COMMENTS OF THE POWER GENERATORS AIR COALITION ON EPA'S PROPOSED RULE: CLARIFYING THE SCOPE OF ''APPLICABLE REQUIREMENTS'' UNDER STATE OPERATING PERMIT PROGRAMS AND THE FEDERAL OPERATING PERMIT PROGRAM

Docket ID No. EPA-HQ-OAR-2023-0401

89 Fed. Reg. 1150 (Jan. 9, 2024)

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INTRODUCTION

On January 9, 2024, the US. Environmental Protection Agency ("EPA" or the "Agency") published in the Federal Register a proposed rule, titled "Clarifying the Scope of 'Applicable Requirements' Under State Operating Permit Programs and the Federal Operating Permit Program" ("Proposed Rule").[1] The Proposed Rule would revise EPA's Title V operating permit program rules to address "when and whether 'applicable requirements' established in other Clean Air Act ("CAA" or the "Act") programs should be reviewed, modified, and/or implemented through the title V operating permits program."[2]

The implementation of the Title V program has significant implications for the members of the Power Generators Air Coalition ("PGen"). PGen therefore appreciates this opportunity to comment on EPA's Proposed Rule.

PGen is an incorporated nonprofit 501(c)(6) organization whose members are diverse electric generating companies—public power, rural electric cooperatives, and investor-owned utilities— with a mix of solar, wind, hydroelectric, nuclear, and fossil generation. PGen is a collaborative effort of electric generators to share information and expertise in the interest of constructively evaluating and effectively managing air emissions to meet and exceed environmental laws and regulations and in the interest of informing sound regulation and public policy. Our members include leaders in the ongoing transition to cleaner energy in the United States. PGen and its members work to ensure that environmental regulations support a clean, safe, reliable, and affordable electric system for the nation.[3]

In the Proposed Rule, EPA acknowledges that the Title V program "is a vehicle for compiling air quality control requirements from other CAA programs," and "not a vehicle for creating or changing applicable requirements from those other programs."[4] For that reason, EPA proposes to interpret the Clean Air Act as prohibiting reevaluation of new source review ("NSR") and other permitting issues under Title V. PGen agrees with that position. Indeed, this interpretation is compelled by the statute.

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

[2] *Id*.

[3] Additional information on PGen and its members can be found at PGen.org.

[4] 89 Fed. Reg. at 1151.

EPA goes on to state, however, that certain "general requirements" may be further defined through Title V, and the Proposed Rule focuses on the "limited situations in which NSR requirements would be reviewed using the EPA's unique Title V oversight authorities."[5] EPA says that situations in which it may be appropriate to address NSR permitting issues through the Title V process include two circumstances: "[1] where NSR requirements have not been established through a sufficient notice and comment permitting process under Title I, or [2] where NSR issues and title V issues involve substantive overlap."[6] The Proposed Rule also seeks comment on three alternatives that would use Title V to reevaluate all substantive NSR requirements.[7] Finally, the Proposed Rule would codify EPA's "well-establish position that th[e] General Duty Clause [of CAA section 112(r)(1)] is not an 'applicable requirement' and is not implemented through title V."[8]

PGen supports EPA's overarching interpretation that "applicable requirements" under the CAA are not subject to reevaluation pursuant to Title V. Indeed, that interpretation is compelled by the statute. PGen disagrees, however, with EPA's proposed interpretation of the CAA to the extent that the Agency believes it can reevaluate NSR requirements that have not been established pursuant to a notice-and-comment process. As EPA acknowledges, regardless of the procedures employed, NSR requirements are "applicable requirements" under the law. Therefore, there is no defensible statutory basis for treating *any* NSR requirements that are applicable without notice and comment differently than requirements adopted pursuant to notice-and-comment proceedings. On the contrary, the Proposed Rule demonstrates that NSR requirements and decisions are subject to enforcement and oversight pursuant to Title I, which provides an entirely adequate and appropriate process for ensuring the consistency of such requirements with the CAA. Finally, the alternative approaches that EPA puts forth for public comment, under which any and all NSR requirements may be substantively reviewed indefinitely under Title V, are plainly inconsistent with the statute (and reasonable policy) and should not be adopted.

I. EPA's Interpretation of the Clean Air Act – That Substantive Applicability Determinations (for NSR, Primarily) and NSR Permit Terms Are Not Subject of EPA's Title V Objection Authority – Is Proper and Compelled by the Language, Structure, and Purpose of the Statute.

