Comments on the Proposed Rule Entitled "Clarifying the Scope of "Applicable Requirements" Under State Operating Permit Programs and the Federal Operating Permit Program

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Submitted by:
American Chemistry Council
American Fuel & Petrochemical Manufacturers
American Petroleum Institute
The Fertilizer Institute
Interstate Natural Gas Association of America
National Lime Association
National Mining Association
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INTRODUCTION

The American Chemistry Council ("ACC"), American Fuel & Petrochemical Manufacturers ("AFPM"), the American Petroleum Institute ("API"), the Fertilizer Institute (TFI), the Interstate Natural Gas Association of America ("INGAA"), the National Lime Association ("NLA"), the National Mining Association ("NMA"), and the U.S. Chamber of Commerce (collectively, "the Associations") appreciate the opportunity to submit comments on the proposed rule entitled "Clarifying the Scope of "Applicable Requirements" Under State Operating Permit Programs and the Federal Operating Permit Program" ("Proposed Rule" or "Proposal").[1] We applaud the U.S. Environmental Protection Agency ("EPA" or "Agency") for proposing to provide important and needed clarifications as to what constitutes an "applicable requirement" under the Clean Air Act ("CAA") Title V operating permit program. But as explained in the comments below, the purported scope of regulatory actions subject to EPA's "corrective oversight" is neither supported by statute nor legal precedent, and fails to further any reasonable interpretation of what constitutes "applicable requirements."

ACC represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier, and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing.

AFPM is a national trade association representing nearly all U.S. refining and petrochemical capacity, as well as midstream industries. In addition to actively pursuing emissions reductions from their operations, our members are committed to sustainably manufacturing and delivering affordable and reliable fuels powering our transportation needs and chemical building blocks integral to millions of products that make modern life possible.

API is the national trade association representing America's oil and natural gas industry. Our industry supports more than 11 million U.S. jobs and accounts for nearly 8 percent of U.S. Gross Domestic Product. API's approximately 600 members, from fully integrated oil and natural gas companies to independent companies, comprise all segments of the industry. API's members are producers, refiners, suppliers, retailers, pipeline operators, and marine transporters, as well as service and supply companies, providing much of our nation's energy. API was formed in 1919 as a standards-setting organization and is the global leader in convening subject matter experts across the industry to establish, maintain, and distribute consensus standards for the oil and natural gas industry. API has developed more than 800 standards to enhance operational safety, environmental protection, and sustainability in the industry.

TFI represents the nation's fertilizer industry, and its members are engaged in all aspects of the fertilizer supply chain. Fertilizer is a key ingredient in feeding a growing global population, which is expected to surpass 9.5 billion people by 2050. Half of all food grown around the world today is made possible through the use of fertilizer.

INGAA is the trade association that represents the interstate natural gas pipeline industry. INGAA member companies transport more than 95 percent of the nation's natural gas through approximately 200,000 miles of interstate natural gas pipelines. In 46 of the 48 contiguous United States, INGAA member companies operate over 5,400 natural gas compressors at over 1,300 compressor stations and storage facilities along the pipelines to

[1] 89 Fed. Reg. 1150 (Jan. 9, 2024).

transport natural gas to local gas distribution companies, industrials, gas marketers, and gas-fired electric generators.

NLA is the trade association for manufacturers of high calcium quicklime, dolomitic quicklime, dead-burned dolomitic lime, and hydrated lime, collectively referred to as "lime." Lime provides cost-effective solutions to many of society's manufacturing and environmental needs. Lime is a chemical without substitute, providing solutions to many of society's environmental problems. Lime is an important ingredient in many other manufacturing processes and industries. It is used in the steel manufacturing process, road building, and the creation of other building products like mortar and plaster. Lime is also a critical component in environmental compliance for many industries, as it is used to purify water and scrub air pollutants from stack emissions.

NMA is the only national trade organization that serves as the voice of the U.S. mining industry and the hundreds of thousands of American workers it employs before Congress, the federal agencies, the judiciary, and the media, advocating for public policies that will help America fully and responsibly utilize its vast natural resources. The NMA has a membership of more than 280 companies and organizations involved in every aspect of mining in the United States. The NMA works to ensure America has secure and reliable supply chains, abundant and affordable energy, and the American-sourced materials necessary for U.S. manufacturing, national security, and economic security, all delivered under world-leading environmental, safety and labor standards.

The U.S. Chamber of Commerce of the United States is the world's largest business organization. Its members range from the small businesses and chambers of commerce across the country that support their communities, to the leading industry associations and global corporations that innovate and solve for the world's challenges, to the emerging and fast-growing industries that are shaping the future. For all of the people across the businesses we represent, the U.S. Chamber of Commerce is a trusted advocate, partner, and network, helping them improve society and people's lives.

Thousands of members of the Associations own or operate facilities with Title V operating permits. The Associations and their members are thus directly affected by EPA's proposal to clarify what constitutes a Title V applicable requirement and to make corresponding changes to the Part 70/71 regulations.

I. The Associations agree with EPA that the Title V permitting program generally should not be used to establish new substantive requirements.

EPA explains in the Proposed Rule that "[t]he title V permitting program was created to assist with compliance and enforcement of air pollution controls established under other CAA programs." 89 Fed. Reg. at 1153. Accordingly, "one key function" of the program "is to consolidate applicable requirements established under other CAA programs." *Id.*[2] A Title V permit is, thus, intended to be a roadmap that provides clarity to the affected source, regulatory agencies, and the public as to which of the countless CAA substantive requirements apply to a particular affected source and how it *operates*.[3] EPA acknowledges that CAA requirements that

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[2] "Subjecting a source's preconstruction permit to periodic new scrutiny, without any changes to the source's pollution output, would be inconsistent with Title V's goal of giving sources more security in their ability to comply with the Act." *Envtl. Integrity Project v. United States Envtl. Prot. Agency*, 969 F.3d 529, 545 (5th Cir. 2020) ("*EIP*").

[3] 89 Fed. Reg. at 1156.

are procedural in nature, such as public notice and comment, do not apply to individual emissions units at a part 70 source and, therefore, are not “applicable requirements” for Title V purposes. *Id*.

