

### **Operational Flexibility**

- ◆ Allows sources to make certain changes without a permit revision

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### **Operational Flexibility**

- ◆ **Mandatory**
  - Authority to contravene permit terms not supported by the underlying rule, as long as emission limits are not exceeded
  - permit terms which allow for trading of emissions increases and decreases to comply with the Federally enforceable emissions cap
- ◆ **Optional**
  - Authority to trade emissions increases and decreases if such trading is allowed by the applicable SIP

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### **Alternative Operating Scenarios** (The Basis of Operational Flexibility)

- ◆ Increases and decreases in number of shifts
- ◆ Changes in type and size of equipment
- ◆ Increases or decreases in material throughput rates
- ◆ Changes in the types of material used in production process

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### **What Scenarios Must the Permit Contain?**

- ◆ Reasonably anticipated operating scenarios
- ◆ Identified by the source in its application
- ◆ As approved by the permitting authority

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### **What is in the Permit**

- ◆ Terms to ensure each alternative meets applicable requirements and Part 70
- ◆ Shield may apply to scenarios

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### **What is an Off Permit Change**

- ◆ Changes not addressed or prohibited by the permit
- ◆ Changes not subject to:
  - Title I Modifications
  - Title IV Acid Rain Requirements

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### How to Make Off Permit Change

- ◆ Contemporaneous notice to authority and EPA
- ◆ Record kept at facility of changes subject to an applicable requirement and emissions resulting from change

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### Federal & State Enforcement Against Off Permit Changes

- ◆ Any prohibition of off permit changes enforceable as a matter of State law only

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### PERMIT CHANGES

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### Permit Revisions

- ◆ Administrative permit amendment [70.7(d)]
- ◆ Minor permit modification [70.7(e)(2)]
- ◆ Group processing of minor permit modifications [70.7(e)(3)]
- ◆ Significant modifications [70.7(e)(4)]

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### Administrative Permit Amendment

- ◆ Types of changes: [70.7(d)]
  - Typographical errors
  - Change name, address, phone number, or similar
  - More frequent monitoring or reporting
  - Change in ownership with transfer agreement, if no other permit change needed

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### Admin. Permit Amendment - 2

- ◆ Types of changes: [70.7(d)]
  - New source review (NSR) permit enhanced to provide process equivalent to one of modification tracks and compliance requirements equivalent to Section 70.6
  - Other types approved by EPA
- ◆ Shield may apply to NSR permit enhanced to significant modification track
- ◆ Permit revised within 60 days
  - Source makes change immediately
  - No public process, affected state review required
  - EPA gets notice, but no review

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### Minor Permit Modification - Principles

- ◆ **Maintains current law**
  - Current law allows small emissions increases under PSD/NSR program. MPM allows same increases - even adds review.
  - “Stacking of MPM’s” not allowed - maintains current policy
- ◆ **Provides adequate review**
  - 90-day State review, 45-day EPA review, after change

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### MPM - Principles - 2

- No shield - if change denied, source returns to original permit. Must comply with applicable requirements.
- ◆ **Allows small changes without unreasonable delay**
  - Ability to make small changes quickly was common industry theme
- ◆ **Protects compliance terms of permit**
  - Only insignificant monitoring changes allowed through MPM - no relaxations

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### MPM - Principles - 3

- ◆ **Flexible approach to expeditious processing**
  - States must adopt “expeditious procedures” - may use EPA’s model or one that provides equivalent streamlining
  - States may require more process

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### Minor Permit Modification - Gatekeepers [70.7(e)(2)(i)]

- ◆ **Can not use MPM for:**
  - Significant changes to monitoring, reporting, recordkeeping
  - Title I modifications
  - Case-by-case emission limits, such as 112(g) modifications or RACT equivalency, or source-specific determinations of ambient impacts, visibility or increment analysis

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### MPM - Gatekeepers - 2

- ◆ **Can not use MPM for:**
  - permit terms with no applicable requirement that source takes to avoid an applicable requirement, such as:
    - » federally enforceable emissions cap to avoid Title I modifications, or
    - » early reductions limit
- ◆ **Can not use MPM for: [70.7(e)(2)(i)]**
  - Violations of applicable requirements

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### MPM - Gatekeepers - 3

- Changes required by State to be processed as significant
- ◆ **May be used for:**
  - Insignificant monitoring changes
  - Changes using market-based programs that explicitly allow MPM process

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### Minor Permit Modification - Process [70.7(e)(2)(ii)-(v)]

- ◆ How source makes changes
  - Files a complete application describing change, requesting MPM procedure, and certifying that change qualifies
  - Application includes suggested draft permit
  - Receives “qualified exemption” from original permit. Exemption lost if source fails to comply with proposed permit.

