**SUPPORT DOCUMENT FOR**

**Mississippi Department of Environmental Quality (MDEQ)**

**Office of Pollution Control’s**

**Proposed Amendments to the “Air Emissions Operating Permit Regulations for the Purposes of Title V of the Federal Clean Air Act,”**

**11 Mississippi Administrative Code Part 2, Chapter 6**

**Regarding Revisions to the Public Notice Provisions, Revisions to the Petition Provisions, Source Determinations for Certain Emission Units in the Oil and Natural Gas Sector, Removal of the Title V Emergency Affirmative Defense Provisions, and Other Miscellaneous Revisions**

This amendment to the State of Mississippi’s “Air Emissions Operating Permit Regulations for the Purposes of Title V of the Federal Clean Air Act,” 11 Miss. Admin. Code Pt. 2, Ch. 6 (“the Title V regulations”), is to address those aspects of the following rules promulgated by the Environmental Protection Agency (EPA) affecting 40 C.F.R. Part 70, State Operating Permit Programs required by Title V of the Clean Air Act:

* “Revisions to Public Notice Provisions in Clean Air Act Permitting Programs” Final Rule, also referred to as the “e-notice rule” [81 FR 71613; October 18, 2016]
* “Revisions to the Petition Provisions of the Title V Permitting Program” Final Rule [85 FR 6431; February 5, 2020]
* “Source Determination for Certain Emission Units in the Oil and Natural Gas Sector” Final Rule [81 FR 35622; June 3, 2016]
* “Removal of Title V Emergency Affirmative Defense Provisions from State Operating Permit Programs and Federal Operating Permit Program” Final Rule [88 FR 47029; July 21, 2023]

Additionally, the MDEQ proposes other miscellaneous changes to the Title V regulations in 11 Miss. Admin. Pt. 2, Ch. 6 to be more consistent with the requirements and reading of 40 C.F.R. Part 70, as well as to clarify or make minor corrections to current regulations. A more detailed description of these miscellaneous changes and a summary of the final rules listed above and resulting regulatory changes are provided below.

1. **Public Participation Revisions**

On October 5, 2016, the U.S. Environmental Protection Agency (EPA) finalized “Revisions to Public Notice Provisions in Clean Air Act Permitting Programs” for the NSR and Title V permit programs of the Clean Air Act. This final rule was published in the Federal Register [81 FR 71613] on October 18, 2016. These revisions remove the mandatory requirement to provide public notice of a draft permit through publication in a newspaper and, instead, allow for electronic notice (e-notice) of permitting actions via a public web site identified by the reviewing authority. The selected notification method (i.e., either newspaper or web site) is known as the “consistent noticing method” and must be used for all permits subject to notice under the NSR or Title V permit programs. EPA leaves discretion to the reviewing authority (i.e., MDEQ) to supplement the consistent noticing method with other methods. If using the public web site as the consistent noticing method, the reviewing authority must also provide an electronic copy of the draft permit for review, in addition to the notice itself, and provide instructions regarding how to access the administrative record for the draft permit and request and/or attend a public hearing. This information must be made available on the public web site for the duration of the public comment period.

Regarding the Title V permit program, EPA revised the public participation requirements for operating permits issued pursuant to 40 C.F.R. Part 70, the State Operating Permit Program. Specifically, the requirements of 40 C.F.R. 70.7(h) were revised to address the e-notice provisions and to expand the acceptable methods for maintaining and updating the required public mailing list. The revisions to 40 C.F.R. Part 70 are reflected in the changes to 11 Miss. Admin. Code Pt. 2, R. 6.4.I(1). MDEQ is proposing to revise this rule to designate the consistent noticing method as MDEQ’s website and remove the requirement to provide notice via publication in a newspaper. The notice and draft permit will be made available on the website for the duration of the public comment period. This is a practice MDEQ already uses to provide electronic access to the notice, draft permit, and statement of basis. The rule was also revised to update the requirements for MDEQ to maintain a mailing list, consistent with the changes finalized by EPA.

1. **Title V Petition Revisions**

On January 14, 2020, the EPA signed the final rule entitled “Revisions to the Petition Provisions of the Title V Permitting Program,” which was published in the Federal Register [85 FR 6431] on February 5, 2020. This rule streamlines and clarifies processes related to the submission and review of Title V petitions, implementing changes in three key areas:

* 1. Provides direction as to how petitions should be submitted to EPA;
  2. Requires mandatory content and format for Title V petitions; and
  3. Requires permitting authorities to respond in writing to significant comments received during the public comment period.

