April 19, 1999

Ms. Bliss Higgins
Chair, Air Toxics Committee
STAPPA
444 North Capitol Street, NW
Washington, D.C. 20001

Dear Ms. Higgins:

Last August 3, you wrote us on the issue of the status of future deferrals and exemptions of area sources subject to title V operating permits. Your initiative in seeking the status of our efforts is appreciated. The questions you raised reiterated those listed in a prior memorandum that Region X sent us requesting clarification of specific concerns. On September 18, 1998, we responded that at that time we were unable to provide the level of detail that you and the Region requested of us. Since then, we have been preparing the responses you sought and are now providing them to you. In general, our responses reflect the following points:

- Permitting authorities should continue to have the authority to defer nonmajor and area sources from part 70, to the extent that permitting authorities have been allowed those abilities by Federal rules.

- Absent changes that reduce the lower size cutoff for part 60 or 61 sources or amend part 63 national emission standards for hazardous air pollutants (NESHAP) to extend applicability to area sources, amendments to new source performance standards (NSPS) or NESHAP promulgated as of July 21, 1992 have no impact on part 70 deferrals.

- New rulemakings will address the appropriateness of nonmajor or area source deferrals or exemptions on a case-by-case basis.

- In order to clarify our position regarding existing opportunities for permitting authorities to provide deferrals, we are preparing a rulemaking, targeted for completion by December 1999, to address post-July 21, 1992 NSPS and to extend all deferrals currently available for NESHAP.

Enclosure A contains Region X's questions and responses to those questions. Enclosure B is a copy of the questions raised in your memorandum followed by responses denoted by *underlined italic text*. While preparing our responses, we considered that many of the same questions could be raised for part 71 and the responses could differ somewhat. However, we elected to answer the questions as they were posed rather than add an additional layer of complication by also considering part 71.

We hope that you will find the answers to your questions helpful. If you would like to further discuss our answers, you may contact David Painter at (919) 541-5515.

Sincerely,

/s/

William T. Harnett
Acting Director
Information Transfer and Program
Integration Division

Enclosures

OAQPS/ITPID/OPG:BParker:PFinch:541-5281:4/8/99
Parker\stappa\higgins.408, colby.408, and hodanbos.408
Final response to Control # ITPID-98-05; preliminary reply sent 9/18/98
Response coordinated with John Walke, OGC

Identical letter also sent to:

Mr. Robert H. Colby
Chair, Air Toxics Committee
ALAPCO
444 North Capitol Street, NW
Washington, D.C. 20001

Mr. Robert F. Hodanbosi
Chair, Permitting Committee
STAPPA
444 North Capitol Street, NW
Washington, D.C. 20001

ENCLOSURE A

A. Regarding NESHAP and NSPS promulgated as of July 21, 1992**,** as they affect area sources:

1. What is the status of the rulemaking required by 70.3(b)(1) to determine how the part 70 program should be structured for area (i.e., nonmajor*) sources and the appropriateness of any permanent exemptions, in addition to those already provided for in 70.3(b)(4)?

At this time, no rulemaking to determine how a permitting program should be structured for nonmajor sources and the appropriateness of any permanent exemptions is under way. We anticipated little trouble in obtaining information regarding permitting nonmajor sources once part 70 programs were approved and fully functioning. However, we find the conditions which prompted the current deferral in section 70.3(b)(1) are largely unchanged, primarily because most permits have not been issued. Since we lack necessary information and since the rule contains no deadline for us to initiate rulemaking, we have elected to postpone making any decision on rulemaking for up to five years. The current deferral in section 70.3(b)(1) will remain in effect until any future rulemaking is completed.

**Note: The use of the term area source in a context other than post -1990 section 112 standards has no meaning. We will maintain a distinction by referring to major and nonmajor sources subject to section 111, or the old section 112, and major and area sources subject to section 112, as currently written.*

2. Who in OAQPS is working on this rulemaking?

Since we have elected to postpone our decision regarding the need for this rulemaking, no one is assigned to such a project. We will continue to monitor and collect pertinent information, as it becomes available, regarding the need for this rulemaking. As will be discussed in the following responses, we are preparing another rulemaking that will seek to extend the current part 70 permitting deferral deadline expiration date established for some individual MACT standards.