EPA states that its interpretation of Title V as described in the Proposed Rule "is supported by the text of title V, the structure and purpose of title V, and the structure of the CAA as a whole."[9] EPA also says that its approach "reflects better policy than alternative approaches," and that it "better accounts for procedural, resource-related, and practical limitations associated with title V oversight tools while incentivizing the use of proper title I avenues of review. Lastly,

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[5] *Id*. at 1152.

[6] *Id*.

[7] *Id*.

[8] *Id*.

[9] *Id*. PGen agrees fully with this portion of the proposal and sees no need for additional comments.

this approach respects the finality of NSR permitting decisions."[10] EPA therefore claims the discretion to codify its interpretation of its Title V authority, as described in the Proposed Rule.

PGen agrees that EPA's general position regarding the role of Title V—*i.e.*, that EPA may not use Title V to create or change applicable requirements from other CAA programs—reflects the most appropriate policy approach to these issues. EPA's position is, however, not merely consistent with the language of the CAA, it is compelled by the terms of the statute. Contrary to a number of EPA's statements in the Proposed Rule, this interpretation of Title V is the only proper interpretation, using traditional tools of statutory construction.[11]

Section 504 of the CAA states that each permit issued under Title V "shall include … such other conditions as are necessary to assure compliance with applicable requirements" of the CAA.[12] EPA's existing regulations reflect this language: "All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements."[13] This language presupposes that applicable requirements are either "self-executing" or have been determined elsewhere. Indeed, EPA acknowledges this, stating "some applicable requirements can be described as 'self-implementing.' Once established, those requirements should entail little to no review through the title V permitting process."[14]

The applicable requirements to which Title V applies and which Title V permits compile are, moreover, subject to their own requirements and procedures. This carefully crafted structure cannot be reconciled with a Title V approach that would second guess—and conceivably redesign or create—substantive CAA requirements that have been developed pursuant to statutorily-prescribed processes. The requirements of Title I illustrate this. EPA's new source performance standards ("NSPS") under section 111 and national emission standards for hazardous air pollutants under section 112, as well as all requirements contained in state implementation plans ("SIPs") approved under section 110, for instance, all impose requirements that apply directly to sources. Altering any of those requirements through the Title V review process would conflict with the carefully designed legal and procedural requirements contained in Title I, making clear the limited role Title V review was intended to play.

Most importantly, the ultimate determinant of a statute's meaning is congressional intent. "Even for an agency able to claim all the authority possible under *Chevron,* deference to its statutory interpretation is called for only when the devices of judicial construction have been tried and found to yield no clear sense of congressional intent."[15] Here, Congress's intent could not be clearer. EPA itself confirms this:

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[10] *Id*.

[11] *Chevron U.S.A., Inc. v. Natural Res. Def. Council*, 467 U.S. 837 (1984); *see, e.g., Babbitt v. Sweet Home Chapter of Cmtys. for a Great Or.*, 515 U.S. 687, 697-98 (1995) (applying canon against surplusage in *Chevron* Step 1 analysis).

[12] 42 U.S.C. § 7661c(a).

[13] 40 C.F.R. § 70.1(b).

[14] 89 Fed. Reg. at 1154.

[15] *See Gen. Dynamics Land Sys., Inc. v. Cline*, 540 U.S. 581, 600 (2004).

> EPA does not believe that Congress intended the title V program to serve as a vehicle to catch or correct programmatic or procedural problems associated with the establishment of applicable requirements in other CAA programs. Instead, again, the title V program was designed to ensure that regulated sources comply with all the substantive air pollution control requirements to which they are subject.[16]

EPA's sense of the will of Congress squares with the overall purpose of Title V. Again, as EPA acknowledges "the regulatory use of the term 'applicable requirement' is closely tied to *the core purpose of title V*: to consolidate and assure compliance with the substantive requirements from other CAA programs, but not to create or modify such requirements."[17] EPA has correctly identified the purpose of Title V. Where a statute's language and purpose are all consistent with every indicator of congressional intent, there is no room for ambiguity. Accordingly, the meaning of the phrase "applicable requirements" and of Title V (and section 504, in particular) are clear. EPA's interpretation of the statute is therefore compelled by the CAA.

