

Monitoring Sufficiency in Title V Permits Proposed Rule

On June 2, 2006 (71 FR 32006), EPA proposed to establish national policy for addressing the sufficiency of monitoring requirements in Title V Operating permits. Under the new rule, state and local permitting agencies would be prohibited from creating new monitoring requirements, or from supplementing monitoring requirements where the underlying requirement specifies monitoring. Only in cases where the underlying requirement does not require periodic testing or monitoring, or requires a one-time only test, could permitting agencies include additional monitoring.

As indicated in the Title V rules under 40 CFR Parts 70 and 71 and EPA White Papers, Title V Operating Permits are not intended to establish new applicable requirements, but to consolidate all of the CAA-based requirements in one permit. Furthermore, Title V permits are required to include monitoring, recordkeeping, and reporting requirements, as necessary, to demonstrate compliance with applicable requirements.

In Parts 70/71, monitoring sufficiency is addressed in the following provisions:

- 40 CFR 70.6(a)(3)(i)(B) and 71(a)(3)(i)(B) – Where the applicable requirements do not require periodic testing, these provisions requires that each Title V permit contain periodic monitoring sufficient to yield reliable data from the source. These provisions are known as the periodic monitoring rules.
- 40 CFR 70.6(c)(1) and 71.6(c)(1) – These provisions require that each Title V permit must contain compliance certification, testing, monitoring, reporting and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.

History of Rulemakings regarding Title V Monitoring Sufficiency

- September 17, 2002 (67 FR 58529) – EPA issued an interim final rule and proposed rule that indicated all Title V permits must contain monitoring sufficient to assure compliance with the CAA (Section 504(a), 504(b), 504(c) and 114(a)(3). The proposed rule stated that 1) if there are no monitoring requirements in the applicable requirement, then additional monitoring must be specified in the Title V permit; and 2) if there are monitoring requirements in the applicable provision, a “test” must be met to ensure that the proposed monitoring is sufficient to assure compliance with the terms and conditions of the permit. Even when an applicable requirement included periodic monitoring, this proposed ruling required permitting authorities to review the monitoring requirements to assure they were of a nature and frequency sufficient to assure compliance and it allowed the agencies to require sources to conduct monitoring beyond that required in the underlying requirement.

- January 22, 2004 (69 FR 3202) – EPA issues this rule as a final rule, where they reverse their position on monitoring frequency from the September 17, 2002 interpretation and state that it would be more practical to revise the regulation that establishes the underlying requirement instead of reviewing the sufficiency of monitoring on a case-by-case basis. However, in an October 7, 2005 decision, the DC Circuit Court decided that EPA’s interpretation was not a logical outgrowth of prior interpretations. The court cited that federal agencies can not reverse their regulatory interpretations without adequate notice and the opportunity for public comment. Therefore, the court vacated the interpretation and remanded the issue to the agency.
- June 2, 2006 (71 FR 32006) – As discussed above, this action withdraws the September 17, 2002 proposed rule and proposes a regulatory interpretation of monitoring sufficiency consistent with the January 22, 2004 final rule.