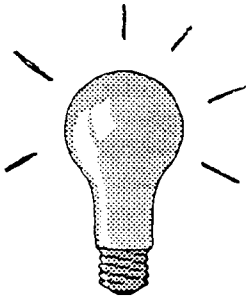
the PERMITTING AUTHORITY

"LETTERS TO THE FRONT LINE"

VOL. 2 NO.1 BY THE PERMITS PROGRAMS BRANCH, AIR QUALITY MANAGEMENT JANUARY, 1993

Regional Wisdom



There's no shortage of good ideas/initiatives at the Regional Offices. Here's a sampling:

STATES TAKE OWNERSHIP OF MONTHLY CONFERENCE CALL

Following the lead blazed by the RTP Permits Program Branch staff, Region VII has organized a monthly title V conference call with its four States. The first call held on December 17 was a tremendous success with 100% participation. Region VII prepared the agenda for the one hour call. First up was general information sharing with the States. This consisted of providing the States with information on section 112(g), title V/title IV interaction, and model and general operating permit updates.

The update was followed by a 20 minute open discussion. The participants from the States not only asked questions but frequently offered insightful suggestions and comments on controversial issues. It is this willingness on the part of all participants to discuss the complex issues surrounding the title V program which will continue to make the calls a success. The State participants see the calls as an opportunity to discuss their ideas with EPA and to listen to how other States intend to develop their programs.

The State participants have also been encouraged by Region VII to submit written questions to the regional office in advance of the calls, providing EPA time to explore the issues and provide written responses to the questions. It is hoped this process will provoke further discussion.

State participants will rotate having the lead on the monthly calls. As the lead for January, the Missouri participant will be responsible for selecting the discussion topics, choosing the call date and time, and distributing the agenda. Region VII will have ongoing responsibility for securing the conference phone line and distributing the call-in number.

For more information, contact Bob Lambrechts, (551) 551-7846.

STATES EXPLORE INTEGRATION OF CURRENT PSD/NSR PROGRAMS WITH OPERATING PERMITS AT REGION VI WORKSHOP

Mindful of the need to support State operating permits program development activities consistent with the States' November 15 program submittal deadline, Region VI conducted a workshop in Dallas on December 10, 1992 to assist the States in Part 70 regulatory development.

Members of the Region VI New Source Review (NSR) Section were joined by Ray Vogel of OAQPS in an all-day meeting with air staff from Arkansas, Louisiana, Oklahoma and Texas. The discussion focused on State flexibility under Part 70 to address the full spectrum of source changes within the framework of an existing NSR program.

All States in Region VI already have time-tested review procedures for permit revisions and modifications as part of their existing preconstruction permit programs. Of course, these procedures apply only to source changes that trigger PSD review of major/minor source NSR. The challenge posed by the Part 70 rules is to unify a State's existing PSD/NSR procedures required for a limited scope of source changes with the more comprehensive procedural requirements and regulatory framework of an operating permits program which encompasses the full range of source changes. Moreover, each State must decide how to relate (enhance, integrate or link) the current preconstruction permits program with the new operating permits programs.

As a platform to assist the States with operating permits programs development, the NSR Section structured the format of the workshop around the consideration of real world examples

[Continued on p. 2]

Inside Stuff

Fees from Phase I Units 2
November Conference Call Highlights 2
December Conference Call Highlights 4
Support for State Legislative Efforts 6
PPB Staff Grows 6
AIRS/Data Management Update 7
Contact List 8
April Workshop 8
Q's & A's 9

[Continued from p. 1]

of possible source changes. A list of so-called "source change categories" was drawn up, representing the full spectrum of source changes. Each State was asked to generate specific examples for an assigned number of source change categories. The States supplied the NSR Section with about 30 examples in total.

In preparation for the workshop, each State was asked to evaluate those examples with respect to current State thinking on its approach to the Part 70 regulations. In other words, how would a State's program require a particular source change to be handled: as a minor permit modification? a significant modification? an off-permit change? or as some other entree from the Part 70 menu?

During a lively all-day exchange of views at the EPA office nineteen specific source change examples were evaluated. As the States presented their comments on each example from the perspective of their approach to program development, summaries were prepared. All States who participated were quite satisfied at the end of the day. The interaction between States was stimulating and at times intense, but reassurance was given by the States that this was the type of workshop they needed to test the durability of their programs.

Our States walked away from this workshop simply exhausted, yet felt that the goal that we targeted for them was met. Draft summaries for nineteen specific examples have been prepared and distributed to the participants for revisions. The NSR Section received great satisfaction from hearing the States comment on the benefits they felt they received from the workshop.

For more information, contact Joe Winkler, (214) 655-7243.

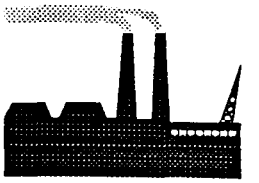
REGION V, STATES, AND INDUSTRY REPS DEVELOP MOCK PERMIT FOR AUTO ASSEMBLY PLANTS

Region V has signed up the State air agency and an auto assembly plant in each State within the region to help develop a State-specific mock permit for auto assembly plants. The purpose of the pilot program is to find and solve procedural permitting problems.

Minnesota is the farthest along in the process. In November 1992, plant officials (including the plant engineer) met with Regional and State agency staff to discuss the mock permit. Ford explained that the traditional "concept to customer" time of 5-8 years for the U.S. automotive industry is changing to 3 years to match the Japanese producers. This requires that the permitting process be shortened. Ford also expressed concern about operational flexibility and construction permit simplification. Ford supports the separation of State-only requirements in the permit and a State hot-line to help sources determine which SIP requirements are Federal requirements. Once Ford provides examples of alternate operating scenarios and its proposals for operational flexibility, the State will respond to Ford's suggestions. Similar meetings are planned in each State. For further information, contact Ron Van Mersbergen, (312) 886-6056.

Policy Update: You Can Count Some of Those Phase I Fees (Sometimes)

In the last Permitting Authority, we indicated that the issue of using fees imposed on Phase I affected units to demonstrate that a State's fees are adequate is a complicated one. Ongoing discussions of this topic have modified our analysis of this issue.