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### MPM - Process - 2

- Make change while application is pending
- ◆ Review Process
  - Public review not required
  - Review by State, EPA, and affected States - after change occurs
  - Up to 90-day State review, 45-day EPA review

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### MPM - Timing [70.7(e)(2)(iii)-(v)]

- ◆ Within 5 days of application, State notifies EPA and affected States
- ◆ May issue permit after EPA’s 45-day review expires, or after EPA notice that it will not object

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### MPM - Timing - 2

- ◆ 90 days after receipt, or 15 days after EPA’s review ends, whichever is later, Permitting Authority:
  - Issues modification as proposed
  - Denies the application
  - Finds that request fails to meet criteria for MPM, or
  - Revises draft permit and sends EPA new proposed permit

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### Group Processing of Minor Permit Modifications [70.7(e)(3)]

- ◆ “De Minimis” emissions threshold
  - State may set its own threshold levels
  - If State does not set levels, EPA’s levels apply
- ◆ Gatekeepers
  - Same as MPM - no significant monitoring changes, no Title I modifications, etc.
  - Changes are collectively below threshold level

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### Group Processing of MPM - 2

- ◆ Quarterly review by EPA and affected States
  - Except: if changes collectively exceed threshold, submit in 5 days
- ◆ Same enforcement protection as MPM
  - No shield, and if permit denied, source returns to terms of original permit

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**Significant Modifications**  
 [70.7(e)(4)]

- ◆ Any permit change not an MPM or administrative amendment
  - Significant monitoring changes
  - Relaxations of reporting and recordkeeping
- ◆ Full review process
  - Same review process as applies to permit issuance and renewal
  - Except: permitting authority completes most reviews in 9 months
- ◆ State may allow permit shield

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**Permit Modifications and the Permit Shield**

Category of Modification	Can Permit Shield Apply
◆ Operational Flexibility	Yes
◆ Off Permit	No
◆ Administrative	Yes
◆ Minor	No
◆ Significant	No

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**Reopenings for Cause [70.7(f)]**

- ◆ Permit must be reopened when:
  - New requirements apply to major sources and 3 or more years remain before permit is due to expire. Complete the reopening 18 months after new requirement promulgated. Reopening not required if effective date of requirement is beyond expiration date of permit.
- ◆ Permit must be reopened when:
  - New requirements apply to acid rain sources

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**Reopenings for Cause - 2**

- State or EPA finds material mistake or inaccurate statement made in establishing permit terms
- State or EPA finds reopening is necessary to assure compliance with applicable requirements (example - reopen to include compliance plan)

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**Reopenings for Cause - 3**

- ◆ Reopenings follow permit issuance process
  - Same review process used for permit issuance and renewal - public, EPA, and affected State review
  - Review those parts of permit being reopened
  - At least 30-day notice to source prior to reopening
  - State may allow permit shield

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**Reopenings by EPA [70.7(g)]**

- ◆ EPA may find “cause exists” to reopen
  - Reasons for reopening are those in Section 70.7(f)
- ◆ Process takes at least 9 months
  - EPA notifies permitting authority and permittee that cause exists
  - In 90 days, State sends EPA a proposed finding to terminate, modify, revoke or reissue permit. EPA may extend deadline 90 days. If State fails to send finding, EPA reopens.

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## Reopenings by EPA - 2

- 90-day EPA review of finding
- Permitting authority has 90 days to resolve EPA objection and terminate, modify, or revoke and reissue permit. If State fails to resolve objection, EPA reopens.
- ◆ If EPA reopens permit:
  - 30-day notice to permittee
  - Opportunity to comment and a hearing

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## PERMIT FEES

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## Purpose of the Fee System

- ◆ Cost recovery mechanism built into 1990 CAAA
- ◆ Relationship to Section 105 grants

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## Fees Recover all Direct and Indirect Costs

- ◆ Broad versus narrow interpretation of indirect
- ◆ Mandated cost recovery for:
  - Reviewing and acting on permit applications
  - Implementing and enforcing permit terms
  - Emissions and ambient monitoring
  - Preparing regulations and guidance
  - Modeling, analyses, and demonstrations
  - Preparing inventories and tracking emissions

