

## **NEWS RELEASE**

For Immediate Release  
April 15, 1999

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### **NYPIRG Petitions EPA Administrator Carol Browner to Correct Deficiencies in New York's Air Pollution Program**

The New York Public Interest Research Group (NYPIRG) released a petition to United States Environmental Protection Agency (EPA) Administrator Carol Browner today requesting that she make a formal determination that the New York State Department of Environmental Conservation (DEC) is improperly administering New York's Clean Air Act Title V Permitting Program. NYPIRG contends that deficiencies in New York's Title V program cripple public participation efforts and undermine attempts to determine whether polluters are complying with air pollution laws.

"Power plants, factories, and other large facilities contribute significantly to air pollution problems in New York State," said Keri Powell, staff attorney for NYPIRG. "The public has a right to know when these polluters are violating the law, and to hold them accountable when they do. Unfortunately, flaws in New York's Title V permitting program complicate public participation efforts and allow polluters to escape legal liability for withholding information about pollution violations."

According to the petition, "New York State's standard Title V permit application form fails to satisfy legal requirements." The permit application fails to require descriptions of applicable requirements and descriptions of or references to applicable test methods for determining compliance with those requirements. The application also fails to require applicants to certify that their facility is currently in compliance with the law.

In the past, the complexity of the regulatory system made it so that the public had virtually no idea whether polluters were complying with emission limitations. In 1990, Congress attempted to remedy this problem by amending the Clean Air Act to require large polluters to obtain operating permits. These permits must contain all air quality rules that apply to a facility, along with monitoring, maintenance, and record-keeping requirements sufficient to demonstrate

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full compliance. Permit applications, permits, compliance reports, and any monitoring or record-keeping information required under a permit are available for public inspection. Title V permits are enforceable by the state and federal government, as well as by members of the public under the Clean Air Act citizen suit provision.

Before being issued a permit, a permit applicant must certify that his or her facility is in full compliance with air quality laws. If the permit applicant is in violation of any air pollution law, the applicant must submit an enforceable schedule by which the facility will be brought into compliance.

“Reliable compliance certifications are essential to the success of New York’s permitting program,” said Larry Shapiro, senior attorney for NYPIRG. “Under federal law, applicants may suffer both criminal and civil penalties for falsely certifying compliance with air quality laws. The permit application form developed by DEC does not require an applicant to sign a statement certifying compliance with air pollution rules as required by law. Nor does the application form ask applicants to identify currently employed monitoring and record-keeping activities that might form the basis for such a certification. To make matters worse, the permit application fails to request legally required background information that is essential for effective public participation in permit proceedings.”

NYPIRG asked EPA to mandate changes in New York’s Title V program that would bring the program into compliance with federal requirements.