The change concerns State fee demonstrations which rely on the $25/tpy (adjusted) presumptive minimum. As discussed in the fee guidance document issued by OAQPS Director John Seitz on December 18, 1992, States have two options with respect to emissions from affected units under section 404 during 1995 through 1999.

States may include or exclude emissions from affected units under section 404 from the inventory against which the $25/tpy is applied. If a State excludes those emissions from its inventory, then fees from those units may not be used to show that the State's fee revenue meets or exceeds the $25/tpy presumptive minimum program cost. If a State includes emissions from affected units under section 404 in its inventory, it may include non-emissions-based fees from those units in showing that its fee revenue meets or exceeds the $25/tpy presumptive minimum amount.

With respect to emissions-based fees, there is no change. States may not use emissions-based fees from affected units under section 404 for any purpose related to the approval of their operating permits programs for the period from 1995 through 1999. Such fees cannot be used to support the direct or indirect costs of the permits program. States may, on their own initiative, impose Title V emissions-based fees on affected units under section 404 and use such revenues to fund activities beyond those required pursuant to Title V.

In summary, the guidance in the December 18, 1992 memorandum from John Seitz updates the guidance in the last Permitting Authority.

Highlights of November Conference Call

Some of the issues raised in the November conference

[Continued on p. 3]

[Continued from p. 2]

call have blossomed into full grown newsletter articles. An update on EPA strategy to assist legislative development is dealt with elsewhere. Two of the November biggies are summarized below.

ACID RAIN PROGRAM SUBMITTAL ISSUES RAISED, CEM POLICY IS CLARIFIED

Donna Deneen's update on the Title IV/Title V interface provided a heads-up on many emerging issues. Prior to the call the Acid Rain Division had developed a ten-part package (draft) of acid rain program application materials for States. The package includes model State regulations which implement Title IV requirements, fact sheets about the acid rain program, Q/A sheets, a model Phase II Acid Rain permit, and other helpful materials. Contact Donna for a copy of the package, at (202) 233-9089.

Two major issues unresolved in November were: 1) what are the roles of the State and EPA with respect to continuous emissions monitoring (CEM), and 2) what acid rain provisions must be included in the State operating permits program submittal in order to get full or interim approval.

With respect to the CEM issue, the Acid Rain Office is concerned about national consistency in monitoring in order to level the playing field for the allowance system. In light of this concern, all monitoring data from sources will come directly to EPA HQ, and all formal decisions concerning monitoring will be issued by the HQ Acid Rain Division. (Such decisions include approval of the monitoring certification test results and any petitions for alternative methods for monitoring.)

Despite its formal role, however, HQ's decisions will be based on recommendations made by teams composed of HQ, Regional, and State staff persons. The Regional team member, as team leader, will have primary responsibility for coordinating the reviews, planning on-site activities at a source, and recommending decisions to HQ. The State's role will likely vary region to region depending on the State's abilities and interest. In the final draft of a paper entitled "Acid Rain CEM Program Implementation: Team Approach," the roles of each team member are more fully described. This paper is expected to be distributed to Regional CEM Acid Rain contacts and the States in February 1993.

The issues concerning program approval have not yet been resolved but are under review. Consensus during the conference call was that States need some immediate clarity on what their program submittals must look like. At the Title V workshops held since the promulgation of Part 70, States have been advised that it may be an option to submit certain acid rain portions of their Part 70 programs later than their initial Part 70 submittals. The rationale for this approach at that time was that the standard for approval is that States must be able to write good permits for sources which are subject to permitting. States may not need to have permitting regs in place for Phase II until a year or so after program approval.

Some Regions have been advising States that they needed to include a framework for acid rain implementation in the submittal with details to be filled in later. On the other hand, staff from the Acid Rain Office suggest that in order to get program approval, States should be required to submit enabling authority and comprehensive regulations which implement the acid rain program. These ideas and others were examined at a December 6 meeting involving HQ and Regional folks and will be the focus of continuing discussions, primarily involving OGC, the Acid Rain Office, and Gwendolyn Holfield.

DO SOURCES NEED MORE WAYS TO LEGALLY AVOID TITLE V REQUIREMENTS?

In order to minimize the burdens of permitting numerous small sources, many States are interested in developing a method of limiting an existing source's potential to emit which is easily implemented. Prompted by numerous calls from State agencies, Kirt Cox posed a new possibility for creating synthetic minors, a "second tier" Title V permit process which was discussed during the November conference call.

The second tier approach would roughly parallel the approach outlined in the June 28, 1989 Federal Register (for approving State permit programs) in that EPA would develop criteria and a procedure for approving a State process which would generate federally enforceable permits separate from the full Part 70 process but approved pursuant to Title V. Such a process could perhaps offer a standardized means of creating federally enforceable emissions limits for both criteria and toxic pollutants that would offer reasonable safeguards while being somewhat less procedurally rigorous than the full Part 70 process. The second tier process would require public and EPA review.

Programs approved pursuant to the June 1989 Federal Register process have a limited ability to deal with toxic sources in that the process was geared to implement SIP requirements. There is also interest in additional options for creating synthetic minor status for sources of criteria pollutants, especially the large number anticipated to be affected by the major source definition for volatile organic compounds (VOC). Although Section 112(l) may provide a means of imposing limits on potential to emit for sources of toxics, States (and industry) are looking for additional ways to create synthetic minors for those sources outside of the Title V process.

In discussing the pros and cons of this proposal, the following points were made:

[Continued on p. 4]

[Continued from p. 3]

* Many folks agreed with Kirt that an additional mechanism for creating synthetic minors may not be a priority for EPA, but States are concerned with the potentially large number of requests to create such limitations. On the other hand, Region I feels this issue is very important and suggests that HQ develop additional guidance on the procedures for the options for creating synthetic minors. The Operating Permits Policy Section is preparing a response.

* The "potential to emit team" working with section 112 issues has strategized about a regulatory mechanism under Part 63, subpart A for toxic sources. They have also developed a list of 9 mechanisms for creating synthetic minors which should be distributed to the permits contacts team. (Regions should have received this list in early January.)

* If new mechanisms are created, make sure public process and EPA review are included to guard against bad permits.

* There needs to be some clarification of whether EPA will require a once-in, always-in policy for synthetic minors. In other words, clarify whether a major source can become non-major after the effective date of the State permit program. Kirt noted that Part 70 appears to allow sources to do this. See the Q & A section for current staff thinking on this issue.