Importantly, the procedural function of cataloguing applicable requirements does not provide EPA or state Title V permitters the substantive authority to establish “new pollution control requirements on sources or provide a vehicle to modify such requirements established under other CAA programs.” *Id*. In other words, “title V does not impose substantive new requirements.” *Id*. (citing 40 C.F.R. § 70.1(b).). The primary exception to this general rule is the obligation for EPA or a state permitter to establish additional compliance assurance requirements through Title V permitting when such requirements are needed to “assure compliance with” applicable requirements. CAA § 504(c), 89 Fed. Reg. at 1153 (“[T]itle V permits may be used to create or supplement monitoring requirements when necessary in order to assure compliance with underlying applicable requirements that do not themselves contain sufficient monitoring provisions.”).

The Associations concur with EPA’s assertion that the Title V permitting program establishes a procedural mechanism to identify the particular CAA requirements applicable to affected sources and generally does not provide authority for EPA or state Title V permitters to establish substantive new CAA requirements when issuing Title V permits. The two primary elements of the Proposed Rule – i.e., the proposals that underlying permitting decisions should not be subject to corrective oversight during Title V permitting and that the CAA § 112(r) “general duty” is not a Title V applicable requirement – inexorably flow from that fundamental legal predicate. Accordingly, EPA should confirm its position on this key issue in the final rule. Indeed, we believe that no other interpretation would be permissible or defensible under the plain statutory language of Title V. But as explained in Section III, below, EPA must clarify the limited role of the agency’s corrective oversight authority over permitting and regulatory decisions through Title V permitting.

II. The Associations support EPA’s proposed exclusions from the definition of “applicable requirement.”

A fundamental Title V issue addressed by EPA in the Proposed Rule is the definition of “applicable requirement.” That definition is “closely aligned with the primary function of title V permits [discussed in Section I of our comments above]: to consolidate and assure compliance with the substantive requirements established under other CAA programs.” 89 Fed. Reg. at 1154. EPA explains that “the term ‘‘applicable requirements’’ is not defined in the Act and the statute does not otherwise specify how to determine the ‘‘applicable requirements of this chapter’’ for a particular source.” *Id*. Consequently, “[w]hen the EPA developed regulations to implement the title V program, the agency specifically defined the term ‘‘applicable requirement’’ as it relates to title V permitting.” *Id*. According to EPA, ““applicable requirement” is a legal term of art with a precise meaning that is unique to title V.” *Id*.

Of course, “[r]equirements that are not based on (i.e., derived from) the CAA are not “applicable requirements” of the CAA with which a title V permit must assure compliance.” *Id*. More importantly, “not all CAA requirements are considered “applicable requirements” for title V purposes.” *Id*. For example, CAA requirements that are not Title V applicable requirements include CAA requirements that: (1) “do not apply to stationary sources that must obtain title V permits” or “are not implemented through title V for other reasons”; (2) “do not directly apply to a sources emission units”; or (3) are “requirements of title V itself (and the EPA’s part 70 and 71 implementing regulations).” *Id*.

Examples of "federal laws beyond the CAA" – "including the statutes and any implementing regulations" – that do not constitute or give rise to Title V applicable requirements include "environmental laws administered by the EPA or other federal agencies (e.g., the Clean Water Act (CWA); Safe Drinking Water Act; Resource Conservation and Recovery Act (RCRA); Comprehensive Environmental Response, Compensation, and Liability Act; National Environmental Policy Act, Emergency Planning and Community Right-to-Know Act, Endangered Species Act, and other statutes)" and "[o]ther federal laws [that] may also impact the decision-making of state permitting authorities (e.g., the Civil Rights Act of 1964)." *Id*. As EPA explains, "[t]his is self-evident from the plain language of the CAA and the EPA's regulations." *Id*.

Along the same lines, "[b]ecause executive orders are not legally binding on state permitting authorities and are generally not based on the CAA, they do not establish "applicable requirements."" *Id.* In addition, state "air quality laws that are not derived from the CAA and/or are not included as part of an EPA-approved state program" are not Title V applicable requirements, although such requirements may be included in a Title V permit as "state only" requirements that "are not legally present for purposes of federal enforceability and oversight." *Id*. It should be noted that EPA asserts that "that any terms of a title V permit that are not designated as ''state only'' or ''not federally enforceable'' (or similar) become federally enforceable upon permit issuance and are subject to the part 70 requirements that govern federally enforceable terms of title V permits, including requirements related to monitoring, recordkeeping, and reporting." *Id*., n. 17. The Associations disagree with that assertion. If a state-only requirement is mistakenly not designated as such in a Title V permit, there is no Title V statutory provision that authorizes or requires EPA to transform the state-only requirement into an "applicable requirement" under Title V or Part 70/71. To address this situation, the Title V permit should be reopened to correct the mistake.

Examples of CAA requirements that are not Title V applicable requirements include standards for mobile sources under Title II of the CAA, the CAA § 112(r)(1) general duty clause (addressed more fully in Section IV, below), emissions reporting and related requirements prescribed by the Part 98 Greenhouse Gas Reporting Program, and CAA provisions that are "general in nature" (such as the CAA Title III general provisions). *Id*. at 1155-6.

Similarly, "requirements of the CAA that do not directly apply to individual emission units at a part 70 source are not "applicable requirements" for title V purposes." *Id.* at 1156. That category includes CAA requirements that "only directly regulate EPA or state actions – and do not result in requirements directly applicable to emission units at a title V source." *Id*. Other examples include "cross-cutting general provisions" that "do not directly apply to emission units at part 70 source," such as the "credible evidence" rule. *Id*. Similarly, "it is well-established that the NAAQS are not themselves applicable requirements because they do not apply directly to sources." *Id.* at 1158. Rather, the NAAQS are the ambient air concentrations that EPA has determined to be requisite to protect human health and the environment. States must meet those NAAQS by developing and seeking EPA approval of SIPs that "include enforceable emission limitations and other control measures, means, or techniques," and only those requirements constitute "applicable requirements" that apply directly to sources. Individual sources are not required to, and indeed often cannot, attain the NAAQS on their own. Therefore, EPA is correct—the NAAQS establish the standards that states must meet with their SIPs; the applicable requirements in those SIPs apply directly to sources.

Lastly, "part 70 requirements" (i.e., "the requirements within title V and the EPA's part 70 and 71 regulations") are not applicable requirements because EPA's Part 70/71 regulations "focus on CAA requirements arising from *other* CAA programs beyond title V." *Id*. at 1156 (emphasis in original). EPA explains that "[t]his distinction is meaningful because the regulatory

use of the term ‘applicable requirement’ is closely tied to the core purpose of title V: to consolidate and assure compliance with the substantive requirements from other CAA programs, but not to create or modify such requirements.” *Id* at 1157.