II. The Statute Compels the Same Approach for all Substantive Determinations under Other Titles of the Clean Air Act, Regardless of Whether the Underlying Actions Were Subject to Public Comment.

In the Proposed Rule, EPA acknowledges that, when a source obtains an NSR permit "under EPA-approved (or EPA-promulgated) title I rules, with public notice and the opportunity for comment and judicial review, that NSR permit establishes and defines the relevant NSR-related applicable requirements of the SIP (or FIP) for purposes of title V."[18] EPA further states that "[a]s with applicable requirements established under other CAA authorities (e.g., NSPS, NESHAP), the EPA would not revisit those NSR decisions through the title V process."[19] This is the correct position.

EPA goes on to say, however, that to the extent the public does not have the opportunity to participate in the NSR permitting process, "the title V process will serve as a backstop to ensure that each title V permit contains all applicable requirements." Thus, according to EPA, "even under the EPA's current (and proposed) framework, there are certain situations in which the EPA would review substantive NSR issues through the title V permitting process.[20]

EPA identifies two circumstances in which it says "the Title V permitting process is the appropriate venue for addressing NSR permitting issues."[21] Those are: (a) permitting issues "where applicable requirements are not conclusively established under another CAA program," which EPA contends is any situation in which "NSR permitting decisions are not developed

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[16] 89 Fed. Reg. at 1156 (footnote omitted).

[17] *Id*. at 1157 (emphasis added).

[18] *Id*. at 1160.

[19] *Id*.

[20] *Id*.

[21] *Id*. at 1169.

through a formal process that involves public notice and the opportunity for comment and judicial review"; and (b) "where the requirements of another CAA program and the requirements of title V feature substantive overlap."[22]

As discussed below, EPA is incorrect on the first category it identifies and correct on the second. Nothing in Title V indicates that it is supposed to function as a "backstop" whenever Title I applicable requirements are developed without notice and comment. The only function of Title V is to collect those applicable requirements—however they are created—in a single operating permit and, to the extent additional requirements can be created under Title V, those requirements are limited to monitoring and related compliance assurance requirements associated with substantive Title I applicable requirements. If there is a question *whether* a Title I requirement is applicable to the particular facility, that issue must be adjudicated under Title I. Title V is not designed—indeed, it is not the proper forum—for complex adjudication related to applicable requirements.

A. Where Requirements Are Not Developed Through a Formal Process that Involves Public Notice and the Opportunity for Comment.

With respect to the first category of NSR permitting actions, EPA contends that requirements are not conclusively established "if NSR permitting decisions are not developed through a formal process that involves public notice and the opportunity for comment and judicial review."[23] Under those circumstances, EPA says, "the title V process can and should be used to assure compliance with the relevant underlying NSR-related applicable requirements of the SIP (or FIP)."[24]

There is no basis under either the text or design of the statute for distinguishing between substantive NSR requirements that were subject to public comment and NSR requirements that were not. Both are applicable requirements emanating from Title I of the Act. Whether these applicable requirements were correctly established and are consistent with Title I is a Title I matter. EPA should revise its Proposed Rule to make clear that all NSR permitting decisions, whether adopted with or without notice-and-comment, are conclusively established as applicable requirements for purposes of Title V.

EPA argues that its position on review of NSR permit requirements that have not been adopted through notice-and-comment proceedings is appropriate

> because an NSR permit that is not issued following such procedures does not provide the title V permit writer or public with sufficient assurance that the preconstruction permitting process has conclusively established the applicable NSR requirements of the SIP (or FIP) for that source for title V purposes.[25]

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[22] *Id*.

[23] *Id*.

[24] *Id*.

[25] *Id*. at 1169-70.

As an initial matter, EPA is factually incorrect that permitting decision can be "conclusively established" only in a process that involves notice and comment. There are many minor NSR programs that—by their own SIP-approved terms—do not require notice and comment for certain categories of actions. State permitting decisions under these programs are just as "conclusive" as any other state permitting action. Indeed, EPA itself says that its Proposed Rule would "clarify that, for purposes of title V, the relevant terms and conditions of *all types* of NSR permits issued under a SIP or FIP— including minor NSR permits—are applicable requirements that must be included in a title V permit, reg*ardless of whether the procedures referenced in paragraph (1) are followed*."[26] Thus, EPA appears to acknowledge that even permit terms adopted without notice and comment or an opportunity for judicial review are applicable requirements for purposes of Title V. As such, they are not subject to reevaluation under Title V.

