor and noise control.

### **Title V Permit Program**

The procedures for obtaining a Title V operating permit are as follows:

1. Submission of permit application

2. Review of the application for completeness by the state agency. In Pennsylvania that agency is the Department of Environmental Protection (DEP).
3. Issuance of a draft permit by the DEP
4. Issuance and publication of a proposed permit by the DEP and the submission of the proposed permit to EPA for approval
5. Decision by EPA to approve or disapprove the permit
6. Issuance of the final permit by DEP.

Additional steps in this process exist which allow citizens to influence the outcome through comments, and they will be discussed in the following pages.

### **Clean Air Act Requirements in Title V Permits**

The Title V operating permit program combines all requirements of the Clean Air Act into one permit for large facilities. The Title V program is complex and may appear daunting to citizens trying to participate in a plant's permitting process. The first step is to determine whether a facility must in fact obtain a Title V permit.

### **Facilities Regulated under Title V**

The Title V program applies only to “major” sources of air pollution.

<b>Regulated Pollutants Sources Under Title V</b>
<p>Oxides of Nitrogen, Sulfur Oxides, Particulates, Lead, Carbon Monoxide, Fine Particulates.*1</p> <p>Because they are Criteria Pollutants</p>
<p>Volatile organic compounds and Oxides of Nitrogen as Ground Level Ozone Precursors</p>
<p>Any pollutant that is regulated under the Clean Air Act’s New Source Performance Standards. NSPS is found under Section 111 of the Clean Air Act and directs EPA to establish the best controls for certain major sources. NSPS regulated air pollutants include particulate matter, sulfur dioxide, carbon monoxide, oxides of nitrogen, volatile organic compounds, sulfuric acid, total reduced sulfur, dioxin/furan, hydrogen chloride, hydrogen sulfide, and fluorides.</p>
<p>Any ozone depleting substance including chlorofluorocarbons and hydrochlorofluorocarbons regulated under Section 601 of the Clean Air Act.</p>
<p>All pollutants regulated under the Hazardous Air Pollutants program under Section 112 of the Clean Air Act.</p>

Sulfur Dioxide and Oxides of Nitrogen. Electric utility generators regulated under the acid rain provisions Section 401 of the Clean Air Act.
All pollutants regulated for any source category by a standard or other requirement are considered a Title V regulated air pollutant for all source categories. This is the catchall section.

\*1 Implementation of the new fine particulate standard is delayed because of legal challenges.

**Determining Major Source Status**

Determining whether a plant is a major source depends on the attainment status of the location of the plant and on the pollutants it emits. As a general rule, emissions of 100 tons per year of a particular “criteria” pollutant will qualify a source as major. The number of tons needed to trigger major source status decreases as the level of non-attainment goes up.

The following table sets forth the numbers for criteria pollutants:

<b>Pollutant</b>	<b>Marginal</b>	<b>Moderate</b>	<b>Serious</b>	<b>Severe</b>	<b>Extreme</b>
NOx	100 tpy	100tpy	50tpy	50tpy	50tpy
SO2	100tpy	100tpy	100tpy	100tpy	100tpy
CO	100tpy	100tpy	50tpy	50tpy	50tpy

PM-10	100tpy	100tpy	70tpy	70tpy	70tpy
VOC	100tpy	100tpy	50tpy	25tpy	10tpy
Lead	100tpy	100tpy	100tpy	100tpy	100tpy
Any combination of hazardous air pollutants(HAP) tons/year listed in § 112(b) of the Clean Air Act.					25tpy
Any single HAP listed in § 112 (b) of the CAA					10tpy tpy:

Southeastern Pennsylvania and the rest of the Northeastern states are in what is known as the Ozone Transport Region (OTR). All areas within the OTR are considered, to be at least in “moderate” non-attainment of the NAAQS for ozone. The Philadelphia area, although within the OTR, has been designated as a severe non-attainment area for Ozone because of its very high levels of the pollutant in the air during the summer.

**How Companies Avoid Triggering Title V**

Since the requirement to obtain a Title V permit only applies to major sources - companies may try to remain under the major source trigger. When determining whether a source is “major” for the purposes of inclusion in the Title V program, the emission numbers for both criteria pollutants and

HAPs are based not on the actual emissions from a plant but upon the plant's "potential to emit".

