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Revisions to Petition Provisions of Title V Permitting Procedures: Will Montgomery (Associate Director - Air - Arkansas Department of Energy and Environment - Division of Environmental Quality) Arkansas Environmental Federation Webinar Presentation

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William K. Montgomery (“Will”) and Stuart Spencer undertook presentations as part of the Air Section of the Arkansas Environmental Federation webinar series addressing Title V of the Clean Air Act on June 18th.

Will serves as Associate Director of the Office of Air Quality at the Arkansas Department of Energy and Environment – Division of Environmental Quality (“DEQ”) and Stuart Spencer is Counsel at Mitchell Williams Law Firm in Little Rock, Arkansas.

Both Will’s and Stuart’s presentations addressed separate Title V topics. This post will summarize Will’s presentation.

Congress in 1990 added Title V to the Clean Air Act to ensure stationary sources were subject to a comprehensive air permit. All major stationary sources of air pollution are required to apply for Title V operating permits. These permits include emission limitations and other conditions as necessary to ensure compliance with applicable requirements of the Clean Air Act.

The Title V operating permit program generally does not impose new substantive air quality control requirements. It does require the Title V permits to contain adequate monitoring, recordkeeping, reporting, and other requirements to assure sources’ compliance with applicable requirements. Like State Implementation Plans, states develop the Title V programs and submit them to the United States Environmental Protection Agency (“EPA”) for approval.

Arkansas has been delegated the Title V permitting program for many years.

Will’s presentation addressed three principal topics related to revisions to the Title V permitting procedures promulgated by EPA:

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

Will noted that the EPA rulemaking effective date for the new Title V permitting procedures was April 6, 2020. The rationale for the rulemaking was:

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.

See 85 Fed. Reg. 6431.

The procedures for concurrent or parallel review were described, including:

1. Draft Permit/"Proposed Permit" sent to EPA
2. EPA (45 days) and Public (30 days) Comment Periods run concurrently
3. No "significant comments" received
4. DEQ issues Final Permit

Significant Comments on the proposed Title V procedures were also noted.

The comments and concerns described include:

- Increase in permitting time
- Delays caused by disagreements over issue resolution
- Support electronic submittal system
- Opposed public notice for transmittal (not finalized)

The presentation included changes from the revised procedures that affect permitting authorities which include:

- 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 were stated to include:

- 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

Various issues associated with court interpretations of comments were addressed. For example, in a Title V context the presentation notes that:

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.

Finally, Will discussed DEQ's response to the revised Title V permitting procedures, which include:

- 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

A copy of the slides can be downloaded [here](#).