

**TITLE V TASK FORCE
REPORT TO THE CLEAN AIR ACT ADVISORY COMMITTEE**

TITLE V IMPLEMENTATION EXPERIENCE

Master List of Recommendations and Voting Records

April 2006

This is a compilation of the recommendations in the final Task Force Report and includes voting results and clarifications. The recommendations and voting results are arranged by issue paper topic, and are located in this document as follows:

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The Task Force decided not to make any recommendations for these issues:

- Deviation Reports
- Compliance Schedules
- Program Benefits

Appeals and Petitions(11 recommendations)

Recommendation #1

States should substantively respond to public comments to minimize the need for appeals and petitions in the first instance.

In Favor (16)*: Broome, Freeman, Hagle, Kaderly, Keever, Morehouse, Owen, Palzer, Paul, Powell, Raettig, Schwartz, Sliwinski, Wood, Golden, Hodanbosi

Opposed:

Abstentions:

Clarifications:

**Note: Number in parentheses () is the total number of Task Force members voting for this position.*

Recommendation #2

States should resolve and address appeals in a timely manner.

In Favor (16): Broome, Freeman, Hagle, Kaderly, Keever, Morehouse, Owen, Palzer, Paul, Powell, Raettig, Schwartz, Sliwinski, Wood, Golden, Hodanbosi

Opposed:

Abstentions:

Clarifications:

Recommendation #3

In the context of an appeal, attorneys for the State agency and the source should make contact as early as possible to determine if a stay of the appealed term(s) is appropriate.

In Favor (9): Broome, Paul, Wood, Morehouse, Freeman, Schwartz, Golden, Hagle, Hodanbosi

Opposed (3): Keever, Owen, Palzer

Abstentions (4): Sliwinski, Powell, Raettig, Kaderly

Clarifications: While Keever and Owen are in favor of early communication between the State agency and the source they oppose making a recommendation on the possibility of a stay because it is a function of State administrative law.

Recommendation #4

Expedited stay proceedings should be available in the event that the parties are not able to agree whether a stay is appropriate.

In Favor (8): Broome, Paul, Wood, Morehouse, Freeman, Schwartz, Golden, Hodanbosi

Opposed (3): Keever, Owen, Palzer

Abstentions (5): Sliwinski, Powell, Raettig, Hagle, Kaderly

Clarifications: Keever and Owen oppose making a recommendation on the possibility of a stay because it is a function of State administrative law.

Recommendation #5

Permitting authorities and EPA should address issues that are raised repeatedly in appeals and petitions, respectively, on a program-wide basis.

In Favor (16): Broome, Freeman, Hagle, Kaderly, Keever, Morehouse, Owen, Palzer, Paul, Powell, Raettig, Schwartz, Sliwinski, Wood, Golden, Hodanbosi

Opposed:

Abstentions:

Clarifications: Keever, Raettig, Van Frank, Powell, Palzer, and Owen clarify that they do not intend this to imply that EPA can use its plan to address an issue program-wide as a reason for not substantively addressing an issue in a filed petition.

Recommendation #6

EPA should take action to address concerns with the transparency of the process in cases where EPA is addressing a precedent-setting/programmatic issue in an objection or in response to a petition for objection.

In Favor (9): Broome, Morehouse, Paul, Hodanbosi, Freeman, Wood, Golden, Schwartz, Sliwinski

Opposed (7): Kaderly, Powell, Owen, Van Frank, van der Vaart, Keever, Palzer

Abstentions (2): Hagle, Raettig

Clarifications: Kaderly, Powell, Owen, Palzer, and Keever opposed because of concerns about vagueness.

Recommendation #7

When EPA publishes a Federal Register notice that it has responded to a petition, the agency should include a list of the issues resolved in the petition.

In Favor (16): Broome, Freeman, Hagle, Kaderly, Keever, Morehouse, Owen, Palzer, Paul, Powell, Raettig, Schwartz, Sliwinski, Wood, Golden, Hodanbosi

Opposed:

Abstentions:

Clarifications:

Recommendation #8

EPA's database for petitions should be more user-friendly—searchable and organized in a manner that provides interested parties with notice that potentially precedent-setting issues have been resolved.

In Favor (16): Broome, Freeman, Hagle, Kaderly, Keever, Morehouse, Owen, Palzer, Paul, Powell, Raettig, Schwartz, Sliwinski, Wood, Golden, Hodanbosi

Opposed:

Abstentions:

Clarifications:

Recommendation #9

EPA and permitting authorities should engage in a dialogue with interested parties when a petition is filed to determine if the issues can be resolved and the petition withdrawn (in whole or in part). Interested parties include petitioners, the permittee, the permitting authority and EPA representatives. A dialogue among interested parties should occur within 60 days of the filing of a petition to attempt to reach agreement regarding a timeline for EPA to complete its petition response.

In Favor (16): Broome, Freeman, Hagle, Kaderly, Morehouse, Palzer, Paul, Powell, Raettig, Schwartz, Sliwinski, Wood, Owen, Keever, Golden, Hodanbosi

Opposed:

Abstentions:

Clarifications: Freeman and Broome clarify that the dialogue should not be used to resolve important legal or policy issues affecting other sources or States in a non-public forum.

Recommendation #10

EPA should not delay in providing meaningful, substantive responses to petitions filed.

In Favor (15): Broome, Hagle, Kaderly, Keever, Morehouse, Owen, Palzer, Paul, Powell, Raettig, Schwartz, Sliwinski, Wood, Golden, Hodanbosi

Opposed:

Abstentions (1): Freeman

Clarifications: Additional resources are needed to accomplish the goal of timely petition responses.

Recommendation #11

EPA should develop procedures consistent with the need to timely respond to petitions by which interested parties may bring to EPA's attention information relevant to the evaluation of the petition. These procedures should provide that any such information is provided to the petitioners when EPA receives it.

In Favor (16): Broome, Freeman, Hagle, Kaderly, Morehouse, Paul, Schwartz, Sliwinski, Wood, Keever, Owen, Powell, Golden, Hodanbosi, Palzer, Raettig

Opposed:

Abstentions:

Clarifications: Powell clarifies that "information relevant to the evaluation of the petition" should be limited to the permit, permit-related documents such as the permitting authority's response to comments, and other information that was before the permitting authority when it made its decision on the permit. Additional information should only be considered if it became available after the permitting authority reached its decision on the permit. Palzer and Raettig join Powell's clarification. Freeman clarifies that interested parties includes other sources and State agencies with an interest in resolution of any issues raised in the petition.

Compliance Certification Forms (5 recommendations)

It was generally agreed among the members of the Task Force that compliance certifications are a valuable component of the Title V program and have increased management awareness regarding environmental enforcement issues. With respect to the optimal content and format of the compliance certification, two potential recommendations emerged from the discussions of the Task Force after considering the extensive public comments on the issue and these are noted below with identification of the supporters of each position. While there were divergent views in this area, there were areas of agreement that we also note below.

Recommendation #1

Most of the Task Force endorsed an approach akin to the “short form” certification, believing that a line-by-line listing of permit requirements is not required and imposes burdens without additional compliance benefit. Under this approach, the compliance certification form would include a statement that the source was in continuous compliance with permit terms and conditions with the exception of noted deviations and periods of intermittent compliance. Although the permittee would cross-reference the permit for methods of compliance, in situations where the permit specifies a particular monitoring method but the permittee is relying on different monitoring, testing or other evidence to support its certification of compliance, that reliance should be specifically identified in the certification and briefly explained. An example of such a case would be where the permit requires continuous temperature records to verify compliance with a minimum temperature requirement. If the chart recorder data was not recorded for one hour during the reporting period because it ran out of ink, and the source relies on the facts that the data before and after the hour shows temperature above the requirement minimum and that the alarm system which sounds if temperature falls below setpoint was functioning and did not alarm during the hour, these two items would be noted as the data upon which the source relies for certifying continuous compliance with the minimum temperature requirement.)

In Favor (10)*: Schwartz, Hodanbosi, Hagle, Kaderly, Broome, Freeman, Paul, Morehouse, Wood, Golden

Opposed (4)*: Keever, Owen, Palzer, Powell

Abstentions:

Clarifications

**Note: Number in parentheses () is the total number of Task Force members voting for this position.*

Recommendation #2

Others on the Task Force believed that more detail than is included in the short form is needed in the compliance certification to assure source accountability and the enforceability of the certification. These members viewed at least one of the following options as acceptable (some members accepting any, while others accepting only one or two):

1. The use of a form that allows sources to use some cross-referencing to identify the permit term or condition to which compliance was certified. Cross-referencing would only be allowed where the permit itself clearly numbers or letters each specific permit term or condition, clearly identifies required monitoring, and does not itself include cross-referencing beyond detailed citations to publicly accessible regulations. The compliance certification could then cite to the number of a permit condition, or possibly the numbers for a group of conditions, and note the compliance status for that permit condition and the method used for determining compliance. In the case of permit conditions that are not specifically numbered or lettered, the form would use text to identify the requirement for which the permittee is certifying.
2. Use of the long form.
3. Use of the permit itself as the compliance certification form with spaces included to identify whether compliance with each condition was continuous or intermittent and information regarding deviations attached.

In Favor of This Range of Approaches (8): Sliwinski, van der Vaart, Haragan, Keever, Palzer, Owen, Powell, Van Frank

Opposed (10): Schwartz, Hodanbosi, Hagle, Kaderly, Broome, Freeman, Paul, Morehouse, Wood, Golden

Abstentions:
Clarifications: van der Vaart favors Option 2 but believes Option 3 is also supportable. Haragan and Owen favor Option 3. Powell, Palzer, and Van Frank favor Options 1 and 3.

Recommendation #3

Where the permit specifies a particular monitoring or compliance method and the source is relying on other information, that information should be separately specified on the certification form.

In Favor (18): Sliwinski, van der Vaart, Haragan, Keever, Palzer, Owen, Powell, Van Frank, Schwartz, Hodanbosi, Hagle, Kaderly, Broome, Freeman, Paul, Morehouse, Wood, Golden

Opposed:

Abstentions:

Clarifications:

Recommendation #4

Where a permit term does not impose an affirmative obligation on the source, the form should not require a compliance certification; *e.g.*, where the permit states that it does not convey property rights or that the permitting authority is to undertake some activity such as provide public notice of a revision.

In Favor (18): Sliwinski, van der Vaart, Haragan, Keever, Palzer, Owen, Powell, Van Frank, Schwartz, Hodanbosi, Hagle, Kaderly, Broome, Freeman, Paul, Morehouse, Wood, Golden

Opposed:

Abstentions:

Clarifications:

Compliance Certification Forms (cont.)

Recommendation #5

All forms should provide space for the permittee to provide additional explanation regarding its compliance status and any deviations identified during the reporting period.

In Favor (18): Sliwinski, van der Vaart, Haragan, Keever, Palzer, Owen, Powell, Van Frank, Schwartz, Hodanbosi, Hagle, Kaderly, Broome, Freeman, Paul, Morehouse, Wood, Golden

Opposed:

Abstentions:

Clarifications:

Definitiveness of Permit (3 recommendations)

Recommendation #1

The EPA should recognize that the Credible Evidence Rule (rule, preamble and guidance) has raised questions about the relationship between the permit, the permit shield, and the compliance certification. This has resulted in confusion among permitting agencies, sources and the public.

