

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.

A. 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.

B. 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 (3) 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.

Regarding the transmission of information to the Administrator (i.e., EPA), Rule 6.5.A. has been 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, the 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. This is a practice that 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 6.5.C. is subsequently revised to properly reference the changes to Rule 6.5.A.

Regarding a public petition to the Administrator (i.e., EPA), Rule 6.5.D. has been revised to be consistent with the requirements for public petitions under 40 C.F.R. 70.8(d) and also to 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.

C. 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 the purpose 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(19).

D. 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] and 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 twelve (12) months of the rule’s effective date. MDEQ’s Title V regulations contain the affirmative defense provisions verbatim from 40 CFR 70.6(g) as the “Emergency provisions” found in 11 Miss. Admin. Code Pt. 2, R. 6.3.G. As such, MDEQ is removing R. 6.3.G. in its entirety at this time but will reserve this condition for future usage should further court decisions impact this rule.

E. 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. The 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, definitions and headings have been italicized throughout the regulations for better presentation of the text and to be more 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 should have minimal impact on regulated sources.

- **Rule 6.1.A(5).**: Added a definition of “*Alternative Operating Scenario*” to be 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(24).**: Revised the definition of “*potential to emit*” to be consistent with the definition in 40 C.F.R. 70.2.
- **Rule 6.1.A(30).**: 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 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.
- **Rule 6.8:** This rule was added to specifically denote the “effective date” of the amendments that were adopted on February 24, 2022, which altered from the standard effective date of thirty (30) days after filing the final amendments with Mississippi Secretary of State. Since the denoted effective date has passed, this rule is no longer needed and would have no bearing in reference to the current amendments. As the effective date for the current amendments will be thirty (30) days after filing with the Mississippi Secretary of State, this rule is being deleted rather than rewritten.

F. Public Hearing

Public participation requirements for the revision of the Title V regulations were satisfied by notifying the general public of a comment period that began on May 17, 2024, and ended on June 19, 2024, on which date a public hearing was held to receive any oral

comments. The public notice was published consistent with procedures approved by EPA and in accordance with State law. Overall, MDEQ provided a 33-day public comment period for the proposed revision of the Title V regulations.

The joint notice for the public comment period / public hearing was published on May 17, 2024, May 24, 2024, and May 31, 2024, in a state-wide newspaper – *The Clarion Ledger* – as well as the following MDEQ website: <https://www.mdeq.ms.gov/air/>. Additionally, the notice of the public hearing, the draft Title V regulations (both a “redline” version and a “clean” version), and the supporting document were made available for public review on the noted website as well as the MDEQ office located at 515 East Amite Street; Jackson, Mississippi; 39201. Furthermore, as a courtesy, the public notice was electronically transmitted to interested persons subscribed to applicable e-mail notification lists.

Attachment 1 to this supporting document contains a copy of the notice of public hearing, the proofs affidavit, and the official transcript for the public hearing.

G. Response to Comments on Proposed Revisions to Title V Regulations

On June 18, 2024, the MDEQ received comments from EPA regarding the proposed revisions to the Title V regulations. The comments, as well as MDEQ’s responses, are as follows:

- **Comment No. 1:** Rule 6.1.A(19)(b)(27) – “Major Source” Definition: For consistency with the Part 70 regulations, please delete the phrase “...*but only with respect to those air pollutants that have been regulated for that category*”. This phrase was removed from the Part 70 regulations on November 27, 2001, to make the regulatory definition of Part 70 consistent with the corresponding provisions of the NSR program [see 66 FR 59166].
 - **MDEQ Response:** After further evaluation, MDEQ agrees to delete the phrase “...*but only with respect to those air pollutant that have been regulated for that category*” within Rule 6.1.A(19)(b)(27). to coincide with the updated definition found in Part 70 regulations. This change will be reflected in the final amendment of the MDEQ Title V regulations.
- **Comment No. 2:** Rule 6.1.B(4): For consistency with the part 70 regulations, please delete this paragraph, which allows sources that are exempt from the obligation to obtain a title V permit to opt in to apply for a title V permit. These opt-in provisions were removed from the Part 70 regulations on December 19, 2005 [see 70 FR 75346].
 - **MDEQ Response:** After further evaluation, MDEQ agrees to delete the following paragraph denoted as Rule 6.1.B(4) to coincide with updated Part 70 regulations: “*Any source listed in Rule 6.1.B(2), (3), and/or (5) which is exempt from the*

requirement to obtain a Title V permit may opt to apply for a Title V permit under the Title V program.”

