

the PERMITTING AUTHORITY

"LETTERS TO THE FRONT LINE"

VOL. 1 NO. 2

BY THE PERMITS PROGRAMS BRANCH, AIR QUALITY MANAGEMENT NOVEMBER, 1992

We're B-a-a-a-ck!!!

Not only are we back from far-flung workshops on the new permits rule, but we're back hunched over our word processors trying to get our creative newsletter juices flowing again.

Barring any plans for more back-to-back workshops, we aim to publish this newsletter on a bi-monthly basis. Our aspirations and plans for The Permitting Authority are found elsewhere. (Look for Kirt's article.) But first, we cut to the chase. That's right, it's time for Q's and A's.

Moldy Oldies: Those Q's and A's You Thought We Had Forgotten About

Here's a down payment on our commitment to answering the stockpile of questions put to HQ by the Regions. We chose to address questions which have not been addressed in any recent conference calls (and our task was made easier by the fact that Region II supplied very good proposed A's along with their Q's).

(1) Q: What is the meaning of "contiguous" as used in the definition of source?

A: The definition of major source in §70.2 requires that all commonly owned or controlled stationary sources on contiguous or adjacent properties be aggregated (if they are within the same SIC major group) for purposes of determining if the source is major. The definition of contiguous will have the same meaning and application as under the PSD regulations. Refer to the preamble of the August 7, 1980 PSD final regulation (specifically, pages 52695 and 52696 of the Federal Register), as well as the EPA NSR Guidance Notebook (ref: determinations #3.18 and #3.25).

(2) Q: What happens if there is a disagreement between the permitting authority and the applicant over compliance plans?

A: Title V requires that the application be accompanied by a compliance plan. Typically, the permitting authority will attempt to negotiate an acceptable compliance plan

with the permittee. Many States have some sort of appeals process involving a governing board or commissioners that helps resolve disagreements. If this process fails and if a source submits an unacceptable compliance plan, the permitting authority may deny the permit (and may take enforcement action based on the source's failure to properly apply for a Title V permit). Alternatively, the permitting authority may issue a permit with a compliance schedule with which the source does not agree. The source would then have the option of challenging the compliance schedule in State court.

(3) Q: What is meant by "deferral of non-major sources"? What sources may be deferred and until when?

A: Non-major sources are those that are subject to Title V but are not "major" as defined in §70.2. Non-major sources include area sources subject to Section 111 (NSPS) and area sources subject to a NESHAP under Section 112.

Permitting authorities have the option of deferring non-major sources (other than acid rain affected sources and municipal waste incinerators) from the requirement to obtain a Title V permit. With respect to non-major sources subject to an NSPS or section 112 requirement in existence as of the date of the Part 70 promulgation, this deferral will continue until EPA completes a rulemaking to consider continued deferral of non-major sources. However, with respect to non-major sources subject to NSPS and NESHAPS promulgated after the date of the Part 70 promulgation, EPA will make a case-by-case [Continued on page 2]

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decision on whether the standard should provide a deferral for non-major sources.

For example, EPA proposed on November 15, 1991 that all dry cleaning facilities which emit perchlorethylene(including area sources) be required to obtain Title V permits.

The EPA's rulemaking on the issue of continued deferral for non-major sources will be completed within 5 years of the date on which EPA first approves a State program that defers non-majors.

(4) Q: What are the mechanisms for securing "federally-enforceable limitations" to avoid the purview of the Title V program?

A: States may use the following means of establishing federally-enforceable limitations to avoid classifying sources as major by limiting their potential to emit to below the relevant applicability threshold:

(a) NSR approved into a SIP -- Limitation on potential to emit to below major limits created by an NSR permit pursuant to a State program that is part of an approved SIP will be recognized as federally enforceable, and the source does not need to obtain a Title V permit.

(b) SIP revisions (source-specific) -- Any source-specific limit imposed in a rule submitted to and approved by EPA as a SIP revision is federally enforceable.

(c) EPA-approved State operating permits program - The June 28, 1989 Federal Register (54 FR 27274) sets out a procedure by which States can have their operating permit programs approved into the SIP provided the State programs meet certain requirements, including appropriate procedures for public participation and EPA review.

