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February 10, 1994

1994 Update: Implementing The Clean Air Act

EPA SPEAKS

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1994 UPDATE: IMPLEMENTING THE CLEAN AIR ACT EPA SPEAKS

AN ABA SATELLITE SEMINAR
FEBRUARY 10, 1994

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12:20	PANEL I:	Reforming the New Source Review Process *Andrea Bear Field, Moderator* *Lydia N. Wegman* *Pamela Faggert* *Douglas G. Fox* *Michael R. Barr*
12:55	BREAK	
1:00	PANEL 2:	NONATTAINMENT *Andrea Bear Field, Moderator* *John Seitz* *A. Stanley Meiburg* *Thomas M. Allen* *David Aldorfer*
1:50	BREAK	
2:10	PANEL 3:	AIR TOXICS *Kathleen Bennett, Moderator* *Bruce C. Jordan* *Donald F. Theiler* *David M. Driessen* *Joseph C. Hovious*
2:55	BREAK	
3:00	PANEL 4:	PERMITTING AND ENFORCEMENT *Kathleen Bennett, Moderator* *Alan W. Eckert* *Michael Trutna* *Robert H. Collom* *Ernie Rosenberg*
3:55	National Transmission Ends	

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AN ABA SATELLITE SEMINAR
FEBRUARY 10, 1994

United States Environmental Protection Agency | Air And Radiation (6102) | EPA 410-K-93-001 November 1993

EPA

Implementation Strategy For The Clean Air Act Amendments Of 1990

Update, 1993

INTRODUCTION

The Environmental Protection Agency is committed to implementing the Clean Air Act (CAA) Amendments of 1990 in a manner which will protect health and the environment, minimize costs, and encourage pollution prevention and innovative technologies.

The implementation of the Amendments is based on a two-year strategy developed and continually updated to inform Congress and the public on the status of CAA implementation activities.

Since Congress passed the Amendments, EPA has issued over 150 proposed and final rules and guidance documents. When fully implemented in the year 2005, the CAA will remove an estimated 57 billion pounds of pollution from the air. To date EPA has proposed or promulgated rules that will account for 85 percent of those 57 billion pounds. Figure 1 shows emission reductions addressed to date and the number of actions included in the revised two-year implementation strategy.

CAA REGULATORY/IMPLEMENTATION HIGHLIGHTS

Under the Clinton Administration, EPA has taken a number of steps to accelerate our rapid implementation pace and enforce the CAA. Highlights of our accomplishments from January through October 1993 are as follows:

Title I (Non-Attainment)

Final Rules

- New source performance standards for SOCMI Reactor Processes
- Guidelines for air quality models for SIPs
- PM-10 increments for PSD program
- Decision on ozone NAAQS
- Enhanced ozone monitoring

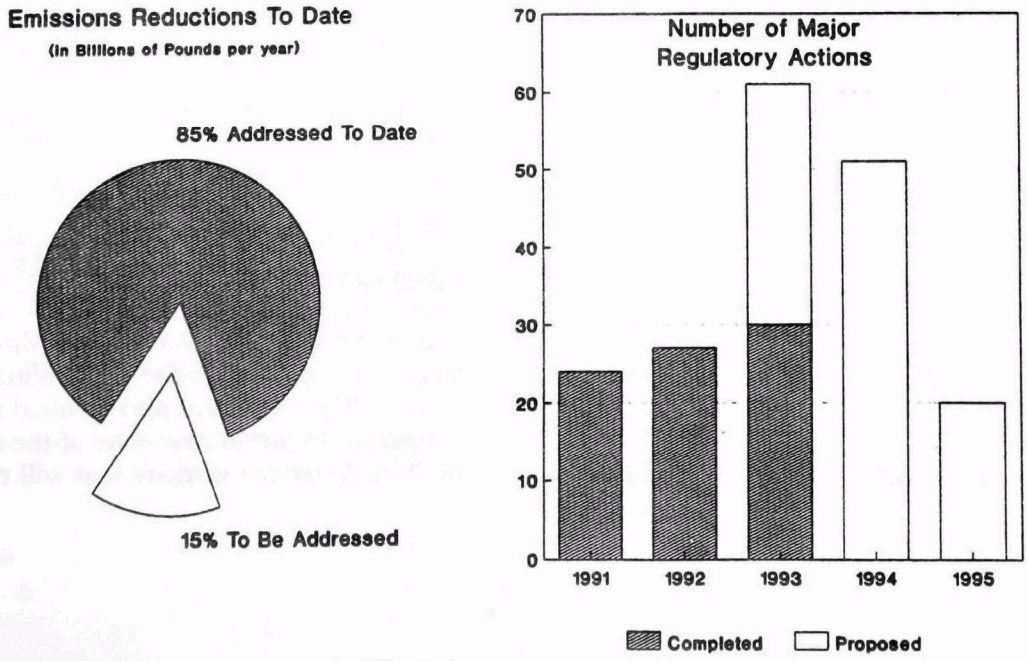

Figure 1

Proposed Rules
• General conformity criteria for federal agencies
• Order of sanctions
• Economic Incentives Program

Title II (Mobile Sources)

Final Rules
• Urban bus PM standards
• Urban bus retrofit standards
• NO_x standards for 1998 model year and later heavy duty engines

Proposed Rules
• Emission standards for non-road engines >50 hp
• Clean fuel fleet vehicle standards
• Credit programs for heavy duty vehicles
• California Pilot test program
• Clean fuel vehicle standards for passenger cars and light duty truck
• On-board vehicle diagnostics

Title III (Air Toxics)

Final rules
• Dry Cleaners MACT standards
• Coke Ovens

Proposed Rules
• Procedures for approving state air toxic programs
• Case by case MACT determinations under section 112(j) -- (MACT hammer)
• General provisions for MACT standards
• MACT standards for Chromium from Industrial Cooling Towers

Title IV (Acid Rain)

Final rules
• Phase II utility allowance allocations

Proposed Rules
• Opt-in regulation for combustor sources

Title VI (Stratospheric Ozone Protection)

Final rules
• Section 608 refrigerant recycling program

Proposed Rules
• Federal procurement regulations for ozone depleting chemicals
• Accelerated phase out of CFCs and listing of methyl bromide as a Phase I ozone-depleting substance
• Class II non-essential products ban
• Significant new alternatives program (SNAP)

Title VII (Enforcement)

Proposed Rules
• Enhanced Monitoring requirements from air pollution sources

Studies, Reports and Guidance

• Report to Congress on Air Toxics Efforts [Section 112(s)]
• 185B NO_x/VOC Study
• Joint EPA/DOT report to Congress: Clean Air Through Transportation
• Guidance to states on writing emission inventories, ozone non-attainment, and Title V permits

Other Significant Accomplishments

• Enhanced I/M legislation - the following eleven states have passed enhanced I/M legislation since January, 1993: Colorado, Connecticut, Louisiana, Maine, Nevada, New Hampshire, New York, Ohio, Rhode Island, Texas, Virginia.
• Operating Permits Legislation - 48 states have enacted operating permits legislation. EPA has to determine whether all the legislation meets the standards.
• EPA is working with the Small Business Administration on an MOU implementing Section 507, the Small Business Assistance Program.
• EPA settled an $11.1 million enforcement action against Louisiana Pacific Corporation. This is the largest penalty EPA has collected ever under the Clean Air Act and the second largest civil penalty under any environmental statute. The settlement also resulted in industry agreement to install new state-of-the-art controls built by American workers that will result in

about 22,000 tons of reductions of volatile organic compounds, particulate matter, and carbon monoxide from 11 wood panel facilities nationwide.

• Voluntary Emission Reduction Programs - The Office of Air and Radiation (OAR) initiated innovative voluntary programs that reduce emissions of greenhouse gases, including carbon dioxide and methane, and other air pollutants. Three of these non-regulatory "Green Programs" promote use of energy-efficient lighting, building energy systems and computers. Other programs will encourage reduction in emissions from natural gas transmission and distribution; assist in the profitable capture of methane from coal beds during and prior to mining; and encourage steps to prevent water and air pollution from feedlot waste stored in lagoons. In each program, emissions reductions are achieved through private-public partnerships with businesses and other organizations. The Green Programs are an example of how we are working cooperatively with the private sector to arrive at economically attractive ways to protect the environment while improving productivity and competitiveness.

• Market-Based Programs - The Clean Air Act has stimulated demand for pollution prevention and control technologies, and in the process has created new business opportunities and jobs in the billion-dollar air pollution control industry. We are working with the Department of Commerce and the business community to identify these business opportunities. OAR has established a database to document the vast array of technological advances and new business and export ventures that have arisen since passage of the Amendments. OAR is also developing regulations that give sources flexibility on ways to comply and encourage prevention and innovative technologies. OAR will encourage market-based solutions, such as those that the Congress wrote into the acid rain provisions of the Clean Air Act. The emissions trading market under the program is now developing; we expect this market will provide a model for future market-based systems.

IMPLEMENTATION GOALS

As we move forward to fulfill our obligations under the Clean Air Act there are four major principles that will guide our efforts:

I. Enhance EPA's partnerships to work with state and local governments.

As more rulemaking occurs, state and local governments bear ever greater responsibility for implementing requirements ranging from the new operating permit program to enhanced vehicle inspection-and-maintenance programs. We need to build true partnerships with state and local governments.

II. Seek to eliminate the adversarial nature of the rulemaking and regulatory process.

An important part of public outreach effort is to encourage consensus through broad public consultation with outside parties. We must reach out to all who have an interest in and are affected by our rules and regulations.

III. Encourage pollution prevention and innovative technologies for reducing pollution.

Where possible we will encourage solutions such as our proposed industrial process cooling tower rule that eliminates chromium emissions through a change in feedstocks, not through end-of-pipe controls.

IV. Examine the environmental justice questions associated with implementing the Clean Air Act.

We will initiate projects to identify and reduce air pollution that is disproportionately affecting the poor and people of color. Earlier in the year OAR held a public meeting in Baton Rouge, Louisiana, to discuss our proposed toxic rule on the chemical manufacturing industry (HON) with the local communities affected by air pollution and to provide them with an opportunity to express their concerns about the proposed rule.

IMPLEMENTATION STRATEGY

The implementation of the CAA is based on a strategy which outlines the regulatory agenda that will serve to guide our activities in the most effective manner for the forthcoming two year period. The strategy document (Attachment A) contains a chart showing OAR's schedule for carrying out the law through December 1995, as well as those actions already completed.

The chart is reprinted below with changes to bring it up-to-date. For each entry, the chart shows the following information:

- whether or not the action has been completed, and if so, when
- the Agency's current target date for completion of planned actions
- the statutory deadline for the action, if one exists

The chart contains most but not all significant actions needed to carry out the 1990 Amendments through December 1995. The chart does not include, for example, some of the requirements implemented by EPA offices other than the Office of Air and Radiation, such as the Office of Research and Development. Target dates for future actions are subject to change based on new risk assessments, court decisions, changes in available resources and other factors.

The remainder of this report will focus on the Agency's communication/outreach efforts.

OAR OUTREACH TOOLS/PUBLICATIONS

One of OAR's primary goals in implementing the Clean Air Act is to reach out to all affected parties and help them understand the implications of the Amendments. OAR has developed and distributed a series of learning tools that can be used to understand the complexities of the amendments. These include brochures, citizen guides, slide presentations, telephone hotlines, interactive computer bulletin boards, and a number of public service announcements. A partial list highlighting current OAR's communication tools follows. The listing is part of an OAR publication entitled "OAR Outreach/Communication Tools" which can be obtained by contacting Jeanette Brandon at (202) 260-7400.

GENERAL INFORMATION -- WRITTEN MATERIALS (October 1993)

The Plain English Guide to the Clean Air Act -

Published April 1993. Explains in non-technical, straightforward language the provisions of the Clean Air Act of 1990 and how they will clean the air. [Contact NCEPI (513) 891-6561].

What You Can Do To Reduce Air Pollution --

Published October 1992. A citizen's guide to what individuals can do to help meet the goals of the Clean Air Act Amendments of 1990. Also outlines the causes and effects of air pollution. [Contact NCEPI (513) 891-6561].

The Clean Air Act of 1990: An Introductory Guide to Smart Implementation --

Published by the Clean Air Act Advisory Committee in May 1992. A concise five page guide, written in layperson's terms, which covers the background, benefits, and philosophy of the new Clean Air Act.

The Clean Air Act of 1990: A Primer on Consensus-Building --

Published summer 1992. Outlines collaborative decision-making processes to assist agencies, organizations, and individuals embarking on consensus-building activities in the implementation of the Clean Air Act.

The Clean Air Act of 1990: A Guide to Public Financing Options --

Published November 1992. Outlines ways for state and local governments to meet the funding obligations of the Clean Air Act of 1990, both within current air program financing arrangements and within the provisions of the Act.

The Clean Air Marketplace --

First issue published in June 1993. Periodic newsletter on business opportunities created by the Clean Air Act Amendments of 1990. [Contact: Steve Harper (202) 260-5580]

Clean Air Act Amendments of 1990: Detailed Summary of Titles --

Published in 1990. A highly detailed and relatively technical treatment of Titles I through XI of the Clean Air Act. [Contact NCEPI (513) 891-6561].

The Clean Air Act Amendments of 1990: Overview Summary Materials --

Published on November 15, 1990. Contains an overview of the Clean Air Act Amendments of 1990, one page summaries of the key titles, a glossary of terms, and a legislative chronology. This document can serve as useful background, but has not been recently updated.

Clean Air Update --

A 2-3 page document, published monthly, with information on upcoming public meetings, upcoming regulatory actions, reports, and major Federal Register notices. [Contact: Heidi Farber (202) 260-2632]

Implementation Strategy for the Clean Air Act Amendments of 1990 --

Published on January 15, 1991. Summarizes plans to implement the Clean Air Act Amendments of 1990 within the timeframes set by Congress. Multi-year document. [Contact: Heidi Farber (202) 260-2632]

Update of Implementation Strategy for the Clean Air Act Amendments of 1990 --

Published July 1992.

EPA Journal, "The New Clean Air Act: What it Means to You" (Vol. 17, No. 1) --

Published in January/February 1991 by the Office of Communications, Education and Public Affairs. The entire edition of the Journal is devoted to discussions of various issues concerning the new Clean Air Act. [Contact NCEPI (513) 891-6561].

The Clean Air Act Amendments of 1990: A Guide for Small Businesses --

Published September 1992. Explains how the various parts of the Clean Air Act Amendments can affect small businesses and how small businesses can obtain information and assistance. [Contact NCEPI (513) 891-6561].

GENERAL INFORMATION -- OTHER FORMATS

Technology Transfer Network (TTN): Clean Air Act Computer Bulletin Board --

A system of integrated electronic bulletin boards. The Bulletin Board is run by the Office of Air Quality Planning and Standards and contains general documents, rules, and guidance documents that can be accessed electronically by the public. The system allows users to call in from anywhere in the world and download information on air quality models, air inventories, recently signed rules, and extensive information on operating permits, including model permits -- all for the price of a phone call. A one page instruction sheet on how to access the bulletin board is available. [Bulletin Board Number (919) 541-5742 (8 bits, no parity, 1 stop bit, VT100 emulation) Contact: Jerry Mersch (919) 541-5635]

Slide Presentation - The Clean Air Marketplace --

"The Clean Air Act: Spurring Innovation, Jobs, and Exports". Slides and talking points

on the relationships between clean air and the economy. [Contact: Steve Harper (202) 260-5580]

Videotapes --

PBS Teleconference on the Clean Air Act

The Legal Winds of Change: Business and the New Clean Air Act, broadcast on November 28, 1990. Tape of a videoconference in which panelists explain provisions of the 1990 Clean Air Act and their implications for business and the environment. (Limited quantities available.) [Contact NCEPI (513) 891-6561].

Air and Waste Management Association/American Bar Association Teleconferences on the Clean Air Act --

Update: Implementing the Clean Air Act - EPA Speaks, broadcast in February 1991, 1992, and 1993. Satellite seminars in which four panels address different aspects of the 1990 Clean Air Act. Each panel features key decision makers from EPA, as well as representatives from industry, state governments, and the major environmental groups. [Contact: The American Bar Association, Division for Professional Education; one copy available for loan from Heidi Farber (202) 260-2632]

ATTACHMENT A

The Clean Air Act Implementation Strategy *
(Revised October 1993)

Date	Title	Activity	Cmpltd.	Stat. Deadline
Dec-90	Title I - Nonattainment			
		Issue "Getting Started" letter to Governors	Y	
		States submit request/justification for 5 % classification adjustments	Y	Dec-90
Jan-91		Publish two-year implementation strategy	Y	
	Title I - Nonattainment			
		Publish notice of initial PM-10 moderate nonattainment areas	Y	
		Initiate additional PM-10, SO_2, lead designation process	Y	
	Title VI - CFCs			
		Listing of depleting substances	Y	Jan-91
Feb-91	Title I - Nonattainment			
		Act on 5% classification adjustment requests	Y	Feb-91
Mar-91	Title I - Nonattainment			
		States submit nonattainment area designations	Y	Mar-91
	Title VI - CFCs			
		Direct final 1991 production limits	Y	
Apr-91	Title I - Nonattainment			
		States submit PM-10 areas unable to attain by 1994	Y	
		States respond to list of PM-10, SO_2, lead nonattainment areas	Y	
May-91	Title I - Nonattainment			
		States deadline for RACT corrections	Partial	
		Notify States of intent to modify suggested boundaries	Y	May-91
	Title I - Nonattainment			
		Convene NE ozone transport commission	Y	May-91
	Title II - Mobile Sources			
		Finalize gasoline Reid Vapor Pressure regulations	Y	May-91
		Finalize Tier I car and truck standards	Y	May-91
		Propose reformulated gasoline requirements	Y	
		Propose clean fuels fleet and CA pilot credit programs	Y	
		Propose urban bus regulations	Y	
		Propose emission control diagnostic rule	Y	

* These dates are subject to change based on new risk assessments, court decisions, and changes in available resources.