In Favor (9)*: Sliwinski, van der Vaart, Broome, Wood, Hagle, Freeman, Paul, Hodanbosi, Golden

Opposed (6)*: Raettig, Van Frank, Owen, Powell, Keever, Palzer

Abstentions (1)*: Morehouse

Clarifications: Broome, Golden, Wood, Paul, and Freeman clarify that because the Court of Appeals never ruled on the substance of the credible evidence rule, there remain questions about its overall legality and that the problem goes beyond confusion. They further clarify that the recommendation should not be interpreted simply as a request for additional guidance, which they do not believe would resolve the real issue.

**Note: Number in parentheses () is the total number of Task Force members voting for this position.*

Recommendation #2

The EPA should recognize that the phrase “at a minimum” in 40 CFR 70.6(c)(5)(iii)(B) when referring to the methods and means required under 70.6(a)(3) information used to determine the compliance status undermines the purpose of the permit shield to the extent it suggests that additional information must be considered in compliance certifications.

In Favor (4): Sliwinski, van der Vaart, Hodanbosi, Golden

Opposed (6): Raettig, Van Frank, Owen, Powell, Keever, Palzer

Abstentions (6): Broome, Freeman, Hagle, Morehouse, Paul, Wood

Clarifications:

Recommendation #3

EPA should pursue rulemaking to propose the following change in 70.6(c)(5)(iii)(B):

(B) The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under paragraph (a)(3) of this section. In cases where the permit is shield under 70.6(f)(1)(i) is included in the permit, the basis of the compliance certification shall be the results of monitoring under 70.6(a)(3).

In favor (3): Sliwinski, van der Vaart, Hodanbosi

Opposed (11): Broome, Wood, Raettig, Van Frank, Freeman, Owen, Powell, Keever, Hagle, Paul, Palzer

Abstentions (2): Morehouse, Golden

Clarifications: Broome and Freeman oppose based on substantive concerns as well as because they do not believe the Task Force should promote specific regulatory language. Golden clarifies that he is in favor of achieving the general goal of definitiveness in the permit, but due to the complexity of the issue, he is unsure that the proposed language addresses all of the issues and does not want to promote exact regulatory language.

EPA Review of Proposed Permits (1 recommendation)

Recommendation #1

Concurrent v. Sequential Permit Reviews: EPA's review period should generally run concurrently with the public comment period. The concurrent review should become sequential if a significant comment germane to the Title V proposed permit is received from someone other than the permittee. It is up to the discretion of the permitting authority to make this determination. EPA will have at least 15 days after the close of the comment period for its review.

In Favor (12)*: Kaderly, Freeman, Broome, Wood, Schwartz, Morehouse, Sliwinski, Hodanbosi, Paul, van der Vaart, Hagle, Golden

Opposed (6)*: Powell, Raettig, Van Frank, Palzer, Keever, Owen

Abstentions:

Clarifications: Owen and Keever oppose because they disagree with the premise of the recommendation that the review period should be concurrent.

**Note: Number in parentheses () is the total number of Task Force members voting for this position.*

Incorporation of Applicable Requirements (5 recommendations)

Incorporation of MACT and Other Rules:

Recommendation #1

Citation Approach. Permitting authorities should use a citation approach to incorporate applicable requirements in MACT and other regulations into Title V permits.

In Favor (13)*: Broome, Palzer, Golden, Paul, Freeman, Hagle, Schwartz, Morehouse, Owen, Raettig, Hodanbosi, Wood, Van Frank

Opposed (2)*: van der Vaart, Sliwinski

Abstentions (3)*: Kaderly, Powell, Keever

Clarifications: Within the citation approach, some members prefer a general citation and others a detailed citation. Task Force members voted for each sub-recommendation that they deemed acceptable (which may have been both).

**Note: Number in parentheses () is the total number of Task Force members voting for this position.*

Recommendation #1(a)

General Citation Approach. Permitting authorities should use general citations as an acceptable way for incorporating MACT and other rules as applicable requirements in Title V permits. A general citation example is:

Source P001, Coke Oven Battery No. 1 – 40 CFR Subpart CCCCC (§§63.7280-63.7352), National Emission Standards for Hazardous Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks. This by-product coke oven battery with vertical flues was constructed prior to July 3, 2001 and is an existing affected source.

This approach provides for efficiencies in permit development and minimizes confusion without sacrificing enforceability since there is sufficient information to determine applicable requirements. This approach also ensures that the permitting authority does not inadvertently change the standard by rephrasing it or putting it into “plain English,” which has led to alteration of MACT requirements in some Title V permits according to submitted comments.

In Favor (12): Broome, Golden, Paul, Kaderly, Freeman, Hagle, Schwartz, Morehouse, Hodanbosi, Wood, Van Frank, Palzer

Opposed (5): van der Vaart, Sliwinski, Powell, Keever, Raettig

Abstentions (1): Owen

Clarifications:

Recommendation #1(b)

Permitting authorities should use detailed citations as an acceptable way for incorporating MACT and other rules as applicable requirements in Title V permits. A detailed citation example is:

Pollutants: Hazardous Air Pollutants regulated pursuant to Section 112 of the Clean Air Act.

Emission Unit: Auto MACT (includes list of emission units covered)

Limitations: On and after the compliance date(s) specified in 40 CFR § 63.3083, for emission units in the Auto MACT Emission Unit, the permittee shall comply with the applicable emission limitations, operating limitations and work practice standards of the National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks, 40 CFR Part 63, Subpart III. Please refer to the following sections of the rule:

Emission limitations: 40 CFR § 63.3091 and 40 CFR § 63.3092.

Operating limitations: 40 CFR § 63.3093.

Work Practice Standards: 40 CFR § 63.3094.

Compliance Demonstration: On and after the compliance date(s) specified in 40 CFR § 63.3083, for emission units in the Flexible Group Auto MACT, the permittee shall comply with the applicable compliance demonstration requirements of the National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks, 40 CFR Part 63, Subpart III. Please refer to the following sections of the rule:

(Recommendation continued on next page)

(Recommendation #1(b) continued)

General Compliance Requirements: 40 CFR § 63.3100.

Applicable Parts of the General Provisions: 40 CFR § 63.3101.

Initial Compliance Demonstration and Performance Tests: 40 CFR §§ 63.3150-3152; 40 CFR §§ 63.3160-3161, 40 CFR §§ 63.3163-3168, 40 CFR §§ 63.3170-3171.

Notifications: 40 CFR § 63.3110.

Reports: 40 CFR § 63.3020.

Reference Test Methods, Recordkeeping and Monitoring: On and after the compliance date(s) specified in 40 CFR § 63.3083, for emission units in the Flexible Group Auto MACT, the permittee shall comply with the applicable requirements for reference test methods, recordkeeping and monitoring of the National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks, 40 CFR Part 63, Subpart IIII. Please refer to the following sections of the rule:

Initial Compliance Demonstration and Performance Tests: 40 CFR §§ 63.3150-3152; 40 CFR §§ 63.3160-3161, 40 CFR §§ 63.3163-3168, 40 CFR §§ 63.3170-3171.

Records: 40 CFR § 63.3130 and 40 CFR § 63.3131.

This detailed citation enhances understanding of the applicability of the rule by citing the particular portions of the rule directly applicable to the particular emission unit, but preserves compliance options that are available under the standard.

Although all of the MACT rules are readily accessible electronically, it is also recommended that the permitting authority make the rule available, upon request, for those who may not have electronic access.

Permitting authorities, the public or the permittee may desire a translation of the technical language in the rule so that they can better understand how the rule applies to the particular facility. This translation can be included as additional narrative in the Technical Support Document or Statement of Basis for the permit, but should not be included in the permit itself, because of the risk of inaccuracies that may inadvertently change applicable requirements. A citation approach does not preclude the source from requesting clarification in the permit of a particular provision of the rule that may be ambiguous. Such a clarification would be focused on a particular provision rather than expending resources to recast an entire MACT rule.

In Favor (14): Broome, Palzer, Golden, Paul, Freeman, Hagle, Schwartz, Morehouse, Owen, Raettig, Hodanbosi, Wood, Keever, Van Frank

Opposed (3): van der Vaart, Sliwinski, Powell

Abstentions (1): Kaderly

Clarifications: Powell clarifies that she would not oppose this approach if the permit specified which of the standard's options are applicable at permit issuance and then required notice if changes are made. Keever joins Powell's clarification.

Recommendation #2

Paraphrasing Approach. MACT and other rules should be incorporated into the Title V permit using a narrative approach that paraphrases the requirements and explains to the public and the permittee how the standard applies to the particular source. If several options are presented in a standard, the source should be required to State which are applicable at permit issuance and then provide notice if changes are made.

In Favor (3): van der Vaart, Sliwinski, Powell

Opposed (14): Broome, Palzer, Golden, Freeman, Hagle, Schwartz, Morehouse, Owen, Raettig, Hodanbosi, Wood, Keever, Kaderly, Van Frank

Abstentions (1): Paul

Clarifications:

Old Construction Permits: One of the larger obstacles that permitting authorities faced for the initial round of Title V permits was locating and incorporating all of the construction permits issued over 20 plus years into the Title V permit. Since nearly all of the initial Title V permits have been issued, and this problem has been addressed in one fashion or another, this issue may be of less importance.

Recommendation #3

Permitting authorities should incorporate currently applicable requirements from construction permits into the Title V permit by restating the terms of those permits in the Title V permit document. The source can request a permit shield (under Section 70.6(f)(1)(ii)) for nonapplicability of any terms of a construction permit not included in the Title V permit. The Title I/Title V Interface Paper contains discussion and recommendations on “cleaning up” obsolete construction permit terms. The only situation in which terms in a construction permit should be included in a Title V permit using a citation approach is if the construction permit is readily available to the public.

In Favor (16): Broome, Palzer, Golden, Freeman, Hagle, Schwartz, Morehouse, Paul, Owen, Hodanbosi, Wood, Keever, Kaderly, van der Vaart, Sliwinski, Van Frank

Opposed (2): Powell, Raettig

Abstentions:

Clarifications: Powell clarifies that she supports the first two sentences of this recommendation, but opposes the last sentence because she does not believe it is ever appropriate to use a citation approach for incorporating construction permit requirements into a Title V permit. Raettig joins Powell’s clarification.

Insignificant Activities and Emission Units (IEUs) (3 recommendations)

One area for improvement in the Title V program would be to simplify the treatment of insignificant emissions units. The administrative burden associated with permit updating and certifications for insignificant units subject to generic or minor NSR permitting requirements outweighs the environmental benefit associated with including them in the Title V permit. Without providing any permit shield for insignificant units:

Recommendation #1

EPA should either amend the rules or the applicable guidance so that States do not have to identify insignificant emissions units in the Title V permit, even if they are subject to generic rules (e.g., opacity) or minor NSR permits and thereby eliminate the associated monitoring, recordkeeping, reporting, permit revision and certification requirements. The IEU exclusion would be for Title V purposes only and would not mean that the State would refrain from regulating, monitoring, or registering such units or activities, under its minor NSR or other programs. Current IEU lists would be reviewed for this purpose.