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## Other Costs to Recover

- ◆ Program development
- ◆ Program administration/ maintenance/ overhead
- ◆ Fee invoicing and collection
- ◆ Certain SIP development activities
- ◆ Information management (pro rata share)
- ◆ Small business assistance programs under Title V
- ◆ Training (all Title V related training and a prorated share of other types of training)

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## Cost excluded from Fees

- ◆ Mobile source/natural source costs
- ◆ Court costs and other enforcement action costs

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## Fee Basics

Actual Emissions  
or  
Permitted Emissions

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## Actual Emissions

- ◆ Advantage
  - Possible economic incentive for reducing emissions if control costs < \$/ton fee
- ◆ Disadvantages
  - Potential to over/under charge due to inaccuracy of emissions inventories
  - Possibility of fraud
  - Varying fees -- hard to budget
  - No incentive to reduce legal potential to emit

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## Permitted Emissions

- ◆ Advantage
  - Early calculation of fees to allow budgeting
  - Incentive to reduce unneeded potential to emit
- ◆ Disadvantage
  - Permitted emission limit is not always clear (consider operational flexibility)
  - No economic incentive to reduce actual emissions

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## Emissions Excluded from Fee Calculations

- ◆ Carbon monoxide
- ◆ Emissions of any regulated pollutant over 4000 tpy
- ◆ Substances regulated solely under Section 112(r) of CAA (accidental releases)
- ◆ Substances regulated solely under Section 602 of CAA (stratospheric ozone)
- ◆ Insignificant quantities
- ◆ Acid rain sources

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## Presumptive Minimum Fee

- ◆ Standard by which aggregate fee rate is initially judged
- ◆ Starts at \$25/tpy (1990 dollars)
- ◆ Adjusted annually for inflation (CPI)
  - Adjusted August 31 each year
  - \$29.05 as of August 1996

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## Types of Fees

- ◆ Application -- fee to apply
- ◆ Emissions ---- fee on emissions
- ◆ Service ----- fee to complete a permitting action

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### Emission Fees

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- ◆ "Fair share" cost based on proportion of emissions
- ◆ Offers economic incentive for emission reductions
- ◆ May vary by pollutant

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### Service Fees

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- ◆ Actual cost of doing business
- ◆ Pay as you go/pay on use
- ◆ Increased fairness/higher complexity

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### FEE DEMONSTRATION

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### The Fee Demonstration

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- ◆ Presumptive minimum fee
  - \$25/ton
  - 1990 dollars
  - Annual adjustment by CPI
- ◆ If less than presumptive minimum, or if challenged
  - Accurate estimation of costs
  - Accurate inventory
  - Fee revenue adequately supports program costs

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### Conditions Requiring Fee Demo

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- ◆ Charging less than presumptive minimum
- ◆ Adequacy of fee structure is challenged

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### Elements of Fee Demo

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- ◆ Adequate identification of permitting activities
- ◆ Proper Accounting of cost of activities
- ◆ Accurate emissions inventory
- ◆ Allocation of costs among sources/emissions

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### **Restriction on Fee Revenue**

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- ◆ Retained by Air Agency
- ◆ Permitting related activity only

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### **EPA Oversight of the Permit Program**

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- ◆ Non-approvable permit program
- ◆ Inadequate administration and enforcement

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### **SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND COMPLIANCE ASSISTANCE PROGRAM**

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### **Program Elements**

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- ◆ Small Business Assistance Program (SBAP)
- ◆ Small Business Ombudsman
- ◆ Compliance Advisory Panel

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### **Small Business Assistance Program (SBAP)**

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- ◆ Provides technical and compliance assistance
- ◆ Promulgated in a SIP revision
- ◆ Funded by Title V fees

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### **Major Elements of SBAP**

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- ◆ Mechanism for developing and collecting information
- ◆ Pollution prevention assistance
- ◆ Compliance assistance
- ◆ Notice of rights
- ◆ Notice of obligations
- ◆ Consideration of modification requests

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### **Small Business Ombudsman**

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- ◆ Represents the interest of small businesses in rule development
- ◆ Provides assistance to small businesses

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### **Compliance Advisory Panel**

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- ◆ Oversees SBAP
- ◆ Monitors compliance with relevant legislation

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### **Source Eligibility to Receive Assistance**

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- ◆ Section 507(c) of CAA
- ◆ Permitting authority option to add or exclude

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