A source may actually emit less than the applicable major source trigger and still be considered a major source subject to Title V. Potential to emit is defined by EPA as "the maximum capacity of a stationary source to emit a pollutant under its physical and operational design". This means a source will be considered a major source for Title V purposes if, unless restricted in the permit, the maximum emissions that can be generated while operating a source full time at maximum design capacity exceeds the major source threshold. Therefore a facility's potential to emit may well be considerably higher than its actual emissions.

The effect of the potential to emit definition is to allow plants to accept, as part of its permit, a variety of limitations on the operations of the plant (including its hours of operation and any pollution control devices which are installed) and then calculate the amount of emissions from the plant under these restrictions. The EPA's definition further provides:

Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control

equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.

In determining a source's potential to emit, two parameters must be measured or estimated: (1) the worst case uncontrolled emissions rate, which is based on the dirtiest fuels, and/or highest emitting materials and operating conditions, that the source is or will be permitted to use under federally-enforceable requirements; and (2) the efficiency of the air pollution control system, if any, in use or contemplated for the worst case conditions, where the use of such equipment is federally-enforceable.

If the resulting emission takes a plant below the threshold, the plant is allowed to operate without getting a Title V permit. Such sources are known as "synthetic minors," and must still report to EPA (or in Pennsylvania to DEP) to verify that the plant's emission levels remain below the threshold. Fugitive emissions, those emissions that leak out, must also be included in the calculation of potential to emit.

### **Restricting Emissions to Below Major Source Thresholds**

Synthetic minors do not have to obtain permits under the Title V Operating Permit program but must obtain a state-issued Federally Enforceable State Operating Permit, FESOP, permits that restrict emissions to below the major source threshold levels. In order to qualify as a synthetic minor source, the requirements that keep a sources' emissions below the major source thresholds must be adopted into a State Implementation Plan (SIP) and therefore are federally enforceable.

However, any source owner or operator seeking to escape Title V in this way must remember that any violation of such a limitation exposes it to federal and citizen enforcement to impose penalties for noncompliance with those limitations and /or to compel compliance. Moreover, a consistent pattern of violation may result in a finding that the limitations were a sham and the source is indeed major. Not only will the source have to obtain a Title V permit but it may also be punished retroactively through administrative, civil, and/or criminal penalties imposed on its operation prior to the issuance of the new Title V permit.

### **The Title V Operating Permit Application**

Each air pollution that is required to obtain a Title V permit must submit a detailed application to the state. If all conditions are met the state will then issue the permit. The Title V operating permit program requires that certain information be contained in every permit application.

Note: Pennsylvania has a broader permit program that applies to all sources. Pennsylvania's requirements can be found at 127.11 et seq. (Pennsylvania Code). In addition Title V sources in Pennsylvania must comply with the requirements of 127.401 et seq.

### **Major Portions of a Title V Operating Permit Application**

Facility Description

Description of Applicable Regulations

Emissions Description and Emission Inventory

Operating Scenarios Description

Compliance Status Description and Compliance Plan

Description of Proposed Compliance Testing

Certification of Completeness and Accuracy

### **Information Required in all Title V Operating Permit Applications**

The first opportunity to challenge a permit application is over its completeness. Citizens wanting to challenge a permit application for lack of completeness should scrutinize these requirements carefully.

### Facility Descriptions

Facility descriptions must include: Facility location, its owners, and operators, and the processes used at the facility. The definition of a facility includes all buildings and structures on adjacent or continuous pieces of property under common ownership or control. Company name and address, owner's name and agent, and telephone number and name of a contact on site. There must also be a description of operations by SIC Code for each of the source's products and processes. A general description of the processes occurring at the facility, the raw materials used, the production rate and the expected end product must all be included in the application.

### Description of Applicable Regulations

The permit application must contain a citation and description of all applicable state or federal air pollutant control regulations. The application must also provide any other specific information that may be necessary to determine and/or enforce Federal Clean Air Act (CAA) and regulations

promulgated to implement the CAA. The applicant must also explain any exemptions from Clean Air Act requirements.

The applicant must then state whether or not it is currently in compliance with these regulations.

### Emissions Description

The permit application must contain a description of all emissions of regulated pollutants for the facility and all emissions for which the facility is considered a major source.

For all regulated pollutants, the application must identify and describe every emission point.