In Favor (12)*: Paul, Wood, Hodanbosi, Freeman, Hagle, Morehouse, Broome, Schwartz, Golden, van der Vaart, Sliwinski, Kaderly

Opposed (6)*: Palzer, Powell, Raettig, Kever, Owen, Van Frank

Abstentions:

Clarifications: Sliwinski clarifies that this would not apply to New York's higher tier of insignificant units (i.e., exempt units) but that no certification would be required for this tier.

**Note: Number in parentheses () is the total number of Task Force members voting for this position.*

Recommendation #2

Under the program as it currently stands, streamlining can be achieved by communicating that States are not required to include lists of insignificant units and activities in permits but can include a simple line item requiring compliance with applicable requirements for insignificant units and activities. Insignificant emission units and activities should be reviewed as appropriate at each renewal of the permit.

In Favor (18): Broome, Paul, Wood, Hodanbosi, Morehouse, Hagle, Freeman, Sliwinski, Schwartz, Powell, Raettig, Owen, Golden, Kever, van der Vaart, Van Frank, Kaderly, Palzer

Opposed:

Abstentions:

Clarifications: Powell, Raettig, Kever, Palzer, Van Frank and Owen support with clarification that they can obtain the list of insignificant units/activities for the source in the application.

Insignificant Activities and Emissions Units (cont.)

Recommendation #3

To the extent EPA decides to exempt IEUs from inclusion in the Title V permit, a State that wants to take advantage of this opportunity should be required to resubmit its list of IEUs to EPA for approval. IEU lists should be subject to public review and comment.

In Favor (11): Powell, Raettig, Paul, Hodanbosi, Hagle, Keever, Owen, Schwartz, Sliwinski, Van Frank, Palzer

Opposed (5): Morehouse, Broome, van der Vaart, Kaderly, Wood

Abstentions (2): Golden, Freeman

Clarifications: Palzer, Powell, Raettig, Keever, Van Frank, and Owen clarify that acceptance of this recommendation does not indicate agreement with the concept of exempting IEUs from the permit. Morehouse, Kaderly, Wood, and Broome oppose and Freeman and Golden abstain because these lists have already been through public and EPA review.

Monitoring (9 recommendations)

Recommendation #I(a)

EPA should proceed expeditiously by rulemaking to address monitoring inadequacies that may exist in underlying Federal standards.

In Favor (17)*: Morehouse, Freeman, Van Frank, Palzer, Owen, Keever, Haragan, Powell, Schwartz, Golden, Paul, Hagle, Sliwinski, Broome, Wood, van der Vaart, Hodanbosi

Opposed:

Abstentions:

Clarifications:

**Note: Number in parentheses () is the total number of Task Force members voting for this position.*

Recommendation #I(b)

States should proceed expeditiously by rulemaking to address monitoring inadequacies that may exist in underlying SIP standards.

In Favor (15): Morehouse, Freeman, Palzer, Owen, Keever, Haragan, Powell, Schwartz, Paul, Hagle, Sliwinski, Broome, Wood, Golden, Hodanbosi

Opposed (2): van der Vaart, Van Frank

Abstentions:

Clarifications: Freeman, Golden, Broome, and Morehouse voted in favor of this recommendation with the understanding that there will be clarification that CAM satisfies periodic monitoring requirements. Van Frank was opposed to this recommendation on the basis that this activity cannot or will not be undertaken with the resources currently available to State and local permitting authorities.

Recommendation #I(c)(i)

Before any such rulemakings, permitting authorities would not have authority to supplement on a case-by-case basis, in the permit review process, monitoring in standards that already contain periodic monitoring requirements. States would proceed with gap-filling monitoring for standards that do not have periodic monitoring requirements, to the extent authorized by the rules and with compliance assurance monitoring.

In Favor (7): Morehouse, Freeman, Schwartz, Paul, Broome, Wood, Golden

Opposed (10): Palzer, Owen, Keever, Haragan, Powell, Hagle, van der Vaart, Van Frank, Sliwinski, Hodanbosi

Abstentions:

Clarifications: Freeman voted in favor of this recommendation with the understanding that periodic monitoring will be limited to a reasonable frequency for the specific reference method test.

Recommendation #I(c)(ii)

Before any such rulemakings, permitting authorities must conduct case-by-case reviews of all applicable requirements and supplement monitoring to assure compliance.

In Favor (6): Palzer, Owen, Keever, Haragan, Powell, Hagle

Opposed (11): Broome, Morehouse, Freeman, Golden, Wood, van der Vaart, Paul, Van Frank, Schwartz, Sliwinski, Hodanbosi

Abstentions:

Clarifications: Hagle voted in favor of this recommendation but would change to the opposed position if the courts determine that case-by-case reviews are not required.

Monitoring (cont.)

Recommendation #1(d)(i)

After a rulemaking, the rule would be a final indication of the monitoring required for a standard, and that may not be supplemented or changed in the permitting process. Anyone who objects to the monitoring in a final rule would be required to challenge that rule in the courts but not in individual permit proceedings.

In Favor (8): Broome, Morehouse, Freeman, Golden, Wood, van der Vaart, Paul, Sliwinski

Opposed (7): Van Frank, Palzer, Owen, Keever, Haragan, Powell, Hodanbosi

Abstentions (1): Hagle

Clarifications:

Recommendation #1(d)(ii)

After a rulemaking, provided such rulemaking expressly address the adequacy, pursuant to Title V, of monitoring in the underlying standard, that monitoring is presumptively adequate to meet Title V requirements, but must be supplemented on a case-by-case basis if necessary to assure compliance.

In Favor (7): Palzer, Owen, Keever, Haragan, Powell, Hagle, Van Frank

Opposed (10): Broome, Morehouse, Freeman, Golden, van der Vaart, Paul, Schwartz, Sliwinski, Wood, Hodanbosi

Abstentions:

Clarifications:

Recommendation #2

Unless EPA lifts the 2004 prohibition on case-by-case supplemental monitoring, EPA must review the adequacy of monitoring in SIP rules and issue a SIP call for those that are inadequate. EPA should provide funding to the States for SIP revision costs.

In Favor (6): Palzer, Owen, Keever, Haragan, Powell, Van Frank

Opposed (10): Broome, Morehouse, Freeman, Golden, van der Vaart, Schwartz, Hagle, Sliwinski, Wood, Hodanbosi

Abstentions (1): Paul

Clarifications:

Recommendation #3

EPA's rulemaking regarding gap-filling monitoring should promote consistency among permitting authorities and include consideration of several factors, such as cost, technical feasibility, monitoring currently in place at the unit, monitoring currently available or being used at similar units, the data upon which the standard was set, size of the unit/emissions levels, margin of compliance, compliance history, likelihood of a violation, and emissions variability.

In Favor (17): Broome, Morehouse, Freeman, Golden, van der Vaart, Schwartz, Hagle, Palzer, Owen, Keever, Haragan, Powell, Van Frank, Sliwinski, Paul, Wood, Hodanbosi

Opposed:

Abstentions:

Clarifications: Haragan, Owen, Powell, Palzer, Van Frank, and Keever, who voted in favor of this recommendation, do not agree that the data upon which the standard was set should be included as a factor. Freeman, Broome, Morehouse, Golden, Wood, and Paul who voted in favor of this recommendation add that monitoring should be consistent with the existing test methods.

Monitoring (cont.)

Recommendation #4

EPA's rulemaking should clarify the relationship between the CAM rule and periodic monitoring, such that CAM satisfies Periodic Monitoring.

In Favor (9): Freeman, Morehouse, Paul, Golden, Schwartz, Hagle, Broome, Wood, Hodanbosi

Opposed (8): Van Frank, Keever, Owen, Haragan, Powell, van der Vaart, Sliwinski, Palzer

Abstentions:

Clarifications:

New Substantive Requirements and Development of Operational Restrictions (3 recommendations)

Recommendation #1

Based on the principle that Title V does not authorize imposition of any new or more restrictive emission limitations, any permit terms not in underlying emission standards:

- (1) should be based on the CAM rule and the CAM submission by the facility or developed with the agreement of the facility after consultation, or
- (2) must be based on adequate technical data to ensure that they do not result in operational restrictions that limit emissions more than the underlying requirement.

In Favor (12)*: Hodanbosi, Kaderly, Schwartz, Sliwinski, Hagle, Broome, Morehouse, Wood, Golden, Paul, van der Vaart, Freeman

Opposed (6)*: Powell, Raettig, Owen, Van Frank, Palzer, Keever

Abstentions:

Clarifications: Powell clarifies that while she agrees with using adequate technical data for monitoring, she opposes the CAM rule, believing sources must monitor directly their emissions whenever possible, and when not possible use parametric monitoring. Owen, Van Frank, Palzer, and Keever join Powell's clarification.

**Note: Number in parentheses () is the total number of Task Force members voting for this position.*

Recommendation #2

Based on the principle that Title V does not authorize imposition of any new or more restrictive emission limitations, in situations where parameter monitoring has not been correlated with the emission limit, such parameter monitoring conditions must not be treated as separately enforceable conditions from the emission limitations, but only as indicators of a potential compliance issue.

In Favor (11): Hodanbosi, Kaderly, Schwartz, Sliwinski, Hagle, Broome, Morehouse, Wood, Golden, Paul, Freeman

Opposed (7): van der Vaart, Powell, Raettig, Owen, Van Frank, Palzer, Keever

Abstentions:

Clarifications: Powell clarifies that her opposition is not to correlating monitoring with limits but is based on the view that direct emission or determinative parametric monitoring is required by Title V. Owen, Van Frank, Palzer, and Keever join Powell's clarification.

Recommendation #3

Regardless of whether there is authority for new conditions, because CAM meets enhanced monitoring requirements, development of CAM plans for Title V renewals should replace any operational restrictions that were included in the initial Title V permit for the corresponding emission limits and units.

In Favor (11): Hodanbosi, Kaderly, Schwartz, Sliwinski, Hagle, Broome, Morehouse, Wood, Golden, Paul, Freeman

Opposed (7): van der Vaart, Powell, Raettig, Owen, Van Frank, Palzer, Keever

Abstentions:

Clarifications: Powell opposes this recommendation because she disagrees with the premise of the recommendation that the CAM rule's approach is sufficient to assure compliance. Owen, Van Frank, Palzer, and Keever join Powell's clarification.

Permit Re-opening, Revisions and Operational Flexibility (16 recommendations)

Recommendations #1-9 are based on implementation of the Part 70 regulations as they currently exist – that is, the Task Force recommends implementing these recommendations without changing the Part 70 regulations.

Recommendation #1 [Permit reopening]

In implementing the current rules, EPA should encourage permitting authorities to use minor permit modification or off-permit procedures to add new applicable requirements to the Title V permit instead of using the permit reopening/ significant permit modification track.