Except as otherwise noted in these comments, the Associations agree with EPA’s targeted definition of “applicable requirement” under Title V and the Agency’s implementing regulations. EPA’s detailed explanation and analysis of that important term provide valuable context as to its meaning and confirmation of many of the basic principles that have stood behind the Title V program from its inception.

We emphasize EPA’s assertion that the NAAQS themselves are not applicable requirements. CAA § 504(s) requires Title V permits to “include enforceable emissions limitations and standards.” In turn, the terms “emission limitation” and “emission standard” are defined to mean “a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants.” CAA § 302(k). NAAQS plainly do not constitute an “emission limitation” or “emission standard” because, in and of themselves, they do not constitute or impose limits on emissions from affected sources.[4]

III. EPA must clarify the limiting role of the agency’s corrective oversight on Title V regulatory actions to align with statutory requirements and legal precedent.

The second primary issue addressed in the Proposed Rule is the “intersection of the title I (NSR) preconstruction permitting programs and the title V operating permit program” and, in particular, the question of “in what situations, and to what extent, should the unique title V oversight tools (e.g., the EPA’s objection authority and the public petition opportunity) be used to address alleged deficiencies related to title I permit decision?”[5] *Id*. at 1160.[6]

As EPA recounts in the Proposed Rule, the Agency has not held a consistent position on these issues over time. Given that these issues go to the core of the Title V permitting program, courts have had the opportunity to weigh in – with two key federal circuit courts reaching different conclusions based on differing approaches.[7] The Proposed Rule is a welcome effort to

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[4] *See, e.g.*, 57 Fed. Reg. 32250, 32276/1 (Jul. 21, 1992) (final rule and preamble establishing Part 70 Operating Permit Program) (“Under the Act, NAAQS implementation is a requirement imposed on States in the SIP; it is not imposed directly on a source.”).

[5] We note that the term “Title I modification” is a term of art in the Title V permitting program that does not encompass minor NSR permitting actions. *See* Letter to Mr. Jimmy Johnston from R. Douglas Neeley, EPA, re: *Request for Terminology Clarification* (Dec. 1, 1997) at 2. EPA’s use of the term “title I” to describe state SIP-approved minor and major preconstruction permitting programs is potentially confusing and should be avoided in the final rule.

[6] *See also id.* at 1175/1 (“The question, then, is whether the permitting process should be used to double-check – ***and re-check during every subsequent title V renewal permit*** – ***the substantive adequacy*** of applicable requirements established through NSR permitting decisions.” (emphasis added)).

[7] *Env’t Integrity Project v. EPA*, 969 F. 3d 529 (5th Cir. 2020) (“EIP”); *Sierra Club v. EPA*, 964 F. 3d 882 (10th Cir. 2020) (“*Sierra Club*”). As EPA correctly recounted in the preamble to the proposed rule, the Fifth and Tenth Circuits approached the issue with vastly differing analyses, as the Fifth Circuit’s “conclusion was based principally on title V’s text, title V’s structure, and purpose, and the structure of the Act as a whole,” whereas the Tenth Circuit “did not address the EPA’s statutory interpretation but instead rejected the EPA’s reasoning as inconsistent with EPA’s regulations.” 87 FR at 1164/2 (internal quotations omitted). In other words, the Fifth Circuit reviewed the statutory text of the CAA to determine that EPA correctly interpreted the provisions of title V to not require a substantive re-review of title I NSR issues when reviewing title V permits, while the Tenth Circuit limited its review to EPA’s regulations defining what constitutes “applicable requirements” to hold the opposite. The distinction between the decisions of the two circuit courts is significant; the Tenth Circuit’s decision was based on construing the existing Title V

reconcile those decisions and provide a clear and consistent nationwide approach going forward.

EPA asserts that "[t]his action proposes to codify the reasonable approach [to these issues] that the EPA has implemented on a case-by-case basis since 2017." *Id*. In explaining its "Current Title V Approach to NSR (2017-Present)," EPA cites to the Administrator's *Pacificorp-Hunter I Order*,[8] where the Administrator asserted that "permitting agencies and the EPA need not reevaluate – in the context of title V permitting, oversight, or petition responses – previously issued final preconstruction permits, ***especially*** those that have already been subject to public notice and comment and an opportunity for judicial review." *Id*. at 1163 (emphasis added). Thus, EPA's "current approach" acknowledges the value of "public notice and comment," but does not exclude or exempt from the corrective oversight policy previously issued final preconstruction permits that were issued without public notice and comment and an opportunity for judicial review. Indeed, when the Fifth Circuit reviewed the Hunter Order in *EIP*, the Court confirmed that EPA's view of Title V did not turn, whatsoever, on whether the underlying NSR activity involved public notice and comment and an opportunity for judicial review:

> In denying a petition to object to a Title V permit for a Utah power plant, EPA announced that it now construes § 70.2 such that the requirements described in subsection (1) ***are merely those contained in the facility's existing Title I permit***. Accordingly, in Title V review, neither EPA nor state permitting authorities must determine whether the source received the right kind of preconstruction permit. It is enough that the Title V permit reflects the result of the state preconstruction permitting decision. The result of that process, ***whether it be a major or minor permit or no permit at all***, defines the source's requirements for purposes of Title V permitting."

EIP, 969 F.3d at 538 (emphasis added) (cleaned up). As discussed below (see Part III.A), public participation in the underlying NSR process was, at most, a tangential factor that EPA referenced when establishing its current approach. But public participation was not a central, controlling element of EPA's analysis of why NSR issues are not subject to EPA's Title V oversight authority.

Yet, in a significant departure from its "current approach," EPA now proposes to preclude corrective oversight of a state permitting decisions through Title V permitting only when the "source obtains [the] NSR permit under EPA-approved (or EPA-promulgated) title I rules, ***with public notice and the opportunity for comment and judicial review***." *Id*. at 1165 (emphasis added). EPA's proposed approach is thus significantly more constrained than the approach EPA has implemented in practice since 2017 (as described in the *Pacificorp* order). Consequently, EPA's proposed approach is not only facially inconsistent with the Agency's "current" approach, the proposed rule is also premised on a mischaracterization of the agency's existing position, which the agency has – as claimed in the preamble to the proposed rule – followed for 7 years.[9]

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regulations and did not reach the more fundamental question of whether the CAA itself provides for Title V to serve as a second (or third or fourth) chance to re-evaluate decisions made under the Title I NSR program. Consequently, the Tenth Circuits' decision in *Sierra Club* does not restrict, control, or dictate EPA's interpretation of the Title V text, which is made in consideration of the structure and purpose of Title V and the overall structure of the CAA, as laid out in the preamble to the proposed rule.