The application must detail fuels, fuel use, raw materials, production rates and operating schedules as necessary to determine emissions. Where inclusion of emission rates is necessary, the methodology and the calculations used to determine these rates must be provided. The application must also include a description of all the pollution control equipment, monitoring devices, and any limitations on service operations.

The application must identify and describe every emission point at the facility.

### Operating Scenarios

All reasonably expected operating scenarios involving the manufacturing process or operations must be described in the application. The application must include raw materials used and the relationship between the equipment, the control device, and the emissions point, as well as an estimate of all expected air emissions. A facility may have more than one operating scenario for each piece of equipment. For example, a boiler that can and does burn either natural gas or fuel oil has two different operating scenarios.

### Compliance Status and Plan

The permit application must contain a description of the current status of the facility's compliance with all applicable regulations covered by the permit.

The application must include a plan to ensure continued compliance and methods used to determine compliance. If the facility is not currently in

compliance with the regulations, the plan must explain the steps that will be taken to bring the facility into compliance along with a timetable for action.

### Compliance Testing

The application must include a proposed testing method that the facility will use to demonstrate compliance with all applicable regulations, covering each regulated pollutant emitted from each stack, vent or source of fugitive emissions. Acceptable types of compliance testing include: Continuous emissions monitoring (CEM) systems, Stack testing, and the use of EPA approved emission factors.

### Certification

A responsible official on behalf of the owner or operator of a Title V source must certify the truth, accuracy, and completeness of the information submitted in the application. The certification must state that, based on information and belief formed after reasonable inquiry, the statements and information in the application are true, accurate, and complete.

The application must be certified by a “responsible corporate official” which is defined as: a president, secretary, treasurer, or vice-president in

charge of a principal business function; any other person who performs similar policy-or decision-making functions for the corporation; or a duly authorized representative of any of the above persons.

Pennsylvania law has two additional requirements: Section 127.43 requires applicants to notify local municipalities and county officials of the application and the 30 day comment period. Section 127.414 allows the DEP to request of the applicant any additional materials it may need to properly evaluate the application.

In Pennsylvania, the applicant submits its Title V application to the DEP which is the permitting agency. Under Clean Air Act, the DEP has 60 days to inform the applicant about any deficiencies or incomplete information in the application. If the agency does not notify the applicant in this time period, then the permit application is considered to be complete. DEP then must approve or disapprove the application within 18 months of having received a complete application (see section 127.421 b).

### **“Deminimis Emissions” or “Insignificant Activities”: Exception to Title V Reporting Requirements**

EPA allows a Title V program to specify that certain listed insignificant activities and emissions levels need not be included in the permit application. However, the permit application must include a list of those insignificant activities and whether their exemption from further information disclosure is based on size or production rate. Information contained in the application, however, must be sufficient to determine which requirements are applicable, to impose those requirements, and to evaluate the permit fee amount required under the federally-approved fee schedule.

Pennsylvania's De minimis emission increase rule can be found at section 127.14 and 127.449.

### **Permit Application Shield**

Another aspect of the Title V program is the "shield" concept. Companies can have their facilities protected from lawsuits by submitting a permit application. Once the application has been submitted, if it is timely and complete, the law allows the facility to operate without an approved permit until the permit is issued or denied. This is known as an application shield.

Congress did not want to penalize companies who have done their part but have no permit as a result of bureaucratic delays..

Pennsylvania's permit application shield provision can be found at section 127.505. The shield will not apply if the applicant is responsible for the delay of DEP's approval or denial of the permit.

If a company submits a late application it is not eligible for a permit shield.

### **Title V Operating Permit Conditions**

After determining that the permit application is complete, the permitting agency prepares a draft permit, a statement of the legal and factual basis for the permit, and a public record containing the permit application and any other relevant information. Under Pennsylvania's regulations DEP has 18 months from the time when it receives a complete application to approve or disapprove it (127.421 b).

Title V operating permit program requires that certain conditions appear in all permits. Any permit that lacks any of these essential conditions is not valid.

## **Major Portions of a Title V Operating Permit**

Permit Term

Emissions Limitations and Standards

Monitoring Requirements

Required Test Methods

Reporting Requirements

Compliance Certification Requirements

Inspection Requirements

Permit Shield

Limitations and Requirements for Alternate Operating Scenarios

Statement of Federally Enforceable Permit Limitations

Severability Clause

Emergency Provision

General Provisions

### **Permit Term**

A permit term is a set length of time for which the permit is valid –and it must be in the permit. A permit can be for less than five years, but a permit

can not exceed five years. (See section 127.446). Most permits are for 5 years.