3. What is the anticipated time frame for proposal and promulgation?

Since we have been unable to assess the need for rulemaking, it is premature to anticipate a schedule for its proposal and promulgation. We plan to revisit our decision to postpone part 70 rulemaking and will later determine what rulemaking, if any, is needed.

4. Which area sources subject to NSPS and NESHAP standards promulgated as of July 21, 1992 does EPA intend to exempt from title V permitting?

As provided in section 70.3(b)(4), nonmajor sources subject to 60 CFR Subpart AAA (residential wood heaters) and certain sources subject to 61 CFR Subpart M (asbestos demolition and renovation) are exempt from title V permitting. No decision regarding exemption for other standards promulgated as of July 21, 1992 has been made.

5. If EPA fails to take timely action, what is the effect on these area sources and on the permitting authorities?

As mentioned in the response to question A.1., since we have no deadline to initiate the rulemaking described in section 70.3(b)(1), inaction by us has no impact upon current deferrals or exemptions granted by you to nonmajor or area sources. Note that inaction on the section 70.3(b)(1) rulemaking also has no impact on your ability under section 70.3(b)(4) to exempt sources subject to woodheater or asbestos demolition and renovation rules.

B. Regarding NESHAP and NSPS standards promulgated after July 21, 1992**,** as they affect area sources:

1. Which area sources subject to NSPS and NESHAP standards promulgated after July 21, 1992, are currently required to obtain part 70 permits? (i.e., which area sources must be permitted in order for a State to maintain approval of its title V program?)

Where allowed by individual standards, permitting authorities determine which, if any, nonmajor or area sources are required to obtain (or are deferred from having to obtain) part 70 permits. In cases where individual standards do not allow permitting authorities the ability to defer nonmajor or area sources from the obligation to obtain a part 70 permit, or in cases where permitting authorities have the ability but choose to not defer nonmajor or area sources from the obligation to obtain a part 70 permit, we would expect nonmajor and area sources to obtain part 70 permits.

Note that of the NSPS promulgated after July 21, 1992, only two, subparts RRR and UUU, affect nonmajor facilities. While one might presume that the Agency took into consideration the appropriateness of permitting nonmajor sources subject to those two rules, available information indicates this did not occur. Because the criteria for applying section 70.3(b)(2) were not met, we believe it is appropriate to afford permitting authorities the option to defer part 70 permitting for nonmajors subject to those rules as provided in section 70.3(b)(1). To eliminate the potential for future confusion, we have decided to amend subparts RRR and UUU to formally allow permitting authorities the option to defer part 70 permitting of nonmajor sources.

Rick Colyer of the Policy, Planning and Standards Group ((919) 541-5262) in ESD is the project lead for this rulemaking.

Also note that we would not expect nonmajor municipal solid waste landfills with a design capacity of less than 2.5 million megagrams or 2.5 million cubic meters to obtain title V permits, unless such landfills are otherwise subject to title V.

Further note that because 40 CFR 63.1(c)(2) requires area sources to be permitted unless individual rulemakings explicitly defer or exempt subject area sources, we would expect all other area sources to obtain part 70 permits.

2. Which area sources subject to NSPS and NESHAP standards promulgated after July 21, 1992, are permanently exempted from part 70 permitting through rulemaking as provided in 40 CFR 70.3(b)(2)? (Please provide appropriate citations.)

For NSPS, nonmajor municipal solid waste landfills with a design capacity of less than 2.5 million megagrams or 2.5 million cubic meters, which are subject to the NSPS for landfills (40 CFR part 60, subpart WWW), or a State or Federal Plan developed pursuant to subparts B and Cc of part 60, are exempt from title V permitting requirements, if they are not otherwise subject to title V.

For NESHAP, area source decorative chrome electroplaters using fume suppressants or wetting agents (40 CFR Part 63 Subpart N) and area source batch cold solvent degreasers (40 CFR Part 63 Subpart T) are exempt from part 70 permitting requirements if they are not otherwise subject to title V.

3. Which area sources subject to NSPS and NESHAP standards promulgated after July 21, 1992 are deferred from part 70 permitting? (Please provide appropriate citations.)

