

Title V Task Force Overview

Clean Air Act Advisory Committee

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Title V Task Force
Designated Presenters

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Timeline

- Charge by CAAAC Permits Subcommittee, May 2004
- 3 public hearings and 2 conference calls held, Jun 2004-Feb 2005
 - Extensive participation
- Written comments accepted until Mar 31, 2005
 - Even more extensive written submittals
- Task Force (TF) deliberations Feb 2005 – Mar 2006
- Final Report April 2006

Task Force Charge

- Gather input from all stakeholder groups
- Determine how well the title V program is performing
- Determine what elements of the program are working well vs. working poorly
- Report may characterize consensus, however, if consensus is not achieved, report should reflect all views

Task Force Members

- Steve Hagle, *TX*
- Bob Hodanbosi, *OH*
- Shelly Kaderly, *NE*
- Adan Schwartz, *Bay Area*
- Rob Silwinski and John Higgins, *NY*
- Don van der Vaart, *NC*
- Marcie Keever, *Our Children's Earth*
- Verena Owen, *Lake Co. Conservation Alliance*
- Bob Palzer, *Sierra Club*
- Keri Powell, *NYPIRG*
- Karla Raettig and Kelly Haragan, *Env. Integrity*
- Dick van Frank, *Improving Kid's Environment*
- Shannon Broome, *Air Permitting Forum*
- Lauren Freeman, *UARG*
- David Golden, *Eastman Chemical*
- Bernie Paul, *Eli Lilly*
- Bob Morehouse, *ExxonMobil*
- Mike Wood, *Weyerhaeuser*

Task Force Issue Areas

- Program Overview Papers
 - Costs & Benefits
- Content Issues
 - Incorporation of Applicable Requirements
 - Insignificant Emission Units
 - Monitoring
 - Title I/Title V Interface
 - New Substantive Requirements
 - Permit Definitiveness
 - Compliance Certifications
 - Startup, Shutdowns and Malfunctions
 - Compliance Schedules
- Process Issues
 - EPA Review of Proposed Permits
 - Public Access to Documents
 - Public Hearings
 - Public Notice throughout Process
 - Statement of Basis
 - Responses to Public Comments
 - Permit Revisions and Operational Flexibility
 - Petitions and Appeals

Process

- Each Paper contains
 - Issue Description
 - Supporting Information
 - Legal requirements
 - Testimony (oral and written) received
 - Task Force Discussion – summarizes the give and take during Task Force deliberations
 - Recommendations (if any)
 - In general, recommendations do not specify the method by which they should be implemented

Clarification of Terms

- Recommendation
 - Any Task Force member could offer a recommendation.
 - The use of the term recommendation is not intended to reflect consensus by the Task Force.
- Majority
 - The term majority should not be construed as a value judgment. Note that a majority could consist of two of the three stakeholder groups represented on the TF and therefore it is critical for reviewers to look at the specific votes and the reasons for those votes which are reflected in the papers.

Costs and Benefits

- ***Issues***

- Testimony indicated costs far exceeding initial projections and provided opportunities and suggestions to reduce costs and streamline the program.
- A cross-section of stakeholders saw benefits from the program as including recordation of applicable requirements into one document, public participation and education, permitting authority/source interaction, strengthened compliance assurance systems.

- ***Recommendation Topics***

- These topics are ingrained in each of the process and content topics the TF addressed.
- Recommendations included best practice sharing and other approaches to capture program benefits at lower cost/burden levels.

Incorporation of Applicable Requirements

- ***Issues***

- TF addressed how to record applicable *rule* requirements in the Title V permit, particularly MACT, *e.g.*, restate verbatim, cite (general or detailed), or paraphrase/translate.
- TF addressed how applicable requirements from construction permits should be recorded.

- ***Recommendation Topics***

- Majority supported citation approach for incorporating MACT (and other standards) into Title V permits.
- For construction permits, terms and conditions should be repeated in Title V permit; citation to construction permits should be used only if construction permit is available for review.