[8] *In the Matter of PacifiCorp Energy, Hunter Power Plant*, Order on Petition No. VIII–2016–4 (Oct. 16, 2017) (hereinafter "Hunter Order").

[9] For this reason alone, the proposed rule is arbitrary and capricious as EPA has failed to acknowledge and explain the shift in approach. *Am. Wild Horse Pres. Campaign v. Perdue*, 873 F.3d 913, 923 (D.C. Cir. 2017) ("A central principle of administrative law is that, when an agency decides to depart from decades-

As a result, if finalized, the proposed revision to the definition of applicable requirements would unnecessarily and without adequate justification subject a wide range of state permit actions and related determinations to corrective oversight through Title V permitting. The Associations respectfully submit that EPA should abandon this aspect of the proposal and, instead (as described more fully below), finalize a rule that respects state authority, adheres to the limits of Title V authority, and recognizes the need for finality of permitting decisions.

A. The Proposed Rule is too constrained.

There are two fundamental problems with EPA's proposed approach. First, EPA has not adequately explained the legal basis for affording protection from corrective oversight only to state permits issued with public notice and opportunities for comment and judicial review. There is no federal statutory or regulatory requirement to provide an opportunity for public notice and comment on a minor NSR permit.[10] Instead, the Agency provides an extensive legal, policy, and factual analysis in support of the more general proposition that state new source review permits should not be subject to corrective oversight through Title V permitting. See, e.g., *id*. at 1174-83. That rationale provides ample justification for the determination that state permits issued through State Implementation Plan ("SIP")-approved programs should be shielded from revisiting state permits through Title V permitting. But that analysis is nearly devoid of any explanation as to why the protection from corrective oversight should be limited only to state permits issued with public notice and opportunities for commenting and judicial review. In other words, EPA sets out a robust analysis as to why NSR decisions should not be subject to EPA's oversight in the Title V process, but then makes a leap of logic in the proposed rule to draw an arbitrary line between which NSR decisions are afforded this respect (those that are subject to public notice and comment and potential judicial review) and which are not (those that are not subject to the same public participation).

EPA's analysis closely tracks the Fifth Circuit's rationale in *EIP*. But the Fifth Circuit did not conclude that public notice and opportunities for commenting and judicial review must be provided to satisfy legal obligations under minor NSR, or for a state permit to be precluded from reopening its terms through Title V permitting. Rather, the Court affirmed the Administrator's order denying EIP's petition to EPA to object to a Title V permit.[11] Notably, EPA asserted in the underlying order that "[w]here the EPA has approved a state's title I permitting program (whether PSD, NNSR, *or minor NSR*), duly issued preconstruction permits will establish the NSR-related

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long past practices and official policies, the agency must at a minimum acknowledge the change and offer a reasoned explanation for it.").

[10] *See* CAA § 110(a)(2)(C) (requiring states to regulate the construction and modification of "any stationary source … as necessary to assure that [NAAQS] are achieved"); 40 CFR 51.160-51.164 (providing minimum requirements for state minor NSR programs but not mandating public participation for permits issued under such programs).

[11] As EPA recounts in the Proposed Rule, the Fifth Circuit exhaustively analyzed the text of the title V, the purposes of title V, and the role of title V in the context of the CAA as a whole. None of the principal reasons cited by the court in support of its decision depended on the opportunity for public notice or opportunity for comment. Indeed, the Fifth Circuit only references public participation one time in its decision. This reference occurred in a single paragraph found at the very end of the opinion, in which the court accepted EPA's contention that the approach outlined in the Hunter Order "respects the finality" of preconstruction permitting decisions as well as would be "inefficient" to re-review NSR issues in the Title V permitting process. *EIP* at 546. The court's limited discussion of public participation in the *EIP* decision is no surprise because EPA also put almost no focus on the significance of public participation in the Hunter Order. *See* Hunter Order at 17-18 (raising public participation only in the context of analyzing the efficiency of the Title V permit program and to afford respect to NSR decisions).

"applicable requirements," and the terms and conditions of those permits should be incorporated into a source's title V permit without further review."[12]

Like in the *Hunter* order, EPA did not assert in the *Baytown* order that public notice and opportunities for commenting and judicial review must have been provided to shield a state permit from reopening the terms during Title V permitting. Rather, EPA asserted only that the permit must have been issued through a SIP-approved state permitting program.[13] Thus, the Fifth Circuit's decision considered public participation as a factor in deciding whether to reopen a permit, but it was not a requirement or central factor of the decision.

In short, EPA must do more than reiterate the Fifth Circuit's rationale in *EIP* to justify the limited protection against corrective oversight in the Proposed Rule. EPA must provide a new and additional explanation (which does not exist and cannot be derived from the *EIP* opinion, the *Hunter* order, or the *Baytown* order) as to why the bar against reviewing state permits only applies when public notice and opportunities for commenting and judicial review are provided. Such explanation is lacking in the Proposed Rule.

The closest that EPA comes is the assertion that "where NSR-related requirements are not established through a public title I permitting process with an opportunity for judicial review, the applicable requirements of the SIP (or FIP) relevant to the construction project at issue are not yet conclusively defined for title V purposes." 89 Fed. Reg. at 1169. According to EPA, "[i]n such a situation, the title V process can and should be used to assure compliance with the relevant underlying NSR- related applicable requirements of the SIP (or FIP)." *Id*.

But that explanation is devoid of legal analysis and fails to provide any explanation of where in Title V EPA finds authority for the contention that a state permit issued without public notice and an opportunity for commenting and judicial review is not "conclusive" or "definitively established" and, thus, not shielded from substantive review during Title V permitting.

The lack of analysis is particularly stark for permits issued through SIP-approved state permitting programs, which are conclusive not only because they clearly represent a final result of the state's permitting process but also by virtue of EPA's approval of that permitting process as satisfying CAA Title I permitting requirements.