The Clean Air Act Implementation Strategy
(Revised October 1993)

Date	Title	Activity	Compl.	Stat. Deadline
May-91	Title IV - Acid Rain			
		Propose regulations for auctions and sales	Y	
	Title V - Permit			
		Propose State permit regulations		
Jun-91	Title III - Air Toxics			
		Publish draft list of source categories	Y	
		Propose list of high risk pollutants, 90/95% early reductions guidance	Y	Jul-91
		Propose early reductions rulemaking	Y	
Jul-91	Title II - Mobile Sources			
		Propose lead substitute gasoline additives	Y	
	Title VII - Enforcement			
		Propose administrative penalties rules of practice	Y	
Sep-91	Title VI - CFCs			
		Propose CFC phase-out regulations	Y	
		Propose mobile air conditioning recycling regulations	Y	
Oct-91	Title I - Nonattainment			
		Publish VOC and CO emission inventory guidance	Y	
	Title II - Mobile Sources			
		Publish study on non-road engines	Y	Nov-91
Nov-91	Title I - Nonattainment			
		Publish guidance on control cost-effectiveness	Y	Nov-91
		States submit PM-10 SIPs	Partial	Nov-91
		Publish air quality and emission trends report	Y	
		Establish Grand Canyon visibility transport commission	Y	Nov-91
		Propose PM-10 area reclassifications	Y	Jun-91
		Finalize ozone, CO, PM-10, and lead nonattainment boundaries	Y	Jul-91
	Title III - Air Toxics			
		Propose MACT for dry cleaners (per court order)	Y	
Dec-91	Title I - Nonattainment			
		Propose outer continental shelf rule	Y	

The Clean Air Act Implementation Strategy
(Revised October 1993)

Date	Title	Activity	Compli.	Stat. Deadline
Dec-91	Title IV - Acid Rain			
		Finalize regulations for auctions and sales	Y	Nov-91
		Propose allowance trading system	Y	
		Propose acid rain permit program	Y	
		Propose continuous emission monitor requirements	Y	
		Propose excess emissions rules	Y	
		Propose conservation and renewable incentives	Y	
Jan-92	Title V - Permits			
		Publish guidance on State programs to assist small businesses	Y	
	Title VI - CFCs			
		Propose ban on non-essential products	Y	
Feb-92	Title VII - Enforcement			
		Finalize administrative penalties rules of practice	Y	
Mar-92	Title II - Mobile Sources			
		Finalize onboard controls regulatory decision	Y	Nov-91
Apr-92	Title I - Nonattainment			
		Publish Title I General Preamble	Y	
		Propose rules for ozone, NO_x, and VOC monitoring	Y	
	Title II - Mobile Sources			
		Propose rule on reformulated gasoline SNPRM (supplemental notice of proposed rulemaking)	Y	Nov-91
May-92	Title I - Nonattainment			
		Publish guidance on TCM's (transportation control measures)	Y	Nov-91
	Title II - Mobile Sources			
		Finalize cold temperature CO standards	Y	Nov-91
	Title VI - CFCs			
		Propose CFC labeling regulations	Y	
Jun-92	Title VI - CFCs			
		Finalize mobile air conditioning recycling regulations	Y	Nov-91

The Clean Air Act Implementation Strategy
(Revised October 1993)

Date	Title	Activity	Compli.	Stat. Deadline
Jul-92		Revise two-year implementation strategy	Y	
	Title I - Nonattainment			
		States submit SIPs for initial SO_2 nonattainment areas	Partial	May-92
	Title II - Mobile Sources			
		Propose enhanced I/M regulation	Y	
	Title III - Air Toxics			
		Publish final list of source categories	Y	Nov-91
	Title IV - Acid Rain			
		Propose list of Phase II utility allowances	Y	Dec-91
	Title V - Permits			
		Finalize State permit regulations	Y	Nov-91
	Title VI - CFCs			
		Finalize CFC phase-out regulation	Y	Sept-91
Aug-92	Title I - Nonattainment			
		Finalize guidance on transportation air quality planning	Y	Aug-91
Sep-92	Title I - Nonattainment			
		Propose additional PM-10 nonattainment areas	Y	
		Propose discretionary sanction rules	Y	
		Finalize outer continental shelf rules	Y	Nov-91
	Title III - Air Toxics			
		Propose regulatory schedule for all source categories	Y	
Oct-92	Title I - Nonattainment			
		Publish 1991 air quality data and emission trends report	Y	
	Title II - Mobile Sources			
		Finalize oxygenated fuel credit guideline	Y	Aug-91
	Title III - Air Toxics			
		Propose MACT for hazardous organic chemical manufacturing	Y	
Nov-92	Title I - Nonattainment			
		States submit RACT catch-up rules, NSR rules, CO attainment demonstration and contingency measures	Partial	Nov-92

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Date	Title	Activity	Compl.	Stat. Deadline
Nov-92	Title I - Nonattainment			
		States submit small business assistance programs	Partial	Nov-92
		States submit base ozone, CO emission inventories	Partial	Nov-92
		Finalize PM-10 BACM technical guidance	Y	May-92
		Publish Title I NO_x guidance	Y	
	Title II - Mobile Sources			
		Finalize enhanced I/M regulation	Y	Nov-91
	Title IV - Acid Rain			
		Propose NO_x requirements for Group 1 utility boilers	Y	
Dec-92	Title I - Nonattainment			
		Publish alternative control technology document for VOCs from bakeries	Y	Nov-93
	Title II - Mobile Sources			
		Propose revisions to motor vehicle certification procedures (certification short test)	Y	
		Finalize California pilot credit program	Y	Nov-91
	Title III - Air Toxics			
		Propose MACT for coke ovens	Y	
		Finalize early reductions rulemaking	Y	
	Title VI - CFCs			
		Propose emission reduction program	Y	Jan-92
Jan-93	Title I - Nonattainment			
		Approve/disapprove first PM-10 SIPs	Partial	Jan-93
		Finalize PM-10 area reclassifications	Y	Dec-91
	Title II - Mobile Sources			
		Finalize vehicle evaporative emissions regulations	Y	Aug-93
		Finalize emission control diagnostic rule	Y	May-92
		Publish draft mobile source air toxics study	Y	
		Propose reformulated gasoline complex model		
		Finalize clean fuels fleet (TCM's)	Y	Nov-91

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Date	Title	Activity	Complt.	Rel. Deadline
Jan-93	Title III - Air Toxics			
		Propose list of substances for accidental releases prevention program	Y	
	Title IV - Acid Rain			
		Finalize excess emission requirements	Y	May-92
		Finalize allowance trading system	Y	May-92
		Finalize continuous emission monitoring requirements	Y	May-92
		Finalize conservation and renewable incentives	Y	May-92
		Finalize acid rain permit program	Y	May-92
	Title VI - CFCs			
		Finalize ban nonessential products	Y	Nov-91
Feb-93	Title I - Nonattainment			
		Finalize rules for ozone, NO_x, VOC enhanced monitoring		May-92
		Propose economic incentive rules	Y	
		Propose transportation conformity criteria	Y	
	Title II - Mobile Sources			
		Finalize urban bus 94+ (PM standard)	Y	Jan-92
		Finalize procedures of enforcement for urban bus standards	Y	May-92
	Title IV - Acid Rain			
		Sources submit Phase I permit applications and proposed compliance plans	Y	Feb-93
	Title VI - CFCs			
		Finalize CFC labeling regulations	Y	May-92
	Title VII - Enforcement			
		Propose rules for citizen suits	Y	
Mar-93	Title I - Nonattainment			
		Issue draft 185B report	Y	
		Propose general conformity criteria	Y	
	Title II - Mobile Sources			
		Finalize urban bus retrofit	Y	Nov-91
		Finalize procedures of enforcement for urban bus standards	Y	May-92

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Date	Title	Activity	Complt.	Stat. Deadline
Mar-93	Title IV - Acid Rain			
		Initiate auctions and sales of allowances	Y	Mar-93
		Finalize list of Phase II utility allowances	Y	Dec-92
		Raking by lottery of Phase I extension applications		
	Title VI - CFCs			
		Propose procurement regulations	Y	May-92
		Propose accelerated CFC phase-out	Y	
Apr-93	Title I - Nonattainment			
		States submit lead SIPs (18 months from designation)	Partial	Jul-93
		Publish alternative control technology document for VOCs from pesticide applications	Y	Nov-93
	Title II - Mobile Sources			
		Publish final mobile source related air toxics study	Y	May-92
		Propose non-road emission standards >50 hpr.	Y	Nov-92
	Title III - Air Toxics			
		Propose guidance for State air toxics program 112(l)	Y	
	Title VI - CFCs			
		Finalize emission reduction program (Section 608)	Y	Jan-92
May-93	Title I - Nonattainment			
		PM-10 PSD increments (11/92 court agreement)	Y	
	Title II - Mobile Sources			
		Propose clean fuel fleet vehicle standards, conversions and general provisions	Y	Nov-92
	Title VI - CFCs			
		Propose safe alternatives		Nov-92
Jun-93	Title II - Mobile Sources			
		Propose California pilot, clean vehicle standards, and opt-in provisions	Y	
	Title III - Air Toxics			
		Propose rule on case-by-case MACT determination 112(j)	Y	
		Propose rules for risk management plans and prevention programs (OSWER)		

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Date	Title	Activity	Complt.	Stat. Deadline
Jun-93	Title VI - CFCs			
		Propose Class II Non-essential ban		Nov-91
Jul-93	Title I - Nonattainment			
		Publish 185B NO_x/VOC study	Y	Feb-92
	Title III - Air Toxics			
		Complete study of the hazards of hydrofluoric acid (OSWER)		Nov-92
	Title IV - Acid Rain			
		Begin submission of applications for Energy Conservation & Renewable Reserve	Y	
Aug-93	Title I - Nonattainment			
		Publish SOCMI distillation processes CTG		Nov-93
		Publish SOCMI reactor processes CTG		Nov-93
		Publish SOCMI batch processes CTG		Nov-93
	Title II - Mobile Sources			
		Submit transportation systems report to Congress	Y	
	Title III - Air Toxics			
		Propose general provisions for MACT standards	Y	
		Propose MACT for industrial cooling towers	Y	
		Section 112(s) Report		
	Title IV - Acid Rain			
		Draft acid rain permits issued for public comment	Y	
Sep-93	Title I - Nonattainment			
		Propose Certification Program for solid waste and fossil-fuel combustor operators (OSWER)		
	Title III - Air Toxics			
		Finalize MACT for dry cleaners	Y	Nov-92
		Propose permits for early reduction sources		
	Title IV - Acid Rain			
		Propose opt-in regulations -- combustion sources		
	Title VII - Enforcement			
		Propose rules for enhanced monitoring		

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Date	Title	Activity	Compl.	Stat. Deadline
Oct-93	Title I - Nonattainment			
		Publish air quality and emission trends report		
		Finalize additional PM-10 and SO_2 nonattainment areas		
	Title II - Mobile Sources			
		Finalize revisions to motor vehicle certification procedures (I/M short test)	Y	Nov-91
		Finalize testing protocols for fuels and additives		
	Title III - Air Toxics			
		Propose MACT for pulp and paper		
		Publish study of hydrogen sulfide emissions from extracting natural gas and oil	Y	Nov-92
		Finalize MACT for coke ovens	Y	Dec-92
	Title IV - Acid Rain			
		Finalize NO_x requirements for utility boilers		May-92
		Begin issuing allowances to small diesel refineries		Oct-93
	Title VI - CFCs			
		Finalize procurement regulation		May-92
	Title VIII - Miscellaneous			
		Section 811 Report (International Competiveness)		May-92
Nov-93	Title I - Nonattainment			
		States receive emission source statements		Nov-93
		Publish alternative control technology documents for NO_x sources		Nov-93
		States submit selected SIP provisions for moderate and above ozone areas		Nov-93
		Finalize general conformity criteria		
	Title II - Mobile Sources			
		Propose detergent additive regulations		
	Title III - Air Toxics			
		Submit Great Lakes study report to Congress		Nov-93
		Issue urban area strategy - research report		Nov-93
		Finalize rules for risk management plans and prevention programs		Nov-93

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Date	Title	Activity	Complt.	Stat. Deadline
Nov-93	Title III - Air Toxics			
		Publish guidance for state air toxics programs 112(l)		Nov-91
		Propose MACT for chromium electroplating		
		Finalize list of substances for accidental releases prevention program		Nov-92
		Finalize regulatory schedule for all source categories		Nov-92
		Propose Degreasing MACT		
	Title IV - Acid Rain			
		States submit acid rain permit program proposals		Nov-93
		Promulgate SO_2 new source performance standards (NSPS) for new fossil fuel utility units		Nov-93
		EPA action on final Phase I permits		Aug-93
	Title V - Permits			
		States submit operating permit programs		Nov-93
	Title VI - CFCs			
		Finalize CFC phase-out		
		Finalize Class II Non-essential Ban		Nov-91
	Title VII - Enforcement			
		Propose rules for field citation		
	Title VIII - Miscellaneous			
		Issue report on the impact of the 1990 CAA Amendments on visibility		
Dec-93	Title I - Nonattainment			
		Propose Part C & D new source review requirements		
		Finalize economic incentives rules		Nov-92
		Finalize discretionary sanctions rules		
	Title II - Mobile Sources			
		Finalize reformulated gasoline regulations		
		Finalize reformulated gasoline complex model		Nov-91
		Finalize CNG/LPG vehicle standards		
	Title III - Air Toxics			
		Propose guidance for modification provisions		

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Date	Title	Activity	Compl.	Stat. Deadline
Dec-93	Title VII - Enforcement			
		Propose rule for contractor listing		
		Propose rule for monetary awards		
Jan-94	Title I - Nonattainment			
		Promulgate sanctions for States failing to submit PM-10 SIPs (18 months from findings)		Jun-93
		Approve/disapprove ozone & CO submittals due 11/92		Jan-94
	Title II - Mobile Sources			
		Finalize on-board refueling vapor recovery regulations		
	Title III - Air Toxics			
		Deliver program-specialized inspection training course at three regional locations (radionuclides)		
		Develop inspection manual and training materials for coke ovens		Nov-93
		Issue HAP list petition procedure guidance		
		Propose standards for large MWC's		Nov-91
		Propose standards for small MWC's		Nov-92
		Propose Stage I gasoline marketing MACT		
	Title IV - Acid Rain			
		Promulgate NO_x NSPS for fossil fuel-fired boilers (utility and nonutility units)		Jan-94
	Title VI - CFCs			
		Enhance regional compliance components		Nov-92
		Finalize safe alternatives program		
	Title VII - Enforcement			
		Prepare clarification guidance for EPA supplementary environmental project for air		
Feb-94	Title III - Air Toxics			
		Propose MACT for solid waste TSDF		
		Propose MACT for commercial sterilizers		
		Finalize MACT for hazardous organic chemical manufacturing		Nov-92
		Propose MACT for magnetic tape coating		
		Finalize general provisions for MACT standards		

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Date	Title	Activity	Compl.	Stat. Deadline
Mar-94	Title I - Nonattainment			
		Publish web offset lithography CTG		Nov-93
		Submit consumer/commercial products study report to Congress		Nov-93
	Title II - Mobile Sources			
		Propose revision for federal test procedures		
	Title IV - Acid Rain			
		Conduct second allowance auction		Mar-94
Apr-94	Title I - Nonattainment			
		Publish petroleum/industrial wastewater CTG		Nov-93
		Publish plastic parts coating CTG		Nov-93
		Publish storage tanks CTG		Nov-93
		Propose tank vessel rule		
		Publish results of ozone design value study		Nov-93
	Title II - Mobile Sources			
		Propose non-road emission standards <25 HP - Phase I		Nov-92
		Finalize clean fuel fleet vehicle standards, conversions, and general provisions		
		Finalize California pilot, clean vehicle standards, and opt-in provisions		
	Title III - Air Toxics			
		Propose MACT for polymers and resins II		Nov-94
		Final permits for early reduction sources		
		Finalize case-by-case MACT determinations 112(j)		
	Title IV - Acid Rain			
		Certify continuous emissions monitors for Phase I units		
		Begin issuing allowances to small diesel refineries		
	Title VII - Enforcement			
		Finalize rules for citizen suits		
May-94	Title I - Nonattainment			
		Reclassify marginal ozone areas failing to attain by 11/93		May-94
		Propose NSR Simplification rule		

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Date	Title	Activity	Complt.	Stat. Deadline
May-94	Title II - Mobile Sources			
		Finalize non-road emissions standards for >50 HP diesel engines		
	Title III - Air Toxics			
		Publish draft risk assessment and management commission report		May-94
		Propose MACT for secondary lead smelters		
		Submit NAS study to Congress		May-93
	Title IV - Acid Rain			
		Propose NO_x NSPS for new fossil fuel utility units [407(c)]		
	Title V - Permits			
		Propose Federal operating permit regulations		
Jun-94	Title I - Nonattainment			
		Approve/disapprove lead SIPs due 4/93		Jun-94
		States implement Phase II of the enhanced ozone monitoring network		
	Title II - Mobile Sources			
		Report to Congress on the Cal. low-emissions vehicle		Jun-94
		Propose locomotive emissions standards		
		Finalize lead substitute gasoline additives		Nov-91
		Proposed mobile source air toxics regulation		
	Title III - Air Toxics			
		Develop inspection manual and training materials for medical waste incinerators		
		Propose medical waste incinerator rule		
		Propose MACT for Petroleum refineries		
	Title IV - Acid Rain			
		Prepare implementation guidance for Phase II - affected units		
Jul-94	Title III - Air Toxics			
		Propose MACT for aerospace industry		
		Promulgate industrial cooling towers standards		
		Propose MACT for shipbuilding (surface coating)		
		Propose MACT for printing/publishing industry		
		Propose asbestos MACT		

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Date	Title	Activity	Compli.	Stat. Deadline
Aug-94	Title I - Nonattainment			
		Publish surface coal mining study		Nov-93
Sep-94	Title I - Nonattainment			
		Produce inspection and compliance checklists for new CTGs completed in FY 1993		
	Title II - Mobile Sources			
		Propose non-road emission standards for marine engines		Nov-92
	Title III - Air Toxics			
		Final certification program for solid waste and fossil-fuel combustor operators		
		Develop inspection manual and training materials for dry cleaners		
	Title IV - Acid Rain			
		Finalize Opt-In Regulation - Combustion Sources		May-92
	Title VII - Enforcement			
		Finalize rules for enhanced monitoring		Nov-92
		Finalize rules for monetary awards		
Oct-94	Title I - Nonattainment			
		Publish air quality and emission trends report		
	Title II - Mobile Sources			
		Finalize detergent additive regulations		
	Title III - Air Toxics			
		Finalize guidance for modifications provisions		May-92
	Title IV - Acid Rain			
		Propose opt-in regulations -- process sources		
		Publish final acid deposition standards study		Nov-93
Nov-94	Title I - Nonattainment			
		Publish wood furniture CTG		Nov-93
		States submit ozone SIP's demonstrating attainment		
	Title III - Air Toxics			
		Promulgate MACT chromium electroplating		Nov-92

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Date	Title	Activity	Compli.	Stat. Deadline
Nov-94		Submit mercury study to Congress		
		Submit risk assessment and management commission report to Congress		Nov-94
		Promulgate MACT for 25% of source category list (includes about 30 categories)		Nov-94
		Promulgate MACT for commercial sterilizers		
		Promulgate degreasing MACT		Nov-94
		Promulgate Stage I gasoline marketing MACT		Nov-94
		Finalize MACT for magnetic tape coatings		Nov-94
	Title V - Permits			
		Finalize Federal operating permit program		
	Title VII - Enforcement			
		Finalize guidance/rule for field citations		
		Issue enhanced monitoring reference document		
Dec-94	Title I - Nonattainment			
		Finalize Part C & D new source review requirements		
Jan-95	Title VII - Enforcement			
		Finalize rule for contractor listing		
Feb-95	Title III - Air Toxics			
		Finalize MACT for polymers and resins II		Nov-94
Mar-95	Title I - Nonattainment			
		Propose auto body refinishing		
	Title IV - Acid Rain			
		Conduct third allowance auction		Mar-95
Apr-95	Title I - Nonattainment			
		Finalize tank vessel rule		
	Title IV - Acid Rain			
		Finalize NO_x NSPS for new fossil fuel utility units [407(c)]		
May-95	Title I - Nonattainment			
		Final NSR Simplification rule		

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Date	Title	Activity	Compl.	Stat. Deadline
May-95	Title II - Mobile Sources			
		Finalize non-road emission standards for <25 HP SI engines		
		Finalize mobile source air toxics regulations		
	Title III - Air Toxics			
		Promulgate asbestos MACT		
		Final MACT for secondary lead smelters		Nov-94
	Title IV - Acid Rain			
		Certify continuous emissions monitors for Phase II units		
Jun-95	Title III - Air Toxics			
		Promulgate medical waste incineration standards		Nov-94
		Finalize MACT for petroleum refineries		
	Title VII - Enforcement			
		Update enhanced monitoring referencing document		
Jul-95	Title III - Air Toxics			
		Final MACT for aerospace industry		
		Final MACT for printing/publishing industry		Nov-94
		Final MACT for shipbuilding (surface coatings)		Nov-94
	Title IV - Acid Rain			
		Propose NO_x requirements for Group 2 utility boilers		Jan-95
Aug-95	Title III - Air Toxics			
		State must submit plans for implementing MWC standards		Nov-94
		Develop inspection manual and training materials for Stage I vapor recovery systems		
		Develop inspection manual and training materials for industrial cooling		
Sep-95	Title III - Air Toxics			
		Promulgate paper & pulp MACT		Nov-94
Oct-95	Title I - Nonattainment			
		Publish air quality and emission trends report		
	Title IV - Acid Rain			
		Finalize opt-in regulations -- process sources		

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Date	Title	Activity	Compl.	Stat. Deadline
Nov-95	Title II - Mobile Sources			
		Finalize marine engine emission standards		
		Finalize locomotive emission standards		Nov-95
	Title III - Air Toxics			
		Study of electric utilities generating units		Nov-93

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These proposed and final rule dates were incorrectly listed in the Implementation Strategy.

Title	Date*	Activity	Statutory Deadline
Title II - Mobile Sources	4/94	Finalize testing protocols for fuels additives	--
Title III - Air Toxics	11/94	Propose standards for large MWC's	Nov-91
Title III - Air Toxics	11/94	Propose standards for small MWC's	Nov-92
Title III - Air Toxics	5/95	Propose medical waste incinerator rule	--
Title IV - Acid Rain	2/94	Finalize NO_x requirements for utility boilers	May-92
Title IV - Acid Rain	Delete 1/94	Promulgate NO_x NSPS for fossil fuel-fired boilers (utility & nonutility units) - Listed twice; current date is 5/94	Jan-94
Title IV - Acid Rain	Schedule under review	Promulgate SO_2 new source performance standards (NSPS) for new fossil fuel utility units - Listed as 11/93	Nov-93
Title VI - CFCs	2/94	Finalize safe alternatives program	Nov-92
Title VI - CFCs	1/94	Finalize Class II Non-essential Ban	Nov-91

* These dates are subject to change based on new risk assessments, court decisions, and changes in available resources.