In Favor (11)*: Morehouse, Freeman, Paul, Hagle, Sliwinski, Broome, Wood, Schwartz, Golden, Kaderly, Hodanbosi

Opposed (7)*: Owen, Van Frank, Palzer, Keever, Raettig, van der Vaart, Powell

Abstentions:

Clarifications:

**Note: Number in parentheses () is the total number of Task Force members voting for this position.*

Recommendation #2 [Permit revisions]

In implementing the current rules, EPA should clarify the scope and applicability of the various permit revision processes through training and outreach efforts. In particular, EPA should provide examples of the types of changes that fit into each of the revision tracks.

In Favor (17): Keever, Powell, Van Frank, Morehouse, Freeman, Paul, Hodanbosi, Hagle, Wood, Raettig, Owen, Palzer, Golden, Schwartz, Kaderly, Broome, Sliwinski

Opposed (1): van der Vaart

Abstentions:

Clarifications: Hodanbosi supports with a request that the outreach and education materials include examples from permitting authorities, and that the examples clearly identify which modification track is applicable to the modification.

Recommendation #3(a) [Off-permit]

In implementing the current rules, EPA should encourage greater use of off-permit notification changes to address new MACT standards, NSPS and minor NSR permit terms.

In Favor (10): Morehouse, Freeman, Paul, Hodanbosi, Hagle, Wood, Golden, Schwartz, Kaderly, Broome

Opposed (8): Keever, Powell, Van Frank, Raettig, Palzer, van der Vaart, Owen, Sliwinski

Abstentions:

Clarifications: Sliwinski clarifies that though EPA allows off-permit revisions, it should not engage in promoting its use.

Recommendation #3(b) [Off-permit]

In implementing the current rules, EPA should encourage States that have not adopted the off-permit notification process to adopt and utilize this process.

In Favor (9): Morehouse, Freeman, Paul, Hodanbosi, Wood, Golden, van der Vaart, Kaderly, Broome

Opposed (7): Keever, Powell, Van Frank, Palzer, Owen, Raettig, Sliwinski

Abstentions (2): Schwartz, Hagle

Clarifications: Kaderly supports with clarification that while Part 70 provides an off-permit process, it is not a required element. Thus EPA should only encourage off-permit procedures and not require them. Sliwinski clarifies that though EPA allows off-permit revisions, it should not engage in promoting its use.

Recommendation #3(c) [Off-permit]

In implementing the current rules, permitting authorities should develop methods to increase public awareness of off-permit notifications that have been received.

In Favor (18): Morehouse, Freeman, Paul, Hodanbosi, Hagle, Wood, Kaderly, Keever, Powell, Van Frank,

Permit Reopening, Revisions and Operational Flexibility (cont.)

Raettig, Palzer, Golden, van der Vaart, Schwartz, Owen, Broome, Sliwinski

Opposed:

Abstentions:

Clarifications:

Recommendation #4 [Administrative permit amendment]

In implementing the current rules, EPA should exercise its authority under 40 CFR 70.7(d)(1)(vi) to approve State permitting programs that allow the administrative permit amendment process to be used for changes similar to those in 70.7(d)(1)(i) through (d)(1)(v). For example, administrative permit amendments should be allowed for straightforward incorporation of new MACT, NSPS, other regulatory requirements, or appeal settlements. Changes eligible for incorporation as administrative permit amendments should be those that require little or no agency discretion.

In Favor (12): Golden, van der Vaart, Morehouse, Freeman, Schwartz, Paul, Hodanbosi, Hagle, Wood, Kaderly, Broome, Sliwinski

Opposed (4): Raettig, Powell, Keever, Palzer

Abstentions (2): Van Frank, Owen

Clarifications: Powell opposes because she does not believe that the examples given are appropriate for incorporation by administrative amendment. Palzer joins Powell's clarification.

Recommendation #5 [Operational flexibility]

In implementing the current rules, EPA should encourage greater use of the operational flexibility tools, such as inherent permit flexibility (*e.g.*, changes that have no impact on applicable requirements, flexibility provided explicitly in applicable requirements), and advance approval provisions.

In Favor (12): Broome, Paul, Sliwinski, Hagle, Hodanbosi, Wood, Freeman, Morehouse, van der Vaart, Kaderly, Schwartz, Golden

Opposed (6): Powell, Van Frank, Palzer, Keever, Raettig, Owen

Abstentions:

Clarifications: Kaderly favors provided the flexibility does not compromise enforceability.

Recommendation #6 [Relationship between NSR and Title V]

In implementing the current rules, EPA should encourage greater usage of streamlined procedures to accomplish incorporation of new minor and major NSR requirements into Title V permits in States that have separate construction and operating permit programs. Administrative permit amendments, minor permit modifications, and off-permit procedures should be the preferred methods for authorizing operation of minor and major NSR permit changes.

In Favor (11): Broome, Paul, Sliwinski, Hagle, Hodanbosi, Wood, Freeman, Schwartz, Morehouse, Kaderly, Golden

Opposed (6): Powell, Van Frank, Palzer, Keever, Raettig, Owen

Abstentions (1): van der Vaart

Clarifications: Sliwinski favors provided that all of the Title V requirements are reflected in the NSR permit, the NSR permit was subject to public notice and comment when it was issued, and the notice is clear that both the Title V and NSR requirements are being addressed. Kaderly favors provided the minor NSR program provides for public notice.

Recommendation #7 [Scope of source requested permit modification]

In implementing the current rules, EPA should discourage permitting authorities from including agency-initiated permit modifications that are beyond the scope of the modification being requested by a source unless the source explicitly agrees to the proposed modification.

In Favor (10): Broome, Paul, Sliwinski, Hagle, Hodanbosi, Wood, Schwartz, Morehouse, Golden, Freeman

Opposed (7): Van Frank, Palzer, Keever, Raettig, Owen, van der Vaart, Kaderly

Abstention (1): Powell

Clarifications: Broome, Freeman, Golden, Morehouse, Paul and Wood clarify that the rules already limit the scope of the modification to that which is in the source's application. EPA should not only discourage the

Permit Reopening, Revisions and Operational Flexibility (cont.)

practice of permitting authority-initiated changes, but should object to permit modifications initiated by the permitting authority to which the source has not agreed, unless reopening procedures are followed.

Recommendation #8 [Relationship between NSR and Title V]

In implementing the current rules, States should have the ability to use simultaneous public notice and permit processing for the construction permit and the modification of the Title V permit without requiring a memorandum of understanding between the permitting authority and the Regional office [or some other approval process]. This recommendation does not pertain to the ability of States to make EPA and public review periods concurrent.

In Favor (17): Broome, Paul, Sliwinski, Hagle, Hodanbosi, Wood, Freeman, Schwartz, Raettig, Van Frank, Morehouse, Kaderly, Golden, van der Vaart, Powell, Kever, Palzer

Opposed:

Abstention (1): Owen

Clarifications: Powell clarifies that the notice must make it clear that both the construction permit and the Title V permit are being modified. Kever and Palzer join Powell's clarification.

Recommendation #9 [When is a revision required?]

In implementing the current rules, EPA should clarify that the existing rules require a permit revision only under the following circumstances:

- When a new or revised applicable requirement applies to the source, and the off-permit procedures are not available; or
- When a proposed activity at the source would cause operations to be inconsistent with or in violation of an existing permit term.

In Favor (11): Broome, Paul, Hodanbosi, Wood, Freeman, Morehouse, Schwartz, Kaderly, Hagle, Golden, Sliwinski

Opposed (5): van der Vaart, Raettig, Powell, Kever, Palzer

Abstentions (2): Van Frank, Owen

Clarifications:

Recommendations #10-14 are based on revising the existing Part 70 rules. Voting in favor of these recommendations does not indicate that the Task Force member agrees that the part 70 rules should be revised.

Recommendation #10 [Permit revisions]

EPA should provide the public with notice of, and an opportunity to comment on, all revisions to a Title V permit.

In Favor (6): Powell, Kever, Raettig, Palzer, Van Frank, Owen

Opposed (11): Broome, Paul, Sliwinski, Hagle, Hodanbosi, Wood, Freeman, Schwartz, Morehouse, Golden, van der Vaart

Abstentions (1): Kaderly

Clarifications:

Recommendation #11 [Permit reopening]

EPA should promulgate regulations formalizing procedures by which the public may petition State permitting authorities and the EPA to reopen and revise permits for cause under 40 CFR 70.7(f) and (g). Such regulations should include a deadline by which the permitting authority and/or EPA must respond to a reopening petition.

In Favor (9): Powell, Keever, Raettig, Van Frank, Kaderly, Sliwinski, Schwartz, Palzer, Owen

Opposed (8): Hodanbosi, Wood, Freeman, van der Vaart, Broome, Paul, Morehouse, Golden

Abstentions (1): Hagle

Clarifications: Sliwinski clarifies that issues addressed previously cannot be challenged again through this process. Kaderly clarifies that there must be safeguards in the process to prevent petitions for issues that have already been addressed, and to assure there is some finality to the permitting process (*i.e.*, the petitioner must show why it was impracticable to raise the issue during the public comment process). Paul clarifies that although the concept has merit, the lack of safeguards in the process to prevent petitions that revisit issues, and the lack of finality to the permitting process create too much uncertainty to support.

Recommendation #12 [Off-permit]

If EPA amends the permit revision procedures, the extent of procedure for revising a Title V permit should be proportionate to the degree of discretion available in the Title V context and to the potential environmental impact associated with the exercise of that discretion. If the extent of procedure is matched to the significance of the change consistent with these principles, the off-permit provisions of section 70.4(b)(14) could be eliminated in favor of a process that updates the Title V permit contemporaneously with changes at the facility.

In Favor (11): Paul, Broome, Hagle, Schwartz, Kaderly, Golden, Hodanbosi, Wood, Freeman, Sliwinski, Morehouse

Opposed (7): Raettig, Van Frank, van der Vaart, Owen, Palzer, Powell, Keever

Abstentions:

Clarifications: Broome supports with clarification that the degree of discretion exercised by the permitting authority is in the context of the Title V revision as opposed to the underlying applicable requirement.

Recommendation #13 [Administrative permit amendments]

If EPA amends the permit revision procedures, the Part 70 rules should be amended to clarify that the administrative amendment process should include any change to a permit term that requires little discretion (*e.g.*, incorporating a new applicable requirement into the permit like a MACT standard or the terms of a construction permit).

In Favor (12): Broome, Paul, Hodanbosi, Wood, Freeman, Morehouse, Hagle, van der Vaart, Kaderly, Schwartz, Golden, Sliwinski

Opposed (6): Owen, Palzer, Van Frank, Keever, Raettig, Powell

Abstentions:

Clarifications: van der Vaart favors provided the permit shield is explicitly applicable.

Recommendation #14 [Streamlined processes]

If EPA amends the permit revision procedures, the process to create a new or revised permit term already includes public notice and comment (*e.g.*, an NSR permit that includes public notice and comment or rules), public notice and comment should not be required to incorporate it into the Title V permit, provided that the applicable requirement contains those terms that are otherwise required under Section 70.6.