December Conference Call Focuses On Toxics, Program Approval Issues, Monitoring/Compliance Guidance

TOXIC TOPICS

During the December call, Karen Blanchard (ESD) led a discussion of Title III requirements as they pertain to Title V program submittals, with comments from Mike Trutna, Adan Schwartz (OGC) and others. Many of the issues raised are the subject of a February 2, 1993 memorandum from Lydia Wegman, entitled "Title V Program Approval Criteria for Section 112 Activities."

PROGRAM SUBMITTAL PROPOSAL IS AIRED

Steve Hitte (AQMD/ROB) explained the proposed procedure for EPA review of State operating permit program submittals. The flow chart which outlines the review process is on MAPS. Copies of the proposal were mailed out prior to the conference call, and the proposal was discussed by the Air Branch Chiefs at their meeting in Baltimore. OAQPS management is presently discussing the proposed approach due to comments received. It will be a topic at the February 8-9 OAQPS/Regional Air Directors meeting in Durham. A final procedure will hopefully be available by the end of February.

A question was raised on whether program approvals need to go to OMB for review pursuant to Executive Order 12291. Steve is seeking guidance on this question. There was concern that building OMB review into the 365 day review process would jeopardize timely approvals.

GUIDANCE FROM SSCD AND OE

Marie Muller (SSCD), Barrett Parker (SSCD), and Elise Hoerath (OE) provided a brief overview of some of the guidance documents for operating permit programs which SSCD and OE staff are developing.

Monitoring Guidance

SSCD and OE are currently developing this guidance which explains the procedures required to comply with §70.6(a)(3) which requires that Part 70 permits incorporate periodic monitoring or testing requirements even where the underlying applicable standard does not.

The three major sections of the guidance will be:

* what types of monitoring or testing meet the requirements of §70.6(a)(3)

* compliance certification

* deviations and enforceability

The first section will address what constitutes periodic monitoring and testing, selection criteria for periodic monitoring or testing, and test averaging times.

The compliance certification section will reiterate the requirements of §70.5, including: the elements for compliance certification, who signs the certification, where certifications are sent, and relevant confidentiality provisions.

The deviations and enforceability section will make 4 major points.

First, permits cannot allow exceedences from the emissions standards where the underlying requirement does not allow for them, or is silent regarding the allowance of exceedences. If the underlying requirement such as a SIP provision allows for periodic exceedences for a certain percentage of time during start up or shut down, an exceedence

[Continued on p. 5]

[Continued from p. 4]

provision can be built into the permit. Second, the same is true for monitor down time. For example, if the underlying standard allows some percentage of monitor down time, the permit may contain this provision. Where the underlying requirement does not require any monitoring and the permit fills that gap, then the permit writer could build in reasonable monitor down time.

Third, monitoring or testing data generated by the periodic monitoring or testing that the permit requires must be used for the compliance certifications. The source cannot substitute alternative testing or monitoring data to use in certifying compliance when there is a specific periodic monitoring or testing obligation in the permit.

Fourth, the guidance will address both how the monitoring or testing data relates to the obligation to do at least annual compliance certifications and how and when this monitoring or testing data may be used by State and federal enforcement personnel to enforce the permitted emissions limits.

For more information on this topic, contact Sally Mitoff at (703) 308-8376 or Elise Hoerath at (202) 260-2843.

State Inspection Strategies for State Operating Permit Programs

SSCD is developing guidance, tentatively titled "State Inspection Strategies for State Operating Permit Programs", to help clarify what State compliance programs and inspection strategies should contain.

The guidance will integrate many elements of the Compliance Monitoring Strategy (CMS) which States currently use to develop their inspection strategies. Adjustments to the CMS will be made in order to reflect new operating permit requirements such as compliance certifications and semi-annual monitoring reports, and the increased universe of sources requiring inspection.

Some of the issues currently under review are how to respond to a large increase in the universe of major sources and defining criteria for an effective ranking scheme. Some States use an inspection targeting method and some use inspection frequency guidance. The guidance attempts to build in more consistency and to pull States closer to an inspection targeting type of ranking method.

SSCD expects that the new data required in Title V permits can be used effectively for ranking and for conducting in-house inspections. Due to limited inspections resources, air programs may need to develop criteria for in-house inspections based on the new data.

States will be expected to phase out current CMS policy subsequent to permit program approval.

The guidance will also contain resource estimates and a workload model (in FTE hours) for new operating permit compliance activities to help States estimate what their resource needs will be.

SSCD plans to issue a draft of this guidance for internal EPA review by Spring 1993. For information on this document, please contact Marie Muller (703) 308-8684 or Paul Reinermann (703) 308-8698.

Since some States will likely need some guidance on resource estimates for compliance activities prior to this Spring, SSCD has made use of Oregon's workload analysis, and distributed comments on their resource estimates for compliance activities. Oregon's workload analysis is a good example of the type of analysis a State needs to complete for compliance activities. The compliance planning portion of this document was distributed by SSCD in a memorandum dated November 20, 1992 to Regional Air Program and Air Compliance Branch Chiefs. Regions are encouraged to share this workload analysis, along with any additional comments they may have, with their States.

Contact Marie Muller for further information on this document.

Enhanced Monitoring

Barrett Parker outlined the proposed schedule for the enhanced monitoring rule (40 CFR Part 64).

Workgroup closure is scheduled for January 27. If OMB gives the rule expedited review, the proposal will come out in March. Final promulgation is scheduled for February of 1994. SSCD is developing a reference document which will be used as a compendium for specific state of the art enhanced monitoring techniques. The reference document will be released on the same date as the regulation but will not be included in the regulatory package.

If the final rule is promulgated on schedule, it will become final during EPA's review of State submittals. Once Part 64 is promulgated, it becomes an applicable requirement. Thereafter, permits must contain enhanced monitoring requirements. Permits issued prior to promulgation would need to be reopened if more than three years of the permit terms remained. Otherwise, the enhanced monitoring provisions could be folded into the permit at renewal. To obtain approval of their Part 70 programs, States must assure that they are not barred from using monitoring data for enforcement.