Note: If at the end of the five year permit term a plant has made a timely application to renew its permit and the Department has not, through no fault of the applicant, issued or denied a new permit, the old permit is automatically continued until DEP takes action (see section 127.446 c)

### **Emissions Limitations and Standards:**

A Title V permit must contain emission limits and standards for all applicable requirements of federal and state air pollution control regulations. (see section 127.441)

### **Monitoring Requirements**

The permit must describe the method by which the facility will demonstrate compliance with all emission limitations. (see section 127.511)

### **Test Methods**

The test method that the facility must use to determine compliance must also be described in the permit. The test must be federally enforceable. (see section 127.441)

### **Record Keeping Requirements:**

The permit must describe the type of record keeping requirements required of the facility. At a minimum, the facility must be required to maintain records of required monitoring information including:

- date, place and time of measurements
- the company that performed the analyses
- the analytical methods used
- the results of the analysis
- the facility operating conditions at the time of sampling or monitoring.

All monitoring records and supporting information must be retained by the facility for five years. (See section 127.441)

### **Reporting Requirements**

The permit must require the facility to submit reports of monitoring results to the permitting agency at least every six months. All violations of permit requirements must be clearly defined in the monitoring reports and the violations must also be reported to the permitting agency in a “prompt” manner (the definition of prompt is to be determined by the state, depending on the degree and type of violation). All compliance monitoring reports must be certified by a responsible corporate official. (See section 127.442)

### **Compliance Certification**

In addition to semi annual compliance monitoring reports, the permit must contain a provision requiring the submission of compliance certifications at least once each year. The compliance certification must describe the compliance status of the facility with regard to all applicable terms and conditions of the permit. (See section 127.513)

### **Compliance Schedule**

If the facility is not currently in compliance with all applicable requirements, the permit must contain a schedule of activities to be performed by the facility in order to achieve compliance. Progress reports regarding the compliance schedule must be submitted to the DEP at least every six months. (See section 127.445)

### **Permit Shield**

The permit may contain a provision stating that compliance with the terms and conditions of the permit constitutes compliance with all applicable portions of the Clean Air Act. This is known as the permit shield.

The permit must also include a written account of all requirements not applicable to the facility. (See section 127.516)

### **Alternate Operating Scenarios**

The permit must contain permit limitations as well as monitoring and record keeping requirements for all reasonably anticipated operating scenarios identified in the permit application. (See sections 127.447 and 127.512 f).

## **Federally Enforceable Requirements**

The terms and conditions of an operating permit are federally enforceable, which means that they are subject to enforcement actions by the EPA and by citizens under the Clean Air Act. The permit should therefore identify all air pollution control requirements that the permitting agency has determined are not subject to federal enforcement, such as state regulations that are not yet incorporated in the SIP.

## **Non Compliance Enforcement**

Any non-compliance with any part of the permit constitutes a violation of the Clean Air Act and is grounds for enforcement action by the EPA, DEP or citizens.

## **Public Notice**

Once the permitting agency completes and issues a draft permit, the agency must notify the public, EPA and all affected states. Notice of the draft

permit must be published in a newspaper that is distributed in the facility's geographic area. Notices must also be mailed to affected states (which are all states that are either contiguous to the state where the facility is located or are within 50 miles of the source and where air quality may be affected) and the EPA. In Pennsylvania, the notice will also be published in the Pennsylvania Bulletin (See section 127.424 d).

Included in the notice are the name and address of the applicant, the location of the facility, a description of the facility, and a description of the permitted activities. The notice must also provide information on how to obtain the draft permit, the permit application, and all other relevant information used relied by the permitting agency in issuing the permit..This allows community residents the opportunity to challenge the accuracy or completeness of the information provided by the company.

Information regarding the opportunity for public comment on the draft permit is also found in the notice. The deadline for submission of public comment, which must be at least 30 days after public notice (the time period is determined by the regulatory agency), and the time and place for any scheduled public hearings on the permit are detailed in the notice. If no

such public hearings have been scheduled, the notice must provide instructions on how the public can request a hearing. (See section 127.521 C8).

