



## **Guidance for Permit Related Changes Under Title V**

The following is based wholly on District Rules 1401, 1410 and 40 CFR Part 70, all of which stem from Title V of the Clean Air Act (CAA). If questions arise, the referenced regulations should be consulted, as the rule requirements supersede this guidance.

### **1.0 Administrative Amendments (District Rules 1401(c)(3), 1410(i) and 40 CFR Part 70.7(d))**

Administrative amendments are characterized, most notably, by the following:

- Correction of typographical errors
- Name changes and changes in contact information
- Change of ownership (submittal must include documentation clearly stating owners' names and date of transfer)
- A change that requires more frequent monitoring or reporting
- Incorporation of changes made via a preconstruction review during which all requirements under Part 70 were fulfilled (i.e., enhanced authority to construct)
- Other, similar to the above

**Procedures :** The applicant must submit a complete application comprising Forms App116 and 1410-A and an estimated fee deposit pursuant to Rule 40. Once the District has received a complete application, the applicant may make the change. The District is required to forward a copy of the final permit to EPA.

**Example:** The District receives applications for changes in the responsible official on a fairly frequent basis. These are typical administrative amendments.

**Discussion:** Although most, if not all, administrative amendments do not demand immediate action to accommodate a physical change or a change that would affect compliance, they are almost always implemented immediately in pursuit of the accuracy and utility of the Title V permit. The key example of an administrative amendment – a change in the responsible official – usually necessitates an immediate change to the permit.

### **2.0 Administrative Amendment - Enhanced Authority to Construct**

As provided by District Rule 1410(q) and 40 CFR § 70.7(d)(v), the enhanced authority to construct (also referred to as “merged NSR”) allows for all Title V procedural requirements, most notably public notice and EPA review, to be met at the time of construction review. Once this is accomplished and the ATC is issued, the Title V permit can be changed as an *administrative amendment*. The enhanced ATC process applies to

minor and significant modifications and must be requested by the applicant at the time of construction permit application submittal.

The enhanced ATC requires additional application form 1410E. It should be recognized that issuance of the District ATC will be delayed until completion of public notice, EPA review, and response to any comments as required.

**Procedures:** The minimum action, and the key action for any enhanced ATC, is public notice, which includes review by EPA and affected states. Public notice for the enhanced ATC follows the same of that required for new and renewed Title V permits, and significant modifications. Additionally, the applicant must submit a certification of compliance using form 1410-B or 1410-I prior to incorporation of the change into the Title V permit.

**Example:** A recent application for a significant modification was processed as an enhanced authority to construct as requested by the applicant. The issuance of an ATC was accompanied with the additional procedures required by Rule 1410(q), most notably public notice and EPA review.

### **3.0 Operational flexibility** under CAA Section 502 § (b)(10)

Operational flexibility under District Rules 1401(c)(43) and 1410(l), and 40 CFR §§ 70.4(d)(3)(viii) and 70.4(b)(12) encompasses any change that does not require a permit revision, if the change *is not*:

- A modification under any provision of Title I of the federal CAA
- A change that would cause a violation of any applicable requirements or result in an exceedance of emissions allowed under the permit

**Procedures:** For each change qualifying as operational flexibility, the applicant must notify the District and the EPA in writing at least 7 days prior to implementation of an op-flex change. This notice must include a brief description of the change, the date on which the change will occur, any changes in emissions, and a listing of any permit term or condition affected. Submittal to the District must include a complete application comprising Forms App116 and 1410-C and estimated fees pursuant to Rule 40. The District continues to consider the future plausibility of streamlining operational flexibility changes as allowed under District Rule 1410 and 40 CFR 70.4(b)(12), and any applicable District permitting requirements.

**Example#1:** The District recently processed more than one application in which a District certificate of registration had been issued some years ago for equipment that was claimed to be portable. Based on site observations, the equipment was found to have remained onsite for more than 12 months, therefore disqualifying it from being a portable emission unit under Rule 12 § (c)(8), and subjecting it to permitting under Rule 10. Upon

receipt and initial review of the application, the District determined that no new or increased emissions would result, and that no Title I (NSPS, NESHAP, PSD, et al) requirements would be triggered as a result of this project. The change was processed under Title V as operational flexibility on this basis, but also based on the fact that the source was expected to comply with the requirements of the new stationary source permit by complying with the existing requirements of the registration program, which are cited categorically in the Title V permit. The District placed documentation in the Title V permit file for future reference. Immediate changes to the Title V permit were deemed unnecessary and, given the categorical reference to comply with any and all Certificate of Registration requirements (which is part of all Title V permits), changes to the Title V permit are not expect at all for this endeavor.