[Continued on p. 6]

[Continued from p.5]

To Do List

SSCD has plans to start the following pieces of guidance when current projects are further along:

* annual enforcement reports
* what constitutes "significant changes in monitoring" for purposes of permit revisions
* what will be required in general compliance plans

Legislative Woes Spawn National Support Effort for State Legislation

At the beginning of November, former Assistant Administrator William Rosenberg was briefed on operating permit issues, including the status of State enabling legislation. He was supportive of a letter being sent to Governors asking for their support in developing adequate State enabling legislation and suggested that a supplemental national effort was needed. As part of this effort, he proposed compiling briefing notebooks for distribution to national industry and environmental groups to gain support for the passage of enabling legislation.

As you know from Ed Lillis' November, 1992 and January 8, 1993 memoranda, the Legislative Outreach Briefing Notebook will include the following:

* Region-by-Region review of the status of State enabling legislation.
* 1-2 page summary explaining why it is in the best interest of everyone, including industry, to have States enact adequate enabling legislation.
* Environmental Protection Agency (EPA) & State contacts.
* EPA's enabling legislation guidance.
* Status of state enabling legislation matrix.

As a result of input from the Regional Offices, a national effort for developing a Governor's Letter was not pursued. Nevertheless, boilerplate language was provided with the January 8 memorandum for those RO's that thought a letter would be beneficial.

The need for, and benefits of, swift legislative action on State operating permits programs, will be highlighted briefly in the March publication of the National Conference of State Legislatures magazine. Unfortunately, plans for a February satellite downlink conference for State legislatures on this topic and others fell through.

To date, representatives from the National Environmental Development Association - Clean Air Regulatory Project and other industry groups have shown great interest in States enacting adequate enabling legislation in order to develop their operating permits programs. Discussions are now underway with representatives from national environmental groups.

For more information about HQ legislative support efforts, contact Joanna Swanson, (919) 541-5282.

New Arrivals Bolster the Permits Team

Gary Rust, formerly of the Air Pollution Training Branch (APTB) brings nearly 18 years of EPA experience to the Permits Support Section. Gary started reviewing SIP's back in 1975 and later moved to the PSD office. After running the BACT/LAER Clearinghouse for 7 or 8 years, he became a Project Officer. His last three years were at the Air Pollution Training Institute.

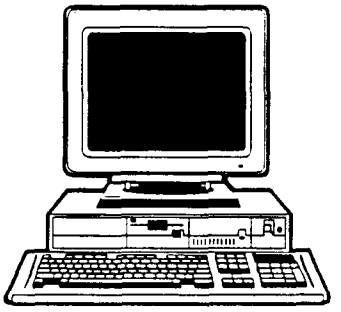
Another APTB staffer, Leo Stander, will join the Permit Programs Branch sometime in February as Ed Lillis' assistant. For the last 10 years, Leo has developed training programs for State and local agencies, including a training course for permitters under development in the past year. Leo's other EPA assignments have included working on the SIP process, getting involved with bubbles and banking, and two stints in Regions IV and VIII. Leo is a commissioned officer in the Public Health Service.

Hank Young made it permanent! His rotational assignment with PPB has evolved into a transfer. Hank is collecting information on the status of State permit fees and will be contacting Regional Offices to obtain fee information to share with the Regions.

PPB is also celebrating the addition of Joanna Swanson who started a rotational assignment with the branch and decided she wanted to stay. She's been a key player in developing the "briefing binders" to be used in the support effort for State legislation to implement Title V.

On the bummer side of the ledger, Tim Williamson (OPAR), whose contributions to the Part 70 rule were extraordinary, moves on to Region I's Office of Regional Counsel, which is phenomenal news for the Region but a significant loss for Headquarters. We all will miss Tim's high level involvement with the operating permits program, but are pleased that he will continue to participate in addressing permit program issues.

Beefed Up AIRS Capabilities Support Title V Tracking, Reporting, Administrative Activities



by Jeff Herring

OVERVIEW

The National Air Data Branch (NADB) is adding capabilities to the Aerometric Information Retrieval System (AIRS) Facility Subsystem (AFS) to provide information management support for Title V operating permit programs. This effort to develop a national operating permit data system is referred to as the AFS -Permitting Enhancements (AFS-PE). The data system will be designed in phases. Phase I, which tracks the permit issuance and review process, is now being designed.

A major goal has been to design a system that States will find useful for their own purposes and, therefore, wish to use voluntarily. This has been done by building in capabilities that are commonly found in existing State permitting data systems or that assist States in performing specific tasks required by the operating permits program tasks.

DISCUSSION

The issue of data management in relation to the operating permit programs is addressed in several sections of 40 CFR Part 70. Section 70.4(j) states that any information obtained or used in the administration of a State program shall be available to EPA upon request without restriction and in a form specified by the Administrator, including computer-readable files to the extent practicable. Also, Section 70.8 states that the permitting authority shall provide to the Administrator a copy of each permit application, each proposed permit, and each final permit and that, upon agreement, certain summary information might be submitted in place of the complete permit application. This section also states "to the extent practicable, the preceding information shall be provided in computer-readable format compatible with EPA's national database management system."

The preamble further states that EPA supports progress in the computerized exchange of information between itself and State and local agencies, as long as it is cost-effective and streamlines processing for the parties involved. State and local agencies also have expressed interest in making their information systems more compatible with those at EPA due to the potential for future administrative cost savings through well-designed permitting-related computer systems.

The intent of the discussion in the rule and preamble is to encourage States to use AFS directly or to maintain a compatible system. In addition to the requirement that agencies submit a hard copy version of the complete application, proposed permit, and final permit to EPA, it is anticipated that agencies will also be asked to submit certain data elements in hard copy or computer-readable format.

PHASE I OF SYSTEMS DEVELOPMENT

Phase I will provide the following data management capabilities to support the Title V permit program activities:

* Ability of the permitting agency to track the status of the permit application and draft permit through the permit issuance process
* Storage of name and phone numbers of contacts at both the permitted facility and the permitting agency
* Storage of basic fees information
* Notification of draft or proposed permit availability
* Notification that comments on a draft or proposed permit have been received/sent
* Preliminary ability to target permits for review
* Management overview and summary information

These Phase I capabilities will be available in the national data system in 1993.

