

Changes to Title V Permits

Workshop K

July 25, 2019



Michael Hopkins, P.E.
Assistant Chief, Permitting
Division of Air Pollution Control
614-644-3611
Mike.hopkins@epa.ohio.gov

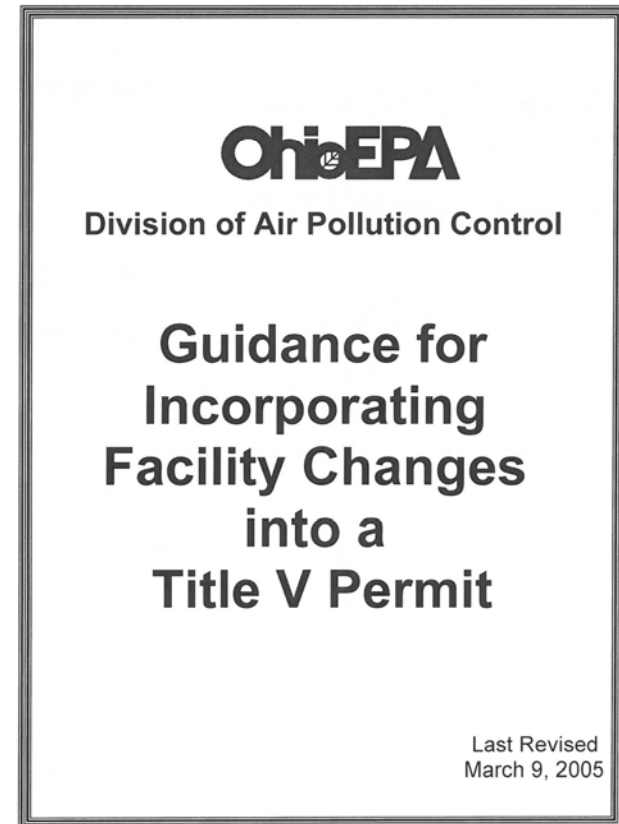
Topics

- When are changes needed?
- Which process should be used?
- What information should be submitted?
- When can you actually make the changes?



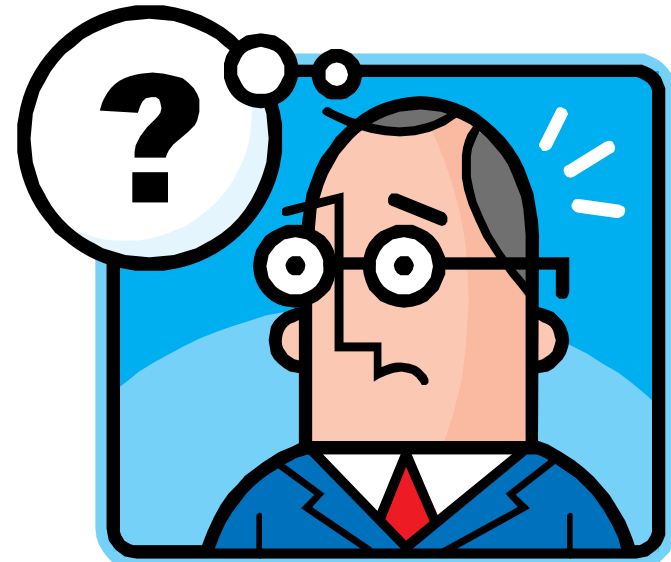
Modification Guidance

- Guidance for Incorporating Facility Changes into a Title V Permit:
- http://www.epa.ohio.gov/portals/27/title_v/3-9-05guidancefinal.pdf



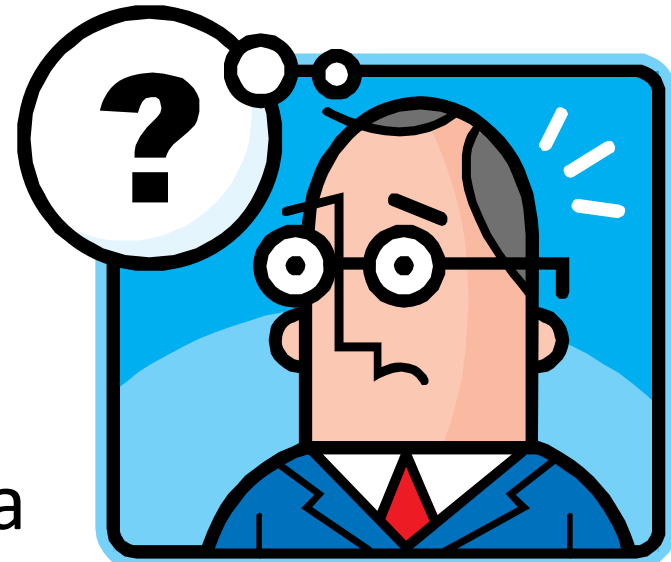
When do I need to modify my TV?

