

Issue 2: Including information and limits from prior permits and permit applications

Applicable Requirements:

- required by any federal rule that applies to the source such as National Emission Standard for Hazardous Air Pollutants (NEHSAP) or New Source Performance Standards (NSPS);
- approved by EPA in the State Implementation Plan (SIP).
- required by a state permit to construct;
- part of a federally approved consent agreement with the Department; or
- in the source's Title V permit.

Federally Enforceable Limitations: a federally-enforceable limit is a physical or operational limitation on the capacity of a source to emit an air pollutant. A **limitation** has been considered federally enforceable if it is enforceable as a practical matter

In order for a limitation to be enforceable as a practical matter it must allow verification of the source's compliance with federally enforceable requirements. In general, a practically enforceable limitation should:

- include a technically accurate limitation and identify the portions of the source subject to the limitation;
- define the time period for the limitation (e.g. hourly, daily, monthly, or annual limits); and
- describe the method to determine compliance, including appropriate monitoring, record keeping, and reporting

Title V Permit: must assure compliance with all applicable requirements

Summary of Comments

- Support a narrow focused approach under which only application information directly related to an applicable requirement would be enforceable
- Applicable Requirements come from Code. Capacity is not in Code, therefore it is beyond the scope of the statutes. Just because [capacity] is in the application does not mean it is enforceable. The statute defines permit content and enforcement is outside of permit content
- Addition of multiple or separate limitations in permits would resolve the question. Include a pound per hour as well as pound per million BTU heat input limit
- EPA concern is how the information submitted is relied upon in determining applicability and demonstrating compliance. All the information in the application is used to determine the approval of a construction permit and any changes to that information must be reviewed to verify applicability and compliance remains satisfied
- Information contained in application is used when there are problems and as credible evidence when pursuing enforcement. Applications are important documents
- Application information becomes enforceable through the permit. There is evidence of confusion about how the information in an application becomes enforceable. The information is an "applicable requirement" and therefore must be included in the permit, enforceable, and paired with sufficient monitoring and reporting
- DNR should not say that the tables providing details of the emission units are not enforceable. Recommend the DNR says that the information in the table may be enforceable through other statutory, administrative code, and or permit provision set forth elsewhere
- Avoid bundling citations and authority when writing permit limitations. An emission unit is required to meet all of the following
- The description of the emission units provide an understanding of what the unit is and help determine if the unit is accurately regulated
- Descriptions must keep in mind that specific information regarding the capacity of an emission unit may be deemed confidential by sources
- Disagree that any information provided in a permit application or listed in the permit preamble becomes enforceable, including production, throughput, and heat input capacities. Equipment descriptions in the preamble and as table headers are there for informational purposes and not to

establish limits or applicable requirements. There are isolated instances where capacity information is included in permits as limits, but as a general rule it would be difficult to prove or show compliance with such a limit

- Sources are obligated to provide information. The DNR's core responsibility is to issue permits and verify compliance with the permits

Summary of Proposals:

- **Response to comments: Change the statement in the Table**

Inclusion of Unit Descriptions Table in Preamble as Statement of Basis

Description of Emission Units Table
Note: The information describing the processes listed below are from the application materials and were relied upon in determining the applicable requirements
A. Process P10, control device C10, Stack S10 – Pulverized Coal Fired Boiler with maximum rated heat input capacity of 875 mmBTU/hr. controlled by electrostatic precipitator, installed 1984
B. Process.....(continue list of processes covered under this permit action)

- **Response to comment: Federally enforceable Limits**

Recommend change in policy of bundling of emission limits - Prepare and Propose Guidance to separate out emission limits

Provide guidance/training to DNR staff on limiting PTE

- **Response to comments: When to include Heat Input Capacity**

Capacity is to be included when it is necessary to assure compliance with an emission limit and paired with adequate monitoring

Provide guidance/training to DNR staff on limiting PTE and writing effective permit conditions

Provide examples of decisions and permit conditions