This change will be reflected in the final amendment of the MDEQ Title V regulations.

- **Comment No. 3:** For a comprehensive Title V program update, we recommend that the final submittal of these revisions (the ones that are the subject of this prehearing) for approval into Mississippi’s Title V program include all previous revisions made at the State level since the original program approval effective January 27, 1995 [see Appendix A to Part 70].

– **MDEQ Response:** MDEQ recognizes both the regulatory and historical importance of accurately detailing the revisions made to the Title V regulations, which are a critical element of the State of Mississippi’s approved Title V Air Permit Program. As such, the following outline summarizes all adopted amendment actions since initial EPA approval (effective on January 27, 1995):

- December 14, 1995: MDEQ amended the Title V regulations to revise the due dates and penalty provisions for fees associated with Title V Operating Permits in accordance with State law. These amended regulations became State-effective on January 14, 1996, and were submitted to EPA for approval on January 24, 1996.
- April 23, 1998: MDEQ amended the Title V regulations to remove the definition of “Title I modification”, which stated the following: “*Title I modification shall mean any modification under Sections 111 or 112 of the Act and any physical change or change in the methods of operation that is subject to preconstruction regulations promulgated under Section 110(a)(2), Part C, and/or Part D of Title 1 of the Federal Act (i.e., Mississippi Regulation APC-S-2).*”

The deletion of the indicated definition eliminated the requirement for which a modification of a Title V Operating Permit was needed for each Title 1 modification performed by the affected source. These amended regulations became State-effective on May 28, 1998.

- October 26, 2000: MDEQ amended the Title V regulations to collectively revise the requirements and procedures related the reporting of actual emissions as the basis for Title V fees in addition to the respective procedures for changing the basis for Title V fees from “allowable emissions” to “actual emissions”. These amended regulations became State-effective on December 29, 2000.

- October 28, 2010: MDEQ amended the Title V regulations to incorporate the final “Greenhouse Gas (GHG) Tailoring Rule” as published by EPA on June 3, 2010. These amended regulations became State-effective on November 27, 2010, and were submitted to EPA for approval on December 9, 2010.
- December 14, 2011: MDEQ amended the Title V regulations to incorporate (by reference) the “*Deferral for CO₂ Emission from Bioenergy and Other Biogenic Sources under the Prevention of Significant Deterioration (PSD) and Title V Programs*” rule as published by EPA on July 20, 2011 [see 76 FR 43490]. These amended regulations became State-effective on January 13, 2012.
- June 28, 2012: MDEQ amended the Title V regulations to revise the Title V fee structure in accordance with a change in State law. More specifically, the revisions incorporated the removal of the maximum amount that could be assessed for Title V fees – previously \$250,000.00. These amended regulations became State-effective on July 28, 2012.
- February 24, 2022: MDEQ amended the Title V regulations to implement a modified fee system for the Title V program. More specifically, the revisions included the incorporation of a maintenance fee based on the number of air regulations (i.e., Part 60, 61, 63, and/or 68) applicable to a Title V source, the removal of “4,000 tons per year” as the maximum respective pollutant emission rate, an allowance to establish an appropriate minimum fee on an annual basis, the removal of outdated information, and other editorial changes for improved clarity. These amended regulations became State-effective on September 1, 2022.

H. Regulation Changes

Attachment 2 to this supporting document contains amendments to 11 Miss. Admin. Code, Pt. 2, Ch. 6, both in “clean” format and “redline/strikeout” format. The amendments to 11 Miss. Code, Pt. 2, Ch. 6 were adopted on June 27, 2024, and will become State-effective thirty (30) days after filing the final amendments with the Mississippi Secretary of State.

I. Final Adoption of Regulations

Attachment 3 to this supporting document contains evidence of final adoption of the amendments to the Title V regulations.