A state agency—or even EPA—may be asked to make an applicability determination under any program, including NSR. Such applicability determinations are not typically subject to notice and comment. That does not make them any less "conclusive." Indeed, such applicability determinations are generally considered final agency action and thus subject to judicial review.[27] Judicial review is *always* available under the Clean Air Act, one way or the other. If not through direct review of actions subject to notice and comment, then through the general availability of review of *any* final agency action (under both federal and state laws). Even applicable requirements that are determined without any source-specific agency action are subject to judicial review, through EPA and state agency enforcement as well as citizen suits.

Most importantly, EPA's statement (quoted above) is a *non sequitur*. Even if EPA were correct that an NSR requirement established without notice and comment "does not provide the title V permit writer or public with sufficient assurance that the preconstruction permitting process has conclusively established the applicable NSR requirements," that does not justify turning the Title V process into an opportunity to establish—i.e., create—applicable requirements. The statute's text and structure do not allow it. And, as EPA itself eloquently put it: "title V is a catch-all, not a cure-all."[28] If there is an issue *whether* a Title I applicable requirement is correct, the remedy is to establish it under Title I (whether through judicial review of a state agency action, or through enforcement), not to turn the Title V process into a mini-adjudication process for complex permitting decisions made years ago.

EPA further asserts that the policy promoted in its Proposed Rule will "create an incentive for permitting authorities to offer robust opportunities for public involvement on NSR

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[26] *Id*. at 1171. The procedures referenced are notice and comment with an opportunity for judicial review.

[27] *See, e.g., Wisconsin Electric Power Company v. Reilly*, 893 F.2d 901 (7th Cir. 1990) (reviewing EPA NSR applicability determination); 65 Fed. Reg. 77623 (Dec. 12, 2000) (notice of NSR applicability determination, explaining that judicial review may be sought by filing a petition for review within 60 days of publication of the final agency's action).

[28] 89 Fed. Reg. at 1154.

permit actions."[29] That may be so, but again, this is a *non sequitur* for the same reason above. As EPA acknowledges, the CAA and EPA's rules already establish which provisions of the Act must be implemented pursuant to notice and comment.[30] Those provisions that do not demand such procedures are properly implemented in other ways. How those provisions are implemented is properly the subject of the rules governing NSR and Title I programs generally, not a basis for questioning under Title V the decisions made following those approved Title I procedures.

Indeed, the NSR determinations that EPA would subject to review, and potential re-evaluation, under Title V are the results of informal adjudications under the CAA, as contemplated by the Administrative Procedure Act.[31] Such adjudicative decisions, while final and conclusive, are not required to be subject to notice and comment. Yet they are nevertheless administrative tools for implementing NSR. Such adjudications are, moreover, used under other Title I provisions. There is, for instance, no meaningful distinction between an NSR applicability determination, which would result from an informal adjudication, and a determination as to whether a source is subject to a particular NSPS because the source was allegedly modified some time in the past.

Even if there were a plausible statutory basis for subjecting certain NSR determinations to review under Title V—and there is not—there are also strong policy reasons for declining to do so. For the same reasons that EPA has previously articulated, there are good policy reasons to avoid making substantive determinations in a Title V permit proceeding for activities that occurred years in the past.

First, the Title V process is compressed. EPA has only 45 days to review a permit,[32] and anyone may petition the Administrator to object to a permit 60 days after the expiration of the 45-day review period.[33] Such a schedule is not well-suited to revisit all permitting determinations, whether by the source or the permitting authority, often made many years ago and which almost invariably involved detailed factual and technical review. EPA's Proposed Rule acknowledges this and notes that the Fifth Circuit reached the same conclusion.[34]

Second, as described above, substantive CAA requirements should be established under Title I, using the processes of Title I (including enforcement, if necessary). Title V is the appropriate place to ensure the operating permit reflects the substantive requirements determined under Title I and includes sufficient monitoring, recordkeeping, and reporting requirements to assure compliance with those requirements. Congress has created a clear and orderly regulatory scheme, and EPA should implement that regulatory regime in the manner Congress intended. EPA's proposal would undermine this regime.

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[29] *Id*. at 1170.

[30] *Id*. (EPA noting that existing rules "govern[] public participation on NSR permits").