Insignificant Emission Units

- ***Issues***

- EPA has required insignificant emissions units (IEUs) be included in Title V permit with applicable rules identified.
- Once IEUs are identified, permittee must provide annual compliance certification for them.
- TF discussed concern re focus on IEUs detracting from significant units & imposing high costs for little environmental benefit and also potential cumulative emissions from multiple IEUs.

- ***Recommendation Topics***

- Majority believes administrative burden associated with the permitting and certification of IEUs outweighs environmental benefit of including these small sources in program and that IEUs can be handled in a more streamlined manner.
- Majority recommends eliminating them from inclusion in the program, but any unit not included in program would not have a permit shield.

Monitoring

- ***Issues***

- Is it permissible to add monitoring to Title V permits?
- Under what circumstances?
- Are states treating “periodic monitoring” as different from CAM? Is CAM being implemented?

- ***Recommendation Topics***

- Very divisive issue, in part because of litigation surrounding rule requirements.
- Different legal interpretations gave rise to a series of recommendations.
- Ultimately, TF felt these issues will be resolved in litigation, although the discussion did advance the understanding of the concerns of all sides.

Title I/Title V Interface

- ***Issues***

- 2-step process for revising Title I permits and Title V permits.
- Confusion with some states voiding Title I permits and others retaining them.
- SIP Gap – pending SIP revisions.

- ***Recommendation Topics***

- Expand use of White Paper No. 1's parallel processing.
- Additional options using current rules to eliminate the Title I/Title V 2-step.
- Expedite processing of SIP revisions and utilize equivalent limits.

New Substantive Requirements

- ***Issues***

- Some states imposing monitoring parameters as enforceable limits. Testimony cited instances where this led to more stringent limits than applicable rules.
- CAM interface.

- ***Recommendation Topics***

- General agreement Title V does not authorize imposition of any new or more restrictive emission limitations.
- Majority supported recommendations relying on CAM rule & ensuring parameters (without agreeing that they are authorized) directly correlated with applicable limits. No double violations.
- Regardless of authority for new conditions, if conditions were imposed in 1st round of permitting, majority supported replacing with applicable CAM rule req'ts.

Permit Definitiveness

- ***Issue***
 - Generally scope of permit shield.
 - Interplay between credible evidence rule and permit shield.
- ***Recommendation Topics***
 - **No consensus but addressed**
 - Credible Evidence Rule (rule, preamble and guidance) and relationship between the permit, the permit shield, and the compliance certification.
 - Language in 70.6 regarding “at a minimum” requirements in compliance certifications.
 - Potential amendments to 70.6 in this regard.

Compliance Certifications

Content

- ***Issues***

- What should the format of compliance certifications be?
- Wide ranging discussion on the pros and cons of the various forms:
 - Long form can obscure compliance issues for the regulators, company management and the public.
 - Some view long form as management tools.
 - Core recognition that identifying deviations is the key.

- ***Recommendation Topics***

- Majority of TF recommends short form.
- Remainder of TF split among three options from a modified short form to the full long form.
- Consensus on several “nagging” issues re certification forms:
 - should provide space for permittee to clarify or explain its certification.
 - should not require certification for requirements that don’t impose an obligation on the source.
 - should include space to indicate where permittee relies on monitoring not specified in the permit in cases when permit specifies a particular method.

Startup, Shutdown & Malfunction

- ***Issues***

- Whether startup, shutdown, & malfunction (SSM) defenses both in SIPs and federal rules create enforcement and compliance problems.

- ***Recommendation Topics***

- Differing views among TF.
- Of 5 offered recommendations, only 1 reached consensus -- that the Title V permit should be clear as to what limits are subject to the emergency defense.
- Majority supported recommendation that if a rule does not adequately address SSM, rules should be revised rather than address on a permit-by-permit basis.

Compliance Schedules

- ***Issues***
 - What constitutes a “determination of noncompliance” sufficient to require inclusion of a compliance schedule in a permit?
 - What are permitting authorities’ obligations to investigate and resolve allegations of noncompliance before they issue Title V permits?
- ***Recommendation Topics***
 - The topic of compliance schedules generated extensive discussion, but the TF concluded that the topic raised legal issues that could not be readily resolved in this forum.
 - Thus, the TF will not offer any recommendations on this issue.