FEDERAL REGISTER DOCUMENTS PUBLISHED

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Notice	Date Published
Protection of Stratospheric Ozone; Labeling Supplemental Proposal (Notice of Proposed Rule/3348)	**December 30, 1993**
Acid Rain Program; Permits and Allowance Permits and Allowance System Proposed Regulations (Change in Public Comment Period for the Proposed Revisions to the Rules/3319)	**December 30, 1993**
Protection of Stratospheric Ozone; Ban of Nonessential Products Containing Class II Ozone-Depleting Substances Under Section 610(d) of the CAA, as Amended (Notice of Final Rule/3267)	**December 30, 1993**
Protection of Stratospheric Ozone; Amend the Class I Nonessential Products Ban Published in the FR of 1/15/93, and Promulgated Under Section 610(b) of the CAA, as Amended (Direct Final Rule/3385)	**December 30, 1993**
Protection of Stratospheric Ozone; Establish Baseline Production & Consumption Allowances for Chemicals (methyl bromide and hydro-bromofluorocarbons) Added to List of Class I Ozone-Depleting Substances in FR Signed 11/30/93 and Published 12/10/93 (Notice of Final Rule/3374)	**December 30, 1993**
Control Techniques Guideline Document; Industrial Wastewater (Release of draft CTG document for public review)	**December 29, 1993**
Control Techniques Guideline Document; Batch Process (Release of draft CTG document for public review)	**December 29, 1993**

Federal Operating Permit Programs; Permits for Early Reductions Sources (Notice of Proposed Rule/3942)	**December 29, 1993**
Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Heavy Light-Duty Trucks (Notice of Final Rule/2801)	**December 28, 1993**
Regulation of Fuels and Fuel Additives; Renewable Oxygenate Requirement for Reformulated Gasoline (Notice of Proposed Rule/3395)	**December 27, 1993**
State Implementation Plans for Lead Nonattainment Areas; Addendum to the General Preamble for the Implementation of Title I of the CAA Amendments (3278)	**December 22, 1993**
Designation of Areas for Air Quality Planning Purposes (Final Action to Redesignate Areas as Nonattainment for PM-10 and Sulfur Dioxide NAAQS/3144)	**December 21, 1993**
Amendments to the National Emission Standards for Hazardous Air Pollutants for Source Categories; Perchloroethylene Dry Cleaning Facilities (Notice of Final Rule/2360)	**December 20, 1993**
Environmental Radiation Protection Standards for the Management & Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes (Notice of Final Rule/2590)	**December 20, 1993**
Certification Testing and Selective Enforcement Audit Testing Waivers for on-Highway Heavy-Duty Diesel Engine Smoke Standards (Direct Final Rule/3153)	**December 20, 1993**
National Emission Standards for Hazardous Air Pollutants, Off-Site Waste Operations (Advance Notice of Proposed Rulemaking)	**December 20, 1993**

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards: Pulp, Paper, and Paperboard Category; National Emission Standards for Hazardous Air Pollutants for Source Category: Pulp and Paper Production (Notice of Proposed Rule/2712 & 2914)	**December 17, 1993**
Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (Notice of Proposed Rule/2841)	**December 16, 1993**
Enhanced Monitoring Program (Proposed Rule; Notice of Comment Period Extension/2942)	**December 15, 1993**
Registration of Fuels and Fuel Additives; Regulation of Fuels and Fuel Additives; Emissions Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program (Notice of Final Rule (3308)	**December 15, 1993**
New Source Review Reform Subcommittee (Notice of Public Meetings)	**December 9, 1993**
Fuels and Fuel Additives; Extension of Time and Finding Concerning Fuel Additive (MMT) Waiver Application	**December 9, 1993**
Clean Fuel Fleet Program: Definitions and General Provisions (Notice of Final Rule/3070	**December 9, 1993**
Grand Canyon Visibility Transport Commission (Notice of Meetings)	**December 8, 1993**
Regulation of Fuels and Fuel Additives: Standards for Deposit Control Gasoline Additives (Notice of Proposed Rule/3018)	**December 6, 1993**
National Emission Standards for Hazardous Air Pollutants Schedule for the Promulgation of Emission Standards Under Section 112(e) of the CAA Amendments of 1990 (Notice of the Source Category Schedule Standards/2971)	**December 3, 1993**

Control Techniques Guideline Document; Volatile Organic Liquid Storage in Floating and Fixed Roof Tanks (Release of draft (CTG) document for public review)	December 2, 1993
Determining Conformity of General Federal Actions to State or Federal Implementation Plans (Notice of Final Rule/3207)	November 30, 1993
Opting Into the Acid Rain Program (Change in Public Comment Period for the Proposed Rule/3009)	November 30, 1993
National Emission Standards for Hazardous Air Pollutants; Amendments to Compliance Extensions for Early Reductions (Notice of Final Rule/2819)	November 29, 1993
National Emission Standards for Hazardous Air Pollutants; Halogenated Solvent Cleaning (Notice of Proposed Rule, Test Methods, and Notice of Public Hearing/2839)	November 29, 1993
Approval of State Programs & Delegation of Federal Authorities EPA is Required to Publish Under Section 112(l) of the CAA Amendments Novice of Final Rule/3142)	November 26, 1993
Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act (Notice of Final Rule/2963)	November 24, 1993
Preparation, Adoption, and Submittal of State Implementation Plans; Methods for Measurement of Visible Emissions (Notice of Proposed Rule and Notice of Public Hearing/2915)	November 22, 1993
Outer Continental Shelf Air Regulations; Denial of Petition for Reconsideration of Corresponding Onshore Area Designation (Notice of Final Rule/2947)	November 19, 1993

Outer Continential Shelf Air Regulations; Petition for Reconsideration (Notice to Announce EPA's Proposal Not to Change the Corresponding Onshore Area Designations for Eight Outer Continental Shelf Platforms)	**November 19, 1993**
Acid Rain Program; Permits and Allowance System Regulations Under Title IV of the CAA Amendments (Notice of Proposed Rule and Notice of Public Hearing/3319)	**November 18, 1993**
Health and Environmental Standards for Uranium and Thorium Mill Tailings (Notice of Final Rule Amending General Environmental Regulations Pertaining to Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978/3039)	**November 15, 1993**
Control Techniques Guidelines Document; Reactor Processes and Distillation Operations Processes (Release of CTG Document)	**November 15, 1993**
Listing of Marine Vessel Loading Operations Under Section 112(c) of the CAA (Notice of Category Listing/2858)	**November 12, 1993**
Protection of Stratospheric Ozone (Notice of Proposed Rule to Establish Baseline Production and Consumption Allowances for Chemicals EPA has Proposed to Add to the List of Class I Ozone-Depleting Substances/3374)	**November 9, 1993**
Inspection/Maintenance Program Requirements; Correcting Amendments (Notice of Corrections to Final Regulation/3004)	**November 9, 1993**
Control Techniques Guideline Document Offset Lithographic Printing (Release of draft (CTG) document for public review)	**November 8, 1993**
Listing of Categories and Regulatory Schedule Schedule for Air Emissions from Other Solid Waste Incineration Units under Section 129 of the CAA and a Schedule for Promulgation of Regulations (Notice of Listing)	**November 2, 1993**

Control of Air Pollution from New Motor Vehicles & New Motor Vehicle Engines: Short Test Emission Regs for 1996 and Later Model Year Light-Duty Vehicles and Light Duty-Trucks, and Revised Performance Warranty Regulations (Notice of Final Rule)	**November 1, 1993**
National Emission Standards for Hazardous Air Pollutants for Source Categories and for Coke Oven Batteries (Notice of Final Rule)	**October 27, 1993**
Protection of Stratospheric Ozone (Final Rule for Federal Procurement Requirements Under Title VI Section 613 of the CAA Amendments)	**October 22, 1993**
Enhanced Monitoring Program (Notice of Proposed Rule; Notice of Opportunity for Public Hearing)	**October 22, 1993**
New Source Review Reform Subcomittee (Notice of Public Meeting)	**October 20, 1993**
Hazardous Organic NESHAP (HON)/Reasonably Available Control Technology (RACT) Interface Draft Guidance (Draft Guidance for Public Comment)	**October 20, 1993**
State Implementation Plans for Nonattainment Areas for Lead (Notice Announces Findings of Failure to Submit Required SIP's for Lead)	**October 19, 1993**
National Emission Standards for Hazardous Air Pollutants for Source Categories: Perchloroethylene Dry Cleaning Facilities (Notice of Public Meeting)	**October 19, 1993**
1994 and 1995 Nominations for Essential for Essential Use Exemptions for Halons 1211, 1301, and 2402 (Notice Announces the Results of the Call for Nominations for 1994; A Call for Nominations for 1995; and Formation of the Halon Recycling Corporation)	**October 18, 1993**

National Emission Stds for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) and Seven Other Processes (Notice to Reopen Comment Period and Correct Regulatory Flexibility Act Certification)	October 15, 1993
Draft Student Handbook & Statement of Intent to Develop Training & Certification Programs for Operators of High Capacity Fossil Fuel-Fired Plants (Notice of Availability)	October 6, 1993
Asbestoes NESHAP Clarification of Intent (Notice of Clarification)	October 5, 1993
Control of Air Pollution; Emissions of Oxides Oxides of Nitrogen & Smoke From New Nonroad Compression-Ignition Engines at or Above 50 Horsepower (Notice to Reopen Public Comment Period)	October 4, 1993
Application Sequence for CAA Section 179 Sanctions (Notice of Proposed Rule)	October 1, 1993
New Source Review Reform Subcommittee (Notice of Cancellation of Public Mtg.)	September 27, 1993
CAA Contractor Access to Confidential Business Information (Notice)	September 27, 1993
Protection of Stratospheric Ozone; Ban of Nonessential Products Containing Class II Ozone-Depleting Substances Under Section 610(d) of the CAA, as Amended (Notice of Proposed Rule)	September 27, 1993
Opting Into the Acid Rain Program (Notice of Proposed Rule)	September 24, 1993
National Emission Standards for Hazardous Air Pollutants for Source Categories: Perchloroethylene Dry Cleaning Facilities (Notice of Final Rule)	September 22, 1993

Territory of Guam Petition for Exemption From the Diesel Fuel Sulfur Requirement (Notice of Direct Final Decision)	**September 21, 1991**
Announcement of Fuel Economy Retrofit Device Evaluation for the Fuelon Power Gasoline Fuel Additive (Completion of EPA Evaluation)	**September 15, 1993**
National Emission Standards for Hazardous Air Pollutants; Compliance Extensions for Early Reductions (Notice of Complete Enforceable Commitments Received Through August 9, 1993)	**September 10, 1993**
Codification of Corresponding Onshore Area Designations & Notice of Convening Proceeding for Reconsideration of Certain Corresponding Onshore Area Designations (Notice of Correction)	**September 9, 1993**
New Source Review Reform Subcommittee (Notice of Public Meeting)	**September 1, 1993**
Approval of South Carolina's Petition to Relax the Federal Reid Vapor Pressure Volatility Standard for South Carolina from 7.8 psi to 9.0 psi (Direct Final Rule)	**September 1, 1993**
Standards of Performance for New Stationary Sources Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes (Notice of Final Rule)	**August 31, 1993**
Hazardous Air Pollution; Proposed Regs Governing Equlvalent Emission Limitations by Permit (Notice to Extend Public Comment Period)	**August 30, 1993**
State of Alaska Petition for Exemption from Diesel Fuel Sulfur Requirement of Section 211(i) of the CAA as Amended (Notice of Proposed Decision)	**August 27, 1993**

Petition to Remove the Compound Caprolactam from Hazardous Air Pollutant List (Notice of Receipt of Petition)	**August 26, 1993**
CAA Contractor Access to Confidential Business Information (Notice)	**August 25, 1993**
National Primary Ambient Air Quality Standards for Sulfur Oxides (Notice Extending Public Comment Period on the Sulfur Dioxide Criteria Document and Staff Paper Supplements)	**August 20, 1993**
Clean Air Act Advisory Committee (Request for Candidates)	**August 13, 1993**
Special Exemptions from Requirements Section 325(a) of the CAA, Territory of Guam (Notice of Final Rule)	**August 12, 1993**
National Emission Standards for Hazardous Air Pollutants for Chromium Emissions from Industrial Process Cooling Towers (Notice of Proposed Rule)	**August 12, 1993**
National Emission Standards for Hazardous Air Pollutants for Source Categories; General Provisions (Notice of Proposed Rule)	**August 11, 1993**
Workshops Sponsored Committees of the Grand Canyon Visibility Transport Commission (Notice of Meetings)	**August 10, 1993**
Final Agency Actions Regarding the Motor Vehicle Provisions of the CAA (Notice of Mobile Source Final Agency Actions)	**August 10, 1993**
Clean Fuel Fleet Emission Standards, Conversions, and General Provisions and the Clean-Fuel Vehicle Standards for Light-Duty Vehicles and Light-Duty Trucks (Proposed Rules; Extension of the Comment Period)	**August 9, 1993**
Standards of Performance for New Stationary Sources: Calciners and Dryers in Mineral Industries; Amendment (Notice of Correction)	**July 29, 1993**

Protection of Stratospheric Ozone (Section 114 Information Request to Establish Baselines for Newly Listed Ozone Depleting Chemicals and to Meet UNEP Reporting Requirements)	**July 27, 1993**
Policy Regarding the Sale of 1985 and Subsequent Model Year California Vehicles (Notice of Public Workshop and Request for Comments)	**July 22, 1993**
Protection of Stratospheric Ozone (Request for Comments on the Recordkeeping and Reporting Requirements of Newly Listed Ozone-Depleting Substances)	**July 20, 1993**
CAA Contractor Access to Confidential Business Information (Notice)	**July 20, 1993**
Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Revised Guideline on Air Quality Models (Notice of Final Rule)	**July 20, 1993**
Acid Rain Program (Notice of Draft Permits and Public Comment Period)	**July 16, 1993**
Hazardous Air Pollution (Proposed Regulations Governing Equivalent Emission Limitations by Permit Under Section 112(j) of the Clean Air Act, As Amended)	**July 13, 1993**
Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (Notice of Public Workshop for Equipment Certifiers)	**July 9, 1993**
Fuels and Fuel Additives (Ethyl Corporation Waiver Application for Methylcyclopentadienyl Tricarbonyl (MMT) and Petition for Review - Circuit Court Remand)	**July 2, 1993**
Clean Fuel Fleet Emission Stds, Conversions, and General Provisions & Amended Heavy-Duty Averaging, Banking, & Trading Credit Accounting Regs (Notice of Clarification Concerning the Comment Period and Opportunity to Request a Public Hearing)	**July 1, 1993**

California State Motor Vehicle Pollution Control Stds (Notice of Opportunity for Public Hearing and Public Comment)	**July 1, 1993**
Emission Defect Reporting Requirements (Notice of Public Workshop and Request for Comments)	**June 30, 1993**
Prevention of Significant Deterioration (PSD) for Particulate Matter (Notice of Correction to Final Rule)	**June 30, 1993**
The California Pilot Test Program & Clean-Fuel Vehicle Standards for Light-Duty Vehicles and Light-Duty Trucks (Notice of Proposed Rule)	**June 29, 1993**
Control of Air Pollution From New Motor Vehicles & New Motor Vehicle Engines: Evaporative Emission Regs for Gasoline and Methanol-Fueled Light-Duty Vehicles & Light-Duty Trucks and Heavy-Duty Vehicles (Notice Technical Correction on FRM)	**June 28, 1993**
Draft Acid Rain Permits Public Comment Period (Notice of Correction)	**June 28, 1993**
Intent To Form an Advisory Committee To Negotiate Small Nonroad Engine Regulations Under the Federal Advisory Committee Act (FACA)	**June 25, 1993**
Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines; Regs Requiring On-Board Diagnostic Systems on 1994 and Later Model Year Light-Duty Vehicles and Light-Duty Trucks (Notice of Public Workshop & Reopening of Comment Period)	**June 23, 1993**
Standards of Performance for New Stationary Sources & Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills (Notice of Availability of New Information for NPRM)	**June 21, 1993**

Control of Air Pollution from New Motor Vehicles & New Motor Vehicle Engines; Refueling Emission Regs for Light-Duty Vehicles & Trucks & Heavy-Duty Vehicles (Notice of Change in Date for Public Hearing & Additional Request for Comment on Proposed On-Board Refueling Vapor Recovery Regs)	June 17, 1993
Approval of State Programs & Delegation of Federal Authorities EPA is Required to Publish Under Section 112(l) of the CAA Amendments (Notice of Public Hearing & Extension of Public Comment Period)	June 16, 1993
Draft Acid Rain Permits (Notice of Draft Permit and Public Comment Period)	June 11, 1993
Control of Air Pollution from New Motor Vehicle Engines; Gaseous & Particulate Emission Regs for 1994 & Later Model Year Light-Duty Vehicles & Light-Duty Trucks Notice of Final Rule; Technical Amendments)	June 10, 1993
Oxygenated Gasoline; Utah Waiver Application and Proposed Establishment of Control Periods for the Salt Lake/Ogden, MSA (Notice of Public Hearing)	June 10, 1993
Grand Canyon Visibility Transport Commission and Operations Committee (Notice of Meetings)	June 10, 1993
Clean Fuel Fleet Emission Standards, and General Provisions & Amended Heavy-Duty Averaging, Banking, & Trading Credit Accounting Regs (Notice of Proposed Rule)	June 10, 1993
Acid Rain Program; Announcement of Open Meeting on Continuous Emission Monitoring (CEM) Data Acquisition & Handling Systems (SAHS) Certification, & Electronic and Magnetic Data Reporting for the CEM Rule	June 9, 1993

In-Use Urban Bus Testing Program (Notice of Availability of Advisory Circular)	**June 8, 1993**
Health and Environmental Standards for Uranium and Thorium Mill Tailings (Notice of Proposed Rule)	**June 8, 1993**
Prevention of Significant Deterioration (PSD) for Particulate Matter (PM-10) (Notice of Final Rule)	**June 3, 1993**
Draft List of Categories and Regulatory Schedule for Air Emissions from Other Solid Waste Incinerator Units under Section 129 of the CAA (Notice of Availability)	**June 2, 1993**
Control of Air Pollution from New Motor Vehicle Engines & New Motor Vehicle Engines; Refueling Emission Regs for Light-Duty Vehicles & Trucks & Heavy-Duty Vehicles (Notice of Public Hearing & Reopening of Comment Period on Proposed Onboard Vapor Recovery Regs)	**May 27, 1993**
Control of Air Pollution from New Motor Vehicles & New Motor Vehicle Engines; Federal Test Procedure Review (Notice of Availability of a Preliminary Report, EPA Document #420-R-93-007, and Solicitation of Comments	**May 24, 1993**
Air Pollution Control; Motor Vehicle Emission Factors (Notice of Availability of Updated & Corrected Highway Motor Vehicle Emission Factor Model MOBILE5a)	**May 20, 1993**
Request for Nominations for Essential Use Exemptions for CFCs, Methyl Chloroform, Carbon Tetrachloride, and HBFCs	**May 20, 1993**
Approval of State Programs & Delegation of Federal Authorities EPA is Required to Publish Under Section 112(l) of the CAA Amendments (Notice of Proposed Rule)	**May 19, 1993**

Regulation of Fuels & Fuel Additives Standards for Reformulated Gasoline & Conventional Gasoline (Notice to Extend Public Comment Period & Notice of Public Workshop)	**May 18, 1993**
Control of Air Pollution from New Nonroad Mobile Sources; Determination of Significance for Nonroad Sources & Emission Stds for Oxides of Nitrogen & Smoke from New Nonroad Compression-Ignition Engines At or Above 50 Horsepower (Notice of Proposed Rule)	**May 17, 1993**
Economic Incentive Program Rules/Interim Guidance on the Generation of Mobile Source Emission Reduction Credits (Extension of Public Comment Period)	**May 14, 1993**
Protection of Stratospheric Ozone; Refrigerant Recycling Program Under Section 608 of the CAA Amendments (Notice of Final Rule)	**May 14, 1993**
Protection of Stratospheric Ozone; Significant New Alternatives Policy (SNAP) Program on Substitutes for Ozone Depleting Compounds Under Section 612 of CAA Amendments (Notice of Proposed Rule)	**May 12, 1993**
Clean Air Act; Acid Rain Provisions; 1993 EPA SO2 Allowance Auctions Results	**May 10, 1993**
Motor Vehicle-Related Air Toxics Study (Notice of Availability)	**May 7, 1993**
CAA Contractor Access to Confidential Business Information (Notice)	**May 6, 1993**

National Emission Standards for Hazardous Air Pollutants; Compliance Extensions for Early Reductions (Notice of Complete Enforceable Commitments Received Through April 6, 1993)	May 6, 1993
Approval of Colorado's Petition To Relax the Federal Reid Vapor Pressure Volatility Standard for Colorado in 1992 and 1993 (Notice of Final Rule)	April 30, 1993
Amended Schedule for the Phaseout of Ozone-Depleting Substances and Request for Comment on the Allowance Level for 1995 Class I, Group I Substances (Notice Extending the Deadline for Submission of Comments on the 3/18/93 NPRM)	April 28, 1993
CAA Contractor Access to Confidential Business Information (Notice)	April 27, 2993
Availability of Draft Model V Operating Permits (Notice of Availability)	April 27, 1993
Oxygenated Gasoline; Waiver Application Submitted by the State of California (Notice of Public Hearing)	April 23, 1993
Retrofit/Rebuild Requirements for 1993 & Early Model Year Urban Buses; Fuel Quality Regs for Certification Diesel Test Fuel (Notice of Final Rule)	April 21, 1993
National Ambient Air Quality Secondary Standards for Sulfur Oxides (Notice of Final Decision)	April 21, 1993
Protection of Stratospheric Ozone; Federal Procurement Requirements Under Section 613 of the CAA Amendments (Notice of Proposed Rule)	April 12, 1993