(d) Air toxics programs established pursuant to §112(l) - This option is still under consideration.

In addition, States may use general permits under the Title V program to impose a federally-enforceable limit on a source's potential to emit. General permits are Title V permits with a simplified application process. They can be used to apply the same limit to all sources for which the general permit is appropriate. For example, a general permit could limit all sources to below 25 tons per year. However, this alternative does not get a source out of Title V since the general permit approval is part of Title V.

(5) Q: When the border between two States falls in the

middle of one of the Great Lakes, must a notice of a draft permit for a source which is within 50 miles of the border be sent to the other State for review by affected States as required in §70.8?

A: Yes. The neighboring State would be considered an "affected State" because the air at the border (over the Lake) is considered part of the State's "ambient air." The neighboring State is entitled to review the permit.

(6) Q: Do you consider fugitive emissions in determining which sources are major?

A: In most cases, fugitive emissions are considered in determining if a source is major. Fugitive emissions count when deciding if a source meets either the definition of major source applicable in serious, severe, and extreme nonattainment areas or the definition of major source under Section 112.

Fugitive emissions are not considered in determining whether a source meets the definition of major source contained in Section 302(j) of the Act unless the source belongs to one of 27 categories listed in the §70.2 definition of major source. The approach is similar to the PSD approach to counting fugitive emissions for applicability purposes except that the list in §70.2 also includes all sources which are regulated by a NSPS (regardless of the date on which the NSPS was promulgated).

(7) Q: Must a permitting authority give a permit to a source which is not required by Title V to apply for a permit but wants to opt into the program?

A: No. Part 70 allows such sources to apply for a permit. However, nothing in Title V or Part 70 requires a permitting authority to permit sources which are not required to obtain permits. A permitting authority may in its discretion issue a permit to such a source, and EPA encourages States to do so.

About the Newsletter

In the June conference call we held a brief discussion about the best approach for developing and using the newsletter. Response was positive and included the following suggestions:

* The Regions support direct distribution of the newsletter to the State and local agencies, but with the caveat that this broader circulation not result in less information being available to the Regions. For example, the newsletter should not broadly distribute a discussion of disagreements that a particular State and Regional Office may be having. This is a reasonable concern. We in the Permits Programs Branch want this to be an

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in-depth treatment of operating permit issues that will support the regions in their efforts in making this program work. We will evaluate these issues as the newsletter develops and act accordingly. One option suggested by a Region would be to run any sensitive matters in an appendix that would be attached only to the newsletters mailed to Regions.

* The Regions agreed that a regular "With the Regions" column could be useful and indicated a willingness to periodically contribute pieces on issues of interest to the broader permitting network. Please call us with any suggestions; we would be glad to assist in roughing out ideas you may have.

* Participants expressed an interest in using the newsletter to keep up with State program submittals and other news regarding State program actions. We agree. Highlighting issues arising from these actions could be valuable to all of us and a useful supplement to the more comprehensive tracking function provided by the Regional Office / Headquarters agreement. Note that, pursuant to discussions at the recent Air Branch Chiefs meeting in Baltimore, the Operating Permits Policy Section will be tracking proposed State fee program provisions and will provide that information to the Regions. The newsletter and conference calls would be a useful mechanism for collecting and circulating this information.

* We also plan to use the newsletter to inform people of the permits "network." We ran the names and numbers of the regional contacts in our "Historic" first issue and are providing in this issue an introduction to the operating permits crew here in the Programs Branch, including an outline of current general program responsibilities. Please submit additions and updates for the regional contact list as appropriate. We will publish updated lists in future issues.

Kirt Cox

Operating Permit Program Implementation Agreements

A draft model implementation agreement (IA) for the operating permit program was recently sent for review and comment to each Regional Office Division Director. STAPPA/ALAPCO has also been sent a copy for distribution to State and local agencies.

Please note the December 8, 1992 deadline for forwarding comments on the IA to Roger Powell.

The purpose of the IA is to define responsibilities of each party (Regional Offices and permitting authorities) in implementing the State permit program. Effective IA's will assure adequate communication between EPA and the States, the timely resolution of issues, and that the policies and procedures to be followed by each party are clarified.