AVAILABLE DOCUMENTS

Documents addressing the design of the AFS-PE system can be downloaded from the Technology Transfer Network (AIRS menu option) or obtained from the contacts listed at the end of this article. The following documents are available:

* Key Event Tracking Definition Document (draft)
* Affected State Review Definition Document (draft)
* User Requirements Analysis (final)
* Update memos

ONGOING PROJECTS

The Regional Operations Branch, AQMD, has the lead for the current effort to define data elements that the permitting

[Continued on p. 8]

[Continued from p. 7]

agency must report for each permit as a minimum Federal requirement. These data elements will most likely become the foundation for the development of summary application forms which, upon agreement with the Region, may initially be submitted to EPA in lieu of the entire permit application. Full permit applications may also be needed for some permits. The agreement could be specified in the EPA-State implementation agreement or by some other means.

NADB is in the process of establishing formal permit contacts at each Region to help disseminate information and provide feedback on permit data system issues.

OAQPS CONTACTS

Contacts in NADB on key aspects of the permits data management effort are as follows:

Name	Function	Phone
Howard Wright	Data Issues, Planning	(919) 541-5584
Andrea Kelsey	System Design Issues, Planning	(919) 541-5549
Chuck Isbell	AFS Database Administrator	(919) 541-5448
Lillian Bradley	System Development	(919) 541-5694
Bill Frietsche	Data Issues & Integration	(919) 541-5451
Angie Shatas	Data Issues	(919) 541-5457

OAQPS Contact List for Operating Permits

AQMD

Permits Support Section

Ray Vogel (Acting Section Chief)	(919) 541-3153
Jeff Herring	(919) 541-3195
Roger Powell	(919) 541-5331
Gary Rust	(919) 541-0358
Ken Woodard (rotational)	(919) 541-5592
Hank Young	(919) 541-5534

Operating Permits Policy Section

Kirt Cox (Acting Section Chief)	(919) 541-5399
Candace Carraway	(919) 541-3189
Harold Ehrenbeck (senior employee)	(919) 541-3773
Gwendolyn Holfield	(919) 541-2343
Eric Noble	(919) 541-5362
Joanna Swanson	(919) 541-5282
Arlene High (secretary)	(919) 541-5389

Interprogram Coordination

Mike Trutna	(919) 541-5345

SSCD

Policy & Guidance Section

Sally Mitoff	(703) 308-8376
Marie Muller	(703) 308-8684
Suzanne Childress	(703) 308-8706

OGC & OE Contacts For Operating Permits

Adan Schwartz (OGC)	(202) 260-7981
Elise Hoerath (OE)	(202) 260-2843

State/Local Expertise To Be Highlighted in April Workshop

Mark your calendars for April 27-29, 1993 (in pencil or erasable pen). Those are the tentative dates for the operating permits workshop for State and local air agencies and Regional Offices which is being sponsored by the Permits Programs Branch. Regional staff have indicated support for a separate

[Continued on p. 9]

[Continued from p. 8]

operating permits workshop in lieu of a combined operating permits/NSR workshop (such as the Estes Park workshops) even though supporting travel to a subsequent NSR workshop may be problematic. The next EPA-State and Local NSR Workshop will likely be held sometime after EPA issues a rulemaking proposal on the CAAA Part D requirements. The rulemaking is currently scheduled for publication in the Federal Register this fall.

State and local agencies will co-chair (with EPA staff) many of the substantive sessions, providing explanations of progress/difficulties in program development and highlighting exemplary practices. EPA staff will take the lead on the wrap-up Q & A session and some of the substantive sessions. Specific agenda items are being developed.

The workshop will (tentatively) be held at the Sheraton Crabtree in Raleigh, NC. A shortage of HQ travel funds precludes the workshop from being held outside the RTP area. Further information about the workshop will be provided after final arrangements have been made. For more information, contact Roger Powell, (919) 541-5331.

More Questions, More Answers

(1) Q: Do States need to include plans for compliance certification and enhanced monitoring as part of their operating permit program submittal in order for the program to be approved, or will requirements for compliance certification and enhanced monitoring be the responsibility of the source?

A: Section 70.4(a)(3) requires States to have adequate legal authority to carry out the requirements of an operating permit program, including the authority to incorporate "monitoring, recordkeeping, reporting and compliance certification requirements into part 70 permits consistent with §70.6." [See §70.4(a)(3)(ii).] Sections 70.5 and 70.6 require certain compliance certification provisions for the permit application and permit itself. Therefore, States must include compliance certification authority consistent with part 70 in their permit programs.

States are required to have the legal authority to require enhanced monitoring. This includes the ability to use monitoring data for enforcement purposes and to implement the enhanced monitoring program through their operating permits programs. The enhanced monitoring rule (to be codified at 40 C.F.R. part 64) is an applicable requirement the promulgation of which may not occur until after the deadline for submitting State programs.

It will be the responsibility of the source to comply with compliance certification and enhanced monitoring requirements in the operating permit program. This may, for example, require the source to propose and justify an appropriate enhanced monitoring protocol in the permit application.

(2) Q: What inspection requirements must be included in permits?

A: Section 70.6(c) requires all part 70 permits to contain inspection and entry requirements that require, upon presentation of credentials and other documents as may be required by law, the permittee to allow the permitting authority or an authorized representative to: a) enter upon the premises where a part 70 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit, b) have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit, c) inspect at reasonable times any facilities, equipment, practices or operations required under the permit, and d) sample or monitor at reasonable times substances and parameters for the purpose of assuring compliance with the permit or applicable requirements. [See 40 C.F.R. §70.6(c)(2)]

(3) Q: How do States write permits for previously grandfathered sources which have not been subjected to any monitoring requirements?

A: Section 70.6(a)(3) states that all title V permits must require periodic monitoring or testing even where the underlying Clean Air Act standard, such as a State Implementation Plan requirement, does not. Therefore, title V sources which have not historically been required under the Act to perform monitoring or testing will now be required to do so when issued a title V permit. The Stationary Source Compliance Division (SSCD) and the Office of Enforcement (OE) are currently developing guidance which sets forth criteria for determining what constitutes periodic monitoring and testing. Generally speaking, periodic monitoring or testing should result in accurate and reliable data which is representative of actual source operation, consistent with the averaging time in the standard, and can be used as the basis for a compliance certification and enforcement.