That failure to provide any legal analysis violates EPA's obligation to provide a "statement of basis and purpose" in the Proposed Rule that "include[s] a summary of … the major legal interpretations ... underlying the proposed rule." CAA § 307(d)(3)(C). Moreover, the lack of legal analysis supporting this key element of the Proposed Rule will render the final rule arbitrary and capricious. *Motor Vehicle Mfrs. Assn. v. State Farm*, 463 U.S. 29 (1983) at 43 ("Normally, an agency rule would be arbitrary and capricious if the agency … entirely failed to consider an important aspect of the problem.").

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[12] *In the Matter of ExxonMobil Corporation, Baytown Olefins Plant*, Order on Petition No. VI-2016-12 (Mar. 1, 2018) at 5 (emphasis added).

[13] EPA argues that its "current" position with regard to reviewing state-issued title I permits through title V permitting is limited to state permits issued with public notice and opportunities for commenting and judicial review. See, e.g., 89 Fed. Reg. at 1163, n. 59, n. 62. However, such a disclaimer was not made in the *Baytown* order that was upheld by the Fifth Circuit. Thus, EPA's "current" position is not limited in the way that EPA suggests and the Fifth Circuit's decision provides no support for the suggestion that title V may permissibly be construed to authorize or require such a limitation.

Notably, EPA also explains that the Proposed Rule is intended to "create a strong incentive for state permitting authorities to ensure meaningful public access to NSR permitting actions, particularly for minor NSR permitting actions that may have limited public participation opportunities." 89 Fed. Reg. at 1182.[14] Accordingly, EPA asserts that "[t]his rulemaking is expected to complement related ongoing efforts by the EPA to promote increased implementation of existing requirements related to public participation in minor NSR permit actions." *Id*. The desire to "create a strong incentive" for public participation in state permitting actions is a policy preference that does not in itself provide a legal basis for the Proposed Rule.[15] In effect, what EPA has attempted to do with its "public participation incentive" analysis is use Title V's reference to "applicable requirements" to require a re-interpretation of section 110(a)(2)(C) to add public notice, public comment, and judicial review provisions to all states' minor NSR permit programs. But this is an absurd result, as section 504(a)'s language that requires Title V permits to include "other such conditions as are necessary to assure compliance with applicable requirements of this chapter" cannot be so broadly read as importing a public participation requirement into section 110(a)(2)(C). If Congress intended this language to revise section 110(a)(2)(C) to mandate public participation (or to vest EPA with authority to do so), it would have done so with something more than what is found in section 504(a); as the Fifth Circuit noted in the *EIP* decision, "Congress does not hide elephants in mouseholes by altering the fundamental details of a regulatory scheme in vague terms or ancillary provisions."[16] In any event, to the extent that EPA believes that there may be deficiencies in some state minor NSR public comment provisions, the appropriate means for addressing such deficiencies directly (for example, a SIP call) as opposed to the Title V program.

EPA already established that Section 502(b)(6) does not require public notice for all Title V permit actions.[17] EPA has not explained why the "careful balance between the competing statutory goals, set forth in section 502(b)(6), that permit procedures be 'streamlined,' 'expeditious.' 'adequate,' and reasonable'"[18] that EPA struck in the 1992 rule should now yield to its policy preference to provide public notice for all permit actions. Moreover, a policy preference

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[14] If EPA is taking the position that all state NSR permits must undergo public notice and comment to be an "applicable requirement," then the Agency's argument is not supported by the CAA and is contrary to the D.C. Circuit's recent decision vacating the EPA's SSM SIP call rule, which required states to remove provisions waiving excess air emissions during periods of a stationary source's start-up, shutdown, and malfunction (SSM). *See Envtl. Comm. of Florida Elec. Power Coordinating Group, Inc. v. Envtl. Prot. Agency*, No. 15-1239, 2024 WL 876819 (D.C. Cir. Mar. 1, 2024). In that case, the court held EPA's blanket call of automatic exemptions was set aside because the agency reasoned that every emissions restriction in a SIP had to be continuous to qualify as an emissions limitation, without explaining why that continuity is necessary or appropriate to meet CAA requirements. In this rulemaking, EPA failed to explain why a requirement for public participation in minor NSR permitting is necessary and appropriate to meet the requirements of the CAA.

[15] CAA Section 110(a)(2)(C) requires regulation of the modification and construction of any stationary source, but does not include public notice requirements. 42 U.S.C 7410. "Congress can and does formulate and apply explicit provisions for public comment to particular type of activities." *See* 57 Fed. Reg. 32250, 32282 (July 21, 1992). Moreover, EPA's regulations implementing section 110(a)(2)(C) also do not require states to adopt specific rules for public participation in their minor NSR programs. 40 CFR §§ 51.160 – 51.164.

[16] 969 F.3d at 542 (quoting Whitman v. Am. Trucking Ass'ns , 531 U.S. 457, 468, 121 S.Ct. 903, 149 L.Ed.2d 1 (2001)).

[17] *See Id* at 32281-2 (explaining that "[t]he text of section 502(b)(6) does not directly tie the 'public notice' element to any of the Agency actions referred to in elements (1), (2) or (4). That a procedure for public notice is referred to in element (3) thus does not alone determine the types of actions to which such notice applies:…Congress thus did not clearly require public notice and comment for all 'permit actions'.")

[18] *Id* at 32283.

for "meaningful public access," elevated public participation, or other Environmental Justice principals does not invite EPA to disregard approved NSR programs in existing SIPs.[19]

Second, even if EPA explained the legal basis for the Proposed Rule, it could not have found adequate authority in Title V to justify disparate treatment of state permits issued under SIP-approved programs based solely on whether public notice and opportunities for commenting and judicial review were provided. As EPA explains in the Proposed Rule, "[w]hen a permitting authority authorizes construction by issuing either a major NSR permit or minor NSR permit, it establishes emission limits and other standards necessary to satisfy the SIP requirements relevant to either major or minor NSR." *Id*. at 1165-6. Moreover, "[a]lthough SIPs contain general criteria for establishing those limits, individual permit actions are necessary to specifically define the limits for each source subject to NSR." *Id.* at 1166. Thus, "[o]nce these limitations are established through the NSR permitting process, the title V process should not be used to re- evaluate whether the resulting limits reflect the general SIP requirements related to BACT, LAER, or other similar requirements." *Id*.