Under section 127.424 C, if DEP proposes to deny the permit, the Department must provide written notice to the applicant, persons who have requested such notice and, must publish the proposed denial in the Pennsylvania Bulletin.

### **Public Comment**

After notice, the public has at least 30 days to prepare written comments on the draft permit. There is no required format the public must follow in submitting comments.

Issues not raised in written comments or in testimony at the public hearing usually cannot be raised in petitions to the EPA, state administrative actions, or subsequent legal challenges to a final permit. **It is therefore important to comment on draft permits during the 30 day public comment period**

**or at the public hearing in order to establish standing for further legal challenges.**

**EPA Comment:**

The EPA has the authority to block a Title V operating permit. **After receiving** a proposed permit, draft permit, permit application, the EPA has 45 days to object, in writing, to the proposed permit. The EPA review period may be concurrent with the public comment and affected states' review period. DEP as the permitting agency is then required to address EPA's objections and resubmit the permit for approval.

If the state does not submit a revised permit within 90 days of an EPA objection, EPA must either (1) issue the permit with changes necessary to bring it into compliance with all applicable requirements or (2) deny the permit.

Throughout the permit review, members of the public should make use of the expertise of the EPA and the air protection departments of the states located near the plant and DEP. Members of the public should call and ask to meet with EPA and state regulators to discuss environmental concerns related to the permit application.

## **Petitions to the EPA**

Individuals may request that the EPA object to a Title V permit. If the EPA fails to object to a permit, any person may petition the EPA to do so. Public petitions must be submitted to the EPA within 60 days of the expiration of EPA's 45 day review period and must be based upon objections raised during the public comment period. Issues not raised during the public comment period can be raised at this time only if it can be demonstrated that it was impractical to raise these comments earlier, or if "new grounds" have risen.

The EPA may either grant or deny a petition. If the EPA denies the petition, the petitioners (such as members of the public) can take the matter to a federal judge by appealing EPA's decision.

If the EPA grants the petition, one of two things must occur. If the state has not yet issued the permit, it must revise the permit taking into account EPA's objections and resubmit it to the EPA for approval. If the state has issued the permit prior to receiving EPA's objections, the EPA must modify, terminate, or revoke the permit.

**Judicial Review of DEP Action:**

The Clean Air Act allow permits to be appealed (by anyone including environmental groups or concerned citizens) to the **state** courts within 90 days of the issuance of the final permit. Only applicants, and anyone who raised concerns during the public participation process may appeal a final permit action.

While very unlikely, the DEP under section 127.428 and 127.429 reserves the right to hold a fact-finding conference and/or departmental hearing on the objections to the permit. After such a conference and/or hearing the DEP will make a final decision. Often, permits must first be appealed to an administrative review board of the permitting agency and then to the state courts.

In Pennsylvania under sections 127.426 and 127.47 an objection (called a protest under Pennsylvania's rules) must be filed within the comment period. If the protest is filed within the 30 day comment period it must be

considered by DEP. DEP also reserves the right to consider protests that are filed with the Department after the close of the comment period but before the permit is issued. (See section 127.427 b).

Actions by EPA can however be appealed directly to the federal courts. Federal judicial review is available to determine whether EPA fulfilled its obligation to object to a permit. Participants in the public participation process can file for federal judicial review only after the EPA has denied a petition. A challenge to an EPA action must be filed in the US Court of Appeals. The challenge must be filed within 60 days of the EPA's denial of the citizen petition.

### **Public Participation in the Title V Permitting Process: Getting the Best Possible Permit**

#### **Keeping informed of Pending Permit Applications and Draft Permits**

It is essential to stay informed of pending permit applications and draft permits. Send in a written request to the state or regional EPA office that

issues Title V permits, asking to be placed on the mailing list for all (or certain) Title V draft permit public notices.

There is no requirement in the federal regulations that the public be notified if and when the EPA objects to a proposed permit or when a final permit is issued. It is therefore necessary to keep in touch with the permitting agency to receive updates on the status of the draft permit.

### **Gathering the necessary Information**

**The following information is written primarily for community members looking for information about a new pollution source. But the basic information is equally valid for community members trying to monitor an existing source.**

Title V guarantees that all draft permits, final permits, permit applications, compliance plans, emissions or compliance monitoring reports, and compliance certifications will be available to the public. The public notice for the draft permit will contain directions to obtain the draft permit, the

permit application and all supporting documentation. Request all the available information.