(4) Q: Must each permit requirement contain testing, monitoring, reporting and recordkeeping requirements sufficient to assure compliance?

A: Yes. Section 70.6(a)(3) requires that each part 70 source have testing, monitoring, reporting and recordkeeping requirements sufficient to assure compliance with the terms and conditions of its permit. If the source is subject to any underlying monitoring, testing, reporting and recordkeeping requirements (such as requirements contained in the SIP or NSPS), these requirements must be in the source's permit. Regardless of the underlying requirements, sources must

[Continued on p. 10]

[Continued from p. 9]

retain records for 5 years, report the results of all monitoring data (not just excess emissions) at least semi-annually, and promptly report deviations.

Additionally, permits must require periodic monitoring or testing. In situations where there are no underlying monitoring or testing requirements, or where those requirements are not periodic, the permitting authority will be required to "gap fill" and include periodic monitoring and testing requirements in the operating permit. This periodic monitoring or testing must be sufficient to yield reliable data which is representative of compliance.

In accordance with a statement in the preamble of the operating permit rule (57 FR 32278), EPA is currently developing guidance which sets forth criteria for determining what constitutes periodic monitoring or testing. This applies similarly to situations where a source is subject to a work practice standard. The permit would need to contain some means of periodically monitoring compliance with the work practice requirement. In such cases, and depending on the particular standard, periodic recordkeeping may be sufficient to satisfy the periodic monitoring or testing requirement. The permit would of course require these records to be kept for five years, require at least semi-annual reporting (and prompt reporting of deviations), and specify the means for determining compliance with work practice standards.

(5) **Q:** What type of recordkeeping is required for alternative scenarios?

A: Each alternative operating scenario written into a permit must satisfy the compliance requirements of §70.6. Therefore, for every alternative operating scenario there must be monitoring or testing and recordkeeping which is representative of source compliance and is enforceable. In addition, records must indicate which permitted scenario the source is operating under at any given time.

(6) **Q:** What are the monitoring requirements for hollow permits (permits for sources that are not subject to any applicable requirements)?

A: Under title V and part 70, all major sources must obtain a title V operating permit. Some of these sources, particularly sources located in rural areas, may not be regulated under the Clean Air Act. Permits for these sources are known as empty or hollow permits. In order for States to make timely MACT determinations pursuant to sections 112(g) and 112(j), permit applications and permits for these sources must identify the hazardous air pollutants emitted by the source. Additionally, States may require monitoring if needed to determine emissions for fee purposes.

(7) **Q:** Are title IV affected sources exempt from obtaining a title V permit from 1995-1999?

A: No. §70.3(a) requires that States issue permits to title IV affected sources. §70.3(b) allows States to exempt certain sources from permitting requirements, but expressly prohibits exempting affected sources from permitting requirements. Permits issued by EPA for Phase I sources are title V permits. In addition, Phase I sources may be required to obtain permits for reasons unrelated to title IV.

Note that the cost of developing and implementing permits for these sources must be covered by permit fees (even during 1995 through 1999).

(8) **Q:** With respect to the 7-day advance notice for section 502(b)(10) changes, can a State be more stringent than EPA by increasing the requisite number of days for advance notification?

A: Yes. §70.4(b)(12) provides that a source must give at least a 7-day advance notice of any change made pursuant to section 502(b)(10). A time period greater than 7 days is consistent with the general approach of 40 CFR part 70 which sets minimum standards which can be exceeded by States and with the plain language of section 502(b)(10), which requires that notice be given "a minimum" of 7 days in advance of the change.

(9) **Q:** Can States establish regulations and start issuing permits before their programs are approved? Will those permits be valid once the State program is approved?

A: States cannot issue title V permits before such time as EPA has approved the State's permit program (partial, interim or full approval). Permits issued by a State under its own permit rules are not title V permits and would have to be reissued after program approval to be valid for purposes of title V. The primary reasons for this approach is that EPA has no authority to object to a State permit, and citizens have no opportunity to petition the Administrator or to file suit in Federal court on State-only permits.

However, EPA encourages constructive use of the period before program approval. For example, the permitting authority should require that some permit applications be submitted <u>before</u> EPA's approval of the program. The permitting authority could then get a head start on reviewing applications so that at least 1/3 of the permits could be issued in the first year after program approval as required by title V.

(10) **Q:** During the initial three year period for reviewing permit applications does the State have to determine completeness of <u>all</u> permits within 60 days of receipt in order to avoid default completeness determinations?

A: Yes. Completeness determinations must be

[Continued on p. 11]

[Continued from p. 10]

performed within 60 days of receipt or the permit application will be deemed complete by default.

The initial three-year period is for issuing permits for sources that submit permit applications during the first year after program approval. [See section 70.4(b)(11) concerning the transition plan]. Part 70 requires that States develop transition plans that provide a schedule for submittal of permit applications during the first year of the transition. Such a schedule will help to manage the workload associated with performing the completeness determinations required during this first year and, more importantly, to issue or deny one-third of all permits during the first year of the transition as required by section 70.4(b)(11)(ii).

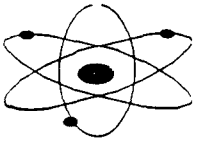
(11) Q: Does a State submittal have to include complete information on local permitting authorities?

A: State programs submitted by the Governor must include a program description which explains how the State intends to carry out its responsibilities to implement a part 70 program. The State submittal must also include a personnel and funding statement which describes the organization and structure of the agency or agencies that will have responsibility for administering the program, delineating the responsibilities of each, including procedures for coordination and the designation of a "lead agency" to facilitate communications between EPA and other agencies if more than one agency has administrative responsibility for the program. The statement must also provide a description of the agency staff who will carry out the State program, including the number, occupation, and general duties of the employees.

If local agencies have a role in implementing the State program, their functions, structure, and staff must be addressed in the program description and personnel and funding statement.

If a local agency plans to administer its own program (and the Governor agrees), the local agency will be treated by EPA as a separate entity and will be required to provide the same program description and documentation as a State. This information could be submitted separately or with the State submittal.

