

General Observations

Permit modifications happening now.	(ALAPCO/Clean Air Implementation Project (CAIP))
Workable solution not yet reached	ALAPCO/CAIP
1995 philosophy better - not prescriptive and relied on State systems	CAIP/ National Association of Manufacturers (NAM)
1995 proposal reflected compromise [i.e., industry gave on off-permit and §502(b)(9)]	CAIP
Concerned with changes to cap provisions since proposal	Intel
Too complex, especially for small businesses (i.e. risk as to which track). Process burden with no environmental benefit. Paperwork not likely to improve compliance.	NAM
Still too much focus on minor revisions	Proctor & Gamble
Better to be workable than to get quick promulgation Link between contemporaneous permits & workable revision system	Swidler & Berlin
Title V being used to dictate NSR process	Texas
Central purpose is source accountability to public Appropriate participation is needed - how to craft with flexibility Challenge: workable system within conflicting priorities	National Resource Defense Council (NRDC)

Permit Revisions System - Overview

Need to add principles for streamlining. e.g., 502(b)(6) & 502(b)(10)	CAIP
Are conditions to enforce netting decreases “changes that require permit change”? [i.e., is a condition to avoid an applicable requirement (AR) itself an AR?] [EPA: Yes, because these conditions are terms of a minor NSR permit, which are applicable requirements.]	ALAPCO
Note that incorrect nets have potentially serious environmental impact. Safeguards are needed.	NRDC
Safeguards do not need to be prior to change	NAM
What is definition of “netting”? (e.g., is it a "significant increase" as used in the NAAQS program?)	Louisiana
Netting issues are NSR issues and not appropriate for Title V	Texas
Title V says any netting conditions go in permit (Question is <u>by what process?</u>)	NRDC

EPA & Public Review

<p>Can EPA waive veto for changes that are not de minimis, notice and go or admin. amendment (AA)?</p>	<p>??</p>
<p>Treat EPA veto completely separate from public participation:</p> <ul style="list-style-type: none"> • 505(a) use of word “modification” • 505(b) EPA can waive review for non-majors (extend to nonmajor modifications at major sources) • waiver still applies to citizen suits and at renewal 502(b)(6), 503(d) • <u>Alabama Power</u> = broad procedural de minimis <p>Improved public review even without veto works with other provisions (e.g, citizen enforcement) to enhance compliance</p>	<p>Shaw, Pitman</p>
<p>Modification in section 505 means “modification for cause”</p>	<p>NAM</p>
<p>Need to clarify scope of EPA veto in NSR decisions. EPA shouldn't veto substance of State NSR action.</p>	<p>Texas</p>
<p>Proper scope of EPA veto can range from review for proper codification to full substantive review</p> <p>Issue not just whether there should be public & EPA review but also whether it occurs prior to change</p> <p>Public review scope has 2 parts also:</p> <ul style="list-style-type: none"> - minor NSR action - part 70 incorporation <ol style="list-style-type: none"> 1. All Applicable Requirements. 2. Practically Enforceable. 3. Adequate Participation. 	<p>Ct, CAIP</p>
<p>Do not confuse part 70 incorporation with EPA’s minor NSR oversight.</p> <p>Problem arises when EPA veto changes minor NSR limits approved by State, (i.e, likelihood that NSR veto would materially alter project after construction), or adds prior process.</p>	<p>ALAPCO</p>
<p>Issue not whether EPA would veto but whether it retains <u>authority</u> to. Also - citizens must retain authority regardless of EPA veto.</p>	<p>NRDC</p>

EPA & Public Review (Cont.)

Legal justifications for waiver conflict with basic need for aggrieved citizens to get administrative relief.	
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EPA & Public Review (Cont.)

De Minimis

Uncertainty about what a de minimis showing would look like and how general program language of de minimis governs specific changes of concern	La, NRDC
Must de minimis showing be in rule and must it specifically list all types of changes? Clarification needed. -- need for clearer rule language on de minimis. Preference is for guidance, not rule.	NEDA/CARP, etc.
[EPA: if change is exempt from minor NSR but triggers other AR's, these AR's must go into permit, but this can be done generically, or through notice only, or possibly de minimis.]	
In situations where minor NSR requires minimal judgement because of the use of guidance documents, it should be eligible for de minimis.	Texas
If no prior approval is required -- -- notice only may be available. If prior approval is required -- -- de minimis may still be available, but no notice-only	NRDC
De minimis category should include well-controlled sources that trigger AR's that would impose less-stringent controls. (issue: shield for less-stringent AR)	NAM
Need to reconcile de minimis and notice-only with generic section 70.5 (d)(4) applicable provisions.	Louisiana
"No new AR's" and "source-specific AR's" language is problematic and may be too broad.	Louisiana, CAIP
Also unclear in rule whether "and" vs. "or" for 25% de minimis cutoff, especially in nonattainment areas.	Exxon
States have tough job responding to a public comment in part 70 program approval that 25% is not an acceptable de minimis level.	ALAPCO
De minimis criteria for title V process should not be based on ambient air quality.	Texas
The Alabama Power case argues for higher de minimis levels. Not necessarily any Title V connection to Title I levels.	CAIP