As mentioned in the response to question B.1. above, to the extent allowed by individual rules, individual permitting authorities decide which, if any, non-exempt nonmajor or area sources are deferred from having to obtain part 70 permits. More specifically, provided that the standard and permitting authority allow deferral, then all nonmajor sources subject to NSPS promulgated after July 21, 1992 can be deferred from part 70 permitting. Likewise, provided that the standard and permitting authority allow deferral, then area sources subject to NESHAP promulgated after July 21, 1992 can be deferred from part 70 permitting.

Currently, the following NESHAP allow permitting authorities the ability to defer area sources from the requirement to obtain a part 70 permit:

Subpart M Dry Cleaners (58 FR 49354)

Subpart N Chrome Electroplating (60 FR 49848)
Subpart O Commercial Sterilizers (59 FR 62585)
Subpart T Halogenated Solvent Degreasers (59 FR 61801)
Subpart X Secondary Lead Smelters (61 FR 27788).

Also note that we are developing guidance that will allow permitting authorities the ability to exclude from title V permitting sources subject only to documentation requirements that show specific units are or remain below applicability cutoffs established in rules.

4. When do each of these deferrals expire and when must these sources submit part 70 permit applications?

The deferrals for the five NESHAP listed in the response to question B.3. expire on December 9, 1999 (see 61 FR 27785). Absent our intervention, complete part 70 applications for those sources would be due by December 9, 2000. However, we believe it appropriate to allow permitting authorities the ability to extend these deferrals beyond the current deadline. We are currently drafting a rulemaking to extend the expiration date by an additional five years. Rick Colyer is the project lead for this effort, which is being combined with the effort for NSPS mentioned in the response to question B.1.

5. What efforts are currently underway to permanently exempt from part 70 permitting area sources subject to NSPS or NESHAP standards promulgated after July 21, 1992? Which area sources will be exempted? What is the time frame for completing these efforts? Who in OAQPS is working on this?

As mentioned in responses to questions A.1. through A.5., we lack the information necessary to conduct a part 70.3(b)(1) rulemaking and we believe the rationale for the current deferral remains valid. Therefore, we have postponed our part 70.3(b)(1) rulemaking decision for five years. We will revisit the issue at that time. Rick Colyer is leading a rulemaking effort to provide and extend area source deferral options contained in individual rulemakings, and our goal is to complete that effort around December 1999. Note that for future standards, any decisions on exemptions for nonmajor or area sources will be determined in rulemaking for individual source categories. Timing for those decisions will be determined by individual project schedules.

6. What is the status of the revisions to the General Provisions and how will those revisions affect area sources?

A settlement of the general provisions litigation is being negotiated, and a proposal package is expected in advance of December 1999. The negotiations are privileged and cannot be discussed with parties outside the Agency.

7. How are area sources being addressed in amendments, promulgated after July 21, 1992, to section 111 or 112 standards promulgated as of July 21, 1992?

Should the individual rule writing work groups need to add, remove, or adjust the ability of permitting authorities to offer deferrals to nonmajor or area sources, then those work groups are to address that need while making their rule amendments. Outside our effort to provide nonmajor source deferral from NSPS subparts RRR and UUU and to extend area source deferral for NESHAP subparts M, N, O, T, and X, we are unaware of specific post July 21, 1992 revisions which changed (or will change) the ability of a permitting authority to offer a deferral from having to obtain a part 70 permit.

Are the amendment writers required to specifically address area sources? Are area sources subject to these amendments required to get a title V permit unless the amendment defers or exempts them?

No to both questions. Failure of an amendment to specify (or respecify) permitting requirements for nonmajor or area sources has no impact on nonmajor or area source requirements developed as part of original rulemakings or in subsequent amendments. However, if the amendments reduce the lower size cutoff for part 60 or 61 sources or amend part 63 NESHAP to extend applicability to area sources, the amendment writers are required to specifically address the need for part 70 permits. If the amendment writers do not provide for deferral or exemption of part 70 permits for part 63 area sources, those sources must obtain permits.

-- Example: Subpart OOO of part 60 has been revised several times since 1992. Has any of these revisions triggered title V applicability for area sources. If not, why not?

No. No changes concerning reducing the lower size cutoff have been incorporated into the revisions. Nonmajor sources under subpart OOO that have permitting authorities who continue to offer deferral of part 70 permitting requirements for those sources are not required to obtain part 70 permits.