[31] *See Safari Club Int'l v. Zinke*, 878 F.3d 316, 331–32 (D.C. Cir. 2017) (explaining the difference between adjudications and rulemakings and the different procedural requirements that pertain to both).

[32] 42 U.S.C. § 7661d(a)(1); 40 C.F.R. § 70.8(c).

[33] 42 U.S.C. § 7661d(b)(2).

[34] 89 Fed. Reg. at 1177.

Finally, as explained above, EPA is, in fact, compelled to interpret Title V as a mechanism for compiling, not reevaluating, substantive requirements established under other provisions of the CAA. EPA must, for instance, interpret its Title I and Title V authorities harmoniously.[35] Using Title V to review the final results of a decision-making process conducted in accordance with procedures authorized under Title I suggests a conflict between those authorities that does not actually exist. Further, using Title V to collaterally attack determinations made under Title I—regardless of the applicable Title I procedural requirements—would improperly elevate the general provisions of Title V over the specific provisions of Title I. It is well-established that "a statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute covering a more generalized spectrum."[36] That is the situation here. EPA should acknowledge, therefore, that because the requirements of Title I, both substantive and procedural, lawfully define a source's Title I obligations, Title V is not a lawful vehicle for re-evaluating, renegotiating, or relitigating those determinations.

In short, Title V does not allow the Agency to conduct in an operating permit proceeding adjudications that are required under Title I for creating substantive applicable requirements for the source. Whether those adjudications are required to be conducted in a notice-and-comment process under the SIP-approved permitting rules, without such process in applicability determinations or under minor NSR rules (that are also SIP-approved), or by the source itself under SIP-approved NSR rules, the result is the same: adjudications *create* applicable requirements under Title I, not Title V. If a person, or EPA itself, believes that adjudication was incorrect, the forum for evaluating it and seeking its review is Title I, not Title V.

B. Where Other CAA Requirements Substantially Overlap with the Requirements of Title V

EPA says that it will continue to review "issues involving an overlap of title V and NSR requirements."[37] EPA further explains that the "most notable example" of such a situation "involves using title V to evaluate the sufficiency of monitoring and related compliance assurance requirements associated with more substantive NSR permit requirements."[38] Other situations EPA identifies include areas in which a SIP specifically calls for further definition of requirements through Title V proceedings.[39] EPA states, however, that its consideration of these issues does not include "reevaluating or second-guessing the content of applicable requirements established in NSR permitting actions."[40]

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[35] S*ee, e.g., Lindh v. Murphy*, 521 U.S. 320, 336 (1997) (favoring reading that "accords more coherence" to the disputed statutory provisions).

[36] *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153 (1976).

[37] 89 Fed. Reg. at 1170.

[38] *Id*.

[39] *Id*.

[40] *Id*.

PGen agrees. EPA's emphasis in this section of the preamble on evaluating the sufficiency of monitoring and compliance assurance provisions and situations where a SIP calls for Title V review tracks the language of the statute, which provides that EPA must ensure that Title V permits contain "such other conditions as are necessary to assure compliance with applicable requirements of this chapter, including the requirements of the applicable implementation plan."[41]

EPA is correct to limit its Title V review in this section of the Proposed Rule to matters expressly identified in the statute as appropriate issues for the Agency's evaluation. The limits on EPA's statutory authority, which EPA readily acknowledges in its discussion of this category of requirements properly subject to review under Title V, should also inform EPA's overall approach to these matters. Where Congress amends a statute, as it did when it enacted Title V, agencies should assume that Congress intended its statutory "amendment to have real and substantial effect."[42] The intended effect here was clearly to limit the matters that are subject to reevaluation pursuant to Title V. Indeed, the carveout for Title V review included in section 504(a) of the CAA is properly viewed as a limited grant of authority to evaluate and possibly include compliance assurance provisions needed to fully implement what otherwise already have been established as applicable requirements. EPA's authority is therefore akin to an exception to an otherwise broad prohibition on establishing new applicable requirements through Title V. EPA's own statements in the Proposed Rule support this position. In discussing its limited authority to create or supplement monitoring requirements for compliance assurance purposes EPA states: "This exception proves the rule; where Congress intended tile V to serve as a vehicle for the reevaluation of existing requirements or for imposing new requirements, it expressly said so."[43] EPA's authority should therefore be construed narrowly "in order to preserve the primary operation of the provision."[44]

In sum, EPA's narrow authority to address compliance assurance provisions through Title V supports the conclusion that EPA is prohibited from more broadly evaluating NSR or other substantive CAA requirements when reviewing a permit pursuant to Title V. EPA should therefore clearly announce and adopt an appropriately limited interpretation of its Title V authority, as reflected in this section of the preamble, throughout its Proposed Rule.

