

**Comment Summary Response & Concise Statement –
Revisions to the Petition Provisions of the Part 70 Operating Permits Program
LAC 33:III.531 and 533
Log Number AQ387ft**

COMMENT 1: LCA is cognizant of LDEQ's mandate to conform with the minimum requirements of the federal regulations at 40 C.F.R. Part 70, which define the minimum elements required for state operating permit programs, per 40 CFR 70.1. The amendments finalized by the EPA to the Title V permitting regulations, which were published on February 5, 2020 and became effective on April 6, 2020, must be incorporated into the appropriate LDEQ regulations.

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Without this proposed amendment, the EPA's 45 day review period of a proposed Title V permit commenced at the time EPA receives the draft permit from LDEQ. Generally, LDEQ sends the draft permit to EPA at the same time that it issues a public notice for a 30-day public comment period on the permit. The proposed rule will require LDEQ to provide EPA with a written response to "significant" comments received on proposed Title V permit actions in order to commence EPA's 45-day review period described in LAC 33:III.533.C. This particular amendment will create an undue burden on both the regulated community and the LDEQ, as it has the net effect of slowing review and issuance of permits. By disallowing the public and EPA comment periods to run concurrently in these situations, the proposed rule injects another layer of uncertainty and time delay into the process. Note that LDEQ already issues a statement of basis and a response to significant comments. Further, third parties desiring to petition EPA for objection already may do so up to 60 days after the end of the EPA's 45 day review period. The proposed amendment is simply not needed in order to provide EPA with sufficient oversight. The addition of 45 days after the close of comment, plus the amount of time needed for the LDEQ to draft response to comment and provide such to EPA is a significant extension to the Title V permitting process. This may discourage facilities from considering and implementing positive changes to operations as well as slowing important economic development projects.

No arguments necessary; comment does not suggest amendment or change.

* indicates a fast-track regulation

RESPONSE 1: As recognized by the commenter, LDEQ's Part 70 operating permits program, which is codified in LAC 33:III.507 and several other sections of LAC 33:III.Chapter 5 (Permit Procedures), must conform to the minimum requirements of 40 CFR Part 70 (State Operating Permit Programs). Per 40 CFR 70.1, "[t]hese regulations define the minimum elements required by the Act for State operating permit programs."

EPA expects any permitting authority that needs to revise its rules in order to implement any of the changes in its final rule titled "Revisions to the Petition Provisions of the Title V Permitting Program" [85 FR 6431] to initiate the program revision process per 40 CFR 70.4(i) (see 85 FR 6442).

COMMENT 2: It is not clear what is classified as a "significant" comment in Section 533.B. The term "significant comment" is nebulous at best and could sanction public comments becoming a forum to purposefully bog down issuance of needed permits. This portion of the proposed rule will not streamline the permitting process. Instead, it will elongate the already extensive period of time it takes to obtain a permit modification or renewal.

No arguments necessary; comment does not suggest amendment or change.

RESPONSE 2: EPA did not define the term "significant comment" in its "Revisions to the Petition Provisions of the Title V Permitting Program."

However, in the interests of providing some guidance on how EPA understands the term, the agency noted that its interpretation of this phrase is informed by the D.C. Circuit's framing of the relevant inquiry in its review of regulatory actions by federal agencies. For example, that court has explained that "only comments which, if true, raise points relevant to the agency's decision and which, if adopted, would require a change in an agency's proposed rule cast doubt on the reasonableness of a position taken by the agency." *Home Box Office*, 567 F.2d at 35 n. 58 (D.C. Cir. 1977) (see 85 FR 6440).

Significant comments include, but are not limited to, those that concern whether the Title V permit includes terms and conditions addressing federal applicable requirements and requirements under Part 70, including adequate monitoring and related recordkeeping and reporting requirements. It

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is the responsibility of the permitting authority to determine if a comment submitted during the public comment period on a proposed permit is significant (see 85 FR 6436).

COMMENT 3: [B]ecause certain aspects of the proposed amendments are unduly burdensome on the regulated community and frustrate the goal of timely permit review and issuance, LDEQ should ensure that it is in a position to quickly amend the Louisiana regulations should the underlying Federal Rule be repealed, amended, or revoked.

* * *

LCA requests that, in the event the underlying Federal Regulation is remanded, revoked, repealed, amended, or otherwise withdrawn, LDEQ should use its emergency rule making authority under La. R.S. 49:953 to immediately reinstate the present version of LAC 33:III.533.

No arguments necessary; comment does not suggest amendment or change.

RESPONSE 3: In the event the rule is amended or its effectiveness is suspended by action of EPA or a court of proper jurisdiction, LDEQ will reevaluate its procedures set forth in LAC 33:III.533.B.2.

Per the Administrative Procedure Act, in order to adopt an emergency rule, the department must find that there is “imminent peril to the public health, safety, or welfare,” or the rule must otherwise be necessary to avoid sanctions or penalties from the United States government (see R.S. 49:953(B)(1)).

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COMMENT #

SUGGESTED BY

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Lauren J. Rucinski, Kean Miller LLP, on behalf of the
Louisiana Chemical Association

Comments reflected in this document are repeated verbatim from the written
submittals.

Total Commenters: 1

Total Comments: 3