In Favor (12): Broome, Paul, Hodanbosi, Kaderly, Hagle, van der Vaart, Wood, Freeman, Morehouse, Schwartz, Golden, Sliwinski

Opposed (6): Van Frank, Keever, Owen, Palzer, Raettig, Powell

Abstentions:

Clarifications:

Program Costs (3 recommendations)

Recommendation #1

EPA and State/local regulatory authorities should facilitate the sharing of best practices related to permitting procedures (e.g., use of electronic databases, streamlined permit revision procedures, public outreach) in order to capture program benefits at lower cost/burden levels.

In Favor (17)*: Broome, Golden, Powell, Freeman, Hagle, Palzer, Morehouse, Raettig, Hodanbosi, Wood, Kever, Schwartz, Paul, Sliwinski, Van Frank, Owen, Kaderly

Opposed:

Abstentions:

Clarifications:

**Note: Number in parentheses () is the total number of Task Force members voting for this position.*

Recommendation #2

EPA should incorporate considerations of costs and benefits in developing/ implementing any future program changes (guidance or regulatory).

In Favor (11): Broome, Golden, Freeman, Hagle, Morehouse, Hodanbosi, Wood, Schwartz, Paul, Sliwinski, Kaderly

Opposed (6): Palzer, Powell, Raettig, Kever, Van Frank, Owen

Abstentions:

Clarifications: EPA may consider costs and benefits without a formal analysis.

Recommendation #3

EPA should conduct case-studies relying on interested parties and should review the written and oral comments provided to the Task Force to identify/assess the major benefit and cost elements of the Title V program. EPA should use its conclusions to develop recommendations to: 1) significantly reduce costs while maintaining key program benefits, and 2) expand benefits without increasing costs.

In Favor (11): Broome, Golden, Freeman, Hagle, Morehouse, Hodanbosi, Wood, Schwartz, Paul, Sliwinski, Kaderly

Opposed (4): Palzer, Van Frank, Owen, Powell

Abstentions (2): Raettig, Kever

Clarifications:

Public Access to Documents (6 recommendations)

Recommendation #1

EPA should encourage Permitting Authorities to facilitate access to the documents relevant to the Title V permit decision, *e.g.*, by making the draft permit and statement of basis, public notice and public hearing notice, where applicable, available online, by digital media, and locally (*i.e.*, a repository near the facility/community impacted) in an accessible format (*e.g.*, PDF), which can also reduce copying and document review costs to commenters and permitting authorities.

In Favor (17)*: Broome, Wood, Hagle, Freeman, Morehouse, Palzer, Raettig, Powell, Kever, Van Frank, Sliwinski, Kaderly, Owen, Schwartz, Paul, Hodanbosi, Golden

Opposed:

Abstentions:

Clarifications:

**Note: Number in parentheses () is the total number of Task Force members voting for this position.*

Recommendation #1(a)

In addition to the documents listed under Recommendation #1, the Title V application should also be available online and via digital media.

In Favor (6): Palzer, Raettig, Powell, Kever, Van Frank, Owen

Opposed (10): Kaderly, Hagle, Wood, Freeman, Broome, Morehouse, Paul, Schwartz, Hodanbosi, Golden

Abstentions (1): Sliwinski

Clarifications: Paul is opposed because of concerns about the potential release of CBI versions of the application.

Recommendation #2

EPA should encourage Permitting Authorities to waive or reduce the copying costs/fees for all relevant documents necessary to review a Title V permit when the release of documents would be in the public interest. Waiver of the fee is in the public interest if the principal purpose of the request is to access and disseminate information regarding the health, safety and welfare or the legal rights of the general public and is not for the principal purpose of commercial benefit or use by government agencies.

In Favor (7): Powell, Kever, Raettig, Owen, Palzer, Van Frank, Golden

Opposed (9): Broome, Freeman, Schwartz, Paul, Sliwinski, Morehouse, Hodanbosi, Wood, Hagle

Abstentions (1): Kaderly

Clarifications: Freeman opposes as drafted. Paul is opposed because he thinks there should be a limit to how much paper a person could have free of charge. Hodanbosi is opposed because, in many cases, State law sets the fee for copying and this cannot be changed or modified by the permitting agency. Hagle is opposed because his agency does not control what to charge or when to charge for documents, State law governs.

Public Access to Documents (cont.)

Recommendation #3

The permitting authority should maintain a central file (exclusive of claimed CBI) for each Title V permit, and in that file, it should maintain all relevant documents to the Title V permit decision, and should ensure that the file remains complete.

In Favor (17): Palzer, Raettig, Powell, Keever, Van Frank, Owen, Kaderly, Hagle, Wood, Freeman, Broome, Morehouse, Schwartz, Paul, Sliwinski, Hodanbosi, Golden

Opposed:

Abstentions:

Clarifications: Schwartz clarifies that alternatives to a “central” filing system should be acceptable if public access is not hindered.

Recommendation #3(a)

If someone requests to review the file and the complete file is not available at the beginning of the public comment period or becomes unavailable during the comment period, the comment period should be extended to allow the required 30-day review period.

In Favor (9): Palzer, Raettig, Powell, Keever, Van Frank, Owen, Kaderly, Sliwinski, Hodanbosi

Opposed (7): Broome, Freeman, Morehouse, Wood, Schwartz, Paul, Golden

Abstentions (1): Hagle

Clarifications: Some of those opposing felt that it isn’t appropriate to extend a comment period without an indication that the deficiency in this particular hard copy file actually impeded the public’s development of comments. Schwartz joins this clarification and additionally clarifies that his opposition is also based on the potential for disagreement about what constitutes “relevant” documents. Hodanbosi makes the same clarifications.

Recommendation #4

The Task Force encourages all EPA Regions to develop an online database for Title V permits and other supporting documents in the Region, potentially following the example of Region 9 (see <http://www.epa.gov/region09/air/permit/> - sorted by State and permitting authority and then alphabetically) and Region 5 (see <http://www.epa.gov/region5/air/permits/epermits.htm> sorted by SIC code or alphabetically).

In Favor (9): Powell, Keever, Raettig, Owen, Palzer, Van Frank, Schwartz, Kaderly, Hodanbosi

Opposed (8): Broome, Freeman, Paul, Sliwinski, Morehouse, Wood, Golden, Hagle

Abstentions:

Clarifications: Kaderly clarifies that she is in favor only if it doesn’t increase the burden on the State. Some of those opposing were concerned about costs and creation of redundant databases (if States are already providing online access to documents). Wood and Golden join this clarification. Sliwinski joins this clarification and also states that if there are redundant databases that EPA’s database may not be kept as up-to-date as the State’s which could create confusion.

Public Hearings (6 recommendations)

Recommendation #1

As a best practice, when a public hearing is requested, a permitting authority should offer the requester the opportunity for an informational session prior to any hearing. The fact that an information session has been or will be held should not be used as a basis for denying a hearing request. If a permitting authority intends to hold both an information session and a hearing, information about both events should be included in a single notice.

In Favor (17)*: Broome, Paul, Wood, Hodanbosi, Powell, Raettig, Owen, Morehouse, Hagle, Sliwinski, Schwartz, Freeman, Kaderly, Keever, Van Frank, Golden, Palzer

Opposed:

Abstentions:

Clarifications: Broome clarifies that she supports EPA’s statements in issuing part 70 that informal meetings can constitute a hearing but that an information session should not be the *sole* reason for denying a hearing request.

**Note: Number in parentheses () is the total number of Task Force members voting for this position.*

Recommendation #2

In general, a hearing should be granted upon request. If a State applies a standard to decide whether to hold a hearing, the State should make it clear exactly how a person would satisfy that standard. If the State requires a person to identify relevant concerns in support of a hearing request, the State should hold a hearing if the requestor identifies at least one issue that is arguably germane to the Title V proceeding. If a State chooses to utilize a “significant public interest” test, the State should establish clear guidelines for what satisfies that standard, *e.g.*, a request by a public interest organization or by a certain number of individuals.

In Favor (9): Owen, Raettig, Van Frank, Powell, Keever, Kaderly, Hodanbosi, Palzer, Sliwinski

Opposed (8): Hagle, Schwartz, Broome, Paul, Freeman, Wood, Morehouse, Golden

Abstentions:

(Clarification on next page)

(Clarification for Recommendation #2)

Clarifications: A vote in favor of this recommendation does not imply support for the sample standards articulated in the recommendation. Opposition to this recommendation does not imply opposition to a State having a standard that the public can understand, that the State articulate that standard publicly, and that the State apply that standard consistently.

Recommendation #3

States should retain discretion provided under part 70 to decide whether or not to hold public hearings based on factors such as whether significant and germane issues relevant to whether the Title V permit contains the appropriate terms and conditions have been raised.

In Favor (12): Broome, Schwartz, Hagle, Hodanbosi, Freeman, Morehouse, Wood, Kaderly, Paul, van der Vaart, Sliwinski, Golden

Opposed (6): Powell, Raettig, Owen, Van Frank, Keever, Palzer

Abstentions:

Clarifications: Powell, Keever, Palzer, and Raettig clarify that they view the phrase “significant and germane” to be too vague to serve as a useful standard, and that a vague standard can lead to inconsistent and arbitrary denials of public hearing requests. Schwartz clarifies that if a State chooses to utilize a standard, the State should establish clear guidelines for how the standard is met.

Recommendation #4

EPA should ensure that any test used by a State to decide whether to grant a hearing request is public, unambiguous, reasonable, consistent with the purposes of Title V, and applied in a consistent, non-arbitrary manner.

In Favor (9): Powell, Palzer, Keever, Van Frank, Owen, Schwartz, Hodanbosi, Raettig, Sliwinski

Opposed (7): Broome, Morehouse, Golden, Wood, Freeman, Paul, Hagle

Abstentions:

Clarifications: Broome and Golden oppose because they view a general reasonableness standard as sufficient and that this is already embodied in the rules so that no further steps are required. Freeman opposes because the mechanism by which EPA would ensure these criteria are met is unclear and she would not support prescriptive regulations.

Recommendation #5

As a best practice, in determining the time and location of any hearing, the permitting agency should take into account the ability of interested persons to attend. For example, the permitting agency could contact the person who requested the hearing and the source to determine a convenient time and place.

In Favor (18): Schwartz, Paul, Palzer, Keever, Sliwinski, Morehouse, Wood, Freeman, Broome, Owen, Powell, Raettig, Hodanbosi, Kaderly, Hagle, Van Frank, Keever, Golden

Opposed:

Abstentions:

Clarifications: Powell, Van Frank, Palzer, and Keever clarify that the time and place of the hearing should be selected based on what is convenient to the members of the general public who wish to participate. Hagle and Broome clarify that the ability of interested persons to attend should be one heavily weighted factor, but State resources, travel restrictions, and other factors must also be considered.

Recommendation #6

If a citizen petition under CAA §505(b)(2) demonstrates that a permitting authority arbitrarily denied the petitioner's request for a hearing, EPA should object to issuance of the permit.