- Installed or modified equipment or processes
- Have a PTI that conflicts with TV
- Need a relaxation of testing frequency



When do I need to modify my TV?

- Want less burdensome record keeping/reporting
- New Federal/state rules apply
- Found typos/incorrect data



What impact does this have?

- Sometimes can't move forward with project
- Wrong terms in permit could mean inadvertent non-compliance
- Different PTI vs TV terms could mean doing things twice
- Preparing unneeded records, unneeded testing wastes money

How do I know when I can begin operating a change?

- Must assess:
 - the specific physical or operational change that is being made,
 - any accompanying changes that will have to be made to the TV Permit; and
 - the modification procedure that needs followed

How do we incorporate changes?

- Revision of the Title V permit
 - Significant Permit Modifications (SPM)
 - Minor Permit Modifications (MPM)
 - Administrative Permit Amendments (APA)
 - Reopenings
- Off Permit procedure (OP)
- Operational Flexibility procedure

Planning to Modify Your Title V

- What needs to change?
- Discuss change with Ohio EPA permit contact

“IMPORTANT POINT”

IT IS IMPORTANT FOR THE PERMITTEE AND THE OHIO EPA TO WORK CLOSELY TO ENSURE THE APPROPRIATE REVISION TYPE IS SELECTED

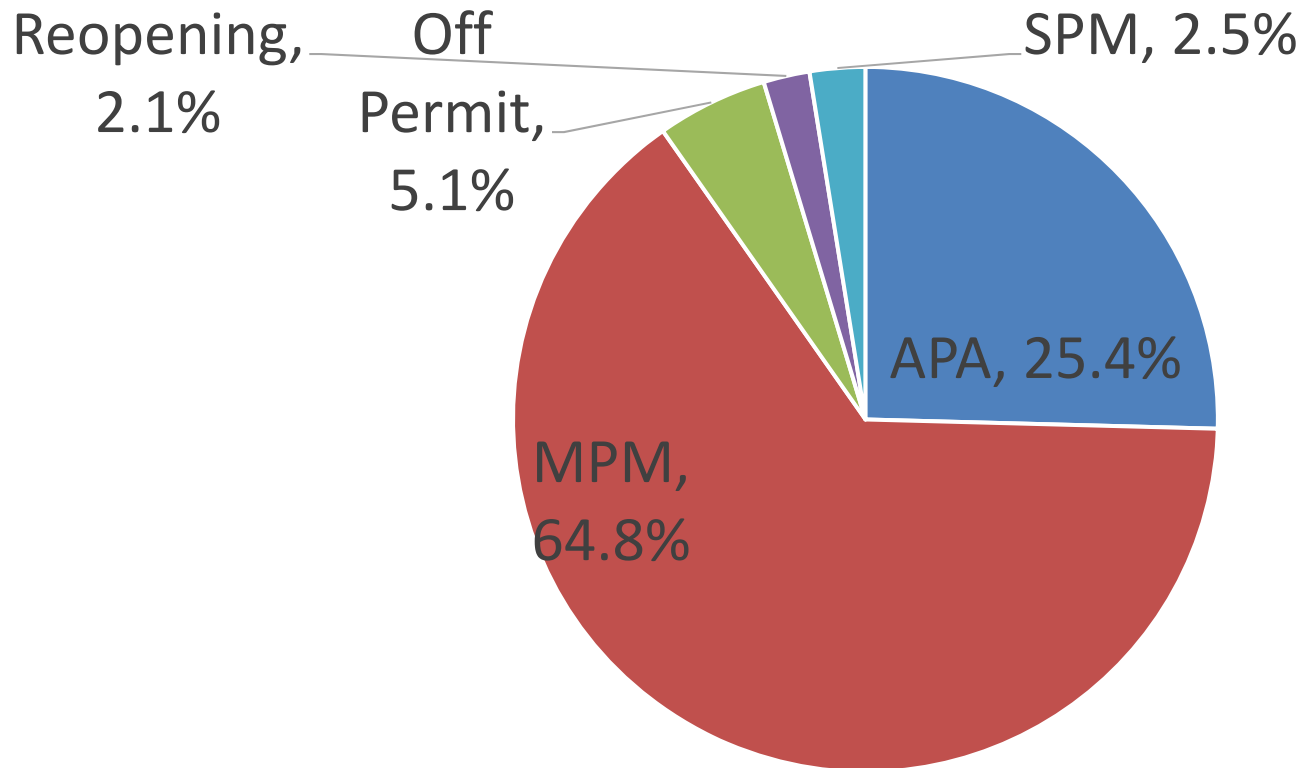
Planning to Modify your Title V

- Need Permit-to-Install first?
- Which TV modification type?
- What information needs to be submitted?
- When do things need done?
- (Each type has different obligations)

Modification Types

Modification Type	For:	When Effective?
Off-permit change	Non conflicting PTIs; exemptions; not addressed or prohibited in permit	Appl. Submitted or PTI issued, TV mod issued
Administrative Permit Amendment (APA)	Typos; inadvertent error correction; name, address change; increased monitoring	When request is submitted
Minor Permit Modification (MPM)	Changes that are not SPM (see below)	When final mod issued (Proposed, then final only)
Significant Permit Modification (SPM)	NSPS, MACT, PSD, Nonattainment mods; significant change to monitoring, recordkeeping etc.	When final mod issued (Draft, PPP, PP, Final must be issued)
Reopenings	New applicable requirements; material mistakes	Final reopening issued (Draft, PPP, PP, Final must be issued)

Processed TV Modifications



■ APA ■ MPM ■ Off Permit ■ Reopening ■ SPM

2014 through 2018 Data

SIGNIFICANT PERMIT MODIFICATION (SPM)

Significant Permit Modification Use

- SPM is used for significant changes to the Title V that typically include:
- Changes in existing units such as:
 - increases above Title I modification levels, or
 - Significant changes to monitoring or relaxation of reporting or recordkeeping terms.
