

Title V Permit Renewal Application Considerations: Stuart Spencer (Mitchell Williams Law Firm) Arkansas Environmental Federation Presentation



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Stuart Spencer undertook a Zoom presentation on November 19th at the Arkansas Environmental Federation convention titled:

Permit Procedures Update: Title V Permit Renewal Application Considerations (“Presentation”)

Stuart is a former Associate Director – Air of the Arkansas Department of Energy and Environment – Division of Environmental Quality (“DEQ”) and serves as Counsel at Mitchell Williams Law Firm.

Congress in 1990 added Title V to the Clean Air Act to assure 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 assure 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. The intent of a Title V permit is to organize in a single document the air requirements which apply to the permit holder. 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 then submit them to the United States Environmental Protection Agency (“EPA”) for approval. Arkansas’s Title V operating program was approved by EPA many years ago.

Components of a Title V permit include:

- Listing of permitting activities
- Description of emission units and pollution control devices
- Listing of applicable emission limits and standards
- Description of methods of monitoring
- Description of recordkeeping
- Identification of methods to be used for reporting and certifying compliance

States are required by Title V to submit each proposed operating permit to EPA for review. Section 505(v)(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 of the Clean Air Act. If EPA does not object to a permit, Section 505(v)(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.

Stuart's *Presentation* initially noted that the goals of permittees include "Continuity of Permit Coverage," noting:

- Timing of application submission
- Sufficiency of information submitted
- Communication with permit writer
- Build in additional time for consideration of confidential materials

As a result, he cites the Arkansas Title V permitting regulations which are found in Arkansas Pollution Control and Ecology Commission Reg. 26.401 (Duty to apply) which states:

Reg. 26.401 Duty to apply

For each source subject to 40 C.F.R. Part 70, as promulgated June 3, 2010 (75 FR 31607) the owner or operator shall submit a timely and complete permit application (on forms supplied by the Department) in accordance with this section.

Further, Stuart notes Reg. 26.406 (Permit Renewal Applications) detailing the timing required for submission of a permit renewal application. Included in the *Presentation* is a chart noting some DEQ information regarding administratively incomplete applications.

The *Presentation* also addressed the Title V permit shield which is found in Reg. 26.704 and provides certain protections to applicants with valid Title V permits.

The importance of the completeness determination requirement which is found in Reg. 26.407 (Complete Application) was reviewed. This included the duty of the applicant to supplement or correct an application which is found in Reg. 26.409.

Because some applicants and facilities have concerns about information submitted pursuant to the application, Reg. 26.408 (Confidential information) was reviewed. This regulatory provision provides certain protections for information submitted to DEQ if it meets the relevant requirements. These include fitting within the scope of the term "trade secret" as specified in Arkansas Pollution Control and Ecology Commission Regulation 19.413 (Confidentiality).

The *Presentation* included the DEQ Office of Air document titled:

Air Application Instructions for Registrations, Minor Source Permits, or Title V Permits

The importance of this document to understand certain requirements is noted. In particular, it addresses a number of the issues associated with the Title V permitting program.

A copy of Stuart's slides can be downloaded [here](#).