Control of Air Pollution From New Motor Vehicles and New Motor Vehicles & New Motor Vehicle Engines; Nonconformance Penalties for Heavy-Duty Engines & Heavy Light-Duty Trucks (Notice to Reopen Comment Period)	**April 12, 1993**
Model Standards & Techniques for Control of Radon in New Buildings (Notice publishes stds for public review & comment as required by section 304 of the Title III of the Toxic Substances Control Act)	**April 12, 1993**
Proposed Model Construction Standards and Techniques for Control of Radon in New Buildings (Public Review & Comment)	**April 7, 1993**
CAA Advisory Committee (Notice of Special Meeting)	**April 6, 1993**
Regulation of Fuels & Fuel Additives; Stds for Reformulated Gasoline & Conventional Gasoline (Notice of Public Hearing & Notice of Correction for Proposed Rule)	**April 1, 1993**
National Emission Standards for Hazardous Air Pollutants; Halogenated Solvent Emissions from Organic Solvent Cleaners (Public Review & Comment)	**March 31, 1993**
Control of Air Pollution from New Motor Vehicles & New Motor Vehicle Engines; Evaporative Emission Regs for Gasoline & Methanol-Fueled Light-Duty Vehicles, Light-Duty Trucks & Heavy-Duty Vehicles (Notice of Final Rule)	**March 24, 1993**
Control of Air Pollution from New Motor Vehicle & New Motor Vehicle Engines; Particulate Emission Regulations for 1993 Model Year Buses, Particulate Emission Regs for 1994 & Later Model Year Urban Buses, and Oxides of Nitrogen Emission Regs for 1998 & Later Model Year Heavy-Duty Engines (Notice of Final Rule)	**March 24, 1993**

National Emission Stds for Hazardous Air Pollutants (NESHAP) for Benzene Waste Operations; request for comment on possible future rulemaking to propose alternative compliance option for NESHAP: Benzene (Advance Notice of Proposed Rule)	March 23, 1993
Acid Rain Allowance Allocations and Reserves (Notice of Final Rule)	March 23, 1993
Notice of Availability of the National Allowance Data Base (Notice announces final data base upon which the Agency is basing the allowance allocations).	March 23, 1993
Environmental Radiation Protection Stds for the Mgmt & Disposal of Spent Nuclear Fuel, High-Level & Transuranic Radioactive Wastes (Extension of Public Comment Period)	March 22, 1993
Criteria for the Certification of Compliance with Environmental Radiation Protection Stds for the Mgmt & Disposal of Spent Nuclear Fuel, High-Level & Transuranic Radioactive Wastes (Extension of Public Comment Period)	March 22, 1993
Protection of Stratospheric Ozone: Accelerating the Phaseout of Class I & Class II Ozone Depleting Substances and Adding Methyl Bromide and Hydro-bromofluorocarbons to Class I (Notice of Proposed Rule)	March 18, 1993
Volatility Regs for Gasoline & Alcohol Blends (Notice of Final Rule)	March 17, 1993
Codification of Corresponding Onshore Area Designations and Notice of Convening Proceeding for Reconsideration of Certain Corresponding Onshore Area Designations	March 16, 1993
Motor Vehicle Certification Short Test & Performance Warranty Procedures (Extension of Comment Period & Notice of Availability)	March 15, 1993

Grand Canyon Visibility Transport Commission Work Plan Committees (Notice of Meetings)	March 15, 1993
Determining Conformity of General Federal Actions to State or Federal Imlementation Plans (Notice of Proposed Rule)	March 15, 1993
Special Exemptions from Requirements; Section 325(a) of the CAA Territory of Guam (Notice of Proposed Rule)	March 12, 1993
Final Documents: Employee Commute Options Guidance (Notice of Availability)	March 12, 1993
CAA Contractor Access to Confidential Business Information (Notice)	March 12, 1993
Regulation of Fuels & Fuel Additives: Stds for Fuel Quality-Sulfur Content; and Control of Air Pollution from New Motor Vehicles & New Motor Vehicle Engines: Stds for Oxides of Nitrogen Emissions from Heavy-Duty Diesel Engines & Correction of Type 2-D Diesel Test Fuel Specification for Light-Duty Vehicles, Light-Duty Trucks & Heavy-Duty Engines (Announcement of Public Meeting on Enforcement of Diesel Desulfurization Regulations)	March 11, 1993
National Ambient Air Quality Stds for Ozone (Notice of Final Decision)	March 9, 1993
Section 185B Report on Trospospheric Ozone (Notice of Report for Public Review)	February 26, 2993
Regulation of Fuel & Fuel Additives: Stds for Reformulated Gasoline (Notice of Proposed Rule)	February 26, 1993
New Source Review Simplification Workshop (Notice of Public Meeting)	February 26, 1993

National Emission Stds for Hazardous Air Pollutants (HAP) for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) (Notice of Public Hearing & Extension of Public Comment Period)	February 24, 1993
Control of Air Pollution from New Motor Vehicles & New Motor Vehicle Engines; Federal Test Procedure (FTP) Review (Notice of Public Workshop)	February 24, 1993
National Emission Stds for Hazardous Air Pollutants; Compliance Extensions for Early Reductions (Notice of Complete Enforceable Commitments Received Through 1/7/93)	February 23, 1993
Interim Guidance on the Generation of Mobile Source Emission Reduction Credits (Notice of Proposed Guidance for Comment)	February 23, 1993
Economic Incentive Program (Notice of Proposed Rule & Notice of Public Hearing)	February 23, 1993
Control of Air Pollution from New Motor Vehicles & New Motor Vehicle Engines; Federal Test Procedure (FTP) Modifications (Notice of Availability)	February 22, 1993
Control of Air Pollution from New Motor Vehicles & New Motor Vehicle Engines; Regulations Requiring On-Board Diagnostic Systems on 1994 & Later Model Year Light-Duty Vehicles & Light-Duty Trucks (Notice of Final Rule)	February 19, 1993
Ambient Air Quality Surveillance; Revise Regs to Include Provisions for the Enhanced Monitoring of Ozone (Notice of Final Rule)	February 12, 1993
Environmental Radiation Protection Stds for the Management & Disposal of Spent Nuclear Fuel, High-Level Wastes (Notice of Public Hearings on Proposed Stds and Establishment of Dockets)	February 11, 1993

Criteria for the Certification of Compliance with Environmental Radiation Protection Stds for Management & Disposal of Spent Nuclear Fuel, High-Level & Transuranic Radioactive Wastes (Advance Notice of Proposed Rule)	**February 11, 1993**
Protection of Stratospheric Ozone; Labeling Requirements for Products Manufactured with, Containers of, & Products Containing Specific Ozone-Depleting Substances Pursuant to Section 611 of the CAA, as Amended (Notice of Final Rule)	**February 11, 1993**
Regulations Governing Prior Notice of Citizen Suits Brought Under Section 304 of the Clean Air Act (Notice of Proposed Rule)	**February 10, 1993**
Environmental Radiation Protection Stds for the Management and Disposal of Spent Nuclear Fuel, High-Level & Transuranic Radioactive Wastes (Notice of Proposed Rule)	**February 10, 1993**
Air Pollution Control; Motor Vehicle Emission Factors (Notice of MOBILE5 Model Availability)	**February 9, 1993**
Request for Nominations for Essential Use Exemption for Halons 1211, 1301, and 2402	**February 2, 1993**
Acid Rain Program; Nitrogen Oxides Emission Reduction Program (Extend Public Comment Period)	**January 25, 1993**
Protection of Stratospheric Ozone; Ban of Nonessential Products Releasing Class I Ozone-Depleting Substances Under Section 610 of the CAA, as Amended (Notice of Final Rule)	**January 15, 1993**

Motor Vehicle-Related Air Toxics Study (Notice of Availability of Public Review Draft)	January 13, 1993
California State Motor Vehicle Pollution Control Stds; Waiver of Federal Preemption (Decision)	January 13, 1993
Hazardous Air Pollutants List; Denying a Petition to Remove Five Specific Substances from the Category of Glycol Ethers as Listed in CAA Section 112(b)(1) (Notice of Denial)	January 13, 1993
Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines; Regulations for Light-Duty Vehicle and Light-Duty Truck 1994, 1995 & 1996 Model Year Durability Testing Procedures, and Later Model Year Allowable Maintenance (Notice of Final Rule)	January 12, 1993
Criteria & Procedures for Determining Conformity to State of Federal Implementation Plans, Programs, & Projects Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act (Notice of Proposed Rule)	January 11, 1993
Acid Rain Program: General Provisions and Permits, Allowance System, Continuous Emissions Monitoring, Excess Emissions and Administrative Appeals (Notice of Final Rule)	January 11, 1993
Control of Air Pollution from New Motor Vehicles & New Motor Vehicle Engines; Gaseous & Particulate Emission Regulations for 1994 & Later Model Year Light-Duty Vehicles & Light-Duty Trucks, and Revised Performance Warranty Regulations; Addition of Certification Short Test Standards and Procedures (Notice of Proposed Rule)	January 8, 1993

Air Quality Designations & Classifications Amendments; Reclassification of Moderate PM-10 Nonattainment Areas to Serious Areas (Notice of Final Rule)	**January 8, 1993**
National Emission Stds for Hazardous Air Pollution; Benzene Waste Operations (Notice of Final Rule)	**January 7, 1993**
National Emission Stds for Hazardous Air Pollutants; Coke Oven Batteries (Notice of Public Hearing)	**January 5, 1993**
Grand Canyon Visibility Transport Commission Work Plan Committees (Notice of Meeting)	**January 5, 1993**

12/19/93

NEW SOURCE REVIEW REFORM

New major stationary sources of air pollution and major modifications to stationary sources of air pollution are required by the Clean Air Act to obtain an air permit before commencing construction. The process is called new source review (NSR) and has major economic and environmental implications for large new sources of air pollution and modifications of existing plants. To obtain a major source NSR permit, sources located in clean air areas must perform complex air quality modeling and other analyses, and apply best available pollution controls. In dirty areas, in order to obtain and NSR permit, sources must secure emissions reductions at existing sources. The NSR permitting process is often contentious and can take the better part of a year or longer.

In August 1992, EPA initiated a comprehensive ongoing effort to examine complaints from the regulated community that the current NSR permitting process was too complex, restricts source flexibility and resulted in needless project delays. The goal of the effort was to address these concerns without compromising the environmental safeguards and benefits embodied in the current permitting program.

Below is a summary of NSR materials contained in this section:

- NSR Reform Chronology of Workshops and Subcommittee Meetings
- List of NSR Reform Subgroups
- Permitting Sources with Class I Impacts:
    - Procedures and Coordination
    - Determination of Adverse Impacts
    - Mitigation of Source Impact
- BACT/LAER Determinations:
    - Clearinghouse and Presumptive BACT
    - BACT/LAER Criteria
    - Innovative Control Technology and Pollution Prevention
- Existing Source Impacts on Class I Areas Subgroup
- Memorandum on Subgroup Approach and Schedule, November 30, 1993

New Source Review Reform

With passage of the 1990 Clean Air Act Amendments, the Environmental Protection Agency (EPA) began to revise its new source review (NSR) rules to incorporated the requirements of the 1990 Amendments. In conjunction with the revision, the EPA began considering ways to simplify the NSR process. To facilitate its efforts to identify potential methods for simplifying the NSR process, the EPA decided to conduct a workshop, open to the public, to solicit comments from interested parties.

The first workshop was held in August 1992. The EPA invited representatives from industry, EPA Regions, State and local air pollution control agencies, and environmental organizations to participate in a NSR Simplification workshop. The workshop was announced in the Federal Register and was designed to provide EPA with input from the affected interest groups as to possible revisions that would simplify but maintain the legislative requirements of the NSR process. The representatives were requested to identify issues of concern and to present any conceptual or specific ideas for simplifying the NSR process. The EPA shared its own preliminary ideas and options for modifying NSR applicability with the group.

A second NSR Simplification workshop was held in March 1993. Like the August 1992 meeting, this meeting was announced in the Federal Register and was open to the public. The primary purpose of the workshop was to explore in greater detail a number of the specific issues identified at the August 1992 workshop and to discuss EPA's proposed responses to many of the comments. Among the agenda topics was an in-depth discussion of the plantwide emissions limit concept for NSR applicability; the definition and treatment of environmentally-beneficial projects for NSR purposes; and ways to simplify the pre-construction monitoring requirements in attainment areas. In addition, the best means for ensuring continued public involvement in the NSR simplification rulemaking process was also discussed. Options discussed were subsequent public meetings, formation of smaller workgroups and regulatory negotiation.

In June 1993, the EPA held a public workshop to discuss the issues and potential solutions associated with pollution control projects (PCP) and pollution prevention projects (PPP). The main topics for this meeting were the definition of PCP and PPP and NSR applicability of PCP and PPP. Some of the issues discussed were identifying criteria (e.g., add on controls, process changes, environmentally beneficial and emission reductions) to use in defining a PCP. Another issue was the distinction between voluntary versus mandatory, required by the Clean Air Act

(e.g., reasonably available control technology or maximum achievable control technology), PCP and whether these types of projects should be subject to NSR.

The EPA considered the input provided by these three public workshops as invaluable and that it was time to select appropriate options in order to formulate policy and regulations. To accomplish this, EPA decided that a subcommittee, constituted as part of the Clean Air Act Advisory Committee, be formulated to assist in choosing a course of action.

On July 7, 1993, the EPA gave notice of the establishment of the NSR Reform Subcommittee (58 FR 36407) under the auspices of the Clean Air Act Advisory Committee (55 FR, No. 217, 46993) which was established pursuant to the Federal Advisory Committee Act (5 U.S.C. app I). The Subcommittee's purpose is to provide independent advice and counsel to the EPA on policy and technical issues associated with reforming the NSR rules. The subcommittee is consulted on environmental, technical, scientific, economic, policy, and guidance issues. Representatives from industry, State and local air pollution control agencies, and environmental organizations are members of the Subcommittee. In addition, representatives from other Federal agencies (e.g., National Park Service, Forest Service and Department of Energy) and various EPA offices participate in these meetings.

The Subcommittee met for the first time on July 20-21, 1993. This meeting addressed NSR issues related to best available control technology (BACT) and Class I areas. As a result of the discussions, the Subcommittee decided to form six subgroups to address broad BACT and Class I area topics. A description of the issues to be addressed by each subgroup and their respective goals are attached. The Subcommittee charged the subgroups with discussing the identified issues and developing recommendations for resolving their respective issues.

Another Subcommittee meeting was held on November 8-9, 1993, to review draft options and recommendations developed by the subgroups on specific areas regarding Class I area impacts and BACT. In addition, the Subcommittee addressed NSR applicability-related issues. At this meeting, two new subgroups were formed: NSR Applicability and Existing Source Impacts on Class I Areas. A description of the issues to be addressed by these two subgroups and their respective goals are attached.

Currently, the Subcommittee is scheduled to meet on January 20-21, 1994. The primary focus of this meeting will be to have the Subcommittee reach a final consensus regarding recommendations on Class I area permitting issues, control technology determinations and NSR applicability.

New Source Review Reform Subgroups

- Permitting Sources With Class I Impacts
  - Procedures and Coordination
  - Determination of Adverse Impacts (Increments & AQRVs)
  - Mitigation of Source Impacts
- BACT/LAER Determinations
  - BACT/LAER Clearinghouse and "Presumptive" BACT
  - BACT/LAER Criteria
  - Innovative Control Technologies and Pollution Prevention
- New Source Review Applicability
- Existing Source Impacts on Class I Areas

Permitting Sources With Class I Impacts: Procedures and Coordination

Description: Proposed sources which may, or actually do, have an adverse impact on Class I areas sometimes experience delays in receipt of a final permit determination. In part, such delays are usually due to the time-intensive steps needed by the Federal land managers (FLMs) in fulfilling their statutory responsibility for protecting the air quality related resources of the Class I area. Identifying steps that can be taken to ensure early and continued involvement by the FLMs and the public during the PSD permit review process may help avoid such delays. Also, existing PSD regulations may not adequately address the important interrelationship between the FLM and the permit granting authority concerning the analysis of possible adverse impacts on air quality related values and the ultimate determination as to whether such impacts warrant denial of a PSD permit.

Goals: Provide proposed recommendations regarding changes (regulatory and other) that will improve the overall coordination between FLMs, permitting authorities, permit applicants and the public to ensure Class I impact issues are raised and addressed in a timely and appropriate manner.

Potential Questions:

1. **What steps can be taken to reduce permitting delays resulting from separate FLM and permitting authority reviews? Also, when considering any potential approaches for additional coordination of project reviews concerning a possible adverse impact on a Class I area, how should the administrative burden be fairly distributed among the involved parties?**

2. Preapplication meetings between the applicant, permitting authority and FLMs as well as advanced FLM notification of the proposed project promote early discussion of Class I concerns and can reduce "late hits" on a project during the public comment period. **How can FLM notification and input (in advance of the public comment period) be formalized within the PSD review process? In addition, how can public input and concerns be addressed early in the PSD review process for a source with potential Class I area impacts?**

3. **What can be done to ensure that FLMs have adequate opportunity to assess impacts of proposed sources (or projects) and to ensure that adequate consideration is given to the FLM's adverse impact determinations?**

4. **What alternative means are available for resolving disagreements between the permitting authority, the FLM, applicant and public over a finding of adverse impacts before a final permit is issued?**

Permitting Sources With Class I Impacts: Determination of Adverse Impacts

Description: Congress established the Class I increments as well as the concept of air quality related values (AQRVs) as the measures for assessing whether proposed emission increases can be allowed near Class I areas. The Clean Air Act provides that the burden of proof for determining adverse impacts to AQRVs, and ultimately whether a PSD permit may be issued, turns on the proposed project's consumption of the available Class I increment. If no increment violation is predicted, then it the FLM's burden to demonstrate to the satisfaction of the State that an adverse AQRV impact will occur. If, however, an increment violation is predicted, then the source must demonstrate to the satisfaction of the FLM that no adverse AQRV impact will result from the source's emissions.

Regarding the AQRV analyses, specific AQRVs, must be identified for each Class I area. Also, specific data needs and criteria should be defined in order to analyze the potential impacts of a proposed source on a given AQRV. De minimis thresholds may be appropriate for determining impacts on both the increments and AQRVs; however, such EPA issued, national thresholds do not currently exist. In addition, some assessment of cumulative impacts is necessary to account for the net impacts on AQRVs.

Goals: Propose recommendations for establishing the necessary procedures and criteria for performing and evaluating adverse impact determinations.

Potential Questions:

1. More specific information concerning the particular AQRVs associated with individual Class I areas is needed by the permit applicants and permitting authorities to analyze Class I impacts. **What kinds of information and common criteria related to AQRVs and effects is available, or can be made available, to industry, the permitting authorities and the public to improve the AQRV analyses and evaluation of the analyses (e.g., FLM screening values)?**

2. **After a Class I analysis is found to be necessary, what is the extent of the area over which existing source emissions should be considered. What criteria should be used to determine which existing source emissions are included in the Class I impact analysis?**

- continued-

3. Class I increments do not exist for tropospheric ozone. In the absence of modeling techniques for predicting ambient ozone levels, a PSD increment would be meaningless. Yet high ozone levels in many Class I areas have been identified. **Where none exist, what alternatives to a numerical PSD increment are available to protect Class I areas?**

4. There are often disagreements as to what distance from a Class I area a new source must locate in order to avoid a Class I impact analysis. EPA's current policy is that sources within 100 km. be addressed, with case-by-case consideration of more distant sources. **What changes to this existing guidance would improve the current system?**

5. The EPA uses significance levels for determining significant ambient impacts on the NAAQS and PSD increments. **Are national significance levels for Class I increments appropriate where there are existing violations (e.g., Virginia and National Park Service significance levels) and how would such levels be set?** Conceivably, significance levels could allow new sources to continue to be constructed and potentially exacerbate violations of the increment indefinitely (i.e., the overflowing cup analogy). **How should the use of significance levels be restricted in such circumstances? What objective criteria, e.g., significance levels, can be developed for determining adverse impacts on AQRVs? Should significance levels be developed specifically for each AQRV and how would such levels be set?**

6. **What opportunity during the permitting process can be made available to rebut presumptions concerning impacts less than and greater than a de minimis level and what would be the criteria by which these presumptions could be rebutted?**

7. **Should a standard analytical approach (and evaluation criteria) be prescribed which by default result in a finding of adverse impacts (e.g., rules of thumb, such as distance and pollutant relationships resulting in adverse impacts on Class I areas)?**

8. An AQRV Clearinghouse is being considered as a means to better inform applicants and permitting authorities of the particular AQRVs of interest or concern for a particular Class I area. **What type of information would be the most useful for such a clearinghouse to contain and what mechanisms exist to ensure that the information be submitted?**

Permitting Sources With Class I Impacts: Mitigation of Source Impact

Description: Once it has been demonstrated that a proposed source will adversely impact a Class I area, the source may be afforded an opportunity to mitigate its adverse impact in order to receive its PSD permit. For example, one suggestion is that once an AQRV has been determined to be adversely impacted, sources seeking to locate near the affected Class I area would comply with nonattainment area type permitting requirements such as
BACT and LAER.