III. EPA's Assessment of its Enforcement Powers in the Proposed Rule Supports a Narrow Interpretation of the Agency's Title V Permit Review Authority.

The Proposed Rule recaps a range of authorities that EPA has to review NSR permitting decisions under Title I. EPA lists, for instance, its ability to disapprove state NSR programs and to call for revisions to those programs.[45] EPA likewise identifies its injunctive order authority, its ability to bring civil and criminal enforcement actions, and the availability of citizen suits for violations of NSR requirements as viable Title I tools for ensuring CAA requirements are

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[41] 42 U.S.C. § 7661c(a).

[42] *Stone v. INS*, 514 U.S. 386, 397 (1995).

[43] 89 Fed. Reg. at 1176.

[44] *Maracich v. Spears*, 570 U.S. 48, 60 (2013) (internal quotation omitted).

[45] 89 Fed. Reg. at 1171.

appropriately implemented.[46] EPA goes on to note that its "title I oversight tools are more effective means of addressing title I issues than the EPA's title V oversight tools."[47] Meanwhile, EPA has found that "the title V permitting process has proven a generally ineffective mechanism to address deficiencies in NSR permitting actions."[48] We agree.

Consistent with EPA's findings, the availability of comprehensive and entirely adequate enforcement and implementation tools under Title I makes clear that an additional role for review under Title V is, at best, unnecessary and, at worst, disruptive or plainly inconsistent with controlling CAA provisions. EPA should revise its Proposed Rule to reflect the proper division between Title V and other CAA provisions.

IV. EPA's Alternative Interpretations of its Title V Authority Are Inconsistent with the CAA.

In addition to its proposed actions, EPA solicits comment on alternative interpretations of its Title V authority "that would involve using title V permits to address substantive NSR issues in additional, targeted situations."[49] EPA specifically requests comment on "(i) using title V to review contemporaneous or recent NSR permitting decisions; (ii) using title V to review issues related to major NSR applicability, and (iii) using title V to review contemporaneous or recent NSR permitting decisions related to major NSR applicability."[50]

EPA acknowledges that there are legal impediments to the alternatives it has identified.[51] Any applicable requirement under the CAA should not be subject to second-guessing pursuant to Title V, and each of these alternatives would do just that. Accordingly, EPA does not have authority to adopt the alternatives. Moreover, the legal flaws EPA acknowledges with respect to these alternatives apply with equal force to the NSR-based decisions that EPA's Proposed Rule would subject to Title V review. It would be arbitrary and capricious for EPA to nevertheless adopt its policy on reviewing NSR requirements that have not been established through a public process with the availability of judicial review when those same legal considerations apply.

CONCLUSION

EPA has appropriately concluded that Title V is not an appropriate mechanism for reevaluating the content of "applicable requirements" established under other provisions of the

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[46] *Id*. at 1172.

[47] *Id*. at 1173.

[48] *Id*. at 1174.

[49] *Id*. at 1183.

[50] *Id*.

[51] *Id*. ("it is not clear what legal basis would support an alternative approach based exclusively on the timing of NSR and title V permit issuance"); *id*. at 1184 ("using title V to revisit NSR applicability questions would inherently upset not only the NSR applicability decisions, but also NSR permit content decisions. The EPA does not view this result as consistent with the key function of title V.").

CAA, including most notably Title I of the Act. EPA should, however, acknowledge that this interpretation is not merely permissible under the statute but is compelled by the text, structure, and purpose of the CAA. EPA should further revise the Proposed Rule to make clear that CAA "applicable requirements" include *all* substantive requirements of Title I, regardless of whether those requirements are established through formal notice and comment processes. Title V requires EPA to collect those applicable requirements in an operating permit and, to the extent necessary, establish additional monitoring, recordkeeping, and reporting conditions to assure compliance with those requirements. It gives EPA no authority to adjudicate or create Title I applicable requirements.

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