EPA's rationale applies equally to all SIP-approved state permitting programs – even those that do not require public notice and opportunities for commenting and judicial review. The CAA plainly provides that EPA shall approve a SIP "if it meets all of the applicable requirements of this Act." CAA § 110(k)(3). Approval of a state permitting program into the state's SIP thus necessarily means that EPA has determined that the permitting program satisfies the CAA requirement to adequately regulate the "modification and construction of any stationary source within the areas covered by the plan." CAA § 110(a)(2)(C).[20] Such approvals encompasses the process by which state permits are issued, whether or not the process requires or allows for public notice and opportunity for public comments.

EPA would prefer for states to require public notice and opportunities for commenting and judicial review when all state permits are issued, but that preference is inconsistent with EPA's routine approval of common SIP provisions that recognize that not all minor permits require such procedures. If EPA genuinely believes that public participation procedures are legally necessary for any state permit to be considered "conclusive" or "definitively established," EPA could not have approved any state's current permitting program because they all recognize the authority to issue some minor permits without public review and comment. And, even if EPA takes that position now, it will need to issue a SIP Call to change every SIP because, as long as the current permitting programs remain SIP-approved, they remain the federally enforceable

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[19] CAA Section 110 requires public participation in adopting the SIP, not for each minor NSR permit decision made under the SIP-approved program. In fact, in approving the Texas SIP, "EPA recognizes a state's ability to tailor the scope of its Minor NSR program as necessary to achieve and maintain the NAAQS." 79 Fed. Reg. 551. 556 (Jan. 6, 2014). EPA has not adequately explained its departure from this previous policy. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009) (when an agency reverses "prior policy," it must provide a "detailed justification" for doing so); *Physicians for Soc. Resp. v. Wheeler*, 956 F.3d 634, 644 (D.C. Cir. 2020) ("It is axiomatic that the APA requires an agency to explain its basis for a decision. . . .This foundational precept of administrative law is especially important where, as here, an agency changes course. Reasoned decision-making requires that when departing from precedents or practices, an agency must 'offer a reason to distinguish them or explain its apparent rejection of their approach.'" (quoting *Sw. Airlines Co. v. FERC*, 926 F.3d 851, 856 (D.C. Cir. 2019)).

[20] If EPA finds new CAA authority and lawfully construes title I to require all preconstruction permitting decisions to go through public notice and comments, and judicial review, then the Agency must formally promulgate regulations and then, as necessary, require states to include these requirements into their SIP through the SIP call process.

rules for definitively establishing applicable requirements.[21] EPA cannot seek to accomplish that goal via its limited Title V authority.

B. EPA must recognize the statutory and regulatory limits of its Title V oversight authority.

As explained above, there is no basis for shielding a subset of permits issued through SIP-approved state permitting programs (i.e., only those that provide public notice and opportunities for commenting and judicial review) while exposing all others to reevaluation. A SIP-approved state permitting program must satisfy all CAA applicable requirements to be approved in the first instance. As a result, all permits issued through such programs (including revisions to existing permits) definitively establish applicable requirements and should not be susceptible to a second round of review through Title V permitting.[22] EPA should revise the final rule accordingly.

But EPA can and should do more. To begin, many states have alternative SIP-approved mechanisms that authorize the modification and construction of sources. For example, many states have source registration requirements that provide authorization for construction or modification (usually of relatively minor emissions sources) through a notice-based system satisfied by the submission of pertinent information to the permitting authority. Similarly, many states allow for permitting of new or modified sources (typically common, widely used types of emissions units) through general permits or permits by rule. Such provisions meet CAA Section 110(a)(2)(C)'s requirement that SIPs have a permit program to assure ambient air quality. The substantive measures prescribed by such provisions are determined at the time they are established by the state and the adequacy of such measures is affirmed by EPA through the SIP approval process. These state rule programs themselves were subject to public comment and judicial review when promulgated, but EPA fails to explain its position relative to permit requirements under these programs. EPA should clarify that requirements under such programs are also not subject to ongoing review through Title V permitting. There is no need or value for reassessing the adequacy of such provisions any time Title V permits are issued or renewed.

The Associations agree that regulatory action specific to the state minor NSR program, and not the Title V permitting process, is the appropriate venue for addressing EPA's concerns regarding public notice and comment.

Similarly, many states have SIP-approved permitting programs that allow for "plantwide applicability limits" ("PALs") to be established, which typically provide that major NSR and, sometimes, minor NSR preconstruction permitting is not required for facility modifications and additions provided the relevant PAL emissions limits are not exceeded upon implementation of such projects. The NSR PAL provisions clearly state that the public participation requirements are only required when the PAL is initially issued, renewed, or the PAL level is increased.[23] Indeed, the Fifth Circuit decision in *EIP* affirmed EPA's decision not to object to a project implemented pursuant to a state PAL permit. EPA should expressly provide in the final rule that

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[21] Indeed, EPA itself states that "even if the EPA disagrees with the content of a SIP, until the EPA approves a corrective SIP revision or issues a FIP, the SIP requirement remains an 'applicable requirement' that should be incorporated unchanged into the title V permit." 89 Fed. Reg. at 1180.

[22] Not all terms included in such permits, however, are applicable requirements. For example, a permitting authority may include a state-based HAP limit in a construction permit, and inclusion of such limit in a construction permit does not transform this requirement into an applicable requirement.

[23] 40 CFR 52.21(aa)(5).

projects implemented through PAL permits are not susceptible to reopening as part of Title V permitting.

In addition, EPA explains that "questions about NSR applicability" often are resolved during the issuance of state permits. *Id*. at 1166. EPA asserts that "once an NSR permit is issued, the limitations and other terms of that permit establish all relevant NSR-related requirements of the SIP (whether major or minor NSR) that apply to construction or modification of the source, and should be incorporated into the title V permit without further review." The Associations agree with and support the Agency's position on that issue.

But we recommend that EPA go further by shielding from oversight all state-issued NSR applicability determinations – even those issued outside of the permitting process. Such a provision would be consistent with (and encompassed by) EPA's assertion that "[t]o the extent that applicability is clearly established within the applicable requirement itself (e.g., a source-specific SIP provision) or some other type of final agency action (e.g., a formal EPA applicability determination under CAA sections 111, 112, or 129), applicability would not be subject to further scrutiny through title V." *Id*. at 1157. Indeed, it would be irrational and arbitrary for EPA to wall off its own applicability determinations from re-review through Title V permitting, while exposing comparable state applicability determinations to such second-guessing.