The IA was prepared initially using a memorandum of agreement (MOA) from the water program as an example. An MOA between Region V and Minnesota in the Resource Conservation and Recovery Act (RCRA) program was then used as further input. The formality and detail of the draft model IA reflect those two MOA's. However, the Regional IA you develop with each of your States need not reflect the same level of formality or detail. Comments have also been incorporated from the operating permit staff in OAQPS and from a Regional Office review committee (comprised of representatives from Regions I, IV, V, VI, and IX).

The model IA is one form of agreement that can be used between Regional Offices and permitting authorities but is not meant to be EPA's prescription for an acceptable IA. Specific details and form of any IA may vary with each Region and each State or local agency. The approach on format and content of an IA is to develop a practical and workable agreement. The model IA has been developed as a guide from which to obtain and distribute ideas for IA content.

Once comments are received, we expect to modify the draft, then recirculate it for use by Regional Offices and States. It can be used as a guide, but Regional Offices and States have considerable discretion in preparing the IA that works best for them.

The IA will, as mentioned in the proposal preamble, accompany the operating permit program submittal to EPA.

Roger Powell

Permit Rule Litigation Update

Shortly after promulgation of the operating permit regulations, several groups petitioned for judicial review of the Part 70 rule in the District of Columbia Circuit Court of Appeals. Among the parties seeking review are the Natural Resources Defense Council, the Sierra Club, the States of New York, New Jersey, and Pennsylvania, and the South Coast Air Quality Management District (Los Angeles, CA).

Several industry groups and companies have also either submitted petitions for review or sought intervention in cases brought by other parties. These include the Clean Air Implementation Project, the Chemical Manufacturers Association, the American Petroleum Institute, Eli Lilly, and the Motor Vehicle Manufacturers Association.

The litigation is still in the very early stages of [Continued on page 4]

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development, with the parties seeking to consolidate the various cases into one action and to establish a schedule for submitting briefs to the court and oral argument. Documents filed with the court do give an early indication of some of the issues to be presented to the court for decision. These involve provisions of the rule addressing the lack of a public notice requirement for minor permit modifications (raised by environmental groups, States), mandatory operational flexibility provision (States), the narrow permit shield (industry), general permits (States), fugitive emissions (industry), deferral of non-major sources (environmental groups) and lack of mandatory provisions for source upsets (industry). The EPA expects that, as is typical for cases as complex as this, the court will allow the parties several months to present their positions once a schedule for briefing is established.

Regional Wisdom: This Spot's for You

This space saver serves as a reminder that in the next issue we'd like to have an article (or two) written by Regional staff. Your public awaits ...

Bulletin Board Update

As everyone is probably already aware, the final Part 70 preamble and regulations can be downloaded from the TTN, MAPS, and the Permits Programs Bulletin Board System (PPBBS).

Other files available on the TTN and the PPBBS include: the proposed Part 70 preamble, guidance for the small business technical assistance program, and draft model permits.

On the TTN, access the CAAA BBS and select the menu option entitled "Title V" for a list of files to download. The PPBBS is the old New Source Review BBS that has been modified to include information about the operating permit program.

In addition to downloading, the PPBBS has full-screen viewing and text searching capabilities for some files. Future upgrades for the PPBBS include multi-user access and a bridge to MAPS. For further information on these bulletin boards or on individual files, call Jeff Herring at (919) 541-3195.

Completeness Checklist is Undergoing Revision

In August we developed and sent a model Permit Application Checklist document to those Regional Offices which

indicated an interest in reviewing it. This document should help permitting authorities develop criteria and procedures for determining permit application completeness, as required by Part 70.

This model is a straw man that could be used by States to establish the criteria for completeness determinations. It outlines the minimum data elements required in permit applications, and it could also help in making actual completeness determinations because it provides a model form that lists each item in the completeness determination process.

Since permitting authorities have discretion to require that additional information be provided by applicants, they could easily revise this model to add provisions for the additional information.

Thanks to all the regions that sent in comments. (If you have not yet commented, you should do so by mid-November if you want your comments included in the next draft.) We will revise the draft in light of these comments and send it out in December to a broader review group, including State and local permitting authorities. Another draft will be prepared to reflect those comments and will be made available to interested industry and public commenters by March.

