

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK NC 27711

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

DEC 3 1998

MEMORANDUM

SUBJECT: Area Source Deferrals and Exemptions from Title V Permitting

FROM: Thomas C. Curran, Director
Information Transfer and Program Integration Division (MD-12)

TO: Douglas E. Hardesty, Manager
Federal and Delegated Air Programs Unit
EPA Region X

We are writing to provide answers to questions you raised in your May 15, 1998, memorandum concerning area source deferrals and exemptions from title V permitting. Your initiative in seeking the status of our efforts is appreciated. In the interest of clarity, we have attached a copy of the questions raised in your memorandum followed by answers denoted by *underlined italic text*.

We hope that you will find the answers to your questions to be helpful. If your staff needs to further discuss our answers, please ask them to contact either Barrett Parker at (919) 541-5635 or David Painter at (919) 541-5515.

Attachment

cc: Fred Dimmick (MD-12)
Steve Hitte (MD-12)
David Painter (MD-12)
Barrett Parker (MD-12)
Jim Szykman (MD-13)
John Walke, OGC (2344)
Susan Wyatt (MD-13)

ATTACHMENT

- A. Regarding NESHAP and NSPS standards 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 703(b)(4)?

At this time, no rulemaking is under way. The part 70 rule does not obligate the Agency to initiate rulemaking. Nevertheless, OAQPS is considering whether rulemaking is appropriate, and OAQPS managers will decide before the end of 1998 if rulemaking is to be conducted. As you know, the current deferral in section 70.3(b)(1) remains in effect until any such rulemaking is complete.

Note: The use of the term are 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 no decision to initiate rulemaking has been made, no one in OAQPS is working on this rulemaking. However, a cross-divisional team consisting of David Painter, Barrett Parker, and Jim Szykman is developing options to present to management. Options under consideration include a no-action alternative, which would allow permitting authorities the ability to continue to provide deferrals, a rulemaking option to provide permanent exemptions, or a rulemaking option to require title V permits.

3. What is the anticipated timeframe for proposal and promulgation?

Should a rulemaking option be selected, proposal would be targeted for completion by December 1999, and promulgation would be expected a year later.

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

As provided in section 70.3(b)(4), nonmajor sources subject to 60 CFR Subpart AAA (residential woodheaters) 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?

Because the deferrals would continue until a rulemaking package was completed there would be no effect upon deferred sources. Since rulemaking would have no impact upon exemptions, exempt sources would remain exempt.

- 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?)

At this time, except for certain nonmajor municipal solid waste landfills, no other nonmajor sources subject to NSPS are required to obtain a title V permit, either because of exemptions or deferrals by permitting authorities. Except for the five source categories listed in Response B.3 below, area sources subject to NESHAP are required to obtain title V permits. See 40 CFR 63.1(c)(2).

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.)

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 NSPS subparts B and Cc, are exempt from title V permitting requirements, if they are not otherwise subject to title V. Certain NESHAP area sources in two categories - decorative chrome electroplaters using fume suppressants or wetting agents (40 CFR Part 63 Subpart N) and batch cold solvent degreasers (40 CFR Part 63 Subpart T) - have been exempted from Title V permitting.

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 Response B.1. above, except for certain nonmajor municipal solid waste landfills, no other nonmajor sources subject to NSPS are required to obtain a title V permit, either because of exemptions or deferrals by permitting authorities.

Area sources subject to the five NESHAP listed below may be deferred from title V permitting until December 9, 1999 by permitting authorities:

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).

Note: The OAQPS is considering developing guidance that may exclude from title V permitting source 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 prior answer expire on December 9, 1999 (see 61 FR 27785) and, absent OAQPS intervention, complete title V applications for those sources would be due within 1 year later. However, allowing permitting authorities the ability to extend these deferrals beyond the current deadline is included in the rulemaking options referred to in response to question A.2.

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 response to question A.2., a cross-divisional team consisting of David Painter, Barrett Parker, and Jim Szykman is developing options to present to management to resolve the question of whether those post-1992 standards where area sources are deferred should be permitting or exempted. The OAQPS is considering whether such rulemaking is appropriate and plans to resolve this concern in advance of December 1999. Options under consideration include a no-action alternative, which would allow permitting authorities the ability to continue to provide deferrals, a rulemaking option to provide permanent exemptions, or a rulemaking option to require title V permits. Should the rationale for the current deferral remain valid, the team may recommend a continuation of the deferral. Note that 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. Timing for these decisions is 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. While the negotiations are privileged and cannot be discussed with parties outside the Agency, Fred Dimmick of the Program Review Group with ITPID will contact you and describe in general terms our efforts on this matter.

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 see a need to adjust the applicability of existing rules to exempt nonmajor sources when making other clarifications to the rules, then those work groups must distinguish between nonmajor and major sources. For NSPS, we are not aware of any specific post-1992 revisions which removed the deferrals provided in section 70.3(b)(1). For NESHAP, the only deferrals and exemptions granted to area sources were provided by the rulemakings that provided the deferrals spelled out in the responses to questions B.2 and B.3

Are the amendment writers required to specifically address area sources?

No. If the amendment addresses applicability, and if the rule writers see a need to exempt nonmajor sources from title V permitting, then rule writers are required to specifically address nonmajor sources.

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

Unless the amendments to an NSPS specifically address the requirement for nonmajor sources to obtain a title V operating permit, permitting authorities may continue to defer title V permitting in accordance with section 70.3(b)(1). Because the requirement to obtain or not obtain a title V permit is determined during initial MACT rulemaking for area sources, subsequent amendments which do not change the initial determinations have no effect on title V permitting.

--Example: Subpart 000 of part 60 has been revised several times since 1992. Has any of these revisions triggered title V applicability for area sources.

No. Since no changes concerning source applicability have been incorporated in the revisions, nonmajor sources with permitting authorities that continue to offer deferral of title V permitting are not required to obtain title V permits.

--If not, why not?

The deferral approach was developed to reduce unnecessary workloads and regulatory burdens for specific post-1992 standards. A change to a pre-existing regulation (pre-1992 standard) should not change the need for a title V permit.