

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IV

345 COURTLAND STREET, N.E.
ATLANTA, GEORGIA 30365

URGENT TITLE V CORRESPONDENCE

DEC 22 1992

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TRANSMISSION

STATE/LOCAL AIR AGENCY DIRECTORS

RE: Title III/Title IV Authorities Necessary for Full and
Interim Title V Program Approval

Dear State/Local Director:

Over the last several weeks Region IV has become increasingly concerned regarding the requirements for title III/IV interface with the title V program approval process. The initial Agency position of deferring some of the title III/IV program implementation elements until after initial title V program approval has changed somewhat with the recent promulgation of the core acid rain rules. In order to give full or interim title V program approval, a permit authority must demonstrate authority to issue permits which include all "applicable requirements." Because the core acid rain rules establish applicable requirements for phase II sources, there will be several acid rain related program submittal elements needed for title V program approval.

Of more immediate concern is the review of state enabling legislation for the title III/IV authorities necessary for title V program approval. In coordination with our Office of Regional Counsel and EPA Headquarters, we have compiled a list of the title III/IV authorities that will be necessary for full or interim title V program approval. Over the next two weeks the Region will re-examine your state's enabling legislation in order to determine adequate legislative authority for the programs established under titles III and IV. While Region IV continues to support broad state enabling legislation for all Clean Air Act Programs, we strongly recommend that you and your legal counsel carefully review the enclosed list to ensure adequate authority for each listed requirement.

Should you have any questions concerning this matter, please contact Carla Pierce of my staff at (404) 347-5014. Should your legal counsel wish to contact one of our staff attorneys, please refer to the contacts listed below.

Alabama,
Tennessee - Keith Holman, Assistant Regional Counsel
(404) 347-2335 (ext. 2129)

Georgia,
North Carolina - Lynda Crum, Assistant Regional Counsel
(404) 347-2335 (ext. 2134)

Florida - Nancy Tommelleo, Assistant Regional Counsel
(404) 347-2335 (ext. 2126)

Kentucky,
Mississippi - Alan Dion, Assistant Regional Counsel
(404) 347-2335 (ext. 2131)

South Carolina - David Savage, Assistant Regional Counsel
(404)347-2335 (ext. 2135)

In addition, we request that future transmittals from your office regarding title V issues or any title V interface issues be specifically flagged as "Title V" in the reference portion of the correspondence. This will ensure more timely distribution of your package to the appropriate personnel on my staff handling the title V permit program. You may also carbon copy Beverly Spagg or Carla Pierce of my staff when transmitting title V information directly to me.

Thank you for your immediate attention to this matter. We look forward to continuing cooperative efforts to establish approvable title V operating permit programs.

Sincerely yours,

Winston A. Smith, Director
Air, Pesticides & Toxics
Management Division

Enclosure

**List of Title III/IV Authorities
Necessary for Full and Interim Title V Program Approval**

I. TITLE III AUTHORITIES

A. Title III Program-Specific Authorities

1. *Emission Standards* - The permit authority must demonstrate authority to include in an operating permit and enforce any EPA-promulgated emission standard (i.e., §112(d), (f), and (h)) (MACT/GACT). See 42 U.S.C. §7412(d), (f) and (h).

2. *Modifications* - The permit authority must demonstrate authority to include in an operating permit and enforce the case-by-case MACT determinations (developed by EPA and/or the approved title V permit authority) for new, reconstructed, or modified major sources where no applicable emissions limitations have been yet established. See 42 U.S.C. §7412(g).

3. *Equivalent Emission Limitation By Permit* - The permit authority must demonstrate authority to include in an operating permit and enforce the case-by-case MACT determinations (developed by the approved title V permit authority) for major source categories where EPA fails to promulgate a standard for a major source category or subcategory within 18 months of the scheduled promulgation date. See 42 U.S.C. §7412(j).