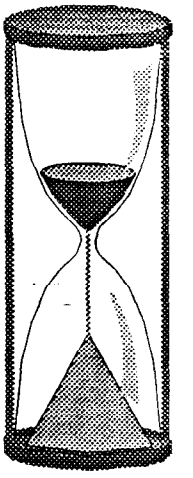
(12) Q: Must a State have delegation of the radionuclide NESHAP in order to get program approval?



A: The EPA is aware that many States are currently unable to implement the radionuclide NESHAP, and the agency is exploring options to address this problem. One of the preliminary options being considered is to develop a mechanism for sharing responsibility for implementing the radionuclide NESHAP during a multi-year transition period during which States increase their capacity to assure compliance with the NESHAP. Under this scenario, EPA would allow States to receive delegated authority for all subparts, for some of the subparts or for portions of the subparts of a radionuclide program. For example, if a State wished to accept delegation for implementation and enforcement of only Subpart H facilities, or for one Subpart H facility, this would be acceptable. In some cases State expertise may limit the State's role to cross referencing the NESHAP requirements in a source's permit while EPA retains authority for implementing that part of the permit.

It seems likely that rulemaking would be required to implement this approach because part 70 does not provide for program approval (except for interim approval) for States which do not accept delegation of the radionuclide NESHAP. Many States would not be able to fully implement the NESHAP even by the 2 year time limit allotted under interim approval.

The approach described above will be presented to OAQPS, OGC, and ORP management for approval.



(13) Q: Is a State program approvable if it has an administrative appeal process that could take longer than 90 days to complete which must be exhausted prior to judicial review?

A: Yes. If State law requires that permit actions be appealed to an administrative agency prior to judicial review, final agency action does not occur, and so the 90-day "clock" for filing petitions for judicial review does not start "ticking" until all State administrative remedies have been exhausted.

(14) Q: What is the renewal process for general permits?

A: The renewal process for general permits is the same as for initial permit issuance. The general permit undergoes the same process as any other title V permit, including public participation and EPA and affected State review. However, these processes do not have to be repeated when the permitting authority receives an applicant's request for coverage under the general permit. If the general permit is renewed without change, sources covered by the general permit do not need to submit new requests to operate under the authority of the general permit.

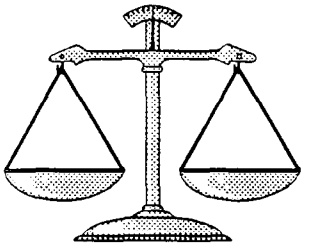
The EPA encourages permitting agencies to inform the public as to which sources are covered by a general permit, although EPA's permit rule contains no explicit requirement to do so. States could, for example, supply the public with a list of sources covered by each general permit.

[Continued on p. 12]

[Continued from p. 11]

(15) Q: Must litigation costs for defending legal challenges of a permit (brought by a third party or the source) be covered by permit fees?

A: Yes. Defending a legal challenge to a permit issued by the permitting authority is not part of an enforcement action. It is part of the permit issuance process, and therefore, the costs are required to be covered by permit fees.



(16) Q: Can fees for title I construction permits be separate from title V fees? That is, can the costs for issuing and enforcing title I construction permits be excluded from the title V fee adequacy demonstration?

A: Section 110(a)(2)(L) of the Act requires that fees for construction permits be superseded by title V fees upon approval of the State program. Thereafter, the costs of issuing and enforcing part C and part D permits to construct for major stationary sources must be covered by title V fees. States may opt to impose separate fees for the issuance of construction permits and for the issuance of operating permits. Both types of fees are considered when demonstrating the adequacy of the State's aggregate fee revenue, and the costs of developing and implementing both types of permits are considered in computing the State program costs.

(17) Q: Will sources that get general permits be subject to monitoring and reporting requirements on a specific pollutant basis? In other words, will a source that emits VOC's and gets a general permit be required to report by species (e.g., separate information for toluene, benzene, etc.)?

A: The monitoring and reporting requirements within general permits are the same as those for permits for individual sources. Generally, applicable requirements that address control of VOC emissions do not require the reporting of separate species, and this would not be treated any differently by general permits. However, if the source emitted VOC and some of the species also were section 112(b) hazardous air pollutants, the species may need to be reported and monitored for section 112 purposes.

(18) Q: Can the issuance of a general permit to a specific source be challenged in court with respect to the permitting authority's determination that the general permit was applicable to the source?

A: No. §70.6(d) provides that the decision to authorize a specific source to operate under a general permit is not subject to judicial review. If each applicability determination were subject to judicial review, the benefit of using general permits (i.e., less burdensome procedures) would be significantly lessened. If it is discovered that the permittee was not qualified for coverage under the general permit, the permitting authority, the EPA, or citizens under the Act may initiate an enforcement action for operating without a part 70 permit (notwithstanding a permit shield). The permitting authority may also revoke the permit and require the source to apply for an individual permit. However, States can be more stringent in this regard and can, if they choose, structure the general permit issuance procedures such that each decision to authorize a source to operate under a general permit will be subject to public participation and/or judicial review.

(19) Q: If a State has developed "insignificance levels" for purposed of permit applications, can it use the insignificance levels to disregard emissions when it determines if a source is major?

A: No. In order to minimize unnecessary paperwork and to reduce the need for sources to conduct analyses of all emissions, regardless of the amount involved, §70.5(c) provides that States may establish exemptions for activities or emissions levels which are insignificant. Even though the exemptions are approved by EPA into a State's operating permit program, the exempted emissions must be counted in making a determination of whether a source is major. As stated in the final rule, these exemptions cannot be used by a source if to do so would interfere with the imposition of applicable requirements, applicability determinations, or the calculation of fees.

(20) Q: Can a final permit be challenged in federal court after State administrative and judicial appeals have been exhausted? Specifically, can a permittee seek relief in federal court for terms of a permit which it feels are inconsistent with the requirements of the Act, including the approved State or local program?

A: The exclusive means for obtaining judicial review of the terms and conditions of permits in State court is by petition filed within 90 days after the final permit action or after the grounds for review arise (whichever is later), or such shorter time as the State shall designate. To obtain federal judicial review, the permittee must petition the Administrator to object to the permit within the time period outlined in §70.8(d) [generally within 60 days of the expiration of the Administrator's 45-day review period]. If the Administrator fails to object to the permit, then the denial of the petition is subject to judicial review under section 307 of the Act. The federal court would then consider whether the permit was in compliance with the requirements of the Act.