It is the third change noted above that subsequently impacts MDEQ’s Title V regulations. Although MDEQ routinely responds to significant comments received during the public comment period for Title V permits, MDEQ is proposing to revise the Title V regulations to specifically address the requirements now codified in federal regulation. Paragraphs (2), (5), and (6) of Rule 6.4.I. regarding Public Participation have been revised or added to address MDEQ’s obligations to provide documents associated with the administrative record for the Title V permit, to keep a record of written comments received, and to respond in writing to all significant comments submitted during the public comment period and at any public hearing on the permit.

Rule 6.5.A., regarding the transmission of information to the Administrator (i.e., EPA), is also revised to address aspects of the Title V petition process, including a requirement for MDEQ to provide EPA with the written response to significant comments received during the public comment period, as well as an explanation of how the comments and MDEQ’s response were made available to the public. To implement this requirement, MDEQ foresees making these documents available on our website. This rule was also revised to address how receipt of significant comments impacts the timing of EPA’s review of the proposed Title V permit. In general, receipt of significant comments requires a delay of EPA’s 45-day review of the proposed permit until such time MDEQ provides the public comments, response to comments document, and any additional support information to EPA. Again, this is a practice MDEQ and EPA have undertaken prior to formalizing these requirements in regulation, so MDEQ expects little change from the current procedures for handling significant comments. Rule 6.4.C. is subsequently revised to properly reference the changes to Rule 6.4.A.

Rule 6.4.D., regarding public petition to the Administrator (i.e., EPA), is revised to be consistent with the requirements for public petitions under 40 C.F.R. 70.8(d) and also direct the public to the requirements for petitions found in 40 C.F.R. 70.12. The requirement specifies that a copy of the petition must be sent to the Permit Board and applicant, in addition to the Administrator, and also addresses the allowable scope of such petitions.

1. **Oil and Natural Gas Source Determinations**

On May 12, 2016, the EPA signed the final rule entitled “Source Determination for Certain Emission Units in the Oil and Natural Gas Sector,” which was published in the Federal Register [81 FR 35622] on June 3, 2016. This rule clarifies the meaning of the term *adjacent*, as it is used in the Title V definition of *major source*, for purposes of evaluating whether onshore activities belonging to SIC major group 13 (Oil and Gas Extraction) are considered adjacent. For those onshore activities within SIC major group 13, pollutant-emitting activities that are located at the same surface site or at surface sites with shared equipment and within ¼ mile of each other (as measured from the center of the equipment on the surface site) are considered adjacent. If considered adjacent, the surface sites may be considered a single stationary source if they are also under common control. A surface site has the same meaning as the definition in 40 CFR 63.761, the National Emission Standards for Hazardous Air Pollutants (NEHSAP) from Oil and Natural Gas Production Facilities, which is defined as follows:

*“Surface site* means any combination of one or more graded pad sites, gravel pad sites, foundations, platforms, or the immediate physical location upon which equipment is physically affixed.”

Since the term *adjacent* has not been defined previously but left to the permitting authority to decide, MDEQ has followed EPA’s guidance regarding the evaluation of onshore oil and natural gas sources when making source determinations. Therefore, MDEQ proposes to revise the definition of *major source* in the Title V regulations to formally adopt EPA’s regulations regarding evaluating onshore oil and natural gas activities for adjacency. This proposed revision is found in Rule 6.1.A(18).

1. **Removal of the Title V Emergency Affirmative Defense Provisions**

On July 21, 2023, the EPA promulgated the final rule entitled “Removal of Title V Emergency Affirmative Defense Provisions From State Operating Permit Programs and Federal Operating Permit Program,” which was published in the Federal Register [88 FR 47029], which became effective on August 21, 2023. With this rule the EPA removed the “emergency” affirmative defense provisions from the Title V operating permit program regulations in 40 CFR Parts 70 and 71 because they are inconsistent with the EPA’s interpretation of the enforcement structure of the Clean Air Act in light of prior court decisions from the U.S. Court of Appeals for the D.C. Circuit.

For states with EPA-approved Title V programs, EPA expects states to submit program revisions to address removal of the affirmative defense provisions within 12 months of the rule effective date. MDEQ’s Title V regulations contain the affirmative defense provisions verbatim from 40 CFR 70.6(g) as the “Emergency provisions” of 11 Miss. Admin. Code Pt. 2, R. 6.3.G. MDEQ is removing the entirety of Rule 6.3.G. and reserving this condition.

