

# Clarifying the Scope of “Applicable Requirements” Under State Operating Permit Programs and the Federal Operating Permit Program

## FACT SHEET

### ACTION

- On December 13, 2023, EPA proposed a rule that would clarify the relationship between the Clean Air Act (CAA) title V operating permit program and certain types of “applicable requirements” established under different sections of the CAA. The proposed rule addresses three issues that have been the source of public interest and, at times, misunderstanding:
  - (1) The preamble explains how different types of “applicable requirements” relate to title V, including how the National Ambient Air Quality Standards (NAAQS) and requirements in State Implementation Plans (SIPs) are (or are not) implemented through title V permitting.
  - (2) The rule would codify EPA’s current position regarding the intersection between title V operating permits and New Source Review (NSR) preconstruction permits, which are issued under title I of the CAA. This position is: provided that a source obtains an NSR permit under EPA-approved or EPA-promulgated rules, with public notice and the opportunity for comment and judicial review, EPA will not revisit such NSR decisions through the title V process.
    - The proposal solicits comment on three alternative approaches in which EPA would use title V permits to address substantive NSR issues in certain additional situations.
  - (3) The rule would codify EPA’s longstanding position that the “General Duty Clause” of CAA § 112(r)(1), which concerns the prevention of accidental releases of hazardous substances, is not an “applicable requirement” and is not implemented through title V.
- The proposed rule would: (1) ensure that applicable requirements established in different CAA programs are treated consistently in title V permits across the nation; (2) incentivize permitting authorities to offer opportunities for meaningful public involvement in NSR permitting actions; (3) respect the finality of NSR permitting decisions; and (4) allow the public and EPA to focus their resources on using the title V permitting process to address issues that can be most effectively resolved through title V (e.g., ensuring sufficient monitoring and compliance assurance measures).
- EPA will accept comment on this proposed action for 60 days after it is published in the *Federal Register*.

### BACKGROUND

- The title V operating permit program is a vehicle for compiling air quality control requirements from other CAA programs and for providing conditions necessary to assure compliance with such requirements, but not for creating or changing applicable requirements from those other programs.

- State, local, and tribal permitting authorities issue most title V permits. EPA reviews these permits and can object to their issuance if they do not assure compliance with “applicable requirements” of the CAA. If EPA does not object on its own, any person may petition the EPA Administrator to object to a title V permit.
- Many of EPA’s past statements regarding the intersection between title V permits and “applicable requirements” from other CAA programs are included within responses to citizen petitions challenging title V permits issued to individual facilities, which the public and permitting authorities may not be aware of. This rulemaking will codify, and thereby clarify and bring greater awareness to, EPA’s current position on the issue.

### **FOR MORE INFORMATION**

- To download this action from EPA’s website, go to <https://www.epa.gov/title-v-operating-permits/current-regulations-and-regulatory-actions>.
- EPA has established a docket for this action under Docket EPA-HQ-OAR-2023-0401. Publicly available docket materials are available electronically through <http://www.regulations.gov>.
- Additionally, a number of documents that are relevant to this proposed action—in particular, prior EPA orders responding to petitions challenging individual title V permits—are available through the EPA’s website at <https://www.epa.gov/title-v-operating-permits/title-v-petition-database>.
- For further information about this action, contact Matthew Spangler of EPA’s Office of Air Quality Planning and Standards by email at [spangler.matthew@epa.gov](mailto:spangler.matthew@epa.gov).