**Example#2:** The District recently processed an application for *new equipment* to be registered pursuant to District Rule 12. As a matter of policy established some years ago, the District does not formally list certificates of registration in the Title V permit, in contrast to the District permits (a.k.a., emission units) that are wholly incorporated into Appendix A of the Title V permit. A section was established in the general “boilerplate” of the Title V permit some years ago which addresses registered equipment and which states that the permittee must comply with the requirements of the registration program. For the subject application for registration of new portable equipment, the change qualifies as operational flexibility because the Title V permit already contains the provision for registrations and, though new equipment is being introduced, no changes are necessary in the Title V permit.

**Discussion:** The operational flexibility provision affords the permittee the ability to make certain types of changes without a revision to the permit, and with minimal notification. However, the District’s rules are in many instances more stringent than federal requirements, and often limit the operational flexibility provision as it appears in Part 70. The provision language in District Regulation XIV is slightly different than that in federal regulation. Perhaps more importantly, District Rule 10 requires permitting on a more stringent basis than federal rules. Given the often greater stringency of the rules covering Title V permitting, District rules should always be reviewed alongside the operational flexibility provision when considering a change under Title V. Frequently, a change that may qualify as operational flexibility begs the question of *whether and when* a change to the Title V permit will be made, pending issuance of a District permit.

**4.0 A Minor Permit Modification** (District Rules 1401(c)(27) and 1410(j); 40 CFR § 70.7(e)(2)) is a modification that would not trigger federally-mandated new source review. A permit modification *shall not* qualify as minor if the permit modification:

- Causes a violation of any applicable requirement
- Involves significant relaxation to monitoring, recordkeeping, or reporting (MRR) requirements (see also last paragraph of Significant Modification section)

- Requires the establishment of, or requires a change in an existing federally-mandated source-specific emission limitation or standard (e.g., a case-by-case determination of control requirements for federal hazardous air pollutants under Section 112 of the federal CAA), or a federally-mandated source-specific determination for temporary sources of ambient impacts on air quality, or a visibility or air quality increment analysis
- Changes permit terms and conditions (e.g., a voluntary emissions cap) for which there is no applicable requirement(s), but which terms and conditions the source accepted in order to qualify as exempt from an otherwise applicable requirement
- Is a "modification" under any provision of Title I of the federal CAA, or results in an emissions increase that would trigger federally-mandated new source review, or
- Is a change involving a federal hazardous air pollutant that is subject to review and required to install Maximum Achievable Control Technology (MACT) under Section 112(g) of the federal CAA.

**Procedures** (see Rule 1410 for full procedural sequence): The applicant must submit a complete application, which includes Forms App116 and 1410-B and a deposit of estimated fees pursuant to Rule 40. The District is required to notify the EPA and affected states of any minor modification within 5 days of receiving a complete application. Once a draft permit has been prepared, the District must submit the proposed permit for 45-day EPA review. The applicant may proceed with the change upon submittal of a complete application, but does so at its own risk prior to EPA concurrence. The District is required to forward a copy of the final permit to EPA.

**Example:** The District recently processed an application for a minor modification in which the source requested deletion of a testing requirement for one of three identical emission control units in lieu of testing which was previously performed on another of these units. The prior test results were understood to provide representative data for all three units. The applicant requested that the change be processed as operational flexibility under Section 502(b)(10). The emission control units had been installed voluntarily for PM control. The criteria defining operational flexibility, minor and significant modifications were examined closely to determine the required permitting track. At the core of the definition of operational flexibility is that a qualifying change does not necessitate a revision to the permit. Because the existing permit contained a condition requiring emissions testing, it needed to be changed to accomplish the request of the application. Therefore, it did not qualify for operational flexibility. After considering the criteria of minor modifications and significant modifications, the chief issue was whether deletion of the test requirement represented significant relaxation, specifically significant relaxation of monitoring, record-keeping or reporting (MRR). Significant relaxation to MRR would have pushed the associated change into the significant modification track. Therefore, the key question was whether deletion of the test requirement constituted such a "significant relaxation." It should be recognized that

the existing permit requirements for this facility previously established an emissions determination framework, and that the emission control units' emissions (as well as other site emissions) were required under this framework to be calculated periodically for compliance demonstration based on a methodology which was based in part on the prior test results. In examining this issue, more than one EPA document was found that referred to source testing as a means of compliance demonstration separate from the monitoring component of MRR. On this basis, and the fact that a prior representative test had been conducted, the change was processed as a minor modification.