- Incorporating new units that qualify as a Title I modification

Significant Permit Modification Use

- Modification under NSPS
- Modifications under MACT
- PSD applies
- NNSR applies
- “Significant” changes to monitoring terms
- “Relaxation” of record keeping/reporting

eBusiness Center Procedure

New Tasks

Select from the list below to create a new task

[Facility Profile Change](#)

[Owner/Contact Change](#)

[Permit-by-rule Notification](#)

[PT/PTD Application \(Initial, Renewal, Modification, General Permit\)](#)

[Title V PTD Application \(Initial, Renewal, Modification\)](#)

[Title IV Acid Rain Application](#)

[Request Administrative Permit Modification](#)

[Fee Emissions Report \(can also include EIS and ES\)](#)

[Permit Evaluation Report \(PER\)](#)

[Emissions/Stack Testing](#)

[CEMS/CERMS/COMS](#)

[Scheduled Maintenance Bypass Request](#)

[Other Compliance Report \(ex. Quarterly Deviation Reports\)](#)

[Create an Intent To Relocate notice](#)

Facility Name: Test Production Facility-1

Request type: Title V PTD Application

⊖ **Title V PTD Application**

- [B004](#)
- [B999](#)
- [P001](#)
- [P010](#)
- [P011](#)
- [TMP159415](#)
- [TMP159417](#)
- [TMP159418](#)
- [TMP159419](#)
- [TMP159420](#)

Reason for Application

Please Identify the reason for this application :

- Initial
- Renewal
- Revision/Modification/Reopening
- Reopening
- Revoke/Reissue
- Significant Permit Modification
- Minor Permit Modification
- Administrative Permit Amendment
- Off permit change

Significant Permit Modification Procedures

- Permittee submits a complete application for the change via Air Services
- Issued draft, preliminary proposed (PP), proposed (P) and final
- Public comment is afforded only to those parts of the permit affected by the change

When can the facility begin the change?

Step 1

Would operation of the **change requested** be prohibited by the current Title V permit?

NO

Operation of the **source and change** can begin immediately after receiving the PTI, but permittee must apply for the SPM within the 1 year period required by the PTI

YES

Operation of the **change** cannot begin until the SPM is issued final. Proceed to Step 2

18

When can the facility begin the change?

Step 2

Could the **source** be operated in a way that would not be prohibited by the current Title V permit (in compliance with all T&Cs)?

YES

Operation of the **source** can begin, in compliance with the current Title V permit, but operation of the **change** cannot begin until the SPM is issued final

NO

Operation of the **source and change** cannot begin until the SPM is issued final

When can the facility begin the change?