Jeff Herring

Work Begun on a Model Application Form

Work is underway on a model operating permit application form. Initially, the form will be used by our data management staff to assist in the design of the AIRS permit system. We consider this a typical or example permit application, not a national standard as to format or specific content. It is one example of an application which meets the requirements set forth in §70.5(c). It also incorporates some data elements we believe are commonly needed by individual permitting authorities.

We are getting State input early through STAPPA/ALAPCO with hopes of getting early "buy-in" on the application content. We are also working on this project with Region IV, the lead Regional Office for Title V permits work.

We have developed the first draft and sent it out for an initial review. For additional information on the document or if you would like to be on the Regional review team, please contact Jeff Herring at (919) 541-3195.

Update: Model and General Permits

Ongoing efforts to develop model permits

Model permits contain the various applicable federal requirements and Title V requirements in a permit format. We currently have the following efforts underway to develop model permits:

1. CTG's for VOC RACT requirements (19 categories; copies available on TTN bulletin board);
2. PM10 models that allow States to enter in applicable requirements (17 source categories but no drafts available yet);
3. 13 NESHAPs (3 of which are available on TTN bulletin board); and
4. SO₂ and lead model permits (no drafts yet);
5. "General condition" model permit which reflects Part 70 requirements and contains the "boiler plate" language that applies to every Part 70 source (review drafts were sent to Regional Offices during election week).

As you know, model permits are not required; they are discretionary with the States. The specific models can be used in conjunction with the general model to construct a full permit in much the same way you put together IRS schedules.

One issue we have considered is the level of specificity of model permit emission limits. In areas in which the State has some discretion, it may be appropriate to leave a blank in the model and let the State fill it in. This is how some of the NESHAP model permits and all of the PM₁₀, SO₂, and lead model permits are structured. Instructions are provided to States on how to fill in the blank table. States are not going to be able to take these model permits off the shelf without some judgment.

Future efforts will focus on model permits to implement MACT standards, 11 CTG documents, and other future requirements. We will consider the suggestion that we develop model permits for new NSPS standards.

The model permits which are under development are expected to remain in draft form for about a year in order to allow extensive review by States, industry, and others. As a means of soliciting public comment, EPA will publish a notice in the Federal Register prior to finalizing the models.

General Permits

General permits are Title V permits that apply to source categories rather than to individual sources. A general permit for degreasers, for example, could be used to cover all

degreasers in the State. General permits save considerable effort at the application stage. The Part 70 rules allow a simple application in which the source provides some identification, perhaps a simple description of capacity or emissions, how it meets the criteria set out in the general permit, and how monitoring will be accomplished to comply with the terms of the general permit.

States will come up with their own criteria for how and when to use general permits. We expect them to be used heavily for toxics sources. In the first 5 years of the permits program (during which permitting of minor sources may be deferred), general permits can be used to permit small but numerous units at major sources, e.g., degreasers, storage tanks, small boilers. After that period, when more minors get permits, stand-alone small sources (such as dry cleaners and small printers) can be permitted using general permits.

General permits promise considerable flexibility. Texas, for example, believes general permits could be used to permit all sources covered by a new SIP requirement thereby avoiding the reopening of hundred of permits. We believe this approach has merit, provided the new requirement is a straight-forward tightening of the old permit limit.

EPA has started an effort to develop "model" general permits. We are looking at developing a model permit and application package for 5 source categories likely to be covered by general permits: degreasers, small boilers, storage tanks, sheet-fed printers, and dry cleaners.

Ray Vogel

Issuing Permits to Sources Within the Boundaries of Indian Reservations

How will EPA handle the situation where a State submits a Title V program asserting jurisdiction over sources within the boundaries of an Indian Reservation?

The EPA's general policy for addressing such jurisdictional questions is set out in an "EPA/State/Tribal Relations" policy statement issued by the Administrator on July 10, 1991. As a general rule, EPA's policy is to require a State to demonstrate that it has jurisdiction over potentially affected sources within the exterior boundaries of an Indian reservation as a prerequisite to approving a State's management of such environmental programs.