Goals: Propose recommendations as to the range of mitigation measures that should be considered for new major sources to mitigate their own Class I adverse impacts in order to receive a PSD permit.

Potential Questions:

1. **What specific, mitigation measures (e.g., offsets, LAER) can be considered or imposed on sources locating in the vicinity of Class I areas already experiencing, or projected to experience, adverse impacts on AQRVs? Should the measure be shown to be related to the particular impact?**

2. **What role can preconstruction or post-construction monitoring serve in areas where projected adverse Class I area impact from the proposed source is of concern?**

BACT/LAER Determinations: BACT/LAER Clearinghouse and "Presumptive" BACT

Description: Currently there is no single comprehensive repository of BACT/LAER technology information, including cost, which permitting agencies, applicants and the public can access, to provide a common definitive basis for selecting and comparing BACT/LAER candidates. This leads to uncertainty regarding the control options which are available to the sources.

Availability of new or improved BACT (and LAER) technologies which sometimes emerge after a permit application has been submitted is another uncertainty in the technology review. Current policy requires consideration of new technologies for BACT and LAER are available for consideration up to the permit issuance date causing some permits to be appealed and renegotiated which may result in project delays. Balancing these concerns, environmental groups and the public have expressed interest in greater opportunity to review and comment on control technology determinations. Often the public first learns of the proposed technology for a source shortly before or during the public comment period on a proposed permit. There is also some concern about the consideration of technology from other countries, because of differing environmental regulations and potentially unproven performance of technology.

Goals: Propose recommendations for improvements in storing, characterizing and disseminating control technology information including the use of a presumptive approach to the BACT analysis.

Potential Questions:

1. **What revisions and improvements to the RACT/BACT/LAER Clearinghouse (RBLCH) can be implemented to ensure a comprehensive, all inclusive data base and what mechanisms exist to ensure the RBLCH is current with respect to available technologies?**

2. **How would a presumptive BACT/LAER be established and how would the development of new or improved control technologies be factored into a presumptive BACT/LAER to ensure it remained current?**

3. **Is there a way to reconcile the case-by-case nature of BACT with a "presumptive" or guideline control technology determination for a category of sources?**

4. **What additional mechanisms exist to involve the public early in the control technology review?**

5. **How should technology demonstrated outside of the U.S. be considered for BACT or LAER purposes?**

BACT/LAER Determinations: BACT/LAER Criteria

Description: In brief, EPA current guidance on BACT provides that all available control technologies be ranked in descending order of control effectiveness. The PSD applicant first examines the most stringent--or "top"--alternative. That alternative is established as BACT unless the applicant demonstrates, and the permitting authority agrees, that technical considerations, or energy, environmental, or economic impacts justify a conclusion that the most stringent technology is not "achievable" in that case. If the most stringent technology is eliminated in this fashion, then the next most stringent alternative is considered, and so on.

LAER is the most stringent emission limitation derived from: 1) the most stringent limitation contained in the implementation plan of any State for such class or category of source; or 2) the most stringent emission limitation achieved in practice by such class or category of source.

While the existing procedures for consideration of technologies (starting with the most stringent) appears to be relatively straight forward, there is apparently some uncertainty in the evaluation of the parameters that are considered in the BACT analysis and in satisfying LAER.

Goals: To identify within the framework of EPA's current BACT and LAER policies, proposed clarifications or information that would add more certainty to the evaluation of the parameters that are considered in the BACT and LAER analyses.

Potential Questions:

1. **Is it appropriate for the financial condition or competitive position of a company to play a role in the BACT or LAER analysis? If yes, how?**

2. **What criteria are appropriate for determining if a otherwise demonstrated technology is a candidate for technology transfer?**

3. **In terms of EPA involvement in the BACT analysis, what type of practice should EPA implement regarding when a technology is or is not available for BACT consideration purposes? How should a cutoff date be implemented for the purpose of limiting what is an available control technology for consideration in the BACT processes?**

4. **What additional guidance on environmental, energy and economic impacts would add more certainty to the BACT process?**

5. **To what extent is it appropriate for the BACT analysis to require the source to consider other alternatives to the source configuration that are either**

inherently less polluting (e.g., alternative fuels or processes) or provide an overall environmental benefit?

BACT/LAER Determinations: Innovative Control Technology and Pollution Prevention

Description: The subcommittee identified the need for additional guidance on how innovative control technology and pollution prevention could be incorporated into new source review (NSR).

The NSR rules, 40 CFR 51.166 (s) and 40 CFR 52.21 (v), provide a mechanism for permitting an innovative control technology. To obtain approval for an innovative control technology, the owner or operator of a proposed major stationary source or major modification must petition EPA's Administrator in writing before the close of the public comment period. The owner/operator must agree to achieve a level of continuous emissions reduction equivalent to that which would be required if BACT was installed. Additional requirements are outlined in these two portions of the NSR rules. To date, requests for innovative control technology waivers have been limited.

The Pollution Prevention Act of 1990 defined pollution prevention as "any practice which reduces the amount of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise released into the environment." In a memorandum dated June 15, 1993, Carol Browner, EPA Administrator, outlined the Agency's position on pollution prevention. In this memorandum, Ms. Browner committed EPA to adopting a major policy integrating pollution prevention into every EPA activity, program, and operation.

Goals: Propose recommendations for improving the utilization of the innovative control technology waiver and evaluating pollution prevention projects in relation to BACT/LAER determination.

Potential Questions:

1. **What changes to the current PSD innovative control waiver can be made to encourage development of innovative controls and strategies?**

2. **How can pollution prevention, as defined by the Pollution Prevention Act of 1990, be recognized and encouraged in BACT/LAER determinations?**

3. **What special considerations should be provided for innovative control technologies when applied as LAER?**

Existing Source Impacts on Class I Areas Subgroup

Description: Currently emissions from existing sources have an adverse impact on Class I areas' air quality related values. These impacts are primarily related to visibility impacts, acid deposition impacts and related terrestrial and aquatic effects, and damage from ozone on sensitive species. Current programs under the Clean Air Act are likely to address at least some of these impacts yet no programs are specifically targeted at effects in Class I areas. EPA is considering development of options for addressing Class I area impacts from existing sources and seeks the advice of the subgroup on potential solutions to the problem.

Goals: Provide review and comment on short-term and long-term program options for specifically addressing ozone, deposition, and visibility impacts on Class I areas. Assess and provide advice on how options mesh with current clean air programs.

HOGAN & HARTSON

MEMORANDUM

November 30, 1993

TO: David Aldorfer, General Motors
Michael R. Barr, Pillsbury, Madison & Sutro
John Bunyak, National Park Service
Larry B. Feldcamp, Baker & Botts, L.L.P.
David Hawkins, Esq., Natural Resources Defense Council
Bill Lewis, Esq., Morgan, Lewis & Bockius
David McAvoy, Eli Lilly and Company
William F. Pedersen, Esq., Perkins Coie
Donald Theiler, Wisconsin Department of Natural Resources
Bill Tyndall, U.S. Environmental Protection Agency
Richard S. Zbur, Latham & Watkins

FROM: Patrick M. Raher

RE: **Subgroup Approach and Schedule**

As EPA would like the Applicability Subgroup of the NSR Reform Subcommittee to propose specific recommendations in January, we have very little time to work. Attached you will find a schedule I am proposing to develop our recommendations. I am gathering relevant comments regarding NSR reconsideration that have been submitted to EPA over the last several years. I will use this, and any other written input or ideas you can provide prior to December 6, to complete an issue paper on the pros and cons of various applicability approaches by December 17. Subgroup members will then have until January 4 to review the issue paper and provide written comments, but if you can comment before Christmas, please do. I have scheduled a conference call on January 7, 1994 at 10:00 am EST to discuss the issues and develop a consensus recommendation for EPA. I will be sending a reminder along with the telephone number after the New Year's holiday. Based on this discussion, we will revise the issue paper for distribution to the full subcommittee prior to the January 20 and 21 meeting.

I also have enclosed a brief outline of the topics to be addressed by the subgroup. Despite the rigorous timetable we face, I believe we can be very productive as a team. I look forward to working with you.

cc: Lydia Wegman
David Soloman

APPLICABILITY SUBGROUP SCHEDULE

11/30/93	Distribute outline of topics for comments
11/30/93-12/6/93	Pat Raher to review/compile past filings on NSR applicability
12/6/93	Written input and ideas for draft issue paper due to Pat Raher
12/17/93	Draft issue paper distributed to subgroup
1/4/94	Written comments on issue paper due to Pat Raher
1/7/94	Conference call on issues and consensus recommendations
1/10/94-1/13/94	Issue paper revised and consensus write-up distributed for comment
1/13/94	Package sent to EPA for distribution to full subcommittee

PROPOSED TOPICS TO BE ADDRESSED IN THE SUBGROUP APPLICABILITY ISSUE PAPER

(1) Changes to the base time period and definition of recent actual emissions (average emissions of last two years, highest two years of previous five, longer periods for more cyclical sectors, use of typical ozone season emissions vs. annual emissions, etc.)

(2) Changes to the current vs. future comparison basis:

- recent actual vs. future allowable
- recent actual vs. expected future actual
- recent potential v. future potential
- recent allowable vs. future allowable
- PAL's

(3) Use of different applicability rules for specific circumstances:

- pollution control projects
- pollution prevention projects

NONATTAINMENT

The EPA has set national ambient air quality standards (NAAQS) for six "criteria" pollutants (ozone or smog, carbon monoxide, nitrogen dioxide, sulfur dioxide, particulate matter, and lead). The primary air quality standards are designed to protect public health with an adequate margin of safety. The secondary standards are designed to protect against welfare effects. The air quality management process that is in place to meet the NAAQS involves tailoring control programs to address the nature and magnitude of a given area's air quality problem. Areas that do not meet air quality standards, i.e. nonattainment areas, must design and implement control programs that make sense for the area in question.

The EPA has designated all areas of the country as "attainment", "nonattainment", or "unclassifiable" with respect to each of the six criteria pollutants. Areas EPA designates as "nonattainment" for a given pollutant must then take a series of steps to meet the applicable NAAQS as outlined in the nonattainment provisions of the 1990 Clean Air Act.

The following materials outlining the status of nonattainment area designations and guidance are provided in this section.

- Ozone and Carbon Monoxide (CO) Nonattainment
    - Map and List of Classified Ozone Areas
    - Map and List of Classified CO Areas
    - Map and List of Not Classified CO Areas
    - Recent Significant Guidance for Ozone and CO
- Particulate Matter (PM-10)
    - Fact Sheet
    - Map and List of Nonattainment Areas
- Sulfur Dioxide (SO2) and Lead
    - SO2 Fact Sheet
    - Map and List of SO2 Nonattainment Areas
    - SO2 Enforceability Deficiencies Issue Paper
    - Map of Lead Nonattainment Areas
    - Status of Lead NAAQS Attainment Strategy and Multi-media Targeting Effort
    - List of Policy Memoranda Issued in 1993

- Copies of Guidance Materials Provided:

  - Guidance on Correcting SO2 Enforceability Deficiencies, April 16, 1993

  - Impact of Recent Onboard Decision on Stage II Requirements in Moderate Nonattainment Areas, June 23, 1993
  - Impact of Conditional Approvals on Sanction and Federal Implementation Plan Clocks, July 14, 1993

  - Fuel Switching to Meet The Reasonably Available Control Technology Requirements for Nitrogen Oxides, July 30, 1993

  - Guidance on Issues Related to 15 Percent Rate-of-Progress Plans, August 23, 1993

  - Addressing Potential NAAQS Violations for PM-10, SO2, and Lead, August 24, 1993

  - Credit Toward the 15 Percent Requirements from Architectural and Industrial Maintenance Coatings, September 10, 1993

  - Responses to Violations of the Lead NAAQS, September 16, 1993

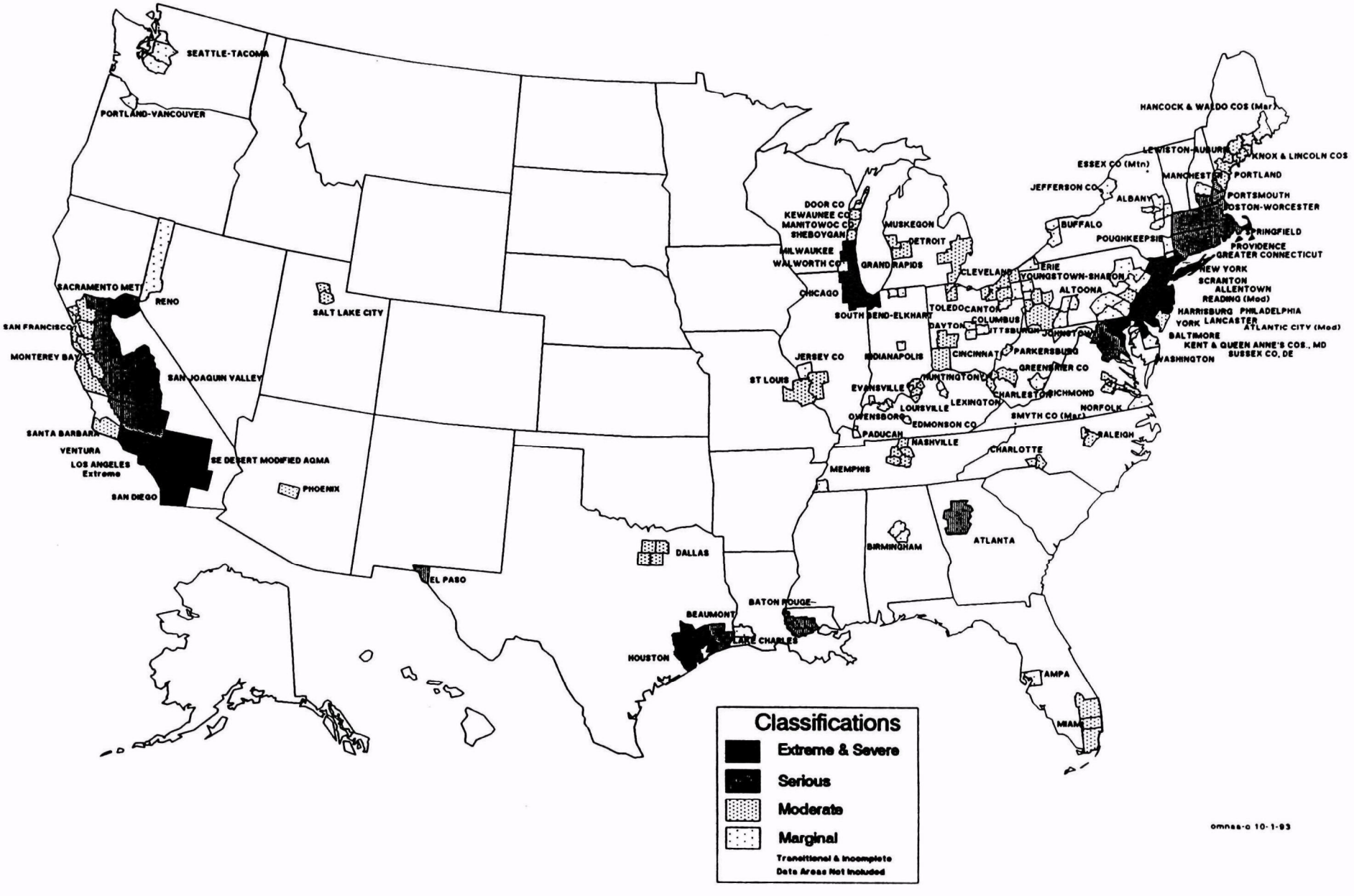
  - State Implementation Plan Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide NAAQS on or After November 15, 1992, September 17, 1993

  - Clarification of Issues Regarding the Contingency Measures that are due November 15, 1993 for Moderate and Above Ozone Nonattainment Areas, November 8, 1993

  - Use of Actual Emissions in Maintenance Demonstrations for Ozone and Carbon Monoxide Nonattainment Areas, November 30, 1993

  - Credit for 15 Percent Rate-of-Progress Plans for Reductions from Architectural and Industrial Maintenance Coating Rule, December 9, 1993

Classified Ozone Nonattainment Areas



Classifications of Ozone Nonattainment Areas[1]

Extreme (2010)[2]

Los Angeles-South Coast Air Basin, CA

Severe (2007)

Chicago-Gary-Lake County, IL-IN
Houston-Galveston-Brazoria, TX
Milwaukee-Racine, WI
New York-N New Jersey-Long Island,NY-NJ-CT
Southeast Desert Modified Air Quality Maintenance Area (AQMA), CA

Severe (2005)

Baltimore, MD
Philadelphia-Wilmington-Trenton,PA-NJ-DE-MD
San Diego, CA
Ventura County, CA

Serious (1999)

Atlanta, GA
Baton Rouge, LA
Beaumont-Port Arthur, TX
Boston-Lawrence-Worcester, MA-NH
El Paso, TX
Greater Connecticut
Portsmouth-Dover-Rochester, NH
Providence (All RI), RI
Sacramento Metro, CA
San Joaquin Valley, CA
Springfield (Western MA), MA
Washington, DC-MD-VA

Moderate (1996)

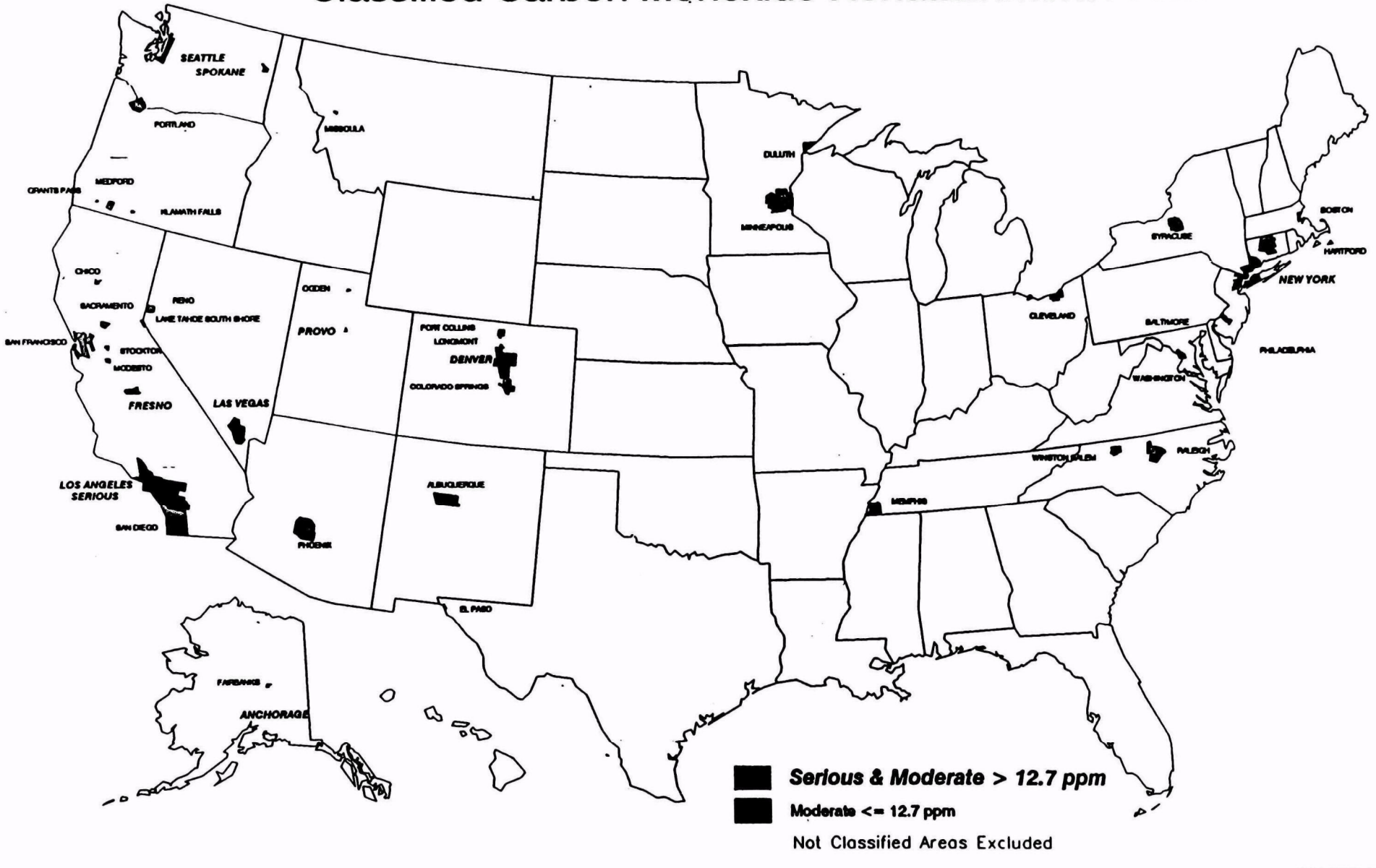
Atlantic City, NJ
Charleston, WV
Charlotte-Gastonia, NC
Cincinnati-Hamilton, OH-KY
Cleveland-Akron-Lorain, OH
Dallas-Fort Worth, TX
Dayton-Springfield, OH
Detroit-Ann Arbor, MI
Grand Rapids, MI
Huntington-Ashland, WV-KY
Kewaunee County, WI
Knox & Lincoln Counties, ME
Lewiston-Auburn, ME
Louisville, KY-IN
Manitowoc County, WI
Miami-Fort Lauderdale-W. Palm Beach, FL
Monterey Bay, CA
Muskegon, MI
Nashville, TN
Parkersburg, WV
Phoenix, AZ
Pittsburgh-Beaver Valley, PA
Portland, ME
Raleigh-Durham, NC
Reading, PA
Richmond, VA
Salt Lake City, UT
San Francisco-Bay Area, CA
Santa Barbara-Santa Maria-Lompoc, CA
Sheboygan, WI
St Louis, MO-IL
Toledo, OH

Marginal (1993)

Albany-Schenectady-Troy, NY
Allentown-Bethlehem-Easton, PA-NJ
Altoona, PA
Birmingham, AL
Buffalo-Niagara Falls, NY
Canton, OH
Columbus, OH
Door County, WI
Edmonson County, KY
Erie, PA
Essex County (Whiteface Mtn), NY
Evansville, IN
Greenbrier County, WV
Hancock & Waldo Counties, ME
Harrisburg-Lebanon-Carlisle, PA
Indianapolis, IN
Jefferson County, NY
Jersey County, IL
Johnstown, PA
Kent & Queen Anne's Counties, MD
Lake Charles, LA
Lancaster, PA
Lexington-Fayette, KY
Manchester, NH
Memphis, TN
Norfolk-Virginia Beach-Newport News, VA
Owensboro, KY
Paducah, KY
Portland-Vancouver, OR-WA
Poughkeepsie, NY
Reno, NV
Scranton-Wilkes-Barre, PA
Seattle-Tacoma, WA
Smyth County, VA (White Top Mtn)
South Bend-Elkhart, IN
Sussex County, DE
Tampa-St. Petersburg-Clearwater, FL
Walworth County, WI
York, PA
Youngstown-Warren-Sharon, OH-PA

[1]As of October 7, 1993 (Transitional and Incomplete Area Not Included) [2]Dates in parenthesis are when the ozone standard must be met.