In Favor (10): Powell, Palzer, Keever, Van Frank, Owen, Schwartz, Hodanbosi, Raettig, Sliwinski, Hagle

Opposed (1): Morehouse

Abstentions (5): Freeman, Paul, Wood, Broome, Golden

Clarifications: Opposition and abstentions are based in part on the suggestion that States are arbitrarily denying hearings (which these members do not believe is the case), and it is unclear what the standard would be for a demonstration that a denial was arbitrary. Powell clarifies that whether a decision is arbitrary depends on the facts of each particular case. She also clarifies that EPA should interpret the term "arbitrary" consistent with the well-established meaning set forth in case law (*i.e.*, when a State fails to provide a reasoned explanation, or when its explanation (a) relies on a factor that the State should not have considered, (b) runs counter to the evidence before the State, (c) fails to consider a relevant factor, or (d) is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.)

Public Notice Throughout the Process (8 recommendations)

Recommendation #1

State programs should be able to include in their rules alternatives to newspaper notification, provided the alternative is more effective in informing a cross section of the affected public including those members lacking routine access to the internet.

In Favor (17)*: Schwartz, Paul, Wood, Hodanbosi, Powell, Raettig, Owen, Morehouse, Hagle, Freeman, Sliwinski, Kaderly, Broome, Kever, van der Vaart, Golden, Palzer

Opposed:

Abstentions:

Clarifications: Effectiveness needs to be evaluated based on objective criteria and considering geographic and demographic differences.

**Note: Number in parentheses () is the total number of Task Force members voting for this position.*

Recommendation #2

The content of a public notice should include the type of facility (e.g., steel plant, chemical manufacturing).

In Favor (17): Schwartz, Paul, Wood, Hodanbosi, Powell, Raettig, Owen, Morehouse, Hagle, Freeman, Sliwinski, Kaderly, Broome, Kever, van der Vaart, Golden, Palzer

Opposed:

Abstentions:

Clarifications: Voting in favor of this recommendation does not indicate that other improvements to the form of the notice are or are not needed.

Recommendation #3

States should improve their Title V websites to provide better notice and access to relevant documents in a permit proceeding, emulating agencies that have developed websites with information on public notice and draft permits. EPA should issue guidance to permitting authorities with suggestions for how to utilize the internet to publicize permit proceedings. That guidance should encourage permitting authorities to:

- a) provide interested members of the public with the option to receive notification of draft permits via electronic mail instead of traditional mail;
- b) maintain a website that includes, among other things, public notices, draft, proposed, and final permits, statements of basis, a table of draft permits out for review and the date the comment period will end, the dates that final permits are issued and will expire, and a description of any permit revision made following initial permit issuance.
- c) Include information on their website about what the Title V program is, how to obtain more information about the program and the sources subject to it, and how to sign up to be included on a mailing list.

In Favor (17): Golden, Paul, Palzer, Powell, Hagle, Schwartz, Morehouse, Raettig, Owen, Wood, Kever, Sliwinski, Kaderly, Broome, Freeman, van der Vaart, Hodanbosi

Opposed:

Abstentions:

(Clarification for Recommendation #3)

Clarifications: Freeman, Broome, and Wood clarify that listing of draft, proposed, and final permits in (b) does not imply agreement that the draft and proposed permits need to be separate documents or that serial review is required. van der Vaart supports contingent to ability to provide alternates to newspaper notice rather than making this a cumulative recommendation.

Recommendation #4

EPA should revise its rules to require that the permitting authority notify any person who makes comments on the record on a draft Title V permit when it forwards a proposed permit to EPA for review. That notice should inform the commenter:

- of when EPA’s 45-day review period will end;
- that if EPA does not object to the permit, the State can issue the permit as final;
- that if EPA does not object to the permit within its review period, the public will have 60 days during which it can petition the EPA Administrator to object to the permit;
- of the projected beginning and ending dates of the public petition period, assuming that EPA does not object during its review period;
- what happen if EPA objects to the permit, and
- of the availability of a document that describes any differences between the draft and proposed permit and how to receive a copy free of charge (electronically or by mail, if requested).

The revised rules should also require a permitting authority to notify those same individuals when it issues the permit as final.

In Favor (9): Sliwinski, Palzer, Powell, Hagle, Schwartz, Raettig, Kaderly, Owen, Keever,

Opposed (7): van der Vaart, Broome, Paul, Freeman, Wood, Golden, Morehouse

Abstentions:

Clarifications: Morehouse and Paul oppose because of the recommendation to revise the Part 70 rules. Paul believes these recommendations should be best practices, but not require rule changes. Freeman agrees that this information should be available to the public, but does not agree with the recommendation for rule revision. Wood clarifies he does not object to notification of those commenting, but does not believe a rule revision is necessary or appropriate. Golden clarifies that, while he supports these as best practices, he does not believe rule requirements are appropriate.

Recommendation #5

EPA should revise its rules to require a permitting authority to retain the name and mailing address of any person who comments on a draft Title V permit, where such information is provided by the commenter. If EPA objects to the proposed permit during its 45-day review period, EPA must notify persons on that list of the objection and (a) provide a copy of the objection, or information regarding how a copy of the objection can be obtained free of charge, (b) explain the process by which the objection will be addressed, and (c) explain when the public will have the opportunity to petition EPA to object to other aspects of the permit, or to the objectionable permit terms once they are revised.

In favor (10): Palzer, Sliwinski, Powell, Hagle, Schwartz, Raettig, Owen, Keever, van der Vaart, Kaderly

Opposed (6): Freeman, Broome, Paul, Wood, Golden, Morehouse

Abstentions:

Clarifications: Paul and Wood oppose because they believe that this recommendation can be accomplished without revising the Part 70 rules. Golden and Morehouse clarify that while they support these as best practices, they do not believe rule requirements are appropriate. Broome opposes the rule change element and the mandatory nature of the recommendation.

Recommendation #6

In addition to notifying people who request to be included on a Title V mailing list, EPA should strongly encourage permitting authorities to directly notify people (by putting them on the mailing list or otherwise) who have recently expressed concern about the air emissions from the facility. People who have expressed an interest in the air emissions from the facility include, among others, those that commented on other air permits or permit revisions for the facility (construction or operating permits).

In Favor (15): Hodanbosi, Palzer, Raettig, Powell, Keever, Van Frank, Broome, Hagle, Owen, Paul, Sliwinski, Kaderly, Golden, Morehouse, Wood

Opposed:

Abstentions (1): Freeman

Clarifications: Broome, Morehouse, Wood, and Golden clarify that they do not support a regulatory requirement in this regard. Kaderly clarifies that she supports this recommendation with the understanding that the person expressing concern about the facility has not requested that their name and address be held in confidence.

Recommendation #7

EPA should clarify that where a facility is located near a county or State line, the term “affected public” in § 70.7(h)(1) includes affected residents in the adjacent counties/States.

In Favor (12): Sliwinski, Powell, Keever, Wood, Schwartz, Palzer, Paul, Raettig, Owen, Van Frank, Hodanbosi, Kaderly

Opposed (1): van der Vaart

Abstentions (4): Freeman, Broome, Hagle, Morehouse

Clarifications: Kaderly emphasizes that EPA must be clear as to what it means to be “near.” Hodanbosi clarifies that he is in favor as long as there is a reasonable standard applied to the notification requirements for people in nearby States (e.g., for a large source near a State border, notification would not need to be any greater than the immediate neighboring county).

Recommendation #8

EPA should issue guidance to permitting authorities regarding how to implement the 40 CFR § 70.7(h)’s directive that notice be provided “by other means if necessary to assure adequate notice to the affected public.” That guidance should encourage permitting authorities to take extra steps to publicize permit proceedings, especially those that involve (1) a facility located in a community that is disproportionately affected by emissions from stationary sources, particularly if the community is composed primarily of low income or minority residents, or (2) a facility that has previously been the subject of significant public interest, or that the permitting authority knows is now the subject of significant public interest due to its size and/or actual or anticipated environmental impacts, or (3) a facility that the permitting authority knows to be in persistent violation of applicable emission limits.

Supplemental outreach efforts could include, among other things:

- a) contacting community group leaders and elected officials by telephone prior to the start of the public comment period and inviting them to assist with outreach efforts;
- b) posting notice of the permit proceeding along the perimeter of the facility;
- c) requesting that local radio stations notify the public in a public service announcement;
- d) posting notices at locations that receive significant foot traffic, such as grocery stores, day care, senior, and community centers, and churches;
- e) ensuring that notices are written in plain language, and that they explain what can be achieved through participation in the permit proceeding;
- f) circulating a press release announcing a public hearing, if a hearing is to be held;
- g) publishing notices in both English and in any other language spoken by significant numbers of people in the community where the facility is located;

Public Notice Throughout Process (cont.)

- h) providing an outreach coordinator to take an active role in notifying the public about permit proceedings, educating interested members of the public about how they can participate, and responding to questions from the public about permit proceedings in a timely manner;
- i) where a language other than English is spoken by a significant number of people within the community where a permit applicant's facility is located, publishing notice of an upcoming permit proceeding in that language in a publication printed primarily in that language, and/or circulating other outreach materials to the affected community in that language (in addition to English notices);
- j) periodically, but at least annually, undertaking outreach to notify the general public of the opportunity to sign up on a Title V mailing list. Outreach materials should provide basic information about the Title V program and how the public can participate.

In Favor (11): Powell, Palzer, Keever, Owen, Raettig, Van Frank, Sliwinski, Schwartz, Hodanbosi, Kaderly, Hagle

Opposed (7): Broome, Freeman, Paul, Wood, Morehouse, van der Vaart, Golden

Abstentions:

Clarifications: Paul, Broome and Freeman clarify that they support outreach when appropriate but believe that it should be more targeted. Therefore, their opposition is not to the concept of increasing outreach but to the inclusion of such a wide range of measures without specifically tying them to the need in a particular case. Paul is also concerned that EPA guidance might be perceived as a mandate and that this list could at most rise only to the level best practices to be selected by the permitting authority on a case-by-case basis. van der Vaart opposes use of the word "supplemental" in this recommendation – if he used any of these suggestions, he would want to replace something he is currently doing (*i.e.*, newspaper notices). Hodanbosi, Hagle and Kaderly clarify that they are in favor of this recommendation as long as the guidance provides examples on how to improve the outreach to communities, and they would oppose mandatory actions that must be completed by permitting authorities. They also note that while the recommendation provides many good examples of ways to improve outreach, they would be concerned about the resources needed to complete all the activities that are identified. Kaderly adds that resources would also be an issue if the measures were mandatory.

Responses to Public Comments on Draft Permits (5 recommendations)

Recommendation #1

If a permitting authority receives comments on a draft permit, it is essential that the permitting authority prepare a written response to comments. The response should (1) respond to each public comment, and (2) identify and explain any changes to the draft permit reflected in the proposed permit (including all changes from public/EPA/permittee comments, either written or oral).

Upon issuance of a final permit, if there is any difference between the proposed and final permit, it is essential that the permitting authority prepare a final response to comments that (in addition to the information provided in the initial response) identifies and explains any difference between the proposed and final permits.