This general policy must be viewed in the context of the 1990 Amendments to the Clean Air Act which added several important provisions to the Act addressing tribal implementation of CAA programs. For example, section 301(d)(2) of the Act calls for EPA to issue a rule specifying those provisions of the

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CAA for which it is appropriate to treat Indian tribes as States. Section 110(o) of the Act, in turn, provides that a tribal implementation plan submitted to EPA pursuant to section 301(d) "shall become applicable to all areas...located within the exterior boundaries of the reservation, notwithstanding the issuance of any patent and including rights-of-way running through the reservation." An EPA workgroup is currently developing a proposal addressing this new authority.

Permits Team Reorganizes and Reinforcements Arrive

The Operating Permits Section has a new look and new structure. Mike Trutna takes his considerable expertise to John Calcagni's staff where he has assumed the duties of interprogram coordination. Mike will continue to be involved with various permit issues and with industry outreach activities and workshops.

The Operating Permits Section has been reorganized into two new sections. The Operating Permits Policy Section is comprised of Candace Carraway, Gwendolyn Holfield, Eric Noble, Harold Ehrenbeck (senior employee), and Kirt Cox (Acting Section Chief). The Permits Support Section is comprised of Jeff Herring, Roger Powell, and Ray Vogel (Acting Section Chief). Our consummate secretary, Arlene High, will support both sections.

Although there are overlapping responsibilities, each section has certain core functions. The Permits Support Section will have the lead on such projects as developing technical guidance for Regional Offices and States for implementation of permits programs, supplying model permits, coordinating data management functions for permits programs, and EPA-State agreements.

The Operating Permits Policy Section will have the lead on preparing Part 70 policy and guidance and performing rulemakings, including those for Part 71, minor source applicability, and litigation results.

We are pleased that Eric Noble, formerly with the New Source Review Section, has transferred to the operating permits team. He'll be phasing out his NSR projects over the next several months.

Also, we enlisted the help of several folks who will join us for rotational assignments. Hank Young from the Regional Operations Branch will become immersed in permit fee issues. Joanna Swanson from the Ambient Standards Branch (a four month rotational) takes on some State enabling legislation issues. During the remainder of his one-month rotational, Bob Lambrechts from Region VII addresses the relationship between the radionuclides NESHAP and Title V permitting.

Ken Woodard from the SO₂/PM₁₀ Branch is developing an example permit based on a specific facility in North Carolina.

Meanwhile, we lose Gwendolyn Holfield from November 1 to January 10, 1992 on a rotational assignment. She has been selected to participate in the Greater Leadership Opportunities Program. As part of that program, Gwendolyn has a detail at the North Carolina Attorney General's office where she will work on enabling legislation to implement Title III and Title V. As OAR's representative for the GLO program, Gwen will have other responsibilities including "shadowing" a senior EPA manager for several days. Congratulations, Gwendolyn!

Who You Gonna Call?

OAQPS Contact List for Operating Permits

In the first Permitting Authority we listed staff in our Regional Offices who were knowledgeable permits contacts. Here we feature the OAQPS staff who are handling most of the operating permits work. In the next issue, look for the latest on our other Headquarters teammates, such as our partners at the Office of Enforcement and the Office of General Counsel.

When using this list of projects, note that Mike Trutna will continue to be involved in a wide variety of permitting issues and will field questions involving the interface between Title V and other programs even though his name does not appear beside every project that has interface issues.

While the responsibilities of the AQMD permits staff were outlined in the preceding article, the SSCD permits team functions are highlighted here. The Policy & Guidance Section within the Stationary Source Compliance Division is responsible for providing guidance on compliance-related issues which arise under the operating permit program. Specifically, SSCD will be developing guidance regarding State compliance monitoring strategies, criteria for periodic monitoring and testing, gap-filling, compliance certifications, and enforceability of monitoring data. Any questions which need Headquarters' attention regarding these topics, as well as recordkeeping and reporting provisions, compliance plans, inspection and entry authority, enforcement authority, and what constitutes a violation or deviation, may be forwarded to one of the listed SSCD contacts.