(21) Q: Are there limits on how simple an application for permit renewal can be?

[Continued on p. 13]

[Continued from p. 12]

A: Yes. A source must file a complete permit application for initial permit issuance or renewal. Permit applications for modifications need only address the aspects of the permitted source that are changing. However, if there are no changes since the last permit application, the source could essentially resubmit the prior application with a current date.

The preamble to the final rule suggests that cross referencing might be used when the relevant materials are current and clear with respect to the information required in the application. At a minimum, if there were no changes at the source since the initial application, the source would have to submit an application form with identifying information and updated signatures, including signatures required for the compliance certification and to certify truth, accuracy, and completeness. The cross-referenced material must be included in the application package sent to EPA and made available as part of the public docket on the permit action.

(22) Q: What are the permitting authority's obligations with respect to §112(r) other than referring to such a plan in the permit, e.g., relative to review and enforcement?

A: Permitting authorities must develop permit terms which require registration and submittal of any risk management plan required of the source and must be able to place a source on a schedule of compliance if it has not submitted a required plan. Part 70 does not require States to evaluate or otherwise act on the content of a submitted plan. States can opt to implement more of the §112(r) program through part 70 permits (such as plan development, compliance, and enforcement), and if they do so, those activities must be covered by permit fees (except that costs of enforcement actions may not be covered by permit fees). However, the EPA does not encourage States to put the actual plan in the part 70 permit. (See discussion of this topic in the December 18, 1992 memorandum from John Seitz.)

(23) Q: Is a source required to remain a permitted title V source if its potential to emit falls below the applicable potential to emit threshold?

A: No. Status as a title V major source is based solely upon potential to emit and not upon any contemporaneous emissions changes as found in the PSD program. Therefore the ability of a source to move in and out of the title V program is less constrained than similar movement in the PSD world. It is critical for a source to recognize that the granting of a request for revocation of an operating permit does not relieve the source from compliance with all applicable requirements.

In general, a major source must obtain some federally enforceable limitation on its potential to emit in order to become non-major. In some cases, the only option for the source will be some type of title V permit.

Major sources which limit their potential to emit to below major source thresholds by adopting permanent physical limitations (such as by dismantling a portion of their facilities) become non-major without having a federally enforceable limitation of their potential to emit, but they must still apply to the permitting authority before the permit can be revoked.

(24) Q: Are all municipal waste combustors (MWC's) required to get title V permits? If so, when?

A: Many MWC's have PM-10 emissions which exceed major source thresholds and are subject to permitting requirements on the same schedule as other major sources.

MWC's which do not meet the definition of major source are subject to permitting requirements if they are subject to a standard, limitation or other requirement under section 111 of the Act. The only MWC's currently subject to section 111 requirements are those with a MWC unit capacity greater than 250 tons per day. [40 CFR 60.30 (emissions guidelines for MWC's), 40 CFR 60.50 (NSPS for MWC's)] Generally speaking, units of this size will have PM-10 emissions which exceed the threshold for major source and must obtain title V permits.

Smaller MWC's are not currently subject to standards under section 111, but EPA has developed a proposal which would regulate MWC's with a unit capacity of greater than 40 tons per day.

Part 70 allows States to defer permitting MWC's which are not major (until EPA completes a rulemaking on continued deferrals for non-majors). However, a State's deferral of these smaller MWC's may not override the Act's specific schedule for permitting this source category. When the revised standards which regulate smaller MWC's are promulgated (possibly in 1994 or 1995), States will have to issue permits to those sources within 3 years of promulgation or by the effective date of the State's permit program, whichever is later, as required by section 129(e) of the Act.

(25) Q: Are changes at a source which are under the minor NSR permit program considered title I modifications?

A: No. As indicated in the preamble to the proposal (56 FR 21746), EPA considers approvable a State part 70 program that excludes from the definition of "title I modification" any changes subject to a minor NSR program. If these changes were title I modifications, then the scope of the "off-permit" provisions, the minor permit amendment provision, and the operational flexibility provisions under section 502(b)(10) would be drastically reduced. This policy regarding State part 70 programs is not intended to in any way affect existing requirements for the submittal of minor NSR programs under title I.

[Continued on p. 14]

[Continued from p. 13]

(26) Q: Can the initial permit application review/issuance period (three years) be extended by interim program approval?

A: Yes. If a State provides compelling reasons to justify why it cannot implement a full program, it is possible for a State to obtain approval for an interim program that would exclude some source categories. In this situation, the types of sources which were not covered by the interim program can be permitted after the State's fully approved program becomes effective.

The initial permit application submittal and review/issuance periods begin upon the effective date of an operating permit program which is the date of its approval, including interim approval. The 1 year for initial application submittal and the 3 years for permit issuance would both begin, therefore, upon interim approval. If, however, interim approval was granted because the program did not address the full universe of sources (e.g., program lacks adequate legal authority to cover all sources subject to part 70), then the effective date triggered by the interim approval would only apply to those sources covered by that program. Upon full approval, when the program picks up the remaining sources, a second effective date would be triggered for those remaining sources. The time period for issuing permits to those sources covered under the interim approval would not be affected by the new effective date for the remainder sources.

The EPA wishes to emphasize that the source category limited interim approval discussed above will be available only in extraordinary circumstances where the State is able to show compelling reasons why it cannot cover all source categories intended to be covered by part 70. Inadequate resources may also support a showing of compelling reasons for source category limited interim approval. However, the EPA must presume that the collection of fees will result in adequate resources to support the State's permit program, as is required for even interim program approval. [§70.4(d)(3)(i)] The EPA will consider proposals for source category limited interim approval on a case by case basis, and reserves the right to disapprove the entire program in any given case. Such complete disapproval may be necessary where, for instance, the State excludes from the coverage of the part 70 program a large portion of the sources in the State that qualify as major sources under section 112.

NSR Simplification Workshop Scheduled For March 17 - 18, 1993

The EPA will conduct a New Source Review Simplification workshop in Durham, NC on March 17 - 18, 1993. The purpose of this workshop is to address issues identified at the first workshop, held August 12 - 13, 1992, and to provide additional information on potential approaches for simplifying NSR. Please contact Joann Altman at (919) 541-5591 for additional information.

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