Classified Carbon Monoxide Nonattainment Areas



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Classified Carbon Monoxide Nonattainment Areas Listed Alphabetically

Albuquerque, NM	Moderate<=12.7 ppm
Anchorage, AK	**Moderate >12.7 ppm**
Baltimore, MD	Moderate<=12.7 ppm
Boston, MA	Moderate<=12.7 ppm
Chico, CA	Moderate<=12.7 ppm
Cleveland, OH	Moderate<=12.7 ppm
Colorado Springs, CO	Moderate<=12.7 ppm
Denver-Boulder, CO	**Moderate >12.7 ppm**
Duluth, MN	Moderate<=12.7 ppm
El Paso, TX	Moderate<=12.7 ppm
Fairbanks, AK	Moderate<=12.7 ppm
Fort Collins, CO	Moderate<=12.7 ppm
Fresno, CA	**Moderate >12.7 ppm**
Grants Pass, OR	Moderate<=12.7 ppm
Hartford-New Britain-Middletown, CT	Moderate<=12.7 ppm
Klamath Falls, OR	Moderate<=12.7 ppm
Lake Tahoe South Shore, CA	Moderate<=12.7 ppm
Las Vegas, NV	**Moderate >12.7 ppm**
Longmont, CO	Moderate<=12.7 ppm
Los Angeles South Coast Air Basin, CA	**Serious**
Medford, OR	Moderate<=12.7 ppm
Memphis, TN	Moderate<=12.7 ppm
Minneapolis-St. Paul, MN	Moderate<=12.7 ppm
Missoula, MT	Moderate<=12.7 ppm
Modesto, CA	Moderate<=12.7 ppm
New York-N. New Jer-Long Is, NY-NJ-CT	**Moderate >12.7 ppm**
Ogden, UT	Moderate<=12.7 ppm
Philadelphia-Camden Co, PA-NJ	Moderate<=12.7 ppm
Phoenix, AZ	Moderate<=12.7 ppm
Portland-Vancouver, OR-WA	Moderate<=12.7 ppm
Provo, UT	**Moderate >12.7 ppm**
Raleigh-Durham, NC	Moderate<=12.7 ppm
Reno, NV	Moderate<=12.7 ppm
Sacramento, CA	Moderate<=12.7 ppm
San Diego, CA	Moderate<=12.7 ppm
San Francisco-Oakland-San Jose, CA	Moderate<=12.7 ppm
Seattle-Tacoma, WA	**Moderate >12.7 ppm**
Spokane, WA	**Moderate >12.7 ppm**
Stockton, CA	Moderate<=12.7 ppm
Syracuse, NY	Moderate<=12.7 ppm
Washington, DC-MD-VA	Moderate<=12.7 ppm
Winston-Salem, NC	Moderate<=12.7 ppm

Bold type for emphasis only

Not Classified Carbon Monoxide Nonattainment Areas

Prior Designation Retained by Operation of Law

cmnaa 10-26-91

Not Classified Carbon Monoxide Nonattainment Areas

Prior Designation Retained by Operation of Law

Listed Alphabetically

Atlantic City, NJ
Bakersfield, CA
Billings, MT
Boise-Northern Ada Co, ID
Burlington, NJ
Charlotte, NC
Detroit, MI
East Chicago, IN
Eugene-Springfield, OR
Freehold, NJ
Great Falls, MT
Greeley, CO
Indianapolis, IN
Lake Tahoe Nevada
Lake Tahoe North Shore, CA
Lowell, MA
Manchester, NH
Morristown, NJ
Nashua, NH
New Haven-Meriden-Waterbury, CT
Penns Grove, NJ
Perth Amboy, NJ
Pittsburgh, PA
Salem, OR
Salt Lake City, UT
Somerville, NJ
Springfield, MA
St Louis, MO
Toms River, NJ
Trenton, NJ
Tucson, AZ
Waltham, MA
Worcester, MA
Yakima, WA

Significant Changes since the
November 6, 1991 Federal Register (56 FR 56694)
on Air Quality Designations and Classifications
for Ozone and Carbon Monoxide Nonattainment Areas

November 30, 1992 Federal Register (57 FR 56762)

California - Carbon Monoxide
San Diego boundary change (small reduction)

Oregon - Carbon Monoxide and Ozone
Salem Area boundary change from City of Salem
to Salem Area Transportation Study

Michigan - Ozone - Muskegon Area
Muskegon County classification change (Serious to Moderate)

New York - Ozone
New York-Northern New Jersey-Long Island Ozone Nonattainment Area --
Orange and Putnam Counties: The November 6, 1991 notice indicated that the State requested time to study the boundaries and classification for these two counties and that EPA would evaluate the State study. Both counties are in the New York City CMSA. The following action was taken in the November 30, 1992 notice:

- The portions of Orange County that remain with the New York City nonattainment area (classified Severe-17) are: Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, and Woodbury.
- The remaining portions of Orange County (16 towns and cities) are designated as attainment.
- Putnam County was placed in the Poughkeepsie Nonattainment Area (classified Marginal).

Washington - Ozone- Seattle Area boundary change (small reduction)

Wisconsin - Ozone - Sheboygan Area
Sheboygan County classification change (Serious to Moderate)

Other areas had small typo changes (see notice)

Redesignations to Attainment

Kansas - Kansas City Area - Ozone (previously Sub-Marginal)
Johnson and Wyandotte Counties
See the June 23, 1992 Federal Register (57 FR 27936)

Missouri - Kansas City Area - Ozone (previously Sub-Marginal)
Clay, Jackson and Platte Counties
See the June 23, 1992 Federal Register (57 FR 27936)

South Carolina - Cherokee County - Ozone (previously Marginal)
See the December 15, 1992 Federal Register (57 FR 59300)

Minnesota - City of Saint Cloud - Carbon Monoxide
Benton, Sherburne and Stearns Counties
See the June 28, 1993, Federal Register (58 FR 34532)

North Carolina - Greensboro-Winston Salem-High Point - Ozone (previously Moderate)
Davidson, Davie, Forsyth & Guilford Counties
See the Sept 9, 1993 Federal Register (58 FR 47391) Effective Nov 8,1993

Tennessee - Knoxville - Knox County - Ozone (previously Marginal)
See the Sept 27, 1993 Federal Register (58 FR 50271)

New York - Syracuse - Onondaga County - Carbon Monoxide
See the Sept 29, 1993 Federal Register (58 FR 50851) (WPfile fed_reg.ch)

For futher information contact Valerie Broadwell (919-541-3310) or Barry Gilbert (919-541-5238)
Ozone/Carbon Monoxide Programs Branch, AQMD, MD-15, OAQPS, EPA, RPT, NC, 27711

Recent Significant Guidance for Ozone and Carbon Monoxide

Documents which have been released recently include:

Federal Register - State Implementation Plans: General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Proposed Rule - Thursday, April 16, 1992.

Guidelines for Estimating and Applying Rule - Effectiveness for Ozone/Co State Implementation Plan Base Year Inventories - November, 1992 - EPA-452/R-92-010.

Guidance on the Adjusted Base Year Emissions Inventory and the 1995 Target for the 15 Percent Rate of Progress Plans - October, 1992 - EPA-452/R-92-005.

Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of-Progress Plans - March, 1992 - EPA-452/R-93-002.

Guidance on the Relationship Between the 15 Percent Rate-of-Progress Plans and Other Provisions of the Clean Air Act - May, 1993 - EPA-452/R-93-007.

Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-Of-Progress Plans - June, 1993 - EPA-452/R-93-005.

Federal Register - State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule - Wednesday, November 25, 1992.

Technical Support Document to Aid States With the Development of Carbon Monoxide State Implementation Plans - EPA-452/R-92-003 - July, 1992.

In addition to the documents listed above, several guidance memoranda have been issued. Copies of these memoranda are attached.

December 14, 1993

PM-10 Fact Sheet

I. Present number of PM-10 Nonattaiment areas: 83

- O The original number was 70 areas, but 3 additional areas were redesignated this Fall by the Regional Offices.
- O The final action for 10 additional areas was signed by the Administrator on December 14, 1993.

II. Present number of Serious areas: 5

- O A total of 5 areas were reclassified to serious on January 8, 1993.

III. The following policy memoranda were issued during 1993:

1. Impact of Conditional Approval Actions on Sanction and Federal Implementation Plan clocks, July 14, 1993.
2. Addressing Potential New NAAQS Violations for PM-10, SO2, and Pb, August 24, 1993.
3. PM-10 Serious Area Guidance: Final Staff Work product.
   - O This document was issued as a staff work product September 24, 1993. It went through work group closure on November 18, 1993 and is next scheduled to go to the Office of Management and Budget for review.
4. PM-10 SIP Development Guideline Document, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C., EPA-452/R-93-008, April 1993. Available through the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.
   - O This document is a compendium of previously issued guidance on PM-10 SIP development policies and procedures.

AK
Eagle River
Juneau
AREAS DESIGNATED NONATTAINMENT
FOR PM10 PARTICULATES, BY EMISSION TYPE
PR
Guaynabo
KEY TO PRINCIPAL EMISSION TYPE
AREAS NONATTAINMENT DUE TO STATIONARY SOURCE EMISSIONS
AREAS NONATTAINMENT DUE IN PART TO WOOD SMOKE EMISSIONS
AREAS NONATTAINMENT DUE IN PART TO FUGITIVE DUST EMISSIONS
AREAS NONATTAINMENT DUE TO MULTIPLE TYPES OF EMISSIONS
CIRCLE DIAMETER
INDICATES RELATIVE SIZE
OF AFFECTED POPULATION
OAQPS, AQMD, SDPMPB
December 17, 1993

December 17, 1993

PM-10 Nonattainment Area Update

EPA Reg	Nonattainment Area	Classification (Moderate or Serious)
I	New Haven, CT	M
I	Presque Isle, Maine	M
II	Guaynabo, PR	M
III	Clairton, PA	M
III	Follansbee, WV	M
V	Lyons Township, IL	M
V	Southeast Chicago, IL	M
V	Granite City, IL	M
V	LaSalle County, IL	M
V	Lake County, IN	M
V	Vermillion, IN	M
V	Cuyahoga County, OH	M
V	Mingo Junction, OH	M
V	Detroit, MI	M
V	St. Paul, MN	M
V	Rochester, MN	M
VI	Anthony, NM	M
VI	El Paso, TX	M
VIII	Aspen, CO	M
VIII	Canon City, CO	M
VIII	Denver, CO	M
VIII	Pagosa Springs, CO	M
VIII	Telluride, CO	M
VIII	Lamar, CO	M
VIII	Butte, MT	M
VIII	Kalispell, MT	M
VIII	Lame Deer, MT	M

VIII	Columbia Falls, MT	M
VIII	Polson, MT	M
VIII	Ronan, MT	M
VIII	Libby, MT	M
VIII	Missoula, MT	M
VIII	Utah County, UT	M
VIII	Salt Lake County, UT	M
VIII	Sheridan, WY	M
IX	Douglas, AZ	M
IX	Hayden/Miami, AZ	M
IX	Phoenix, AZ	M
IX	Nogales, AZ	M
IX	Paul Spur, AZ	M
IX	Rillito, AZ	M
IX	Yuma, AZ	M
IX	Ajo, AZ	M
IX	Coachella Valley, CA	M /Reclassified to Serious
IX	Imperial Valley, CA	M
IX	Mammoth Lake, CA	M
IX	Owens Valley, CA	M/ Reclassified to Serious
IX	South Coast Air Basin, CA	M/Reclassified to Serious
IX	San Joaquin, CA	M/Reclassified to Serious
IX	Searles Valley, CA	M
IX	Las Vegas, NV	M
IX	Reno, NV	M/Reclassified to Serious
X	Eagle River, AK	M
X	Juneau, AK	M
X	Boisie, ID	M
X	Bonner County, ID	M

X	Pinehurst, ID	M
X	Pocatello, ID	M
X	Grants Pass, OR	M
X	Klamath Falls, OR	M
X	Springfield/Eugene, OR	M
X	Medford, OR	M
X	LaGrande, OR	M
X	Kent, WA	M
X	Olympia, Tumwater, and Lacey, WA	M
X	Seattle, WA	M
X	Spokane, Wa	M
X	Tacoma, WA	M
X	Wallula, WA	M
X	Yakima, WA	M

I. List of new PM-10 nonattainment areas:

A. Just signed by the Administrator:

1. Payson, Arizona
2. Bullhead City, Arizona
3. Sacramento County, California
4. San Bernadino County, California
5. Steamboat Springs, Colorado
6. Shoshone County, Idaho
7. Thompson Falls, Montana
8. New York County, New York
9. Oakridge, Oregon
10. Weirton, West Virginia

B. Redesignated by Regional offices:

1. Mono Lake, California
2. Lakeview, Oregon
3. Whitefish, Montana

II. List of areas for which PM-10 SIP's have not been submitted:

1. New, Haven, CT
2. Guaynabo, PR
3. Clairton, PA
4. Rillito, AZ
5. Yuma, AZ

III. No. of proposed SIP rulemaking actions - 15

1. Follansbee, WV
2. La Salle County, IL
3. Vermillion County, IN
4. Cuyahoga County/Mingo Junction, OH
5. St. Paul/Rochester, MN
6. Anthony, NM
7. El Paso, TX
8. Canon City, CO
9. Butte, MT
10. Missoula, MT
11. Utah/Salt Lake, UT
12. Eagle River, AK
13. Grants Pass, OR
14. Kent, WA
15. Thurston, WA

* The total number of PM-10 areas with proposed SIP rulemaking actions is 18. The Regions, in some cases, as indicated above, proposed more than one nonattainment area in a Federal Register package.

IV. No. of final rulemaking actions taken - 9

1. Anthony, NM
2. El Paso, TX
3. Eagle River, AK
4. Grants Pass, OR
5. Kent, WA
6. Thurston County, WA
7. Cuyahoga County/Mingo Junction, OH
8. St. Paul/Rochester, MN
9. Vermillion County, IN

December 16, 1993

Fact Sheet on the Sulfur Dioxide (SO_2)
National Ambient Air Quality Standards (NAAQS) Program

- National Ambient Air Quality Standards
  - Primary (40 CFR 50.4): - 80 ug/m3 (0.03 ppm), Annual (Arithmetic mean), and
    - 365 ug/m3 (0.14 ppm), 24-hour, not to be exceeded more than once per year.
  - Secondary (40 CFR 50.5): - 1300 ug/m3 (0.5 ppm), 3-hour, not to be exceeded more than once per year.

- Part D SIP's for nonattainment areas were due May 15, 1992.

- Number of nonattainment areas for:

Primary NAAQS =	32
Secondary NAAQS =	4
Both Primary and Secondary NAAQS =	12
Total =	48

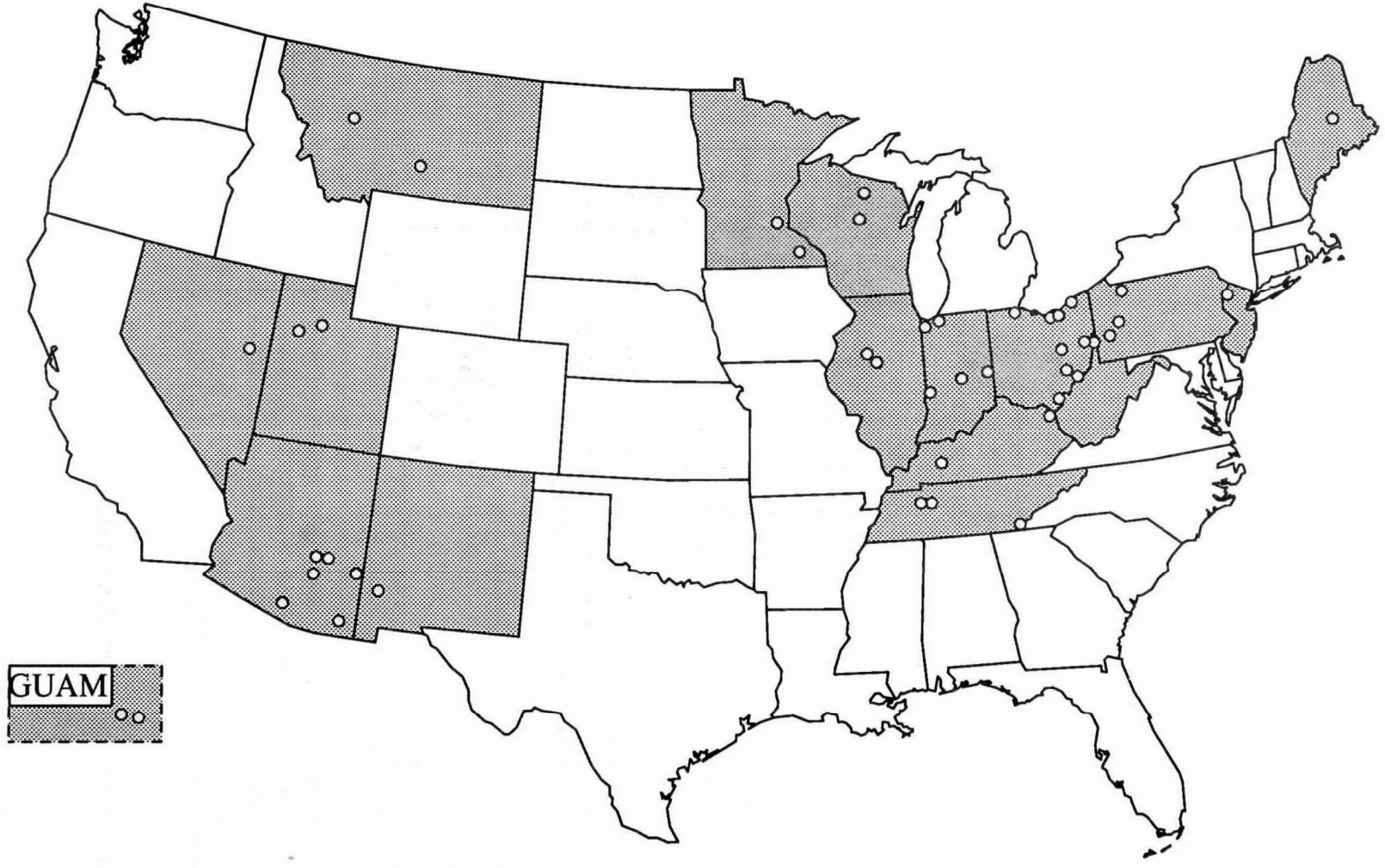
The above tally includes two additional nonattainment areas that were signed by the Administrator on 12/14/93.