The permitting authority should provide a copy of the initial response available to the public prior to the start of the 60-day period for petitioning the EPA Administrator to object to the permit. Any person who participated in the public comment period on the draft permit should be provided with a copy of the initial and final responses to comments, as follows:

- When the initial response to comments is completed, the permitting authority should notify the permittee and any person who submitted a written comment on the draft permit that the response is complete and provide a copy free of charge, electronically and by mail upon request. The same procedures should apply with respect to the final response to comments, if the permitting authority amends its initial response.
- The permitting authority should provide any person who attends a public hearing or information session on a draft permit the option to be notified when the initial response to comments is available, and to receive a copy free of charge (electronically and by mail, if requested). The same procedures should apply with respect to the final response to comments, if the permitting authority amends its initial response.

In Favor (18)*: Raettig, Van Frank, Powell, Keever, Paul, Golden, Owen, Palzer, Hagle, Wood, Broome, Freeman, Morehouse, Hodanbosi, Kaderly, Schwartz, Sliwinski, Golden

Opposed (1)*: van der Vaart

Abstentions:

Clarifications: “Public comment” refers to a comment made during the public comment period either in writing or orally at a public hearing. The public includes the facility being permitted. Hodanbosi clarifies that he supports this recommendation because it describes what he views as the “desired State.” He does not believe that his agency could have followed this recommendation for initial permit issuance, but believes his agency should be able to respond as described above when issuing renewal and new source permits. Kaderly clarifies that if EPA makes comments on a proposed permit, her agency would probably prepare a separate response to their comments rather than revising the initial response to public comments. Sliwinski clarifies that he does not support the idea of providing commenters with a paper copy of the response to comments free of charge. He believes that this could become a burden on the permitting authority for controversial permits with hundreds of commenters. Schwartz clarifies that the permitting authority should be able to use an economical means of providing its response if there are a large number of commenters.

**Note: Number in parentheses () is the total number of Task Force members voting for this position.*

Recommendation #2

If the permitting authority received public comments from anyone other than the permittee during the public comment period, the response to comments described in Recommendation #1 should be provided to the EPA for consideration during its 45-day review period.

In Favor (16): Raettig, Van Frank, Powell, Keever, Hodanbosi, Schwartz, Wood, Palzer, Owen, Hagle, Broome, Morehouse, Paul, Sliwinski, Freeman, Golden

Opposed (2): van der Vaart, Kaderly

Abstentions:

Clarifications: Kaderly clarifies that she opposes this recommendation because she thinks that EPA should have the benefit of seeing a response to the permittee’s comments in addition to a response to comments from other members of the public. Freeman, Golden and Broome clarify that nothing in this recommendation should be read to preclude the use of concurrent review or to suggest that EPA should not receive a response to comments by the permittee when that would not interfere with concurrent review. Hodanbosi makes the same clarification as he does for Recommendation #1.

Recommendation #3

EPA should revise 40 C.F.R. Part 70 to require permitting authorities to implement the procedures described above in Recommendation #1.

In Favor (8): Raettig, Van Frank, Powell, Keever, Schwartz, Palzer, Owen, Sliwinski

Opposed (10): van der Vaart, Hodanbosi, Broome, Hagle, Paul, Kaderly, Wood, Freeman, Golden, Morehouse

Abstentions:

Clarifications: Hodanbosi and Wood clarify that they do not think that adopting regulations is the best way to accomplish Recommendations #1 and #2 because nuances of the different State permitting programs would make it difficult for permitting authorities to modify their programs to comply with whatever EPA might prescribe. Kaderly and Golden clarify that instead of revising Part 70, EPA should carefully review each State’s process of responding to comments to determine whether it is effective and deal specifically with those States where there is a problem.

Recommendation #4

If a permitting authority fails to prepare a written response to comments on a draft permit, and to make this response available to the public in a manner consistent with the above recommendations, EPA should object to issuance of the permit pursuant to CAA § 505(b).

In Favor (10): Raettig, Van Frank, Powell, Keever, Palzer, Owen, Hagle, Schwartz, Sliwinski, Kaderly

Opposed (7): van der Vaart, Hodanbosi, Morehouse, Wood, Broome, Freeman, Golden

Abstentions (1): Paul

Clarifications: Hagle and Schwartz clarify that EPA should not object where comments were insignificant or irrelevant. Kaderly clarifies that regardless of the comment, she thinks it is inappropriate not to respond at all—she views that as a sign of disrespect to the individual who took the time to review and comment on the permit. Hodanbosi, Wood, Golden, and Broome clarify that they are opposed because they think that the mandatory penalty is too large for what could be a minor administrative error. They believe that if the permitting authority consistently does not provide a copy of the response to comments, EPA should have the ability to use the objection process, but an objection should not be mandatory. Freeman also clarifies that all failures to comply with the above recommendations should not result in an EPA objection to the proposed permit. As an example, she explains that a permitting authority’s failure to provide a copy of the response to comments to someone who attended a hearing but did not testify or comment should not result in an objection.

Recommendation #5

The permitting authorities should clearly document the changes made to a draft Title V permit. A recommended way to document changes is using redline/strikeout in edited or amended versions of the proposed Title V permit or by describing the changes in a transparent manner (*e.g.*, in the technical support document/statement of basis).

In Favor (17): Powell, Keever, Raettig, Owen, Palzer, Van Frank, Broome, Freeman, Schwartz, Paul, Sliwinski, Morehouse, Kaderly, Hodanbosi, Wood, Golden, Hagle

Opposed:

Abstentions:

Clarifications:

Startup, Shutdown, Malfunction (SSM) (5 recommendations)

Recommendation #1

Where the applicable requirements use vague terms (e.g., “minimize emissions during SSM events”), the Title V permit should include conditions sufficient to verify how that applies to the source.

In Favor (8)*: Palzer, Powell, Owen, Keever, Raettig, Sliwinski, Kaderly, Van Frank

Opposed (10)*: Paul, Wood, Hodanbosi, Morehouse, Hagle, Freeman, Schwartz, van der Vaart, Golden, Broome

Abstentions:

Clarifications:

**Note: Number in parentheses () is the total number of Task Force members voting for this position.*

Recommendation #2

To the extent EPA or a State believes a rule inadequately describes the applicability of SSM provisions, the rule should be revised rather than addressing this in case-by-case permit proceedings.

In Favor (11): Broome, Paul, Hodanbosi, Wood, Morehouse, Hagle, Freeman, Schwartz, van der Vaart, Kaderly, Golden

Opposed (7): Sliwinski, Palzer, Powell, Owen, Keever, Raettig, Van Frank

Abstentions:

Clarifications: Sliwinski opposes based on “rather than.” Kaderly joins in Sliwinski’s clarification.

Recommendation #3

Title V permits should be clear as to which limits are subject to the part 70 emergency defense (e.g., under the current rule, technology based limits).

In Favor (18): Broome, Freeman, Hagle, Hodanbosi, Keever, Morehouse, Owen, Palzer, Paul, Powell, Raettig, Schwartz, Sliwinski, van der Vaart, Wood, Kaderly, Golden, Van Frank

Opposed:

Abstentions:

Clarifications: Freeman and Broome clarify that a permit’s failure to be clear on applicability would not prevent a source from asserting the defense.

Recommendation #4

The emergency defense should cover all limits in the Title V permit that are based on being achieved through the application of technology.

In Favor (9): Broome, Paul, Wood, Freeman, van der Vaart, Hodanbosi, Sliwinski, Morehouse, Golden

Opposed (5): Schwartz, Powell, Keever, Palzer, Van Frank

Abstentions (4): Hagle, Raettig, Owen, Kaderly

Clarifications: Schwartz opposes in that he views this as a new substantive requirement which Title V was not to create.

Recommendation #5

Where a permit includes an affirmative defense for startups and shutdowns, or the emission limits do not apply during those events, the permit should define what constitutes startup and shutdown if it is anticipated that emissions during such events would exceed the limits in the relevant standard.

In Favor (6): Powell, Owen, Keever, Raettig, Van Frank, Palzer

Opposed (12): van der Vaart, Hagle, Broome, Sliwinski, Paul, Wood, Hodanbosi, Morehouse, Freeman, Schwartz, Kaderly, Golden

Abstentions:

Clarifications: Schwartz, Sliwinski, and Kaderly clarify that it should be done where practical.

Statement of Basis (5 recommendations)

Recommendation #1

EPA should clarify to States what it expects to be included in a statement of basis. The Task Force considered the following items as appropriate for inclusion:

- 1.1 A description and explanation of any Federally enforceable conditions from previously issued permits that are not being incorporated into the Title V permit.
- 1.2 A description and explanation of any streamlining of applicable requirements pursuant to EPA White Paper No. 2.
- 1.3 A description and explanation of any complex non-applicability determination (including any request for a permit shield under section 70.6(f)(1)(ii)) or any determination that a requirement applies that the source does not agree is applicable, including reference to any relevant materials used to make these determinations (*e.g.*, source tests, State guidance documents).
- 1.4 A description and explanation of any difference in form of permit terms and conditions, as compared to the applicable requirement upon which the condition was based.
- 1.5 A discussion of terms and conditions included to provide operational flexibility under section 70.4(b)(12).
- 1.6 The rationale, including the identification of authority, for any Title V monitoring decision.

In Favor (18)*: Palzer, Sliwinski, Schwartz, Raettig, Owen, Keever, Kaderly, Golden, Freeman, Paul, Morehouse, Hodanbosi, Wood, van der Vaart, Hagle, Powell, Broome, Van Frank

Opposed:

Abstentions:

Clarification:

The Task Force did not reach consensus on the following two Recommendation #1 sub-items regarding the Statement of Basis, and the relative support for these is indicated below.

- 1.7 A list of all construction permits for the portion of the facility being permitted that are applicable to the facility as of the date of the draft permit if they are not already listed in the Title V permit, and all Title V permits issued to the facility.

In Favor (16)*: Palzer, Sliwinski, Paul, Powell, Freeman, Hagle, Morehouse, Raettig, Owen, Hodanbosi, Wood, Keever, van der Vaart, Broome, Golden, Van Frank

Opposed (1)*: Schwartz

Abstentions (1)*: Kaderly

Clarification:

- 1.8 - A list of formal enforcement documents over the last five years and the status of implementation, and any active consent decrees.

In Favor (9)*: Palzer, Sliwinski, Schwartz, Raettig, Owen, Keever, Kaderly, Powell, Van Frank

Opposed (9)*: Golden, Freeman, Paul, Morehouse, Hodanbosi, Wood, van der Vaart, Hagle, Broome

Abstentions:

Clarification: Van Frank clarifies that this should include all unresolved notices of violation. Palzer joins Van Frank's clarification.

**Note: Number in parentheses () is the total number of Task Force members voting for this position.*

Recommendation #2

The statement of basis for renewal need only address changes since the last Title V permit issuance, provided that the statement of basis issued for prior revisions and the original statement of basis are available.

