

(Signed January 11, 1996)

MEMORANDUM

SUBJECT: Section 112(j) Permit Application Deadline

FROM: John S. Seitz, Director
Office of Air Quality Planning and Standards (MD-10)

TO: Regional Air Directors

SUMMARY:

This memo provides guidance on whether Regions and State and local permitting agencies should require compliance with the

May 15, 1996, Section 112(j) permit application deadline

(59 FR 26429). This deadline will be triggered if the Environmental Protection Agency fails to promulgate a Section 112(d) emission standard for a source category within 18 months of the regulatory schedule of November 15, 1994, (4-year source categories) (58 FR 64931). Regions and State and local permitting agencies should not require submittal of permit applications until November 15, 1996. In the event that the applicable emission standard is promulgated before November 15, 1996, owners or operators should defer to Title V programs for permitting requirements. This delay in the permit application submittal is appropriate because the Agency fully intends to promulgate emission standards for the 4-year source categories on or before the permit application deadline, but in order to comply with the deadline, owners or operators would have to begin preparation of permit applications at this time. This would result in unnecessary paperwork burden for both owners or operators and permitting agencies.

BACKGROUND:

Section 112(e) of the Clean Air Act (the Act) requires the Agency to publish a schedule for promulgating regulations establishing hazardous air pollutants (HAP) emission standards for all source categories listed pursuant to Section 112 of the Act. The Act further directs that this regulatory schedule

require the promulgation of emission standards for at least 40 source categories by 1992, for at least 25 percent of the listed categories by 1994, for at least 50 percent of the listed categories by 1997, and all remaining categories by the year 2000. These are commonly referred to as the 2-year, 4-year,

7-year, and the 10-year maximum achievable control technology (MACT) standards, respectively. This regulatory schedule was published by the Agency on December 3, 1993 (58 FR 64931).

If the Agency should fail to promulgate a MACT standard for a listed source category by 18 months after the date in the regulatory schedule, Section 112(j) of the Act requires owners or operators of major sources within that source category to obtain a Title V permit, if the major source is located in a State with an approved Title V permit program. This permit will require compliance with an emission limitation equivalent to that which the major source would have been subject to had the Agency promulgated a timely MACT standard for that source category.

On May 20, 1994, the Agency issued a final rule for implementing Section 112(j) (59 FR 26429). This rule requires major source owners or operators to submit a permit application by the date 18 months after a missed date on the regulatory schedule. In accordance with this regulation, the deadlines for submittal of permit applications are as follows:

| <u>Emission Standard</u> | <u>Regulatory Schedule</u> | <u>112(j) Permit Application Deadline</u> |
|--------------------------|----------------------------|---|
| 4-year | 11/15/94 | 5/15/96 |
| 7-year | 11/15/97 | 5/15/99 |
| 10-year | 11/15/00 | 5/15/02 |

CURRENT SITUATION:

To date, the Agency has promulgated several 4-year MACT standards and intends to promulgate MACT standards for all the remaining 4-year standards within the 18-month period following the date in the regulatory schedule. All of these standards have court-ordered deadlines with the latest deadline coinciding with the Section 112(j) permit application deadline.

In order for owners or operators of major sources to submit a timely permit application in the event that the Agency would fail to promulgate a 4-year emission standard, applicants would have to begin preparation of these applications in the very near future. If EPA promulgates standards in accordance with the court-ordered schedule, this would result in an unnecessary burden for both the owners or operators and the Title V permitting agencies.

GUIDANCE:

Upon review, the Agency has determined that it is not the intent of Section 112(j) to create unnecessary burdens for owners or operators and permitting agencies when the Agency clearly intends to promulgate emission standards for the source category. Therefore, the Agency will be issuing a direct final Federal Register notice that delays the Section 112(j) permit application deadline for all 4-year MACT standards by 180 days until November 15, 1996. The Agency believes that this new application deadline will allow sufficient time to promulgate the remaining 4-year emission standards and is consistent with the intent of Section 112(j). If the Agency does promulgate the emission standard before this time, permit applications or reopenings will be governed by Title V requirements.

If you have any questions about the permit application deadline or Section 112(j), please contact Lynn Hutchinson or Kathy Kaufman of the Office of Air Quality Planning and Standards (OAQPS) at (919) 541-5624 or (919) 541-0101, respectively.

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