Operational Flexibility Caps and Advance NSR

States support option for caps & and NSR, but not <u>mandate</u>	ALAPCO, Connecticut
Nonetheless, these approaches offer hope in avoiding/minimizing permit revisions.	Connecticut
For some sources, caps are the only adequate, streamlined, reasonable approach	Intel
Available flexibility varies with minor NSR SIPs.	Latham & Watkins
Permit revision <u>process</u> needs to work for <u>all</u> sources - not be addressed permit-by-permit. Case by case solutions can be a resource drain.	Louisiana
Up-front customizing of flexible permits can lead to long-run savings by avoiding revisions. In addition, resources needed decrease as experience increases.	Connecticut, Intel, 3M
EPA could mandate <u>option</u> for caps vs. mandating use of caps in any instance	3M
Some cap provisions in State programs exist now because of original part 70 State experience shows that flexibility is addressed, but not always through caps	Kentucky
“Mode” of operation language seems to conflict with advance NSR.	Lilly
If part 70 drives part 51 changes for public participation, then why not for advance NSR?	Latham & Watkins

Emergency Defense

Keep part 70 provision authorizing States to have emergency defense	CAIP
Why not retain current defense (delay in SIP change) for technology-based standards?	CAIP, Eli Lilly
Inconsistent to argue that part 70 cannot create new requirements, but then to argue that it can provide exemption from established requirements.	NRDC
Language is not clear as to scope of defense	ALAPCO
Note that existing (111 & 112) rules not developed perfectly. This is opportunity to address one such problem.	CAIP

Permit Revisions System Middle Tier Options

1. <u>Post-hoc review</u>	
Confusion as to whether part 70 emissions cutoffs have same meaning as NSR emissions cutoffs.	Louisiana
Do not require different basis (especially confusing in serious/severe areas); use netting like NSR	Texas, Louisiana
This is circular logic.	NRDC
Do not address change involving net-outs as pre-hoc. Use post-hoc notice together with reopening if net was bad.	Texas, CAIP
Current part 70 offers a model for post-change treatment of proposed “permit-only” terms.	CAIP
Risk of post-hoc is unacceptable if there is no liability protection built-in.	P&G
<p>If part 70 review has limited scope, this may offer liability protection (source meets minor NSR permit as issued)</p> <p>If shield attaches on NSR issuance, source is at much less risk. Can shield attach before EPA review? [EPA: no, unless the source is subject to liability from the start.]</p>	Texas, P&G

**Permit Revisions System
Middle Tier Options (Continued)**

2. Discussion of Options 1-3	
Clarify definition of "PTE limit" -- voluntary	ALAPCO
Draft exclusions from "minimal judgement" criteria are unreasonable and too strict	Lots of folks
Especially for calculated emissions reductions, which often involve minimal judgement	ALAPCO
Bring de minimis criteria for PTE limits in line with existing State practice --- give States discretion	Texas
Eliminate middle tier; if not significant then de minimis	P&G
Use streamlined process to create incentives for emission reductions (base on option 2-type criteria) and use these to establish de minimis	Texas
To work, must address liability if source claims de minimis but it really was not. Risk is vulnerability to reopening and liability from time change was operated.	NRDC
Quarterly notice is adequate to keep public abreast of de minimis changes that may be of concern. Also same old de minimis issue about how State can establish de minimis criteria to get part 70 approval.	Texas
Expanded de minimis track will still not address all industry concerns	CAIP
Middle tier may still offer some value for changes that deserve review, but not full-blown	ALAPCO

**Permit Revisions System
Middle Tier Options (Continued)**

Next Steps

<p>Minor “tinkering” probably will not fix the problems with draft rule.</p> <p>Suggest subgroup approach to reworking draft</p>	Shaw-Pittman
<p>Still must be sensitive to delay</p>	EPA, ALAPCO
<p>Goal: Move forward -- not back to 1995 position; [e.g., EPA veto waiver is still of concern]</p>	EPA
<p>Can a system be crafted to provide meaningful review for changes smaller than major??</p>	NRDC
<p>No pre-hoc review does not mean <u>no</u> review.</p> <p>Still think workable system can be crafted</p>	Texas
<p>Strive for policy compromise especially <u>re-veto</u></p> <p>Subgroups must involve <u>all</u> Major players including environmentalists. If so, there is reason for optimism.</p>	Shaw Pittman