- Submit PTI application and Significant Permit Modification application simultaneously
- Allows agency to coordinate issuance
- Minimizes delays

“IMPORTANT POINT”

WATCH FOR THE ABOVE SCENARIO. THE PERMITTEE SHOULD SUBMIT APPLICATIONS CONCURRENTLY AND OHIO EPA SHOULD PRIORITIZE THE SPM & PTI TO PREVENT UNNECESSARY DELAYS TO THE PERMITTEE

MINOR PERMIT MODIFICATION (MPM)

21

Minor Permit Modification (MPM)

- Non SPM changes
- Non significant changes to MRR
- Change to BAT that are not SPMs
- PTI Synthetic minor additions or changes
(can't establish new syn minor in TV MPM –
must be done in a PTI first)

MPM Procedures

- Submit complete application in Air Services
- Include suggested permit language

Clarification: The suggested draft permit language need only cover the terms and conditions applicable to the change requested. Ohio EPA prefers a red-line strikeout version of the permit.

MPM Procedures

- Responsible Official certifies change qualifies for MPM
- Issued as proposed, then final
- No public comment period
- **Permittee operates under suggested terms once application submitted**
- Ohio EPA can terminate operation under terms if not a MPM

**ADMINISTRATIVE
PERMIT AMENDMENT
(APA)**

25



Administrative Permit Amendment

- Used for:
 - Typos
 - Administrative Changes (name, address, phone)
 - Increases in monitoring or reporting frequency
 - Changes in ownership or operational control
 - this includes the permanent shutdown of emissions units (see guidance)
 - Correction of inadvertent errors

Admin Permit Amend Procedures

New Tasks

Select from the list below to create a new task

Facility Profile Change

Owner/Contact Change

Permit-by-rule Notification

PTI/PTIO Application (Initial, Renewal, Modification, General Permit)

Title V PTO Application (Initial, Renewal, Modification)

Title IV Acid Rain Application

Request Administrative Permit Modification

Fee Emissions Report (can also include EIS and ES)

Permit Evaluation Report (PER)

Emissions/Stack Testing

CEMS/CERMS/COMS

Scheduled Maintenance Bypass Request

Other Compliance Report (ex. Quarterly Deviation Reports)

Create an Intent To Relocate notice

Facility ID : 0125204001

Request type : Request Administrative Permit Modification

Modification Type :

- Please select
- PTI/PTIO Administrative Modification
- Title V Administrative Permit Amendment**
- Title V Off-Permit Change

Administrative Permit Amendment

- When can the facility begin the change?
- The change can be implemented immediately upon submitting the APA

REOPENING FOR CAUSE

Reopening Use

- 3 or more years before renewal
- Insert newly applicable requirements
 - E.g., new MACT applies...
- Correct material mistakes or inaccurate statements
- Permit must be revised or revoked to assure compliance with applicable requirements
- <3 years before renewal – just use renewal

Reopening Procedures

- Ohio EPA initiates either on own or by request
- Ohio EPA may request updated application
- Issued as draft, preliminary proposed, proposed and then a final action.
- Public comment is afforded only to those parts of the permit affected by the change

Reopening Conditions

- Ohio EPA must notify permittee 30 days before draft
- If permit reopened for cause within 2 years of expiration, permittee can choose to renew
- Renewal procedures then followed

OFF-PERMIT CHANGES

Off-Permit Changes

- Used for:
 - Incorporate non-Title I modification changes to state-only side of Title V
 - Changes can't be “specifically addressed or prohibited” by current Title V
 - e.g., commonly used for incorporating a PTI for a minor NSR change or a PTI exempt source subject to applicable requirements

Off-Permit Procedures

- Must submit an updated application in Air Services to Ohio EPA
- Ohio EPA puts on State-only side of permit
- Issued as a final action
- No comment period

Off-Permit Changes

- When can the facility begin the change?
- Operation can begin immediately
 - After the PTI is issued final (when applicable)
 - Follow the procedures for contemporaneous notice to ensure continued operation is afforded by Ohio law when operation under the PTI has expired

OPERATIONAL FLEXIBILITY

37

Operational Flexibility Use

- Term more stringent than applicable requirement (not likely)
- Emissions trading where not in permit
 - Usually not needed because in Ohio trading terms end up in a permit)
- Emissions trading for emissions cap (Not needed because terms in permit)
- Very limited – rarely used

Need Help?