ENCLOSURE B

STAPPA and ALAPCO's Questions/Issues Regarding Area Source Deferral and Exemptions

! Regarding NESHAP and NSPS standards promulgated as of July 21, 1992, we seek verification that until or unless EPA promulgates a final rule to require Title V permits, permitting authorities do not have to issue Title V permits to area sources.

Response: Until we promulgate a final rule that specifies how a permitting program should be structured for nonmajor sources and the appropriateness of any permanent exemptions, you continue to have the ability, granted by us in section 70.3(b)(1), to defer nonmajor and area sources from the obligation to have a part 70 permit.

Also, please clarify whether these area sources became subject to Title V permitting requirements if the applicable NESHAP or NSPS was amended after July 21, 1992 and what procedures rule writers are using to address permitting of area sources when rules are amended.

Response: Amendments to NSPS or NESHAP promulgated after July 21, 1992 have no impact on your ability to defer part 70 permitting to nonmajor or area sources, provided that the rule continues to allow you that ability and that the change or changes do not reduce the lower size cutoff for part 60 or 61 sources or amend part 63 NESHAP to extend applicability to area sources. Note that if the amendment writers do not provide for deferral or exemption of part 70 permits for part 63 area sources, those sources must obtain permits.

! What is the current status of rulemaking anticipated under Part 70.3(b)(1)? Who at OAQPS is working on this and what is the anticipated time frame for proposal and promulgation?

Response: As mentioned in responses to questions A.1. through A.5., we lack the information necessary to conduct a section 70.3(b)(1) rulemaking and we believe the rationale for the current deferral remains valid. Therefore, we have postponed our section 70.3(b)(1) rulemaking decision for five years. Since we have been unable to assess the need for rulemaking, it is premature to anticipate a schedule for its proposal and promulgation. Before announcing a rulemaking schedule, we will first determine if a rulemaking is needed. We plan on making that determination within the next five years.

! It is our understanding that only residential wood heaters and asbestos demolition and renovation projects have been permanently exempted (standards promulgated as of July 21, 1992). Is this accurate?

Response: Yes. Sources subject to those rules were given an exemption from part 70 permitting via section 70.3(b)(4), not through a section 70.3(b)(1) rulemaking.

! Regarding NESHAP and NSPS standards promulgated after July 21, 1992, which area sources have been exempted and which have been deferred from the Title V program, and, if deferred, when do these deferrals expire? It is our understanding that only cold solvent cleaning machines, decorative chromium electroplating operations or chromium anodizing operations using fume suppressants as an emission reduction technology, and trivalent chromium electroplating operations have been permanently exempted from Title V permitting, pursuant to the criteria in Section 502(a) of the Clean Air Act. All other solvent cleaning machines and chromium electroplating and anodizing operations, and all perchloroethylene dry cleaning operations, ethylene oxide sterilization facilities, and secondary lead smelting operations have been specifically deferred from Title V permitting requirements until December 9, 1999 if located at a nonmajor source. Is this accurate?

Response: Our rules give you the ability to exempt from part 70 permitting not only area source chrome electroplaters using fume suppressants or wetting agents and area source batch degreasers, but also nonmajor municipal solid waste landfills with a design capacity of less than 2.5 million megagrams or 2.5 million cubic meters, provided that the sources are not otherwise subject to part 70. Our rules also allow you the ability to defer until December 9, 1999 non-exempt area sources subject to NESHAP subparts M, N, O, T, and X from having to obtain a part 70 permit, provided that these area sources are not otherwise obligated to get a part 70 permit. Note that the expiration date of the deferral is a result of individual part 63 rulemakings, not from a part 70 rulemaking.

! Regarding NESHAP and NSPS standards promulgated after July 21, 1992, what efforts are currently underway to permanently exempt area sources and who in OAQPS is working on this effort?

Response: Rick Colyer is leading a rulemaking effort to provide and extend current area source deferral options contained in individual rulemakings, and our goal is to complete that effort around December 1999.

As EPA continues to write MACT standards that apply to area sources, what procedures are rule writers using to address permitting of area sources?

Response: For standards promulgated after July 21, 1992, any decisions on exemptions for

nonmajor or area sources have been and continue to be determined in rulemaking for individual source categories.

What is the status of the revisions to the General Provisions and how will those revisions affect area sources?

Response: A settlement of the general provisions litigation is being negotiated, and a proposal package is expected in advance of December 1999. The negotiations are privileged and cannot be discussed with parties outside the Agency.