If you have asked to be put on the state's list or if you find out on your own, rather than waiting until the draft permit is issued, you should request a copy of the permit application prior to the official public notice. One way to seek a copy of the draft permit is to request it under the Pennsylvania Right to Know Act (65 P.S. 66.1 et seq). You can find out what information the EPA has by filing a request under the Freedom of Information Act (FOIA) process.

You should be able to arrange to examine and copy all documents held by an agency regarding the facility of concern. Conducting a complete file review is a good way of insuring that no relevant information is missed.

Appendix C provides information on obtaining relevant EPA documents.

#### **WHAT TO LOOK FOR IN A PERMIT APPLICATION:**

Determine that the applicant has submitted a legally complete application.

Does it include all of the information discussed earlier in this booklet?

Federal regulations at 40 CFR 70 outline the required elements of the permit

application. Pennsylvania regulations dealing with completeness can be found at 127.12 and 127.503.

Determine whether the individual who signed the certification of completeness meets the requirements of a responsible corporate official as required by the regulations.

Examine the operating scenarios. Familiarity with the facility or similar facilities and their operations may be invaluable in determining whether the identified operating scenarios are reasonable representations of the operations at the facility. If possible speak with neighbors or workers at similar facilities to determine the accuracy of the scenarios. Environmental and community organizations from the area hosting such facilities are good contacts.

The EPA has developed emission factors for numerous air pollution sources that are theoretically reasonable estimates of emissions. Determine if EPA emission factors are available for the facility's category and compare the applicant's emissions estimates with the EPA estimates. EPA emission

factors can be found on the EPA web site at  
[www.epa.gov/ttn/chief/ap42.html](http://www.epa.gov/ttn/chief/ap42.html).

Examine the applicable requirements. Determine whether the permit application contains all the information required by the federal and state regulations.

Examine the compliance plan. The applicant is required to detail the current compliance status of the facility. Compare the applicant's statement of compliance with available compliance monitoring reports. (See section 127.513). Examine the compliance schedule. The compliance schedule should be reasonable and specific dates should be set for compliance.

Check the date of permit application submittal. The permit application shield is valid only if the permit application was submitted and deemed complete **prior** to the permit application deadline established by the state.

Compare the permit to the permit application. The permit should be consistent with the information contained in the permit application. Any discrepancies should be explained.

Examine permit variances. On rare occasions the state will allow the facility to not fully comply with a particular requirement, this is known as a variance. The permitting agency should detail the reasoning behind all permit variances. Carefully question all permit variances.

### **Analyzing Synthetic Minor Permits**

Synthetic minors do not have to obtain operating permits under Title V, but must obtain state-issued permits that restrict emissions. Keep informed of all air permits issued for facilities that you want to monitor. In order for the synthetic minor permit to be effective it must be federally enforceable.

### **Permit Modifications:**

Under Pennsylvania regulations there are three different kinds of permit modifications and they all have different implications for the permitting process.

### **Administrative modifications:**

Section 127.450 modifications refers to bookkeeping changes such as correcting typos, changes in frequency of monitoring or testing, changes in names of facility owners etc. Administrative modifications (called amendments) have to be reviewed by DEP quickly (within 60 days--see section 127.450(c) 1) ).

**Minor permit modification:**

Minor modifications are changes that are too significant to qualify as administrative modifications, but which the Pennsylvania DEP has decided are not of such import as to justify the whole DEP and public review process of a new permit. Therefore minor permit modifications are granted an expedited review process. Such modifications require public notice. If there is no public comment, DEP has 21 days to disapprove or seek additional information of the proposed modification. If there are public comments, DEP has 28 days. If during the 21 or 28 day period DEP has not objected to the modification, the source can proceed with the implementation. From the public's point of view this is not a good process since it does not require the agency to take any action before the facility can implement the modification.

**Significant Modification:**

A significant modification of the permit requires the full agency and public review.

**Public Participation:**

Much of the following section on public participation is a repeat of information from earlier sections of this guide. But it is key to effective public participation in the permitting process.

**How to get information:**

The key to participating in permit oversight is for citizens to stay informed at each step of the process. Almost all the information that citizens need to question, monitor or oppose a permit is **by law** publicly available.