- Guidance:

http://www.epa.ohio.gov/dapc/title_v/titlev.asp

- <http://ohioepa.custhelp.com/app/home>

- Permit-Specific

- Consultant
- District Office or local air agency permit contact

29th Annual Conference

ENVIRONMENTAL PERMITTING IN OHIO

**Workshop K
Title V Change Management**

**Robert L. Brubaker, Esq.
Porter Wright Morris & Arthur
July 25, 2019**

AIR POLLUTION OPERATING PERMITS

PTIOs

- A non-exempt “air contaminant source” (other than a Title V source) must have a Permit to Install and Operate (PTIO) – see OAC 3745-31-02
 - Generally, **minor** sources require a PTIO to operate

TITLE V Permits

- A Title V source must have a Title V operating permit – see OAC 3745-77-02
 - Generally, **major** sources require a Title V permit to operate

AIR POLLUTION REGULATION BASICS

- What is a *source*?
- What is an *air pollutant*?
- What is the difference between a *new* source, an *existing* source, and a *modified* source?
- What is the difference between a *major* source and a *minor* source and an *area* source?
- What *exemptions* apply to *permitting* requirements?
- What *exemptions* apply to *performance* requirements?

ALERT: Pay careful attention to terms *defined* in air pollution statutes and regulations

WHAT IS A *SOURCE*?

The following similar terms all have different legal origins and definitions:

- Stationary Source
- Air Contaminant Source
- Facility
- Affected Facility
- Emission Unit
- Affected Source
- Process or Production Unit

WHAT IS AN *AIR POLLUTANT*?

- The definition of *air pollutant* in the Clean Air Act is “capacious”. See: section 302(g) of the Clean Air Act and *Massachusetts v. EPA*, 549 U.S. 497 (2007)
- Not all air pollutants are *subject to regulation* under the Clean Air Act
- Air pollutants *subject to regulation* under the Clean Air Act are listed by U.S. EPA. See: EPA’s “Definition of Regulated Air Pollutant for Purposes of Title V,” <https://www.epa.gov/sites/production/files/2015-08/documents/rapdef.pdf>, and EPA’s “List of Lists,” https://www.epa.gov/sites/production/files/2015-03/documents/list_of_lists.pdf.
- The definition of *air contaminant* in the Ohio Air Pollution Control Act is broad; the Ohio definition of *air pollution* is more narrow. Compare section 3704.01(B) and (D) of the Ohio Revised Code
- Some air pollutants are regulated for some purposes but not others under the Clean Air Act (such as GHGs and certain substances listed under section 112(r)) and under the Ohio Air Pollution Control Act (such as certain State-only Air Toxics listed in OAC 3745-114-01)

WHAT IS THE DIFFERENCE BETWEEN A **NEW** SOURCE, AN **EXISTING** SOURCE, A **MODIFIED** SOURCE, AND A **RECONSTRUCTED** SOURCE?

- The difference between a *new* source and an *existing* source (for NSPS, PSD, NNSR, and MACT/HAP purposes) depends on the date construction *commences*
 - (Note: For NSR purposes, the term “*begin actual construction*” is used to determine what may and may not be done before a permit is issued, whereas the similar term “*commence*” construction is used to distinguish a *new* source or *modified* source from an *existing* source)
- A *modification* transforms an *existing* source into a *new* source. Whether an *existing* source is *modified* or not depends primarily on whether *increases in emissions* have been *caused* by a particular “physical change or change in the method of operation.” The criteria for determining *increases in emissions* and their *cause* are complicated, have changed over time, and are not the same for NSPS, PSD, NNSR, and PTI/PTIO purposes.
- *Reconstruction* of an *existing* source transforms it into a *new* source. *Reconstruction* depends primarily upon the capital cost of an activity.

WHAT IS THE DIFFERENCE BETWEEN A **MAJOR** SOURCE AND A **MINOR** SOURCE AND AN **AREA** SOURCE?

- The difference between a *major* vs. *minor* source depends on the *potential to emit*.
- The *potential to emit* threshold for *major* source status is measured in tons per year and depends on the Clean Air Act program (PSD, NNSR, Title V, or Section 112), the source category, the attainment/nonattainment designation, and the type of regulated pollutant (HAP or non-HAP).
 - The potential to emit takes into account physical and operational design, and constraints on operating times and emissions that are either federally or State enforceable.
- A *minor* source is one with the potential to emit less than a *major* source.
- *Area* source is a term applied to non-major sources of HAP emissions.

WHAT *EXEMPTIONS* APPLY TO AIR POLLUTION PERMITTING AND/OR COMPLIANCE?