**Key consideration:** whether the change will result in significant relaxation of monitoring, record-keeping and reporting requirements; if so, it would be a significant modification. (NOTE: With this consideration, see also Significant Modification reference to MRR.)

**5.0 Significant Modifications** (District Rules 1401(c)(44) and 1410(k); 40 CFR Part 70.7(e)(4) and (h))

"Significant Permit Modification" means any modification to a permit issued pursuant to this regulation that is not an administrative amendment or a minor modification, or any modification to such permit which:

- Causes a violation of any applicable requirement; or
- Involves significant change in existing monitoring permit terms or conditions or relaxation to monitoring, recordkeeping, or reporting requirements; or
- Requires the establishment of, or requires a change in, an existing federally-mandated source-specific emission limitation or standard (e.g., a case-by-case determination of control requirements for federal hazardous air pollutants under Section 112 of the federal CAA), or a federally-mandated source-specific determination for temporary sources of ambient impacts on air quality, or a visibility or air quality increment analysis; or
- Changes permit terms and conditions (e.g., a voluntary emissions cap) for which there is no applicable requirement(s), but which terms and conditions the source accepted in order to qualify as exempt from an otherwise applicable requirement; or
- Is a "modification" under any provision of Title I of the federal CAA, or results in an emissions increase that would trigger federally-mandated new source review; or
- Is a change involving a federal hazardous air pollutant that is subject to review and required to install Maximum Available Control Technology (MACT) under Section 112(g) of the federal CAA.
- A change of location requires a significant permit modification

Any relaxation of monitoring, reporting or recordkeeping requirements at a source required to have a permit to operate (e.g., a change from daily to monthly recordkeeping) shall be a significant modification (statement in definition of Rule 1401).

**Procedures:** The applicant must submit a complete application, which includes forms equivalent to those required for a new or renewal permit. These forms are listed on the District’s website (the most basic of these are Forms App116 and 1410-I). The key requirements for a significant modification comprise public notice for review and comment, and notice to the EPA and affected states for review and comment in accordance with Rule 1410 and 40 CFR Part 70.7(h). The District is required to forward a copy of the final permit to EPA.

**Example:** A recent District application was processed for replacement of a gas fired turbine generator at an electric power generation facility. At the time of application submittal for the replacement unit it was not clear exactly what conditions would be included for the new unit, as compared to the existing unit. Upon review of the permit application it was determined that the change would be either a minor or a significant modification. The minor modification track was examined, but one issue remained: 1) New conditions might result in a “...significant change in existing monitoring permit terms or conditions...” For this reason the change was identified as a significant modification. The permit, as proposed and issued, did indeed include additional monitoring conditions, thus confirming this as the correct determination.

**6.0 Reopening of a Permit** (District Rule 1410(o); 40 CFR Part 70.7(f))

The reopening of a permit is initiated by the District on the basis of any of the following:

- Additional requirements promulgated under the federal CAA become applicable to a major source with at least three years remaining on the permit term.
- Additional requirements (including excess emissions requirements) become applicable under the federal Acid Rain Program.
- The District APCO or the EPA Administrator determines that the permit must be revised or revoked to correct a material mistake, or because inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit; or to assure compliance with all applicable requirements.

**Examples:** No examples of permit reopenings were known to be available for this guidance.

**Table of Examples**

<b>Project/Action Description</b>	<b>Type of Change Under Title V</b>	<b>Rationale</b>
Change in facility’s responsible official	Administrative change	Key example of such a change as given by regulation
Significant modification	Enhanced ATC	Applicant request granted



**Air Pollution Control Board**

Greg Cox                District 1  
 Dianne Jacob        District 2  
 Dave Roberts        District 3  
 Ron Roberts         District 4  
 Bill Horn             District 5

		given provision under Rule 1410 and 40 CFR 70.7
Portable aggregate screen (registration under Rule 12)	Operational flexibility under Section 502 (b)(10)	Title V permit already contains provision for registered equipment
Deletion of redundant test requirement	Minor modification	Representative test performed on identical unit; change is not significant change in MRR
Replacement of power unit (EGU)	Significant modification	Significant changes to monitoring conditions necessary

**Closing discussion**

The above guidance is intended to provide useful reasoning, based on regulations, which will aid in the determination of the correct Title V permit track for a given change. However, it may not always be clear which track is required. The District expects to work with Title V sources in determining the appropriate course, given an absence of clarity. This lack of clarity is most often realized when considering a change that may require a minor or significant modification, or possibly be implemented as operational flexibility. In general, when examining two possible tracks with remaining uncertainty, it may be advisable to submit under the track with greater requirements (e.g., operational flexibility default to minor modification, et al).