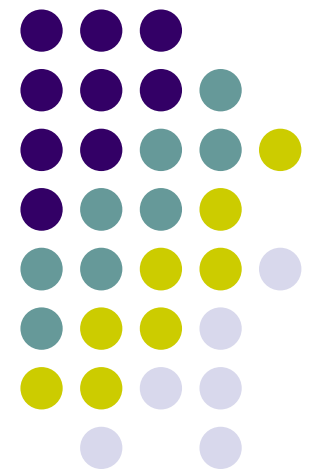


# Title V Permitting Program: An Update

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# Outline

- Purpose
- Background
- Title V Task Force
- IG Audit
- Executive Order 13563
- State Permitting Authorities Involvement
- Putting It All Together
- Next Steps





# Purpose

- To provide an update on a series of activities related to improvements for the Title V permitting program and planned next steps.



# Background

- Operating Permits Program enacted into Title V of the Clean Air Act in 1990
- Three recent initiatives identify the Title V program for potential improvements
  - I. 2004 Clean Air Act Advisory Committee (CAAAC) Title V Task Force
  - II. 2005 EPA Inspector General Audit Report
  - III. EPA's Plan for responding to Executive Order 13563
    - EO 13563 calls federal agencies to “develop...a...plan, consistent with law and its resources and regulatory priorities...to determine whether any... regulations should be modified, streamlined, expanded, or repealed...”



# I. Title V Task Force

- CAAAC recommended and EPA convened the Title V Task Force in May 2004
- “State of the Program” report after 10 years of implementation
  - What is working well?
  - What is working poorly?
  - Are there changes that should be made?



# Task Force Charge

- Gather input from all stakeholder groups
- Determine how well the title V program is performing
- Determine what elements of the program are working well vs. working poorly
- Report may characterize consensus, however, if consensus is not achieved, report should reflect all views
- May make recommendations for changes



# Timeline

- Significant public outreach
  - 3 public hearings and 2 conference calls held from Jun 2004 - Feb 2005
  - Written comments accepted until March 2005
- Extensive Task Force deliberations
- Task Force Final report submitted to CAAAC in April 2006
- EPA discussed response with CAAAC in Sept 2006.

# Task Force Issue Areas



- Program Overview Papers
  - Costs & Benefits
- Content Issues
  - Incorporation of Applicable Requirements
  - Insignificant Emission Units
  - Monitoring
  - Title I/Title V Interface
  - New Substantive Requirements
  - Permit Definitiveness
  - Compliance Certifications
  - Startup, Shutdowns and Malfunctions
  - Compliance Schedules
- Process Issues
  - EPA Review of Proposed Permits
  - Public Access to Documents
  - Public Hearings
  - Public Notice throughout Process
  - Statement of Basis
  - Responses to Public Comments
  - Permit Revisions and Operational Flexibility
  - Petitions and Appeals



# Final Report



- For each of 18 topic areas
  - Issue Description
  - Supporting Information
    - Legal requirements
    - Testimony (oral and written) received
  - Task Force Discussion – summarizes the give and take during Task Force deliberations
  - Recommendations
- Task Force Made a total of 100 recommendations
- Not all recommendations had unanimous, or even majority support
- Recommendations generally do not specify the method by which they should be implemented.
- The report is available at:
  - <http://www.epa.gov/oar/caaac/titlev.html>

# EPA Response to Date



- Conducted intensive internal process for discussing all 100 recommendations
- Determined preliminary Agency reaction
  - Response may not exactly mirror recommendation
- Sorted recommendations according to implementation method
- Prioritized and discussed priorities with CAAAC
- Following CAAAC Discussion, EPA Developed a draft plan for what to do first.
  1. Guidance document addressing several recommendations at once
  2. Rule addressing three recommended regulatory changes
  3. If resources allow, possible additional work
    - For example, identify best practices for a variety of topics

# Suggested Potential Guidance



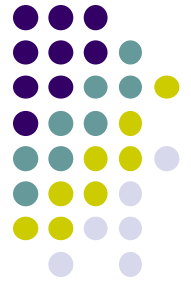
- Guidance Document
  - Affirm White Paper 2 generic treatment of insignificant emissions units (IEU)
  - Reiterate that citation-based incorporation of applicable requirements is ok but paraphrasing is generally unacceptable
  - Provide selected examples clarifying current permit revision procedures
  - Clarify expected content of Statements of Basis
  - Address use of “short form” for compliance certifications
  - Encourage public notices to specify type of facility

# Suggested Potential Rule Changes



- Rulemaking on three specific recommendations
  - Allowing alternative forms of public notice
  - Excluding IEU from permit
  - Possible additions to allowed list of administrative amendments and minor permit revisions

# II. 2005 Inspector General Report



- The IG Report included a series of recommendations for improvement/clarification of the Title V Program
- Three of these recommendations are still unresolved:
  - “...develop and issue guidance or rulemaking on annual compliance certification content which requires responsible officials to certify compliance with all applicable terms and conditions of the permit, as appropriate.”
  - “...develop nationwide guidance or rulemaking, as appropriate, on the contents of statements of basis...”
  - “Issue the draft rule regarding intermittent versus continuous monitoring as it relates to annual compliance certifications and including credible evidence.”