EPA Review of Proposed Permits

- ***Issues***

- Concurrent v. sequential EPA and public review.
- Permit changes during review process.
- Informing stakeholders of schedule and version.
- HQ EPA permit review policy/guidance (e.g., quantity, quality).

- ***Recommendation Topics***

- Majority recommended concurrent review applies absent a significant comment that is germane to Title V permit proceeding submitted by someone other than the permittee. If such a comment is submitted, review would become sequential.
- Debate -- whether *any comment (no significance or germaneness test)* should lead to sequential review because permitting authority and commenter may not agree on what is significant or germane.

Public Access to Documents

- ***Issues***
 - Difficulty or ease the public has obtaining documents during Title V permit review and comment process.
- ***Recommendation Topics***
 - General agreement that permitting authorities should maintain an accessible and complete file of the relevant documents and make certain of these documents, including the permit and statement of basis, available online.
 - Disagreement regarding which documents are relevant to a Title V permit.

Public Hearings

- ***Issues***
 - The process for providing and conducting public hearings on Title V permits.
 - Hearings provide an important opportunity for a member of the public to participate in permit development.
- ***Recommendation Topics***
 - Use of informational sessions.
 - State discretion/standards for deciding when to hold public hearings and the publication of such standards.
 - Time and place for public hearings, if held.
 - Whether EPA should grant petitions regarding denial of hearing on grounds that it was arbitrary.

Public Notice throughout Process

- ***Issues***
 - Degree to which public notification of permit proceedings has been effective.
 - Potential improvements to address any problems that do exist in state implementation of notice requirements.
- ***Recommendation Topics***
 - Majority agreed that states should
 - explore effective alternatives to newspaper notice;
 - make greater use of the internet; and
 - notify commenters throughout process of key permit development actions.

Statement of Basis

- ***Issues***
 - Production, content, and use of statements of basis.
- ***Recommendation Topics***
 - Consensus on:
 - most items that should be included in a statement of basis for initial permits, renewals, and revisions; and
 - consequences for permits issued without a statement of basis and state programs that routinely do not issue a document satisfying the intent of the statement of basis with their permits.

Response to Public Comments

- ***Issues***

- Concerns some permitting authorities are not providing a written response (or any response at all) to comments on draft permits.
- Difficulty in determining what changes have been made to a permit following the public comment period.

- ***Recommendation Topics***

- Majority agreement that permitting authorities should:
 - prepare written response to comments responding to each comment received and explaining changes between draft/proposed permits; and
 - Send response to comments to EPA.
- Split on approach and consequences.

Permit Revisions/Operational Flexibility

- **Issues**

- Examples: (1) reopen/ revise permits for MACT; (2) lack of timely revision processing/system sustained by minor mod and off-permit application/notice; (3) scope of administrative amendment category; (4) permit engineer confusion re which path applies; (5) merged construction/Title V programs (a not-insignificant minority) classify many changes involving little or no discretion categorized as significant.

- **Recommendation Topics**

- Didn't pursue whether rules should be revised but offered instead separate sets of recommendations – one to improve current rule *implementation* and another assuming (not supporting/disagreeing with) rule revisions.
- Under current rules:
 - Addressed incorporation of new requirements, use of off-permit and minor modification, need to respond to revision requests, potential best practice/guidance opportunities.
- If EPA were to revise the rules:
 - Addressed need to match procedures with the discretion in the Title V permitting process and significance of change.

Appeals and Petitions

- **Issues**
 - Some states very slow in processing sources' permit appeals.
 - EPA also slow in responding to petitions for objection to permits.
 - Process not at all transparent (*i.e.*, poor communication with petitioner, permittee, or permitting authority).
- **Recommendation Topics**
 - Seek to:
 - expedite appeal resolution and consideration of source stay requests;
 - improve transparency of the petition process
 - expedite EPA petition responses;
 - Address concern regarding resolving programmatic issues in individual petitions/appeals w/o public input.