

# Lessons Learned from Title V

## ▶ Petitions

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# What's the purpose of Title V?

- ▶ Before 1990, regulators and industry were left to wander through this regulatory maze in search of the emission limits and monitoring requirements that might apply to a particular source. Congress addressed this confusion in the 1990 Amendments by adding title V of the Act, which created a national permit program that requires many stationary sources of air pollution to obtain permits that include relevant emission limits and monitoring requirements.
- ▶ *Sierra Club v. EPA*, 536 F.3d 673, 674 (D.C. Cir. 2008)

# What's the purpose of Petitions?

If the Administrator does not object to a permit during the 45-day EPA review period, any person may petition the Administrator within 60 days after the expiration of the 45-day review period to take such action.

The purpose is to give the public a path for Administrative review of Title V permits.

# History

- 2000 - 7 Permits petitioned  
3 Petitions resolved, 3 denials  
4 are still “open”
- 2001-2020 - 3 Permits petitioned  
3 Petitions resolved, 3 denials
- 2021-present - 9 10 Permits petitioned  
8 Petitions resolved, 3 denials, 5 partial grants

# The Petitioners are changing

## **Application**

Alabama Bulk Terminal Company submitted a permit application for loading and storage of organic compounds. Michael E. Buckley Vice-President of Operations prepared the application. However, the application was not signed by Mr. Buckley.

The application failed to include tank 7 in the application. No forms with detailed information was provided for tank 7.

The shells of tanks 1, 6, 8, 9, and 10 were reported as light rust. The condition of each tank shell must be improved.

The truck loading and load out system and marine loading system were not equipped with vapor recovery systems. These loading and unloading units must be required to have vapor recovery systems.

# The Petitioners are changing

Alabama Bulk was part of a group of 5 permits petitioned at once.

96 page petition

Issues ranged from programmatic to specific.

Authority of state to issue anti-PSD limits

Legal succession of permits

EJ/Title VI issues

SO<sub>2</sub> monitoring from natural gas boilers

'Sole source' with a facility 150 miles away

# EPA is changing

## 2000 Response to Petition

“The absence of a more detailed written response to public comments on the draft permit does not mean that the comments were not adequately considered by ADEM.”

## 2021 Response to Petition

“ADEM must adequately respond...” (4x)

# 5 lessons learned

1. The Response to Comments is your first line of defense
2. Monitoring/Emissions estimates are your biggest weakness
3. Title V petitions are not the appropriate venue for every gripe
4. Sometimes you're going to lose over something you didn't even realize was an issue
5. You may end up with an 'Absurd Result' and little recourse



# Response to Comments

Petitions can only be filed over issues raised in comments.

EPA will not consult you during their review, only the permit record.

Detail comments - Detailed response. General comments - General response

“Add more information to the permit record.”

# Monitoring

Without a doubt, the appropriateness of monitoring is the biggest weakness

Why? Because monitoring added for Title V purposes is not prescriptive, but engineering judgement

Monitoring set in 1999 and 'good enough' for 25 years may not survive scrutiny

Monitoring not on the same time scale as the standard is the most vulnerable  
i.e. daily parametric levels vs. an hourly limit

# Emissions estimates

Many units have emission limitations based on estimates times operating rate

The source of the emission estimates is very vulnerable

AP-42 states that “...test data from individual sources are not always available and, even then, may not reflect the variability of actual emissions over time. Thus, emission factors are frequently the best or only method available for estimating emissions, in spite of their limitations.”

Still, you may be asked to further justify the use of AP-42 factors.

+ - 30%

# Not the appropriate venue

Applicable Requirements Rulemaking

EJ has been raised by the petitioners, but not responded to by EPA

Programmatic issues raised (supersession of permits), EPA has said it's not a Title V issue

# I didn't even know this was an issue!

Sometimes you're just going to lose one

NSPS Boiler with a lb/mmbtu NO<sub>x</sub> limit

That NSPS limit was converted to a lb/hr limit for anti-PSD

EPA found that the NSPS monitoring was insufficient

# Absurd results

## 335-3-4-.02 Fugitive Dust And Fugitive Emissions<sup>1</sup>.

(1) No person shall cause, suffer, allow, or permit any materials to be handled, transported, or stored; or a building, its appurtenances, or a road to be used, constructed, altered, repaired, or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne. Such reasonable precautions shall include, but not be limited to, the following:

(a) Use, where possible, of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads, or the clearing of land;

(b) Application of asphalt, oil, water, or suitable chemicals on dirt roads, materials stock piles, and other surfaces which create airborne dust problems;

# Absurd results

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<sup>1</sup>Section 4.2.1 and 4.2.2 of the Alabama Air Pollution Control Commission Rules and Regulations now cited as ADEM Administrative Code Rule 335-3-4-.02(1) and 335-3-4-.02(2) were declared unconstitutional by the Alabama Supreme Court in Ross Neely Express, Inc. v. Alabama Department of Environmental Management, 437 So. 2d 82 (Ala. 1983).

# Absurd results

Your agency has limited recourse

EPA's position is that an agency can only challenge a petition finding if EPA takes over and issues a part 71 Permit

The agency either accepts the results or will continue to lose petitions over the same issue

In this case, Alabama now requires a dust plan or a detailed explanation of why one isn't necessary



# Bonus lesson learned

Small changes become big victories

NEWS

## EPA denies air pollution permit renewal for south Alabama factory near Africatown

Updated: May. 26, 2022, 4:00 p.m. | Published: May. 25, 2022, 9:51 a.m.



adem.alabama.gov



Africatown industry

# Never ending story

The permitting resolutions (minor and significant mods) are subject to petitions.

EPA petition order resulted in 2 significant modifications and a minor mod

Minor Mod petitioned

Extensive comments received on significant modifications, petitions expected

UOP is up for renewal in 2025

# Questions?

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