- National SO_2 emission estimates, 23 tons/year

- Typical sources of SO_2 emissions:
  - Fossil-fuel fired power plants
  - Fossil-fuel fired boilers
  - Petroleum refineries
  - Sulfuric acid plants
  - Pulp and paper mills
  - Nonferrous smelters
  - Steel Mills
  - Municipal incinerators
  - Wet corn milling operations/ ethanol production

- SO_2 Guideline Document - This compendium of SO_2 NAAQS implementation policy and guidance has been revised to reflect changes per the 1990 Clean Air Act Amendments and is in the final stages of review within the EPA. It will be distributed to State agencies in the Spring of 1994.

AREAS DESIGNATED NONATTAINMENT FOR SO2



○ DESIGNATED NONATTAINMENT AREAS FOR SO2, Dec. 17, 1993

OAQPS, AQMD, SDPMPB
December 17, 1993

12/16/93

Sulfur Dioxide Nonattainment Areas

REGION	STATE	COUNTY	AREA	STANDARD
1	ME	PENOBSCOT	Millinocket	P
2	NJ	WARREN	6 areas	P/S
3	PA	ALLEGHENY	Clairton portion	P
3	PA	ARMSTRONG	5 areas (TWPS)	P
3	PA	WARREN	CONEWANGO TWP	P
3	WV	HANCOCK	New Manchester Grant	P
4	KY	BOYD	portion	P
4	KY	MUHLENBERG	all	S
4	TN	BENTON	portion	P/S
4	TN	HUMPHREYS	portion	P/S
4	TN	POLK	all	P/S
5	IL	PEORIA	HOLLIS TWP	P/S
5	IL	PEORIA	PEORIA	P
5	IL	TAZEWELL	GROVELAND TWP	P
5	IN	LAKE	portion	P
5	IN	LAPORTE	portion	P
5	IN	MARION	portion	P
5	IN	VIGO	all	P
5	IN	WAYNE	portion	P
5	MN	AQCR 131	7 Co.'s; Dakota, etc	P
5	MN	OLMESTED	CITY OF ROCHESTER	P
5	OH	COSHOCTON	FRANKLIN TWP	P
5	OH	CUYAHOGA	portion	P
5	OH	GALLIA	ADDISON TWP	S
5	OH	JEFFERSON	portion	P
5	OH	LAKE	portion	P
5	OH	LORAIN	portion	P
5	OH	LUCAS	portion	P
5	OH	MORGAN	CENTER TWP	S
5	OH	WASHINGTON	WATERFORD TWP	S
5	WI	MARATHON	3 areas	P/S
5	WI	ONEIDA	RHINELANDER portion	P/S
6	NM	GRANT	portion	P
8	MT	LEWIS AND CLARK	EAST HELENA AREA	P/S
8	MT	YELLOWSTONE	LAUREL	P
8	UT	SALT LAKE	all	P/S
8	UT	TOOELE	portion	P/S
9	AZ	COCHISE	DOUGLAS (3 AREAS)	P
9	AZ	GILA	MIAMI (9 AREAS)	P
9	AZ	GREENLEE	MORENCI (8 AREAS)	P
9	AZ	PIMA	AJO (5 AREAS)	P
9	AZ	PINAL	SAN MANUAL (11 AREAS	P
9	AZ	PINAL	HAYDEN (9 AREAS)	P
9	GM	PITI-CABRAS	PITI POWER PLANT	P
9	GM	TANGUISSON	TANGUISSON POWER PLT	P
9	NV	WHITE PINE	CENTRAL STEPTOE VALL	P
3	PA	WARREN	Warren, Pleasant,Gla	P/S
3	WV	Hancock	portion	P/S

P= Primary NAAQS
S= Secondary NAAQS
P/S = Both Primary and Secondary NAAQS

SO2 Enforceability Deficiencies Issue Paper

Background

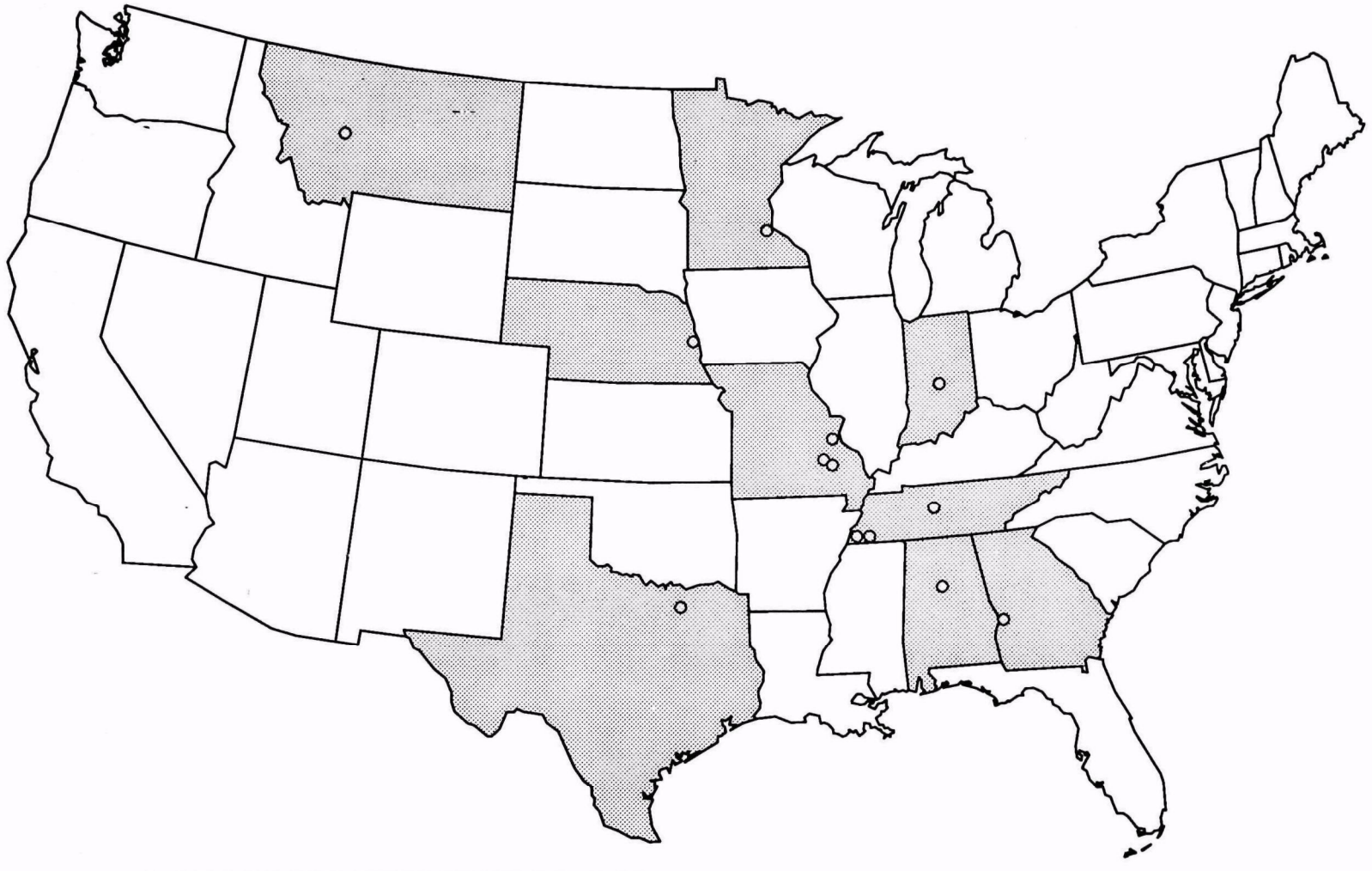
In the past, EPA has had difficulty enforcing emission limitations that have longer averaging times than those associated with the attainment demonstration and the NAAQS. These difficulties have resulted in lack of referrals of cases to the Department of Justice and lost enforcement cases. State and industry resistance to short term averaging times in emission limitations and/or compliance methods stems from the inherent variability of sulfur in the coal burned at power plants. In the past, limits specifying allowable sulfur emissions were derived by assuming that the sulfur content of the particular fuel supply is essentially invariant. However, this assumption is not valid for coal. The short term compliance averaging periods provide less opportunity for extreme random deviations from the norm to be "averaged down." Thus, shortening the averaging times effectively tightens the source's emission limitation by forcing the source to use a lower sulfur coal to assure high peaks will be under the limit. Therefore, in the past few years, EPA has not approved 30-day averaging as a compliance method, because it does not guarantee continuous compliance with the emission limitation or protection of the short term standard.

In addition to the issues associated with sulfur variability, EPA has encountered other deficiencies in the SIPs that have led to problems in enforcing the rules pertaining to SO2 emissions. EPA developed a 12 point checklist of the most common enforcement deficiencies (Nov 28, 1990 memo from Bauman and Biondi to the Regional Air Branch Chiefs). This checklist was used to review the SIPs. The results of this review are compiled in the SO2 Yellow Book (June 12, 1991).

In order to address the SIP deficiencies identified in the SO2 Yellow Book, EPA created the SO2 implementation work group. The work group is composed of representatives from AQMD, SSCD, OE, OGC, ARD and Regions III, IV and V, as well as eight States, which have (had) Phase I acid rain sources located in SO2 nonattainment areas. Their task is to address these outstanding issues in the most practical way, using the authorities under Titles I, IV, V and VII of the 1990 Clean Air Act as Amended.

The work group has developed a policy memorandum for addressing the noncontroversial SO2 issues (April 16, 1993), and worked to refine options for addressing the long term averaging issues. The efforts of the work group are currently on hold pending the completion and evaluation of the statistical compliance methods currently being developed by OAQPS.

AREAS DESIGNATED NONATTAINMENT FOR LEAD



○ DESIGNATED NONATTAINMENT AREAS FOR Pb, Dec. 17, 1993

OAQPS, AQMD, SDPMPB
December 17, 1993

December 17, 1993

Status of the Lead NAAQS Attainment Strategy and Multi-media targeting effort

GOAL - Target lead implementation efforts where they are most needed, e.g., in communities with the most risk to lead exposures.

Lead NAAQS Attainment Strategy Approach - To identify areas of highest potential exposure to lead, and determine if an environmental problem exists. Address environmental problems using existing regulations and programs to the fullest extent possible. Finally, where exisitng regulations are inadequate, initiate the regulatory process (SIP calls, nonattainment designations) to develop programs that will address the identified environmental problem.

Current Status - The first phase of the lead NAAQS attainment strategy targeted 29 primary and secondary lead smelters. Since its initiation in 1990, ambient air monitors were sited around all of these sources. Compliance inspections were conducted at all sources and appropriate actions were taken where compliance problems were identified. Ambient air concentrations have been reduced around 14 of the original sources. In 15 of these areas, where compliance actions did not address the problem (or where the requirements were obviously lacking), regulatory action was initiated.

In addition, the EPA Regions have identified additional sources to target and address any subsequent problems. The Regions identified three additional areas with air quality problems. In all of these areas, compliance actions were taken, but have proven insufficient to address the air quality problems and further regulatory action is under consideration or is underway. The Regions have also investigated other areas and determined that no problems exist and no additional follow-up is needed.

Expanding the Strategy - EPA is expanding the Lead NAAQS Attainment Strategy in two ways.

First - identify additional source categories which have the potential to emit enough lead to violate the lead NAAQS. OAQPS will provide this information to the Regions to aid them in their implementation efforts. The list of new areas/sources included in the Strategy is on schedule for completion in January, 1994.

Second - Identify ten Regional hot spots where there are potential multimedia exposures to lead, as well as a list of 100 hot spots nationwide (may be different from the Regional hot spots). The identification the priorities within a specific media is currently underway. Once this is completed and agreed on by the other media offices the

mapping will take place to begin to identify the hot spot. The final step is to prioritize these hot spots by looking at the magnitude of potential exposure, and the demographic information (population, age, income level, race, etc).

The long term goal of all of these efforts is to address environmental problems where they pose the greatest potential health risk. The targeting efforts are used to indicate where potential problems exist, the areas identified will indicate where the further investigation is needed to determine if an environmental problem truly exists.

Policy Memoranda Issued in 1993

April 16, 1993 - Guidance on Correcting SO2 Enforceability Deficiencies (Attached)

August 12, 1993 - Lead Guideline Document EPA-450/R-93-009 Available through NTIS #PB94-111846

September 16, 1993 - Responces (actions by the Region) to Violations of the Lead NAAQS. (Attached)

December 14, 1993 - Lead Addendum to the General Preamble of Title I of the Clean Air Act Amendments of 1990. Signed by the Administrator, to be published in the Federal Register.

APR 16 1993

MEMORANDUM

SUBJECT: Guidance on Correcting SO_2 Enforceability Deficiencies

FROM: D. Kent Berry, Acting Director
Air Quality Management Division (MD-15)

TO: Director, Air, Pesticides and Toxics Management Division, Regions I and IV
Director, Air and Waste Management Division, Region II
Director, Air, Radiation and Toxics Division, Region III
Director, Air and Radiation Division, Region V
Director, Air, Pesticides and Toxics Division, Region VI
Director, Air and Toxics Division, Regions VII, VIII, IX, and X

As you may recall, the Office of Air Quality Planning and Standards (OAQPS) has identified correction of sulfur dioxide (SO_2) enforceability deficiencies as a priority in the detailed operating guidance for 1992 and 1993. This effort targets the deficiencies, documented in the June 12, 1990 SO_2 Yellow Book, which could impede or complicate the issuance of the permits under title V or complicate the implementation of the acid rain program.

The OAQPS, in coordination with eight State representatives with interests in both the acid rain and SO_2 nonattainment programs, and several Regional and Headquarters offices, is developing guidance to address these deficiencies. Based on discussions with this group, we now believe that many deficiencies (e.g., lack of record keeping and reporting requirements, ambiguities in averaging times, etc.) may be resolved more expeditiously through the title V permits, thus avoiding the need for a formal State implementation plan (SIP) revision. Generally, the permits can be used to clarify ambiguities or fill gaps in noncontroversial SIP requirements.

The States and Regions, however, should be cautious not to address deficiencies that may be controversial through the permits program. If a State has an indication that the public or the industry will challenge the permit, the State should address the issue in a SIP revision. For instance, when addressing the issue of long averaging times, affected industries could be very sensitive about changing these requirements. Several have indicated that they will challenge any permit that does not reflect what they believe to be the current SIP requirements. Permit challenges from the industry or the public may encumber the permitting process and could lead to unfavorable legal precedents and risk a more difficult and confusing permitting process, thus defeating the purpose of avoiding the more cumbersome SIP process.

In addressing these deficiencies, an affected State should: (1) document to EPA satisfaction that there is no deficiency where the State disagrees with the Yellow Book items; (2) where there are deficiencies in the SIP, correct them via the permit if the State demonstrates that it has adequate general authority in its operating permits program and/or SIP to clarify (or fill) these requirements in the permit; and (3) correct the deficiency through a SIP revision if the State does not have adequate general authority, or if the State is concerned about potential challenges from the industry or the public.

In order to clarify the State's intent and to establish a record of how it is addressing these problems, the Regional Office may wish to prepare a memorandum of agreement (MOA) with the State explaining that the permit will be the federally-enforceable vehicle for clarifying the deficiency(ies). The MOA should acknowledge the deficiency(ies) and identify any impediments to its authority to correct these deficiencies in the permit. The State and EPA should establish in the MOA that, if the permit is not consistent with the current guidance on an enforcement issue, EPA may exercise its veto authority on the grounds the permit is not enforceable[1].

I believe that this approach will provide the States with a series of practical options for dealing with most of the identified Yellow Book deficiencies. I am attaching more detailed information on how the individual checklist deficiencies can be addressed and where additional guidance can be found. We

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[1]The SIP revision is always an option for the State in resolving any of these issues. A benefit of undertaking a SIP revision would be to avoid a case-by-case review of all of the permits for sources with the affected deficiency.

will continue to work on refining the guidance for dealing with the long-term averaging time issues. If you have any questions or comments, please feel free to contact me at (919) 541-5505 or Laura McKelvey at (919) 541-5497.

Attachment

cc: W. Becker, STAPPA/ALAPCO
G. Foote, OGC
B. McLean, ARD
R. Ossias, OGC
J. Rasnic, SSCD
M. Winer, OGC
Chief, Air Branch, Regions I-X

bcc: D. Campbell
J. Dills
P. Dubenetsky
P. Embrey
E. Flowers
P. Hansen
N. Hartman
K. Harmon
T. Helms
Z. Kosim
L. Lay
E. Lillis
M. Miller
S. Miller
S. Mitoff
M. Onischak
R. Patterson
J. Rinertson
S. Sallie
J. Slade
M. Trutna
T. Tucker
R. Vogel
L. Wegman

SDPMPB:LMcKelvey:pfinch:MD-15:541-5628:3-22-93
McKelvey 2B:DEFMEM2.GUD

Attachment

Background

On June 12, 1990, OAQPS released the "SO2 Yellow Book," which documented deficiencies in the SO2 SIPs. OAQPS initiated this effort because of the concern that leaving these issues unresolved would impede or complicate the implementation of Titles I, IV and V of the CAA.

Even though resolution of these issues has been identified by EPA as a priority in the subsequent operating guidance, many States have made little progress in correcting the deficiencies, perhaps due to a lack of clear guidance. Consequently, OAQPS established an SO2 Implementation Work Group. This work group consists of representatives from eight States (chosen from the States that have Phase I acid rain units located in SO2 nonattainment areas), the Regions in which these States are located; and the appropriate Headquarters offices. The work group is charged with developing guidance for correcting these "Yellow Book" deficiencies and with developing model permits for the ambient SO2 requirements.

Since the effort to identify and correct these problems in the SO2 SIPs was initiated, Part 70 regulations which implement the Title V operating permits program have been completed. Recently, the work group met to discuss the development of guidelines and the interaction between this effort and Title V operating permits. In response to the opportunities provided by this new program, the work group determined that of the deficiencies caused by ambiguities or omissions (gaps) in the SIP requirements and which are noncontroversial, could be resolved more expeditiously through the Title V permits.

Checklist Deficiencies

The following is the checklist that was used in reviewing the SO2 SIPs:

1) The rule does not clearly specify sources subject to the rule.

2) The rule does not clearly specify the applicable averaging time (compliance periods) associated with the emission limitation.

3) The averaging time in the rule is inconsistent with the averaging time for the NAAQS. For instance, if the rule allows 30-day averaging or weekly fuel sampling then there may be no assurance that the 3-hour and 24-hour NAAQS are being protected.

4) The compliance test methodologies in the rule are inconsistent with the averaging time and/or units of the applicable emission limitations (e.g., the rule specifies a lb/hr limitation based on a 1-hour average but the compliance method specifies part per million over a 24-hour average.

5) The rule does not provide for determining compliance on a continuous basis (e.g., Reg. Method 6, Stack Test, is the specified reference test method, but no frequency for testing is specified; or fuel sampling is specified but does not require daily sampling, CEM is feasible but is not required).

6) The averaging time in the continuous compliance monitoring and reporting methodology is inconsistent with the protection of the NAAQS (e.g., the averaging time in the compliance method is not specified in the regulation or in the reported data). Therefore, the source with an acceptable continuous compliance method may be providing information that demonstrates compliance on a 30-day average but that might not be in compliance with the shorter term averaging times.

7) The rule does not specify requirements to report compliance data to regulatory agencies or does not include requirements on format and frequency of data reporting (e.g., quarterly reports of 3-hour average excess emissions).

8) The rule does not contain clear requirements for compliance data record keeping and retention (e.g., all emissions data, recorded in units consistent with the emission limit, must be retained on site and made available to the regulatory agency inspectors; data must be maintained for at least 2 years).

9) The rule contains an alternative approach for compliance (e.g., variable or multiple limits among a number of affected sources) where the emission limits which apply to each affected sources are a) unclear, b) the period of time and length of time the alternate limits are in effect are unclear, c) there is no requirement for the source to notify the regulatory agency prior to changes in the applicable emission limit, and/or d) the rule does not contain continuous monitoring requirements that enable EPA to verify that all sources are in compliance with an applicable limit scenario.

10) The rule contains an alternative compliance approach other then alternative emission limits (e.g., load derating) but it does not clearly state the method of determining continuous compliance.

11) The rule contains director's discretion authority without provision for EPA review.

12) The rule has Section 123 deficiencies; including non compliance with the 1985 regulations, sources affected by the NRDC vs Thomas, 838 F.2d 1224 (D.C. Cir., 1988) remand and restrictions on Intermittent or Supplemental Control Systems (ICS or SCS).

Note that checklist items # 5, 9, and 10 which require a method for determining compliance on a continuous basis may meet the requirement for periodic monitoring or testing. However, as stated above, a one time stack test would not be considered periodic monitoring or testing. Additionally, the permit regulations would require the periodic monitoring data to be used in compliance certifications. Therefore, if a state believes that using continuous compliance or periodic monitoring or testing data for direct enforcement may be controversial, the state may wish to address this through a SIP revision.

Checklist items 1,2,4,7,8,9, and 10 (See attached checklist) can be corrected in the permit. The permit can also be used to fill a gap in the SIP for to checklist item # 5, to the extent that there is an omission or ambiguity in the continuous compliance method. However, where the compliance method is clearly stated, but does not provide for continuous compliance (e.g., requires an annual stack test) more extensive rule making will be necessary.