1. **Miscellaneous Changes**

While revising the Title V regulations to address the final rules noted above, MDEQ reviewed the entirety of the regulations to determine if other changes should be made. Changes that were simply related to formatting or nomenclature are shown in the redline version of the proposed Title V regulations but are not specifically discussed below. For example, throughout the regulations, definitions and headings have been italicized for better presentation of the text, also consistent with 40 C.F.R. Part 70. Additionally, numbers under ten are spelled out rather than written as numerals.

The following list provides a brief description of other revisions proposed to the Title V regulations to promote consistency with the requirements of 40 C.F.R. Part 70. MDEQ determined that the following revisions do not change the way in which MDEQ has previously interpreted or applied the Title V regulations and, therefore, should have minimal impact on regulated sources.

* **Rule 6.1.A(5).:** Added a definition of *Alternative Operating Scenario*, consistent with 40 C.F.R. 70.2, since the Title V regulations authorize such scenarios. It appears this addition was previously overlooked when incorporating the “Operating Permit Programs; Flexible Air Permitting Rule” promulgated in 74 FR 51438 (October 6, 2009).
* **Rule 6.1.A(18).:** Added a definition for *Greenhouse Gases* (GHGs), previously defined within the term *subject to regulation*. The definition is consistent with definition incorporated by reference by Mississippi’s PSD regulations in Chapter 5 and is also consistent with the revisions to 40 CFR Part 70 proposed by EPA in 81 FR 68110 (October 3, 2016) – “Revisions to the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas (GHG) Permitting Regulations and Establishment of a Significant Emissions Rate (SER) for GHG Emissions Under the PSD Program.”
* **Rule 6.1.A(19).:** Revised the definition of a *major source* to exclude GHGs in this determination, consistent with the proposed revisions in 81 FR 68110 which address the June 23, 2014, Supreme Court decision in *Utility Air Regulatory Group (UARG) v. EPA*. The Court held that the EPA may not treat GHGs as an air pollutant for the specific purpose of determining whether a source is a major source required to obtain a Title V permit.
* **Rule 6.1.A(19)(b)(20).:** To be consistent with Mississippi’s PSD regulations pertaining to addressing fugitive emissions for certain source categories [i.e., the list in 40 CFR 52.21(b)(1)(i)], the exclusion of ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140 from the term *chemical processing plant* is addressed. This exclusion was allowed under the rule entitled “Prevention of Significant Deterioration, Nonattainment New Source Review, and Title V: Treatment of Certain Ethanol Production Facilities Under the ‘Major Emitting Facility’ Definition” (commonly referred to as the “Ethanol Rule”) promulgated in 72 FR 24060 (May 1, 2007). On October 21, 2019, the U.S. EPA took final action to deny a petition for reconsideration as it pertains to the exclusion in the Title V and PSD regulations.
* **Rule 6.1.A(19)(b)(27).:** Corrected the last listed source category to read consistently with 40 C.F.R. 70.2 and with the PSD regulations in Chapter 5.
* **Rule 6.1.A(23).:** Revised the definition of *potential to emit* to be consistent with the definition in 40 C.F.R. 70.2.
* **Rule 6.1.A(31).:** Removed the definition of *sources or facilities required to hold a Title V permit*. This term is not used elsewhere and is addressed in Rule 6.1.B(2).
* **Rule 6.1.A(32).:** Revised the definition of *subject to regulation*, consistent with the proposed revisions in 81 FR 68110. This change was made to address the June 23, 2014, Supreme Court decision in *Utility Air Regulatory Group (UARG) v. EPA*. The Court held that the EPA may not treat GHGs as an air pollutant for the specific purpose of determining whether a source is a major source required to obtain a Title V permit though GHGs are remain subject to regulation.
* **Rule 6.2.C(3).:** Revised paragraphs (b) and (c) to be consistent with the wording in 40 C.F.R. 70.5.
* **Rule 6.3.A(3)(a)(1).:** Revised to be consistent with 40 C.F.R. 70.6, which addresses monitoring required by the Compliance Assurance Monitoring regulations of 40 C.F.R. Part 64 and allows for streamlining.
* **Rule 6.3.F(2).:** Revised to add paragraph (2) to address the permit shield requirement of 40 C.F.R. 70.6(f)(2).
* **Rule 6.4.E(3).:** Revised to be consistent with 40 C.F.R. 70.7(e)(4)(i), which indicates that a change made by the permittee that makes certain permit terms and conditions irrelevant would not be considered a significant modification under the Title V regulations. A common example is removal of permitted equipment.
* **Rule 6.4.I(2).:** Added paragraph (2) to provide a clear and concise list of the contents of the public notice.