# 2005 Inspector General Report



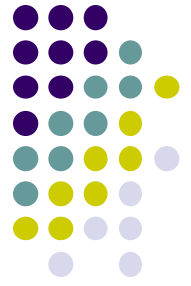
- EPA is in the process of developing a rule that will address the issue of credible evidence as it relates to compliance certifications.
- EPA has committed to develop a guidance document that addresses the recommendations on the contents of statement of basis and compliance certifications.
- Work is currently underway and guidance is expected to be completed in the fall/winter of 2012
- Guidance document will take into consideration recommendations from the CAAAC Title V Task Force on these topics to the extent possible
  - Must be consistent with current regulatory requirements



## III. Executive Order 13563

- The Executive Order calls for each federal agency to:
  - “develop...a...plan, consistent with law and its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency’s regulatory program more effective or less burdensome in achieving the regulatory objectives.”
- EO 13563 is an opportunity to take a fresh look at the Agency’s approach to protecting human health and the environment and an opportunity to modernize our regulatory program.
  - What should a 21st century regulatory program look like?
  - How can we better understand the impacts of existing regulations?
  - How do we determine which regulations should be modified, streamlined, expanded, or repealed to be more effective and less burdensome?
  - How can EPA improve collaborations with our partners such as state, local, and tribal governments?
  - What new tools should the Agency employ to improve environmental quality?

# Title V Program and Executive Order 13563



- EPA included the Title V Operating Permits Program in our Final Plan for Periodic Retrospective Reviews.
- The goal is to simplify and clarify the requirements of the program. Specifically:
  - EPA intends to review the Title V implementation process to determine whether changes can be made to simplify and clarify the process for industry, the public, and government resources, which is in keeping with EO 13563's directive to simplify regulatory requirements.
- EPA has begun the review process to implement this recommendation.



# State Permitting Authorities Involvement



- The National Association of Clean Air Agencies (NACAA) has reviewed the recommendations from the CAAAC Title V Task Force and presented recommendations to EPA for program improvement priorities
- NACAA's recommendations are similar to those developed by the EPA work group analyzing the Task Force report and those identified by the IG.

# State Permitting Authorities Involvement (cont.)



- NACAA’s recommendations for guidance are:
  - Affirm WP2 generic treatment of IEUs until rulemaking can be completed.
  - Clarify expected content of Statement of Basis.
  - Reiterate that citation based incorporation of applicable requirements is ok and citations can be general or specific. Also, agencies should not try to paraphrase MACT, NSPS or NESHAPS.
  - Provide for use of “short form” compliance certification
  - Encourage public notices include minimum amount of information on Title V facility.
  - There should be clarification on the definition of “common controls” on multiple emission units.
- NACAA’s recommendations for rulemaking are:
  - Expand the allowed list of administrative and minor permit revisions.
  - Allow alternate forms of public notice to reflect the new means of communication that would be more effective and less costly than the traditional forms of public notice.
  - Allow permitting authorities the ability to exclude IEUs from Title V permit.



# Putting It All Together

- All three initiatives (task force, IG report, and EO 13563 Plan) as well as the recommendations from NACAA identify similar areas for improvement
- Utilizing the recommendations from the CAAAC Title V Task Force, EPA plans to respond to the IG's recommendations
  - Issue guidance document on statement of basis and compliance certifications
  - This will also be responsive to some of NACAA's recommendations
- The Task Force Report will also serve as a source of information for identifying areas for improvement that are responsive to EO 13563



# Next Steps

- Continue development of guidance document responsive to IG recommendations (Winter 2012)
- Continue review process in response to EO 13563 to identify areas where the program can be improved
  - Cross reference identified areas for improvement with recommendations from the CAAAC Title V Task Force
- Initiate an EPA workgroup tasked with follow up on the areas for improvement already identified and identifying additional areas that should be addressed, and developing a plan for moving forward
  - Develop implementation mechanisms for areas of improvement (guidance, potential rulemaking, other)
  - Keep CAAAC and other stakeholders (NACAA, others?) apprised of our progress
  - Solicit suggestions from stakeholders for their future involvement