

AIR PERMIT CLIMATE – AN ATTORNEY’S PERSPECTIVE

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Breadth. Depth. **Results.**

Why do Attorneys need to be involved?

- Developing a permitting strategy
- Confirming applicable requirements
- Representing the Permittee in the public review process
- Negotiating compliance plans and schedules
- Assisting the source to comply with ongoing permit requirements
- Protecting internal compliance discussions

Developing a permitting strategy

- What permit is potentially required?
- Avoiding Major Source Status
 - ▶ PSD (RMRR, netting, future projected emissions, demand growth)
 - ▶ NSR (25 tpy vs 100 tpy, anti-backsliding)
 - ▶ Title V
 - ▶ MACT requirements
- Avoiding public attention
- Obtaining maximum flexibility
- Avoiding project delays
- Resolving potential enforcement concerns

Confirming Applicable Requirements

- Permit Applications
- Permit Conditions
 - ▶ Are the included requirements truly applicable?
 - ▶ Are proposed emissions and other limits too restrictive?
 - ▶ Are monitoring, recordkeeping and reporting requirements appropriate?
- Some recent examples include:
 - ▶ GHG issues
 - ▶ Coating and other RACT requirements
 - ▶ Incinerator requirements
 - ▶ NSPS Subpart Kb (VOL storage)

Representing the Permittee

- When is public notice/hearing required?
- What should and should not be in the Agency's File?
 - ▶ Application
 - ▶ Subsequent correspondence/responses to comments
- How to prepare for public meeting/hearing?
- Who should be the permittee's public face?
- How to keep the Agency focused despite public attention?

Negotiating compliance plans and schedules

- How much time is reasonable/appropriate?
- What interim steps are necessary?
- What level of detail is required?
- When should you discuss with the Agency?
- What do you do when achieving compliance is in the Agency's hands?
 - ▶ Issuing permit
 - ▶ Resolving enforcement matter

Complying with ongoing permit requirements

- Submitting new or revised permit applications
- Revising annual emissions reports
- Reporting of deviations
- Annual and semi-annual compliance reports
- When must the permit be reopened and updated?
- Potential self disclosure protections

Protecting internal compliance discussions

- Conducting internal investigations
 - ▶ Failure to operate controls
 - ▶ Source of prior emissions factors
- Responding to whistle blower claims
- Environmental audit protections
 - ▶ EPA Audit Policy
 - ▶ Interim New Owner Policy
- Protecting discussions from disclosure
 - ▶ Attorney client privilege
 - ▶ Attorney work product protection

Thanks!

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