In Favor (18): Palzer, Sliwinski, Paul, Powell, Freeman, Hagle, Schwartz, Morehouse, Raettig, Owen, Hodanbosi, Wood, Keever, van der Vaart, Broome, Kaderly, Golden, Van Frank

Opposed:

Abstentions:

Clarification: Powell, Palzer, and Van Frank clarify that they consider the best practice to be to prepare a single comprehensive statement of basis for a renewal permit, thereby eliminating the need to refer back to prior statements. Kaderly clarifies that the previously completed statement of basis must be an accurate reflection of operations at the facility.

Recommendation #3

Statements of basis for revisions do not need to address matters that are outside of the scope of the revision.

In Favor (18): Palzer, Sliwinski, Paul, Powell, Freeman, Hagle, Schwartz, Morehouse, Raettig, Owen, Hodanbosi, Wood, Keever, van der Vaart, Broome, Kaderly, Golden, Van Frank

Opposed:

Abstentions:

Clarification:

Recommendation #4

EPA should object to Title V permits without a statement of basis.

In Favor (18): Palzer, Sliwinski, Paul, Powell, Freeman, Hagle, Schwartz, Morehouse, Raettig, Owen, Hodanbosi, Wood, Keever, van der Vaart, Broome, Golden, Kaderly, Van Frank

Opposed:

Abstentions:

Clarification: Morehouse, Broome, and Freeman clarify that this recommendation is not intended to impose on EPA a requirement to review each permit just to determine if there is a statement of basis, this recommendation does not address the content of the statement of basis, and that EPA would not need to object if the same information was contained elsewhere in the permitting record or in another document that satisfied the intent of the statement of basis. Kaderly clarifies that EPA should object only if the permit does not contain the information that a statement of basis would.

Recommendation #5

EPA should issue a Notice of Deficiency for State programs that routinely do not issue a document satisfying the intent of the statement of basis with their permits.

In Favor (18): Palzer, Sliwinski, Paul, Powell, Freeman, Hagle, Schwartz, Morehouse, Raettig, Owen, Hodanbosi, Wood, Keever, van der Vaart, Broome, Golden, Kaderly, Van Frank

Opposed:

Abstentions:

Clarification:

Title I/Title V Interface (6 recommendations)

1. Updating and Revising NSR Permits

Recommendation #1

When requested by the permittee, States should make better use of White Paper No. 1's procedures for parallel processing of construction permit revisions with the operating permit process during initial issuance, revision and renewal.

In Favor (12)*: Broome, Sliwinski, Golden, van der Vaart, Kaderly, Wood, Morehouse, Freeman, Hagle, Paul, Schwartz, Hodanbosi

Opposed (6)*: Powell, Raettig, Owen, Keever, Palzer, Van Frank

Abstentions:

Clarifications: Powell, Raettig, Keever, Palzer and Owen clarify that the general concept of processing NSR and Title V permits simultaneously is not objectionable, so long as the process satisfies the SIP and part 70 requirements for public notice and comment. They oppose this recommendation because they object to certain statements in White Paper #1 as referenced in the discussion section of this paper.

**Note: Number in parentheses () is the total number of Task Force members voting for this position.*

Recommendation #2(a)

After the initial permit is issued, to address the concern of revising terms in existing construction permits, part 70 provides several options for sources that can be chosen based on the need to implement the change or begin construction. While all of these options are already available under part 70, the State and regulated industry's familiarity with these options appears to be low. New York is one State that has taken the approach of allowing the source to obtain either a construction permit, followed by a Title V modification or a combined construction/Title V modification.

Option A: Permitting authorities should allow sources to use an administrative amendment to incorporate the terms of a preconstruction permit into the Title V permit in accordance with Section 70.7(d)(1)(v). This will require permitting authorities to provide notice to EPA and affected States (if any) of the construction permit action to allow them the required Title V objection period and to verify that any compliance terms required under Section 70.6 of the rules have been included in the preconstruction permit.

Option B: In States that allow for changes to be made pursuant to Section 70.4(b)(14), qualifying construction permits (not Title I modifications and that do not cause a violation of an existing permit term), permitting authorities should allow sources to implement the construction permit change.

Option C: When requested by the source, permitting authorities should provide for consolidated processing of the construction permit and the Title V permit modification. In most cases, this will require a significant permit modification. When there is sufficient lead time for a project, it makes sense to consolidate processing so that the source can complete construction and begin immediate operation.

Option D: The current practice in many States is to process the construction permit issuance/modification and then to use the applicable Title V permit modification procedure to incorporate the new terms and delete no longer applicable terms from the Title V permit. This will either be a minor or a significant modification under the Title V rules. This option should remain available because some sources will want to obtain a construction permit quickly to move a project forward but may have time to process the operating permit change. In addition, in some cases, the exact operating permit terms will not be known before construction begins. Thus, this option can be a viable one but can be more cumbersome when a significant Title V modification is required. Therefore, permitting authorities should ensure that Options A through C are available and that sources and permit writers are aware of the requirements to qualify for such procedures.

In Favor (12): Broome, Sliwinski, Golden, Paul, Kaderly, Schwartz, Morehouse, Wood, van der Vaart, Hodanbosi, Freeman, Hagle

Opposed (6): Powell, Owen, Keever, Raettig, Palzer, Van Frank

Abstentions:

(Clarification on next page)

(Clarification for Recommendation #2(a))

Clarifications: van der Vaart clarifies that his support of Option A is based on the availability of the permit shield under 70.7(d)(1)(v) and (d)(4). Powell, Owen, Keever, and Raettig oppose Options B and D because they believe all Federally-enforceable construction permits authorizing new units or modifications to existing units are Title I modifications that must be processed under significant modification procedures; contrary to that view, Options B and D suggest such changes could be processed “off-permit” or as minor modifications. Likewise, while they do not oppose consolidated processing, they oppose Option C’s suggestion that some construction permits be processed as minor modifications, *i.e.*, without notice and opportunity for comment. They explain that Federal regulations governing minor and major NSR permits require such public participation opportunities. Broome clarifies that the State would comply with whatever provisions for processing Title I permits are approved in the SIP and therefore these options are all within the scope of both existing Title V and SIP rules and that EPA’s promulgated interpretation is that minor NSR permits are not Title I modifications.

Recommendation #2(b)

Under any of the above options, once the construction permit terms have been incorporated into the Title V permit, the Title V permit can list the applicable requirement as the Title I rules and the requirement can reside only in the Title V permit. Retaining Title I as the underlying applicable requirement would allow changes to those terms to be processed through minor permit modification procedures because there will continue to be an underlying applicable requirement serving as the basis for the permit terms (assuming they otherwise meet the minor modification gatekeepers in Section 70.7(e)).

In Favor (12): Broome, Sliwinski, Golden, Paul, Kaderly, Schwartz, Morehouse, Wood, van der Vaart, Hodanbosi, Hagle, Freeman

Opposed (6): Powell, Raettig, Owen, Keever, Palzer, Van Frank

Abstentions:

Clarifications: Hodanbosi and Hagle clarify this should be an option but States may choose to maintain the effectiveness of construction permits, such that they could remain enforceable documents. Powell clarifies that she does not believe Title I specific enough to serve as a citation for the underlying applicable requirement, and is concerned that this recommendation would allow revision of case-by-case emission limits in preconstruction permits without public notice and comment. Freeman, Wood, and Broome clarify that the fact that the underlying Title I permit is voided does not mean that the substance of the terms created in Title I are governed by Title V procedures (*i.e.*, the substance of Title I terms are not subject to EPA objection).

2. “SIP Gap”

Recognizing that the SIP approval backlog is beyond the capability of this Task Force to solve, the Task Force believes that the following measures could improve the current situation and help to reduce the adverse effects the backlog is having on Title V implementation

Recommendation #3

Early EPA Involvement in SIP Rule Development. A process in which EPA is able to act *in a timely manner* on new State and local agency regulatory provisions that are pending SIP approval needs to be developed. States and local agencies need to develop communication plans with EPA Regional Offices. In these plans, State and local agencies must commit to including EPA in their rule development process, including stakeholder groups, to facilitate EPA input on approvability issues. In turn, EPA must commit to providing States with timely comments during the pre-proposal and proposal stage of regulatory development to avoid States’ adopting provisions that EPA considers “unapprovable.” Both States and EPA must commit adequate resources to implement this process.

In Favor (18): Broome, Palzer, Golden, Sliwinski, Paul, Freeman, Hagle, Schwartz, Morehouse, Raettig, Owen, Wood, Keever, van der Vaart, Kaderly, Powell, Hodanbosi, Van Frank

Opposed:

Abstentions:

Clarifications:

Recommendation #4:

Expiration of Conditions Upon Approval of New SIP Provisions. Even with timely review and approval procedures there will be some inevitable lag time in the approval process. Moreover, it is unlikely that EPA will “catch up” with the backlog any time in the near future. With continual processing of Title V operating permits, there will be permits issued or renewed between the time a State or local agency implements a regulation and EPA approves that regulation for inclusion in the SIP. To address this situation, permit conditions with the old regulatory provisions could be written to expire upon EPA’s approval of the new regulatory provisions. The SIP provisions pending SIP approval would also include a statement that they become Federally enforceable and replace the prior SIP provision upon the effective date of any EPA SIP approval of that provision. This would allow the new regulatory requirements to be included in the permit without a permit revision.

In Favor (18): Broome, Palzer, Golden, Sliwinski, Paul, Freeman, Hagle, Schwartz, Morehouse, Raettig, Owen, Wood, Keever, van der Vaart, Kaderly, Powell, Hodanbosi, Van Frank

Opposed:

Abstentions:

Clarifications:

Recommendation #5

Utilize Equivalency Determination Authority When There Is a SIP Rule Pending Approval. States should utilize whenever possible the flexibility provided by Section 70.6(a)(1)(iii), under which a State may choose to adopt a SIP provision that would authorize sources to meet either the SIP limit or an equivalent limit to be formulated in the permit process. This provision of the rules could be used to include only the limit that is included in the rule pending SIP approval, as long as the new rule is equivalent or more stringent in terms of emission reduction as the old rule. In general, SIP rules are becoming more stringent. Sometimes they are revised to provide additional flexibility but for the most part, are equivalent to prior rules in terms of emission reductions. One potential impediment to this approach is that the part 70 rules require that the SIP provide authority for equivalency determinations. EPA should recognize States' inherent authority to interpret their SIPs and include "at least as stringent" limits in Title V permits. If this is not possible so that a SIP revision is required to provide the authority for implementing Section 70.6(a)(1)(iii), EPA should develop standard SIP language that it would deem approvable to provide a State with the general authority to adopt equivalent limits in Title V permits when requested by the source. This would allow States to submit a "model" SIP revision that could then be adopted and approved quickly by EPA (see SIP backlog issue above).

In Favor (12): Broome, Golden, Sliwinski, Paul, Freeman, Hagle, Schwartz, Morehouse, Wood, van der Vaart, Hodanbosi, Kaderly

Opposed (6): Powell, Raettig, Owen, Keever, Palzer, Van Frank

Abstentions:

Clarifications: Freeman and Broome clarify that the discussion of this recommendation was limited to situations where the source requested the inclusion of the equivalent term in the Federally-enforceable section of the permit.