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OAQPS CONTACT LIST FOR OPERATING PERMITS

AQMD

SSCD

Permits Support Section

Operating Permits Policy Section

Policy & Guidance Section

Ray Vogel (Acting Section Chief)	541-3153	Kirt Cox (Acting Section Chief)	541-5399	Sally Mitoff	(703) 308-8376
Jeff Herring	541-3195	Candace Carraway	541-3189	Marie Muller	(703) 308-8684
Roger Powell	541-5331	Harold Ehrenbeck (Senior Employee)	541-3773	Suzanne Childress	(703) 308-8706
Ken Woodard (Rotational)	541-5592	Gwendolyn Holfield	541-2343		
Hank Young (Rotational)	541-5534	Bob Lambrechts (Rotational)	541-2343		
		Eric Noble	541-5362		
		Joanna Swanson (Rotational)	541-5282		
		Arlene High (Secretary)	541-5389		

Interprogram Coordinator

Mike Trutna	541-5345	Joanna Swanson (Rotational)	541-5282		
		Arlene High (Secretary)	541-5389		

PROJECT

STAFF MEMBER

PROJECT

STAFF

Acid Rain	Gwendolyn H.	Enabling Legislation Guidance	Kirt C. Candace C. Joanna S.
Air Toxics/Title V	Mike T. Kirt C.	Enforcement	Sally M.
AIRS Data Management	Roger P. Jeff H.	Fees	Roger P. Kirt C. Candace C. Hank Y.
Applicability/ Program Scope	Kirt C. Candace C. Jeff H.	General Permits	Jeff H. Ray V.
Applications/ Completeness Checklist	Jeff H.	Indian Tribes	Candace C.
Approval of State Programs	Kirt C. Roger P.	Inspection Strategies	Marie M.
Bulletin Board	Jeff H.	Interprogram Issues	Mike T.
Compliance Plans and Certifications	Marie M. Jeff H.	Litigation Issues	Kirt C.
Data Management	Howard Wright (TSD, 541-5584) Jeff H.	Model Application Form	Jeff H.
		Model Implementation Agreement	Roger P.

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Acid Rain/Title V Interface

Model Permits	Ray V.
NESHAPs	Warren Johnson (ESD, 541-5124)
VOC RACT	David Sanders (541-3356)
PM ₁₀	Charlene Spells (541-5255)
Lead	Laurie Ostrand (541-3277)
SO ₂	Laura McKelvey (541-5497)
Monitoring and Testing	Sally M.
Newsletter	Candace C. Gwendolyn H. Kirt C.
Operational Flexibility	Ray V. Kirt K.
Part 71 Rule (Development)	Gwendolyn H.
Permit Issuance	Ray V. Gwendolyn H.
Permit Program Manual	Roger P.
Permit Revisions	Ray V.
Program Approval Checklist	Roger P.
Q & A Document	Roger P. Mike T.
Recordkeeping and Reporting	Marie M.
Regulated Pollutant	Candace C. Kirt C.
Regulatory Impact Analysis (RIA)	Rosalina Rodriguez (541-5298) Jeff H.
SIP/Permit Relationship	Ray V.
Small Business Impacts	Gwendolyn H.
Technical Support Document for Part 70 Rules	Roger P. Jeff H.
Workshops	Roger P.

The acid rain program is a market-based program to reduce sulfur dioxide and nitrogen oxide emissions. To achieve these reductions, the program utilizes the concept of "allowances" wherein sources can buy, sell, or trade those allowances. One allowance authorizes a source to emit one ton of SO₂.

For acid rain program purposes, a source's emissions limit will equal the number of allowances that it holds, which is flexible and could vary throughout the year if the source participates in allowance trading.

Another unique and significant feature of the acid rain program is that if a source has more emissions than it holds allowances (i.e., is out of compliance) at the end of the year, there is an automatic penalty provision. This means that the source will owe a penalty, due without demand, in the amount of \$2,000 for every ton of excess emissions. In addition, the source will have to offset those excess emissions in the following year.

Initially, EPA will issue acid rain permits pursuant to Part 72 to 110 sources (listed in Title IV) under Phase I of the program. Subsequently, Phase II of the program is to be implemented by States through Part 70 permits. (The term "acid rain permit" refers to the acid rain portion of State-issued operating permits as well as to federally-issued Phase I permits.)

Title V requirements apply to acid rain sources except as modified by Title IV. The Administrator has signed a final rule (40 CFR Part 72) which addresses federal acid rain permitting and which includes acid rain program requirements which must be included in State operating permit programs. A great deal of effort was put into the Part 72 package to ensure that the program complements the Part 70 program requirements.