4. *Early Reduction* - The permit authority must demonstrate authority to issue a permit allowing an existing source (for which the owner or operator demonstrates that the source has achieved a reduction of 90 percent or more in emissions of hazardous air pollutants, 95 percent in the case of particulate hazardous pollutants, from the same source) to meet an alternative emission limitation reflecting such reduction in lieu of an emission limitation promulgated under §112(d) of the Clean Air Act. See 42 U.S.C. §7412(i)(5).

5. *Prevention of Accidental Releases* - The permit authority must demonstrate authority to include, as a condition of issuing an operating permit, that a stationary source have registered a risk management plan with the EPA. See 42 U.S.C. §7412(r).

B. Other Title-III Implementation Issues

1. *Standard Coverage* - State enabling legislation which references 40 C.F.R. Part 61, National Emissions Standards for Hazardous Air Pollutants, should be replaced with a more generic reference to requirements developed pursuant to Section 112 of the Clean Air Act. Development of new subparts (i.e., 40 CFR Part 63, 40 CFR Part 68) would require periodic updates to state enabling legislation if the state utilizes references to specific Parts of the Code of Federal Regulations.

2. *Pollutant Coverage* - State enabling legislation which makes any reference to specific hazardous air pollutants should be changed to a generic reference in order to provide coverage to the 189 pollutants identified under §112 of the Act including any additional pollutants which may be added at a later date. This would also include pollutants listed under §112(r) of the Act.

II. TITLE IV AUTHORITIES

A. Federal/State Title IV Coordination Authorities

1. *EPA Review of Acid Rain Permits* - The permit authority must demonstrate that it is authorized to allow EPA to review, comment upon, and modify any proposed acid rain permit. See 40 C.F.R. §72.72(B)(1)(vii).

2. *Notification of State Acid Rain Permit Appeals* - The permit authority must demonstrate that it is authorized to provide written notification to EPA of any State administrative or judicial appeal concerning an acid rain permit provision or the denial of an acid rain permit. See 40 C.F.R. §72.72(b)(5)(iii).

3. *EPA Review of State Actions Affecting Acid Rain Permits* - The permit authority must notify EPA of any State determination or interpretation, whether administrative or judicial, which alters, voids, or otherwise affects any acid rain permit provision. Further, the permit authority must demonstrate that it is authorized to allow EPA to review and modify or revoke the affected permit if necessary to ensure national consistency in the issuance of acid rain permits. See 40 C.F.R. §72.72(b)(5)(v), 72.80(e).

4. *EPA Intervention in Acid Rain Permit Appeal Proceedings* - The permit authority must demonstrate that it is authorized to provide EPA, as a matter of right, the ability to intervene at any time in any administrative or judicial proceeding involving the appeal of an acid rain permit provision or the denial of an acid rain permit. See 40 C.F.R. §72.72(B)(5)(iv).

5. *Appeal Based on State Failure to Act on Application* - The permit authority must provide a basis for applicants to obtain an administrative or judicial appeal where the permit authority has failed to take action on a timely and complete application for an acid rain permit application. See 40 C.F.R. §72.72(b)(5)(vi).

B. Other Title IV Implementation Issues

1. *Permit Shield* - The acid rain permit shield differs from the part 70 permit shield in that the acid rain permit application and operating shield is a mandatory element of the acid rain program. The permit authority must therefore demonstrate that it is authorized to consider acid rain sources in compliance which have submitted timely and complete acid rain permit applications or which are operating in accordance with acid rain program requirements. See 40 C.F.R. §72.32(a), 72.51.

2. *Permit Term* - Acid rain permits are to be issued for fixed five year terms, as opposed to the more flexible terms of up to five years required for part 70 operating permits. The permitting authority must demonstrate that it is authorized to issue acid rain permits for a fixed term of five years. See 42 U.S.C. §7651g(a), 40 C.F.R. §72.73(b)(ii).

3. *Non-interference with Acid Rain Program* - The State's part 70 operating permit program must not restrict or interfere with the acid rain program. Specifically, the operating permit program must not prohibit or restrict emission allowance trading and must not interfere with EPA's decision on an offset plan. See C.F.R. §72.72(a).