Lastly, in limited circumstances where corrective oversight through Title V permitting might be appropriate, EPA should impose reasonable time constraints on the opportunity for such oversight. For example, oversight should not be available beyond the first opportunity available under the Title V program – either at the time the given applicable requirement is incorporated into a Title V permit or no later than the first renewal after the applicable requirement becomes effective.

EPA's analysis of the comparison of the Title I program against the Title V program is instructive on this point. In the preamble to the proposed rule, EPA provides an analysis of how the Title I NSR program vests both EPA and citizens with more comprehensive and robust tools to ensure compliance with NSR requirements as opposed to the limited objection role that EPA holds under the Title V program. 89 FR at 1178-79. As to Title I NSR, EPA points out the agency has the authority to issue injunctive orders and to pursue civil and criminal enforcement actions. Likewise, citizens are empowered to bring enforcement actions of their own to obtain both penalties and injunctive relief for violations of NSR requirements. Additionally, Title I gives EPA the authority to disapprove State Implementation Plans – and call for revisions to existing SIPs – that do not meet the requirements of the CAA. As EPA succinctly and persuasively stated,

> The enforcement-based tools available to EPA and members of the public can be used to ensure that decisions made in establishing the terms of a major NSR permit, such as BACT limits, were made on reasonable grounds properly supported by the record. Additionally, they can be used to address situations where a source failed to obtain a major NSR permit (even where it obtained a minor source permit). These ***powerful enforcement tools*** enable the EPA and public to directly correct the behavior of facility that pursue illegal construction.
>
> Overall, the availability of title I oversight tools weighs against using title V oversight tools to address alleged defects with NSR permitting decisions.

89 FR at 1179/1-2 (emphasis added) (internal citations omitted). We agree with EPA's assessment; "these title I-based oversight tools are more effective than the more limited title V oversight tools."

What's more, it is clear that Congress appreciated the Title I-Title V distinction when it adopted the Title V provisions in the 1990 Clean Air Act Amendments. The entire suite of Title I enforcement provisions were adopted as part of the 1977 Clean Air Act and functioned well enough over the course of the intervening 13 years that Congress did not modify those provisions as part of the 1990 CAAA. This, of course, includes the limitations on those actions, including the 5-year statute of limitations that applied to those enforcement actions. Yet, without a reasonable and rational limit on the duration that petitioners can seek to have NSR issues re-evaluated as part of a Title V permit, the Title V program's corrective oversight provision become much broader than the Title I program ever envisioned.

EPA appears to acknowledge this in the preamble to the rule as it questions "whether the title V permitting process should be used to double-check – ***and re-check during every subsequent title V renewal permit*** – the substantive adequacy of applicable requirements established through NSR permit decisions." *Id.* at 1175/1 (emphasis added). One needs to look no further than the Hunter Order to see the arbitrary nature of such a position. The modifications that were at the core of the Hunter Order occurred between 1997 and 1999. Hunter Order at 7. EPA received a petition to object to the Title V permit on April 11, 2016, nearly two decades after the owner/operator commenced the modifications.

After nearly 20 years since the modifications occurred at the facility, without some extraordinary facts rooted in conscious and affirmative efforts that would preclude claims from accruing, neither EPA nor citizens could bring a Title I NSR enforcement action against the owner/operator of the facility. Consequently, a rule – drawn from the limited language found in section 504(a) and 505(b) – that allows such a result through the Title V permitting process is certainly arbitrary and capricious and impermissible under the Act.

Similarly, prior NSR permitting actions should not be subject to review through Title V permitting based on a post-hoc revision to the definition of "applicable requirement." If prior NSR permitting actions were subject to a Title V Part 70 approved public participation process, were subject to EPA review and public petition opportunity, have not been altered or amended, and continue to be incorporated into a Title V permit, then the scope of EPA's oversight in subsequent Title V reviews should not extend to such prior actions.

We note that the appropriate statutory and regulatory limits of the Title V program as outlined above should also be considered in response to EPA's specific request for comment on its proposed alternative approaches. EPA solicits feedback on the following three alternative approaches for use of the Title V program: using Title V to review contemporaneous or recent NSR decisions; using Title V to review issues related to major NSR applicability; or using title V to review contemporaneous or recent NSR permitting decisions related to major NSR applicability.[24] The Associations note that the Title V program cannot be used and should not be revised for these purposes. As outlined in this section, state permitting agencies have mature NSR permitting processes and are best suited to review NSR applications and make determinations on applicability or source type with the state applicant directly. These decisions represent a direct method to review and engage on issues relevant to the permitting process within the state. They should not be unnecessarily second-guessed or re-evaluated as part of the Title V permitting process. As such, the Associations strongly recommend that EPA not pursue any of its proposed alternative approaches.

[24] 89 Fed. Reg. 1183.

IV. The Associations agree with EPA that the CAA § 112(r)(1) general duty is not a Title V applicable requirement.

CAA § 112(r)(1) imposes on the "owners and operators of stationary sources producing, processing, handling or storing" listed "regulated substances" or other "extremely hazardous substances" a "general duty … to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur." CAA § 112(r)(1). That provision also specifies that "the provisions of [CAA § 304] of this title shall not be available to any person or otherwise be construed to be applicable to this paragraph." *Id*. According to EPA, that "means that citizen suits under CAA section 304 shall not be available to enforce the requirements of the General Duty Clause; instead, this clause may only be enforced by the EPA under CAA section 113." 89 Fed. Reg. at 1185.

EPA explains in the Proposed Rule that that the ""General Duty Clause" is not an applicable requirement for title V" and proposes "to provide further clarity to the public by making this exclusion explicit in the EPA's regulations." *Id*. at 1184. EPA's primary rationale is tied to the prohibition against enforcement of the General Duty Clause by citizens under CAA § 304. EPA explains that the "CAA provides that all standards and limitations in title V permits are enforceable by citizens under section 304." *Id*. at 1185. As a result, "if the requirements of the General Duty Clause were included in title V permits, they would ostensibly be enforceable through enforcement of the title V permit itself." *Id*. Because that "would be in conflict with the unambiguous statutory prohibition on citizen enforcement of the General Duty Clause under section 304," EPA asserts that, "[t]o avoid this conflict, the General Duty Clause must not be considered an "applicable requirement" that is implemented through title V permitting." *Id.*

EPA points out that CAA § 112(r)(1) specifies that the general duty applies ""in the same manner and to the same extent as section 654, title 29" – that is, the general duty clause within the Occupational Safety and Health Act (OSH Act)." *Id*. EPA notes that that "OSH Act provision, enacted in 1970, is not implemented through site-specific permits, nor are citizen suits authorized to enforce it." *Id*. EPA concludes that "[i]f Congress had intended the CAA General Duty clause to be implemented in a fundamentally different manner than the OSH Act provision on which it was explicitly modeled … it could have specifically said so." *Id*. The fact that Congress did not do so, EPA argues, is evidence that Congress did not intend the General Duty Clause to be implemented through Title V permits.