Several of the most frequently asked questions concerning the relationship between Title V and Title IV are discussed below.

(1) Q: What will be the practical effect of different permit revision procedures under Part 72 and Part 70?

A: The acid rain rule does not have a minor permit modification procedure like the Part 70 regulations but rather contains a fast track modification procedure (which requires a 30-day public notice and comment period as well as prior approval from the permitting authority before the proposed change can be made by the source).

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The EPA does not anticipate any practical effect from the fact that the Acid Rain program uses a fast track modification procedure because it only applies to changes in the acid rain permit that would not be permit revisions under Part 70 (e.g., bringing a new source into the acid rain program). Similarly, the source changes that would require minor permit amendments under Part 70 require no notice or action under Part 72.

(2) Q: Could one permit review process (including public participation) be developed for Phase II acid rain and operating permits?

A: Yes, provided that the acid rain applications are received in time to allow one review to occur. In Phase II of the acid rain program, as State/local permitting authorities issue their operating permits, acid rain requirements will be one chapter or section of the operating permit. Therefore, the permit with the acid rain provision may receive only one review process by EPA, the public, and affected States.

This may not always be the case during the initial phase-in of the program since some acid rain applications may be received after Title V permits are required to be issued. Phase II SO₂ applications are due by January 1996, while Title V permit applications are due one year after program approval, nominally November 15, 1995. Permitting authorities may be able to delay issuing Title V permits to acid rain sources until after Phase II SO₂ applications are received. This is possible because Phase II SO₂ applications are due well before the end of the 3-year transition period for issuing Title V permits. Phase II SO₂ permits must be issued by December 31, 1997. However, Phase II NO_x applications are due January 1, 1998. If the Title V permit has been issued before a Phase II NO_x application is received, the State/local permitting authority will have to reopen the permit and go through the review process a second time to put the NO_x requirements into the permit.

(3) Q: What EPA offices will be involved in any step of the operating permit program review process, and will the process be concurrent or sequential review?

A: The process for EPA review of State permit programs is currently being developed. Steve Hitté of the Regional Operations Branch within AQMD has the lead. At this time, we believe the following offices will participate in the review: OAQPS, OPAR, OE, OGC, the Acid Rain Office, and the appropriate Regional Office.

(4) Q: What type of fees can be imposed on acid rain sources?

A: This a complex issue which will be discussed in the permit fee guidance which OAQPS expects to issue in the next few weeks. Our preliminary views are as follows.

Section 408(c)(4) states that during the years 1995 through 1999 inclusive, no fee shall be required to be paid under Section 502(b)(3) or Section 110(a)(2)(L) with respect to emissions from any unit which is an affected unit under Section 404 (i.e., a Phase I unit). This emissions fee exemption applies to all pollutants.

The EPA interprets this section to mean that during 1995 through 1999 the EPA is prohibited from charging emissions-based fees of Phase I sources. States may choose to impose emissions-based fees on Phase I sources during this time. However, States may not rely on such fees in showing that their fee revenue will meet or exceed the amount required to fund their operating permits programs.

Permitting authorities may charge fees of Phase I sources on some other basis (e.g., application or processing fees). A State can use these fees when it demonstrates the adequacy of its fee revenue by showing that revenue meets or exceeds costs (i.e., a detailed fee demonstration which does not rely on the \$25 tpy presumption). On the other hand, a State may not use such fees when demonstrating that its fee revenue in the aggregate is equal to or greater than \$25 per ton per year (as adjusted by the CPI). This is because the formula for calculating the emissions inventory used in computing the presumptive minimum fee amount excludes emissions from Phase I sources. §70.9(b)(2)(ii)(A).

The units that are exempt from fees pursuant to Section 408(c)(4) include affected sources listed in Section 404, Table A and substitution units. The staff of the Office of General Counsel has been looking at the issue of whether compensation units are entitled to this same fee exemption or not. The OGC has taken the initial position that as they are not subject to nitrogen oxide requirements they are likewise not entitled to the fee exemption. However, this is an unresolved issue to date. Finally, the opt-in units of Section 410 of the Act are not entitled to the fee exemption of Section 408(c)(4).

Gwendolyn Holfield
Claudia O'Brien

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