Citizens should be aware that there are formal and informal ways of getting the information they need.

Freedom of Information Act: Federal law allows the public to access documents and information held by federal agencies. 5 USC 552.

Pennsylvania Right to Know Act: Pennsylvania law also provides public access to documents held by state agencies. 65 PS 66.1 et seq.

The advantage of a formal request to access documents is that it sets up a paper trail. If the agencies are not responsive, then the person may have recourse to the courts.

Informal requests however can be made directly to federal or state bureaucrats or directly to a company seeking a permit. The advantage of informal information requests is that they are less time consuming and do not involve formal administrative function. Citizens can also directly contact a company to request the information. Many companies are more than willing to provide the public with relevant documentation.

**Public Notice and Comment:**

Once a company has submitted a permit application the Department of Environmental Protection must: 1) Provide notice of the permit request in a local newspaper; 2) Provide notice to a list of interested people that have formally requested such notice and 3) Publish notice in the Pennsylvania

Bulletin. Once the notice is published in the Pennsylvania Bulletin there must be at least a 30-day comment period.

### **How To Draft Testimony Or Comments:**

Comments should detail all concerns identified after analyzing the permit application and the draft permit. It is important to make concerns known for two reasons: to allow the permitting agency to consider these concerns when developing the final permit and to establish standing for subsequent petitions to the EPA and permit appeals. In most instances petitions to the EPA and permit appeals must be based upon issues raised during the public comment period.

### **Opportunity for Other States to Comment:**

As discussed earlier in this booklet, affected states (those states within 50 miles of the source or adjacent states) must be notified of the permit application. Citizens should take the opportunity to contact the air sections of those states and ask them for their perspective on the permit application being submitted. It may make sense to contact an environmental group in that state familiar with air issues to discuss the best way to approach an affected state's bureaucracy.

**EPA Review:**

The permit application must also be submitted to EPA Region III. The EPA review is another opportunity for citizens to take an opportunity to talk to knowledgeable bureaucrats about a permit concern. It may also be appropriate to raise those concerns with EPA informally, before submitting formal comments.

EPA has up to 45 days to review the permit. If EPA concludes that the proposed permit does not meet federal requirements (including those state requirements that are federally enforceable) **and** If EPA objects within the 45 day period, DEP can not issue the permit. DEP can either revise the permit to address EPA's concerns or do nothing. If DEP does not submit a revised permit addressing EPA's objections, the EPA will itself issue or deny the permit.

DEP may issue the permit after public notice, notification to adjacent states, and EPA's 45 if EPA has not objected to DEP's issuing the permit.

**PUBLIC PETITION TO EPA:**

For 60 days after the end of the 45-day period that EPA has to review the permit, a citizen may still petition the EPA to object to the permit. Citizens can not raise new issues in their petition unless it was not possible to raise the issues during the comment period. After the filing of the petition from a citizen, EPA must grant or deny the petition within 60 days of the date it is filed-the EPA can either agree with the petition and order the permit to be reopened and revised. If EPA rejects the petition, the citizen may ask a court to review EPA's refusal to order the permit revised.

EPA denial of the petition is must be appealed to the U.S. Circuit Court.

**Enforcement:**

Once the permit is issued, there are on going opportunities for the public to participate in permit issues. The best opportunity has to do with ensuring that the permitted facility lives up to their Title V commitments. Violations of permit obligations can be enforced by citizens.

**Permit Renewals:**

Title V operating permits under 127.446 are generally issued for a five year period. At the end of the five years the permit application process essentially starts over again.

Applications for permit renewal must be submitted to DEP at least 6 months and no more than 18 months before the existing permit expires.

(see section 17.446 e)

This opportunity is key to neighborhood activists concerned about a pollution source in their neighborhood. If citizen monitoring indicates violations of the permit have occurred or can show how the company's operation have resulted in a detrimental environmental or health impact, permit conditions can be tightened by DEP.

**Recommended Sources of Information:**

Clean Air Act Permitting Manual--James T. O'Reilly, William V. Luneburg, Richard Ayres, Kim K. Burke. Excellent and detailed review of Title V requirements.

The Clean Air Act Operating Permit Program--Charles H. Knauss, Shannon S. Broome, Michael E. Ward. Industry perspective on Title V requirements.