EPA also points out that "the CAA requires that states have the authority to enforce title V permits in order to receive EPA approval of their permitting programs." *Id*. But the CAA § 112(r)(1) General Duty Clause expressly may be enforced only by the federal government. Thus, if the General Duty Clause is deemed to be a Title V applicable requirement, that would create the "absurd result" that "all state and local title V programs would be fundamentally flawed" because no state or local regulator could enforce the General Duty Clause under the Title V permitting program. EPA reasons that that outcome is avoided if the General Duty Clause is not considered a Title V applicable requirement.

EPA next argues that its Part 70/71 rules are not "compatible with the view that the General Duty Clause … should be included in title V permits." *Id*. Moreover, "[e]xcluding the General Duty Clause from the regulatory definition of ''applicable requirement'' is consistent with how the EPA has described and implemented both the title V and 112(r) programs since their inception in the early 1990s." *Id*.

EPA lastly argues that a number of policy considerations weigh against treating the General Duty Clause as a Title V applicable requirement. For example, it would be an "enormous resource burden" on permitting authorities for "thousands of title V permits nationwide [] to be reopened to include conditions necessary to identify an assure compliance with the clause." *Id*. at 1186. In addition, treating the General Duty Clause as a Title V applicable requirement would "fundamentally alter the EPA's implementation and enforcement of the General Duty Clause itself." *Id*. EPA asserts that "the General Duty Clause is meant to be implemented and enforced independently as a direct requirement of the CAA, beyond the strictures of any set of regulations or the title V permitting program." *Id*. at 1187.

The Associations agree with and support the legal, policy, and factual analyses that EPA asserts in support of its position that the General Duty Clause is not a Title V applicable requirement. We also support EPA's proposal to amend the Part 70/71 regulations to expressly exclude the General Duty Clause from the definition of "applicable requirement."

Treating the General Duty Clause as a Title V applicable requirement would be plainly inconsistent with the express terms of both Title V and CAA § 112(r)(1). It also would impose a tremendous burden on affected sources and Title V permitting authorities by requiring Title V permit terms and conditions to be developed from whole cloth – with no guiding principles or clear direction from Congress. And it would invite endless debates over the adequacy of those terms and conditions, inevitably leading to widespread controversy over the validity of Title V permits. Most importantly, it would constrain the scope and effectiveness of the General Duty Clause by placing limits on its meaning that by design do not exist in the statute. All of that can and should be avoided by finalizing the proposed interpretation that the General Duty Clause is not a Title V applicable requirement and promulgating the corresponding new regulatory provisions.

In closing, the General Duty Clause is widely applicable to facilities owned and operated by members of the Associations. The Associations believe that the General Duty Clause is an integral element of the CAA § 112(r) program to prevent accidental releases and, more broadly, the coordinated accident release program jointly implemented by EPA and OSHA. The Associations and their members place the utmost importance on and are committed to promoting process safety and preventing accidental releases of hazardous substances. The fact that the General Duty Clause is not a Title V applicable requirement does not affect our commitment to the coordinated accident release program.

V. The authority to impose compliance assurance measures through Title V permitting does not authorize permitting authorities to increase the stringency of the underlying emissions limitation or standard.

EPA asserts that "CAA section 504 provides the EPA with the authority to use title V permits to establish additional requirements … when necessary in order to assure compliance with underlying applicable requirements that do not themselves contain sufficient monitoring provisions." *Id*. at 1153. The Associations agree that Title V establishes authority to add monitoring, recordkeeping, and reporting as necessary to assure compliance. EPA's authority, as codified and explained in the 1992 Part 70 rule, however, did not establish 40 CFR 70.6(a)(1), which EPA codified to implement CAA Section 504(a), as establishing a substantive gap-filling provision. EPA also did not present an interpretation of 70.6(c) that would allow a permitting authority to fundamentally alter compliance obligations under the guise of compliance assurance. Specifically, emissions limits or standards are established in conjunction with data from specific test methods and monitoring procedures. For example, there are different types of flow meters relying on different technologies to measure gas stream flow. Altering the type of

flow meter could lead to different flow readings affecting a major source's ability to comply with an emissions limit established by relying on data from a different type of gas flow meter. Similarly, adding a requirement to maintain a temperature range on a control device can affect the ability of a major source to comply with a standard if temperature data was not considered in establishing the emissions limit. And requiring measurements over a shorter averaging time typically reduces the amount of variability that a source may experience and still be able to show compliance with a numeric emissions limit.

There is a difference between compliance assurance and altering the compliance obligation such that a major source must reduce operations or add additional control measures, or face difficulty demonstrating continuous compliance because the compliance monitoring scheme is altered. Title V permitting cannot be lawfully used to effectively alter compliance obligations rather than accurately recording such standards that are developed under other CAA programs. See, e.g., *Clean Air Implementation Project v. EPA*, 150 F. 3d 1200, 1203 (D.C. Cir. 1998) (Petitioners explained that "any change in compliance method or test is substantive because "use of a different test method or procedure can lead to fundamental differences in results, due to difference in analytical method, data reduction, or measurement location.""). Accordingly, we recommend that EPA clearly state in the final rule that any monitoring or related compliance assurance measures developed and issued through Title V permitting must be prescribed in a manner that does not materially affect a major source's ability to comply with numeric emissions limits as written. If EPA intends this "clarification" rule to potentially result in substantive expanding a Title V permit holder's performance-based obligations, EPA needs to squarely say so and explain the legal and factual justifications, or clearly state that the clarification excludes such results.

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The Associations again thank you for the opportunity to submit these comments. Please do not hesitate to contact Leslie Bellas at lbellas@afpm.org if you have questions or need more information.

Sincerely,

The American Chemistry Council
American Fuel & Petrochemical Manufacturers
American Petroleum Institute
The Fertilizer Institute
Interstate Natural Gas Association of America
National Lime Association
National Mining Association
U.S. Chamber of Commerce