- Some *exemptions* apply to the requirement to obtain a permit, but not to the requirement to comply with underlying performance obligations. See, for example, OAC 3745-31-03.
- Some *exemptions* apply to *performance* obligations. These are scattered throughout Ohio and federal statutes and regulations. See, for example, the de minimis exemption in section 3704.011, Ohio Revised Code, and individual SIP, NSPS, and MACT rules.

An Intimidating Number

The maximum civil penalty for violation of a CAA requirement:

\$99,681

For *each* day of *each* violation

If the violation continues for one week: **\$697,767**

It takes only **10 days** to be exposed to **\$1 million in liability**

If the violation continues for 5 years: **\$182,017,506**

See: 2019 adjustments under the *Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*

84 *Fed. Reg.* 2056 (Feb. 6, 2019)

TITLE V BASICS

- **Applicability** (see OAC 3745-77-04)
 - All “Major Sources” and those Minor Sources expressly required to have a Title V permit under an applicable Part 60 or Part 63 standard
- **Definition of “applicable requirement” is crucial**
 - 12 specific rule-based federally-enforceable requirements listed in OAC 3745-77-01(H)
- **Must Distinguish FARs** (Federally-enforceable Applicable Requirements) **from SORs** (State-only requirements) (see § 3704.036(A), Ohio Revised Code)
- **Federally-enforceable “New Substantive Requirements” are prohibited** (see § 3704.036(K), Ohio Revised Code)
- **“Periodic Monitoring”** (see OAC 3745-77-07(3)(a)(ii)) **has been particularly controversial**

WHAT ARE PROHIBITED “NEW SUBSTANTIVE REQUIREMENTS”?

- **Title V permit requirements are “*substantive*” if they:**
 - impose a duty or create a liability
 - impair or take away an existing right
- “Operational restrictions” are likely to be substantive
- *See General Electric Lighting v. Koncelik*, 10th Dist. No. 05AP-310, 2006-Ohio-1655 (March 31, 2006)
- **Title V permit requirements are “*new*” if they:**
 - did not exist before they appeared in the Title V permit;
 - add source-specific or case-by-case details to rules that are general in nature
 - are made enforceable by placement in a Title V permit
- *See Columbus Steel Castings v. Nally*, 10th Dist. No. 11AP-932, 2012-Ohio-4417 (Sept. 27, 2012)

TITLE V CHANGE MANAGEMENT

- Change management is often a difficult part of living with a Title V permit
- Title V change management obligations can collide with business needs
- Applicants should review and comment on draft Title V permit terms and conditions with a focus on: 1) **Compliance Certifications**; and 2) **Change Management**
- Be alert to independently-enforceable NSPS and MACT change management requirements not spelled out in Title V permits
- Good change management recordkeeping is essential for Title V facilities

TITLE V CHANGE MANAGEMENT

TITLE V Roadblocks to Change:

OAC 3745-77-07(I)(1) (off-permit changes):

Off-permit changes must “not result in conditions that violate any applicable requirements or that violate any existing federally enforceable permit terms and conditions.”

OAC 3745-77-08(C)(3)(d) (significant modifications):

“ . . . Where an existing Title V permit would prohibit *construction or operation* of [a] modified source, a Title V permit revision must be obtained ***before operation*** of such modified source.”

OAC 3745-77-08(C)(3)(a) (significant modifications):

A significant permit modification is needed for: (i) “a significant change in existing monitoring permit terms or conditions”; or (ii) “a relaxation of reporting or recordkeeping permit terms and conditions” for units other than “insignificant emission units.”

TITLE V CHANGE MANAGEMENT

Things that are NOT changes within the purview of Title V permit revision requirements:

- Things unrelated to air pollution control regulation
- Things excluded or exempt from PTI requirements
- Things unrelated to a current or forthcoming Title V “applicable requirement” or other federally-enforceable CAA requirement



TITLE V CHANGE MANAGEMENT

Title V facility changes that do NOT require a Minor or Significant Permit Modification:

- Administrative Amendments
- Off-Permit Changes

TITLE V CHANGE MANAGEMENT

Minor Permit Modifications
do *not* delay *operation* of changes

Significant Permit Modifications
do delay *operation* of changes and involve:

1. Time-consuming procedures
2. U.S. EPA and public participation
3. Uncertain outcomes



TITLE V CHANGE MANAGEMENT

Significant Permit Modification requirements are complicated by the evolving and controversial definitions of:

Modification
and
Major Modification

DIFFICULT “MAJOR MODIFICATION” DEFINITIONS AND NSR APPLICABILITY CONCEPTS

- ✓ Potential to Emit
- ✓ Facility
- ✓ Contiguous or Adjacent
- ✓ SIC Code commonality/support facility
- ✓ Common Control
- ✓ Project
- ✓ Baseline Actual Emissions
- ✓ Projected Actual Emissions
- ✓ Causation
- ✓ Significant Net Emissions Increase
- ✓ Aggregation of multiple projects
- ✓ Routine Maintenance, Repair, and Replacement
- ✓ Netting

SIGNIFICANT CHANGES TO PRIOR EPA CAA GUIDANCE ON NSR APPLICABILITY

- **Enforceability and Use of the Actual-to-Projected-Actual Applicability Test in Determining Major Modification Applicability** (Dec. 7, 2017)

EPA will no longer “second guess” pre-project projections of post-project “actual emission” increases caused by the project, and operators may “actively manage” post-project actual emissions to prevent significant increases

- **Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program** (March 13, 2018); 83 *Fed. Reg.* 13745 (March 30, 2018)

EPA will consider project-related emission *decreases* as well as increases in NSR “step 1” baseline emission accounting

- **“Common Control” guidance to Pennsylvania DEP for Meadowbrook biogas processing and Keystone Landfill** (April 30, 2018)

“Control” means the power or authority to dictate decisions, not simply a support or dependency relationship

- **Draft Guidance on “Contiguous or Adjacent”** (Sept. 4, 2018)

“Contiguous” means “in physical contact with.” “Adjacent” means “physical proximity” that comports with the “common sense notion of a plant” – “functional interrelatedness” is not relevant.

SIGNIFICANT CHANGES TO PRIOR EPA CAA GUIDANCE ON NSR APPLICABILITY

Aggregation of multiple projects at the same facility during the same planning cycle – 83 FR 57324 (Nov. 15, 2018)

- In 2009, the Bush Administration promulgated its “NSR Aggregation Policy,” a rule that only aggregates projects that are “substantially related,” and that rejects a 1993 Memo on NSR applicability at the 3M Maplewood, MN plant (the 1993 policy would aggregate projects that serve the “overall basic purpose” of the facility). See 74 FR 2376 (1/15/09).
- In 2010, the Obama Administration proposed to reconsider and revoke the 2009 Bush Administration NSR Aggregation Policy.
- In 2018, the Trump Administration took final action on reconsideration proposed by the Obama Administration, and retained the 2009 Bush Administration rule on NSR Aggregation Policy.
- NRDC appealed the 2018 Trump Administration final rule on NSR Aggregation Policy, but on June 25, 2019 voluntarily dismissed its appeal.

“ONCE IN, ALWAYS IN”

Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act (Jan. 25, 2018)

- 1995 “Once in, Always In” policy said a facility that is a “major source” of HAPs when an applicable NESHAP goes into effect must comply with that standard “permanently”
- New 2018 guidance withdraws the 1995 OIAI policy
- A “major source” of HAPs may now become an “area source” by taking an enforceable limit on its PTE below major source thresholds
- On June 25, 2019, EPA proposed a rule change to implement its reading of the §112 “area source” definition

OHIO'S 10 TPY BAT EXEMPTION

APPROVED BY U.S. EPA AT LAST

- Enacted in SB 265, eff. 8/3/06
- Sierra Club litigated before ERAC, U.S. District Court, and the Sixth Circuit
- Region 5 raised “anti-backsliding” concerns
- U.S. EPA final approval 4/12/19
 - 84 *Fed. Reg.* 14874, effective 5/13/19
- Permits issued with dual BAT terms (one before approval, one after approval) automatically apply 10 tpy exemption

TITLE V CHANGE MANAGEMENT

The *origin* of a Title V “Applicable Requirement” affects the *process* for revising it

“Applicable Requirements” can come from:

- The applicable SIP or FIP
- A federally promulgated rule (e.g., NSPS, NESHAP, and MACT standards)
- A federally-enforceable pre-construction permit (PTI) term (e.g., BACT, LAER, BAT)

TITLE V CHANGE MANAGEMENT

PTI and Title V permit terms and conditions can be designed in ways that make change management better or worse

- Avoid unnecessary detail/granularity
- Avoid unnecessary inflexibility
- Anticipate the full range of material usage and operating conditions, including SSM
- Consider alternative MRR approaches
- Consider options for testing requirements
- Consider business growth/change plans
- Anticipate change management recordkeeping needs

TITLE V CHANGE MANAGEMENT

SIP rules can be designed to accommodate change management needs

OAC 3745-77-08(C)(1)(b):

“minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modifications are explicitly provided for in the applicable implementation plan or in applicable requirements promulgated by the administrator.”

