Clean Air Act Title V Petitions to Object/Proposed Revisions: National Association of Clean Air Agencies Comments

Arkansas Environmental, Energy, and Water Law Blog

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The National Association of Clean Air Agencies ("NACAA") submitted October 24th comments on the United States Environmental Agency's ("EPA") proposed rule, *Revisions to the Petition Provisions of the Title V Permitting Program ("Proposed Rule").*

The *Proposed Rule* was published in the Federal Register on August 24, 2016. See 81 Fed. Reg. 57,822.

EPA has previously stated that the Proposed Rule is intended to:

. . .revise its regulations to streamline and clarify processes related to submission and review of title V petitions.

A copy of the *Proposed Rule* can be found here.

The 1990 amendments to the Clean Air Act provided a process by which the EPA Administrator could object to a Title V permit issued by a delegated state.

42 U.S.C. § 7661 d(a) requires that states submit each proposed Title V operating permit to EPA for review. Section 505(b)(1) of the Clean Air Act requires that EPA object to the issuance of a proposed Title V permit in writing within 45 days of the receipt of the proposed permit (and all necessary supporting information) if the federal agency determines that it is not in compliance with the applicable requirements under the Clean Air Act. If EPA does not object to a permit, Section 505(b)(2) provides that any person may petition the EPA Administrator, within 60 days of the expiration of the 45-day review period, to object to the permit.

The proposed rule covers five areas related to submission and review of Title V petitions. The five areas include:

- Regulatory provisions that provide direction as to how petitions should be submitted to the agency
- Regulatory provisions that describe the expected format and minimum required content for Title V petitions
- Clarification that permitting and authorities are required to respond to significant comments received during the public comment period for draft Title V permits (and to provide that response with the proposed Title V permit to EPA for the agency's 45-day review period)

- Guidance in the form of "recommended practices" for various stakeholders to help ensure Title V permits have complete administrative records and comport with the requirements of the Clean Air Act
- Increase familiarity with the post-petition process (i.e., information on the agency's interpretation of certain Title V provisions/implementing regulations regarding the steps following an EPA objection in response to a Title V petition)

The NACAA notes that it:

. . .understands and agrees that the Title V petitions process should be made more transparent and efficient, and we support sensible changes to the Part 70 rules that would advance this goal. There are, however, elements of the proposed rule that we believe would pose an undue burden on state and local agencies – in particular the proposal to require permitting authorities to provide public notice when they transmit a proposed permit package to EPA. We have also identified a number of areas where we believe the proposed rule language should be amended or clarified.

The three topics addressed in the organization's comments include:

Notice of Transmittal of Proposed Permit to EPA

- NACAA opposes the proposed "notice of transmittal" requirement because it would "impose an inappropriate and undue burden on state and local agencies." The reasons for its objections include:
- The requirement is beyond the requirements of Title V of the Clean Air Act.
- Requiring state and local agencies to publish what amounts to a second public notice for every proposed Title V permit would be expensive.
- There is a fundamental disconnect in requiring state and local agencies to bear the responsibility of informing the public about the start of a decision-making process that does not involve them.

Response to Significant Comments

- NACAA notes its recognition that state and local agencies are already required under general principles of environmental and administrative law to respond to significant comments. However, while it does not oppose "spelling out the response to significant comments requirement in the Part 70 rules," it believes the proposed language should be "improved to more accurately describe what is minimally required of state and local agencies in this regard."

Permit Information Transmitted to EPA

- NACAA identified three "areas of concern" which include:
- The regulations must continue to accommodate concurrent review practices
- "Statement of basis" is not a defined term in the Part 70 rules and any reference should be changed to "the statement required by § 70.7(a)(5)"
- EPA should not require a separate statement or basis for each proposed permit and for each final permit

A copy of the comments can be downloaded here.