TITLE V CHANGE MANAGEMENT

Permits that authorize changes:

- **Plantwide Applicability Limits (PALs)**
OAC Rule 3745-31-32
(approved 2/25/10, 75 Fed. Reg. 8496)
- **Flexible Air Permitting Rule**
74 Fed. Reg. 51418 (10/6/09)

GHG TAILORING RULE

UARG V. EPA, 573 U.S. ____ (2014)

- “EPA overstepped its statutory authority when it decided that a source could become subject to PSD or Title V permitting by reason of its greenhouse-gas emissions.”
- “To the extent its regulations purport to [treat greenhouse-gas emissions as a pollutant for purposes of PSD and Title V], they are ***invalid***.” (Emphasis added.)

OAC 3645-77-11(D)

- “This rule and any terms or conditions of Title V permits regarding greenhouse gases shall cease to be effective if any of the following occurs:

* * *

- (2) The issuance of any opinion . . . by a federal court, limiting the administrator’s authority . . . to regulate greenhouse gases, including . . . any federal court decision . . . invalidating . . . the requirement to obtain prevention of significant deterioration permits and Title V permits as provided in the greenhouse gas tailoring rule (75 FR 31514, June 3, 2010)”

NOTE: *The same language appears for PSD purposes in OAC 3745-31-34(C)*

UARG V. EPA

- GHG emissions alone cannot trigger PSD or Title permitting requirements, but EPA may require “sources otherwise subject to PSD review” [“anyway sources”] to install BACT for GHGs.
- EPA has proposed a 75,000 ton per year CO₂e significance threshold for BACT applicability to GHGs from “anyway sources” (81 Fed. Reg. 68110 (Oct. 3, 2016)).

NON-TITLE V CHANGE MANAGEMENT BEWARE OF NSPS-TRIGGERING CHANGES

- Applicability – see 40 CFR 60.1(a)
- “**Construction**” of an “affected facility” after a Part 60 standard becomes applicable (definitions in 40 CFR 60.2)
- “**Modification**” of an “affected facility” after a Part 60 standard applicability date – see 40 CFR 60.14
- “**Reconstruction**” of an “affected facility” after a Part 60 applicability date – see 40 CFR 60.15

NON-TITLE V CHANGE MANAGEMENT BEWARE OF MACT-TRIGGERING CHANGES

- Applicability of Part 63 standards – see 40 CFR 63.1(b)-(d)
- Preconstruction review and notification requirements for “**new**” and “**reconstructed**” “affected sources” – see 40 CFR 63.5
- Requirements for “**construction**” or “**reconstruction**” of “major” HAP sources under CAA § 112(g)(2)(B), and for **case-by-case MACT permit applications** under CAA § 112(j) – see 40 CFR 63.40 – 63.44

NON-TITLE V CHANGE MANAGEMENT BEWARE OF REPORTING DUTIES UNDER SPECIFIC MACT STANDARDS

- See, for example, the MON MACT, at 40 CFR 63.2520(e)(10):

Notification of process change. (i) Except as specified in paragraph (e)(10)(ii) of this section, whenever you make a process change, or change any of the information submitted in the notification of compliance status report or a previous compliance report, that is not within the scope of an existing operating scenario, you must document the change in your compliance report.

DISCLAIMER

Porter Wright Morris & Arthur LLP offers these materials for general informational purposes only. The content of these materials is not intended as legal advice for any purpose, and you should not consider it as such advice or as a legal opinion on any matters.

The information provided herein is subject to change without notice, and you may not rely upon any such information with regard to a particular matter or set of facts. Further, the use of these materials does not create, and is not intended to create, any attorney-client relationship between you and Porter Wright Morris & Arthur LLP or any individual lawyer in the firm. Use of these materials is at your own risk, and the materials are provided without warranty of any kind. We make no warranties of any kind regarding the accuracy or completeness of any information in these materials, and we make no representations regarding whether such information is reliable, up-to-date or applicable to any particular situation. Porter Wright Morris & Arthur LLP expressly disclaims all liability for actions taken or not taken based on any or all of the contents of materials, or for any damages resulting from your viewing and use thereof.