Items 12 and 13 are issues where there is on going policy development and it is not yet clear how they will be resolved. Thus, we are unable determine if these will require revisions of the SIP or if they, too, can take advantage of the permit program.

For the remaining checklist items (3 and 6) and any of the above deficiencies that may be controversial in the particular State. The States and Regions should be cautious not to implement address these items through the permit. If the State has an indication that the public or the industry will challenge the permit, the State should address the issue in a SIP revision. For instance, when addressing the issues of long averaging times, the industries could be very sensitive about changing these requirements. They may challenge any permit that does not reflect the current SIP requirements. Permit challenges from the industry or the public on these issue, may encumber the expeditious permitting process and may lead to unfavorable legal precedents, both of which would risk a more difficult and confused permitting process defeating the purpose of avoiding the more cumbersome SIP process.

Process

Affected States should employ a three-tiered approach for dealing with these problems.

1) If the State does not agree that there are deficiencies in their SIPs, the State should document their reasons to the Region's satisfaction.

2) If the SIP is unenforceable, the State may correct these noncontroversial deficiencies through the permit if the State demonstrates that they have adequate general authorities in their operating permit program and/or SIPs to clarify (or GAP fill, i.e., rely on general authorities to satisfy pollutant/program specific requirements) these requirements in the permit. Evidence of the States ability to demonstrate that they have "adequate general authority" could include operating permits issued pursuant to the existing SIP which impose the missing requirements.

3) If the State does not have adequate general authorities, or if the State is concerned about potential challenges from the industry or the public, then the State can correct the deficiency through a SIP revision.

Mechanism

In order to clarify the State's intent and to establish a record of how it is addressing these problems, the State should prepare a memorandum of agreement (MOA) with the Regional office explaining that the permit will be the Federally enforceable vehicle for clarifying the deficiency(ies). This MOA could be included in the State-Regional agreements developed with their Title V permit program. The MOA should acknowledge the deficiency(ies) and identify any impediments to its authority to correct these deficiencies in the permit. The State should also agree that the permit will reflect the current EPA policy on that particular issue. For instance, if there is no averaging time associated with the emission limitation, the MOA and the permit should specify an appropriate (3 or 24 hour) averaging time. The State and EPA should agree in the MOA that, if the permit is not consistent with the current guidance on an enforcement issue, then EPA may exercise its veto authority on the grounds the permit is not enforceable.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

JUN 23 1993

MEMORANDUM

SUBJECT: Impact of the Recent Onboard Decision on Stage II Requirements in Moderate Nonattainment Areas

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

TO: Director, Air, Pesticides and Toxics Management Division, Regions I and IV
Director, Air and Waste Management Division, Region II
Director, Air, Radiation and Toxics Division, Region III
Director, Air and Radiation Division, Region V
Director, Air, Pesticides and Toxic Division, Region VI
Director, Air and Toxics Division, Regions VII, VIII, IX, and X

As you are probably aware, on January 22, 1993, the U.S. Court of Appeals for the District of Columbia Circuit held that the Environmental Protection Agency (EPA), under section 202(a)(6) of the Act, has a mandatory duty to issue regulations requiring installation of onboard refueling vapor recovery (ORVR) systems on light duty motor vehicles (Natural Resources Defense Council v. Reilly, 983 F.2d 259). The EPA has since entered into a proposed settlement agreement (subject to the section 113(g) public comment process) under which the Agency would promulgate final ORVR standards by January 22, 1994.

In a memorandum dated March 9, 1993, I addressed the issue of how the new court opinion related to potential legal obligations under section 182(b)(3) to install vehicle refueling (Stage II) controls in moderate ozone nonattainment areas. I indicated there that the opinion would not abrogate such Stage II requirements since the requirements remain until EPA actually promulgates ORVR standards. In light of the more recent developments noted above, I would now like to supplement my

earlier memorandum, particularly with respect to the issue of whether EPA intends to invoke sanctions for State implementation plans which fail in some manner to implement the Stage II requirement contained in the Act.

As I indicated in my March 9 memorandum, EPA has started the 18-month time clock for mandatory sanctions for failure to submit Stage II programs in about 20 moderate ozone nonattainment areas. This would result in the first sanction being imposed in July 1994. However, since EPA plans to promulgate ORVR rules by January 1994, mandatory sanctions in these moderate areas would not be imposed. The EPA also has the authority to implement sanctions earlier than 18 months from issuance of a findings letter; however, given our plans to promulgate ORVR rules, EPA does not intend to impose such sanctions for a State's failure to adopt or implement Stage II programs in moderate ozone areas. The Office of General Counsel has previously communicated this information to the industry petitioners (see attached).

I note that States may still need to require installation of Stage II for reasons independent of section 182(b)(3). One possible reason, as explained in my March 9 memorandum, would be to meet the 15 percent volatile organic compounds (VOC) reduction requirements in section 182(b)(1). A second reason would be the need to include Stage II in a maintenance plan to ensure maintenance of the standard. (EPA, of course, is not promising that it would not invoke discretionary sanctions for failure to carry out the 15 percent VOC reduction requirements.)

I would appreciate your sending copies of this memorandum to all State air program directors in States in your Region that contain moderate ozone nonattainment areas, as well as to any State air program director otherwise interested in this issue.

Attachment

cc: M. Shapiro
D. Wilson

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

MAR 9 1993

MEMORANDUM

SUBJECT: Impact of the Recent Onboard Decision on Stage II Requirements in Moderate Nonattainment Areas

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

TO: Director, Air, Pesticides and Toxics Management Division, Regions I and IV
Director, Air and Waste Management Division, Region II
Director, Air, Radiation and Toxics Division, Region III
Director, Air and Radiation Division, Region V
Director, Air, Pesticides and Toxics Division Region VI
Director, Air and Toxics Division, Regions VII, VIII, IX, and X

On January 22, 1993, the United States Court of Appeals for the District of Columbia Circuit ruled that the Environmental Protection Agency's (EPA's) previous decision not to require onboard vapor recovery controls be set aside and onboard standards be promulgated pursuant to the Clean Air Act (Act), section 202(a)(6). The EPA is currently studying a schedule for complying with the court's ruling.

As a result of that court decision, several States have contacted EPA Regions and asked how the decision will affect Stage II requirements in moderate ozone nonattainment areas. States are required to adopt Stage II rules for such areas under section 182(b)(3). Section 202(a)(6) states that "the requirements of section 182(b)(3) (relating to Stage II gasoline vapor recovery) for areas classified under section 181 as moderate for ozone shall not apply after promulgation of such standards [i.e., onboard controls] . . . ."

These Act provisions indicate that a State's obligation to adopt, implement, and enforce Stage II rules for moderate areas continues until onboard rules are actually promulgated. The EPA will process Stage II rules as revisions to State implementation plans (SIP's). When onboard rules are promulgated, a State may withdraw its Stage II rules for moderate areas from the SIP (or

from consideration as a SIP revision) consistent with its obligations under sections 182(b)(3) and 202(a)(6), so long as withdrawal will not interfere with any other applicable requirement of the Act. Further guidance on Stage II requirements for moderate nonattainment areas seeking redesignation will be forthcoming.

The EPA has recently issued findings of failure to submit Stage II rules covering about 20 moderate ozone nonattainment areas. If EPA has not promulgated the onboard rules and a State still has not submitted complete Stage II rules within 18 months of the findings letter, the Act imposes sanctions in that area.

There are compelling reasons for keeping Stage II requirements even after an onboard rule is promulgated. Vehicles equipped with onboard controls are not required to enter the market until the fourth model year after the onboard standards are promulgated, and even then only 40 percent of that model year's production would be required to have onboard controls. Full coverage of all new vehicles is not required until 6 model years after promulgation [see section 202(a)(6)]. It will take several more years for the fleet to turn over so that most cars in use have onboard controls. Thus, it could take 10-15 years before onboard controls may achieve the same overall degree of volatile organic compound (VOC) emissions reductions as Stage II controls.

In the meantime, section 182(b)(1)(A) requires moderate and above nonattainment areas to achieve a 15 percent VOC reduction by 1996. The VOC reductions achieved from Stage II controls may contribute significantly toward this 15 percent reduction requirement. Early indications are that many areas will have difficulty demonstrating the 15 percent reduction in VOC emissions needed to meet section 182(b)(1)(A) even when reductions from Stage II are included. Given the stringent criteria for receiving a waiver from the 15 percent reduction requirement, it is unlikely that many areas will receive a waiver. Therefore, areas that do not adopt Stage II may be faced with adopting much more stringent and less cost-effective controls on other sources in order to meet the 15 percent requirement. States that fail to submit approvable 15 percent demonstrations and fail to waive the requirement will also subject themselves to sanctions and Federal implementation plans.

In addition to the 15 percent requirement, moderate ozone nonattainment areas must demonstrate attainment of the ozone standard by December 31, 1996. Therefore, regardless of whether Stage II is necessary to meet the 15 percent reduction, Stage II may be needed for moderate areas to attain the ozone standard by the end of 1996. Moderate areas failing to attain by that date will be "bumped up" to a serious classification and will become subject to the requirements for serious areas, including the 1999

attainment date. At that time the area would then be subject to the Stage II requirement as well as the additional control requirements for serious areas [see section 182(i)]. These reclassified areas will have less than 3 years to adopt and implement additional controls before the serious area attainment date of 1999. Furthermore, failure to attain by that date will subject the areas to being "bumped up" to a severe classification and the more stringent requirements applicable for those areas.

The EPA is further considering how this court ruling affects a State's obligation under section 184(b)(2) regarding Stage II or measures that get equivalent emission reductions in the Northeast Ozone Transport Region. The section 184(b)(2) requirement applies to all areas in the Region regardless of the ozone designation or classification. Guidance concerning the Northeast Ozone Transport Region will be issued at a later date.

cc: M. Shapiro
D. Wilson

JUN 2 1993

Alice Crowe
American Petroleum Institute
1220 L Street, N.W.
Washington, D.C. 20005

Dear Ms. Crowe:

This letter documents the substantive points to be made in EPA's letter regarding the relationship of Stage II requirements under the Clean Air Act (CAA) section 182(b)(3) and on-board refueling vapor recovery (ORVR) requirements in section 202(a)(6), as well as the Agency's position with respect to discretionary sanctions for SIPs which fail, in some manner, to implement the section 182(b)(3) Stage II requirement.

EPA would state that, because the section 182(b)(3) Stage II requirement is waived in moderate ozone non-attainment areas once EPA promulgates an ORVR requirement, and because the Agency has committed to promulgating on ORVR requirement by January 22, 1994, EPA therefore does not intend to invoke discretionary sanctions (pursuant to section 110(m)) in any of the following situations: a) for moderate ozone non-attainment areas that fail to submit a SIP revision addressing section 182(b)(3); b) for SIP submittals that do not require Stage II in moderate ozone non-attainment areas; and c) for States that require Stage II in moderate ozone non-attainment areas but fail to implement the requirement. The letter would also note that states may still need to require installation of Stage II for reasons independent of section 182(b)(3), such as to meet the 15 % VOC reduction requirement in section 182(b)(1).

Within two weeks, EPA will disseminate a letter making all of these points to EPA Regional Offices, and will request the Regional Administrators to send copies of the letter to state air

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program directors in each of their states. We will send you a copy of the letter at the time it is sent to the EPA Regional Offices.

Sincerely,

Alan W. Eckert
Associate General Counsel
Air and Radiation Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

JUL 14 1993

MEMORANDUM

SUBJECT: Impact of Conditional Approvals on Sanction and Federal Implementation Plan (FIP) Clocks

FROM: D. Kent Berry, Acting Director
Air Quality Management Division (MD-15)

TO: Director, Air, Pesticides and Toxics Management Division, Regions I and IV
Director, Air and Waste Management Division, Region II
Director, Air, Radiation and Toxics Division, Region III
Director, Air and Radiation Division, Region V
Director, Air, Pesticides and Toxics Division, Region VI
Director, Air and Toxics Division, Regions VII, VIII, IX, and X

The purpose of this memorandum is to clarify the impact of conditional approvals on the sanction and FIP clocks initiated by findings of failure to submit a State implementation plan (SIP) or complete SIP under sections 179(a) and 110(c)(1), respectively, of the Clean Air Act (Act), as amended.[1] A July 9, 1992 memorandum from John Calcagni to the Air Division Directors entitled "Processing of State Implementation Plan (SIP) Submittals" provides guidance on how the sanction and FIP clocks function but does not address the effect of conditional approval on the sanction and FIP clocks. The July 1992 guidance indicates that to stop the sanction clock following a section 179(a) finding, the State must correct the deficiency prompting the finding. A finding of failure to submit a plan or complete plan is corrected when the State submits a plan the Environmental Protection Agency (EPA) finds complete. Regarding the FIP clock, section 110(c)(1) requires that the EPA promulgate a FIP

[1]This memorandum does not address the effect of conditional approval on sanction and FIP clocks initiated by SIP disapprovals, which will be addressed in future guidance.

within 2 years of findings of failure to submit a plan or complete plan unless two conditions are met: the State corrects the deficiency, and the EPA approves the plan.

The Effect of Conditional Approval on Clocks Initiated by Findings of Nonsubmittal

Sanction Clock Permanently Stops, FIP Clock Temporarily Stops

As indicated in the July 9, 1992 guidance, when the EPA finds that a State has failed to submit a plan or complete plan,[2] the sanction and FIP clocks start on the date of the finding. If the EPA subsequently finds the late plan submittal complete, the sanction clock will permanently stop. If the EPA then takes final rulemaking action to conditionally approve the same plan, the FIP clock will temporarily stop.

The sanction clock will permanently stop because the submittal of a SIP that the EPA finds complete corrects the finding of failure to submit.[3] The FIP clock will temporarily stop because both conditions for stopping the FIP clock will have been met. The complete SIP submittal correcting the deficiency prompting the finding satisfies the first condition for stopping the FIP clock, and the EPA taking final rulemaking action approving the plan satisfies the second FIP clock condition.

The EPA believes that the FIP clock should only stop temporarily because the Act does not require the EPA to take duplicative FIP promulgation action to address the SIP's inadequacy during the time intended for the State to meet the commitment of the conditional approval. However, the FIP clock does not permanently stop because a conditional approval can convert to a disapproval if a State fails to meet the commitment by submitting a plan revision that the EPA can fully approve. Thus, although the State has met the second condition, it is temporary, and if the conditional approval converts to a disapproval, the FIP clock resumes where it stopped and a new sanction clock starts.

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[2]Note that plan or complete plan refers also to any submittal which we have indicated explicitly in guidance or elsewhere that we could accept as a committal SIP.

[3]For guidance on finding committal SIP's complete, see memorandum entitled "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines" from John Calcagni to Air Division Directors, Regions I-X, October 28, 1992.

Following Conditional Approval, When Does FIP Clock Stop or Resume?

The FIP clock will stop permanently if the State fulfills its commitment and the EPA takes final action fully approving the plan. The clock will resume where it stopped (and the EPA will remain under its FIP obligation) and a new sanction clock will start if any one of three events occurs where the conditional approval converts to a disapproval. (See attached flowchart for graphic representation of how this process works.)

One, if the State fails to submit anything to meet its commitment, the clock will resume on the date of the letter from the EPA to the State finding that it had failed to meet its commitment and that the SIP submittal has now been converted to a disapproval. The letter will be sent shortly after the final date for the State to meet its commitment. Two, if the State submits an incomplete SIP to meet its commitment, the clock will resume on the date that the EPA sends a letter of incompleteness to the State. If the EPA finds the SIP incomplete prior to the final date for meeting the commitment (i.e., in the case where the State submits the SIP before the due date), the FIP clock will resume on the final date for meeting the commitment if the State has not remedied the incompleteness finding by making a submittal the EPA finds complete. On that date, the EPA will notify the State by letter that the plan remains incomplete and that the FIP clock resumes.[4] Three, if the State submits a SIP for which the EPA takes final disapproval action, the clock resumes on the effective date of the final action. (The July 9, 1992 guidance explains in detail how conditional approvals function.)

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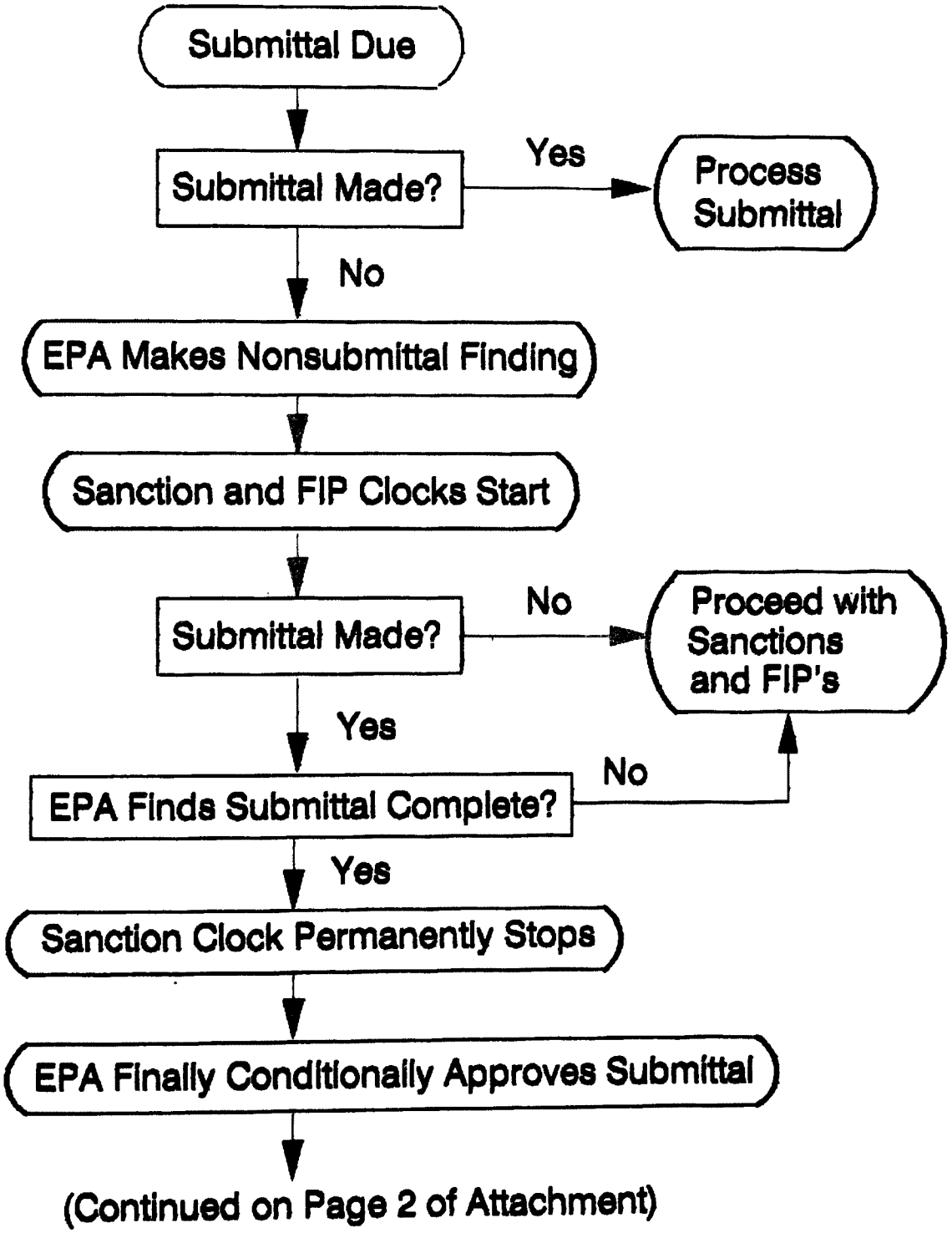
[4]The guidance provided here clarifies the discussion in the July 9, 1992 guidance of how conditional approvals may be converted to disapprovals in the event the State fails to submit anything and/or where the State makes a submittal that EPA finds incomplete. In the first case, if the State fails to submit anything, the sanction and FIP clocks start on the date of the letter from EPA to the State finding that it had failed to meet its commitment and the SIP has been converted to a disapproval. The letter is sent shortly after the final date for the State to meet its commitment. In the second case, if EPA finds the SIP incomplete, the sanction and FIP clocks start on the date of the EPA letter making the finding of incompleteness and notifying the State that it, therefore, failed to meet its commitment. However, if EPA finds the submittal incomplete before the date the submittal is due under the commitment, the sanction and FIP clocks do not start until the final date for meeting the commitment shortly after which time EPA will notify the State by letter that the SIP remains incomplete.

General questions on this clarification should be directed to Chris Stoneman of the Sulfur Dioxide Particulate Matter Programs Branch (919/541-0823). Questions regarding application to specific programs should be directed to the appropriate program branch within OAQPS.

Attachment

cc: Jane Armstrong, OMS
William Becker, STAPPA/ALAPCO
Phillip Lorang, OMS
Rich Ossias, OGC
Air Branch Chief, Regions I-X
Regional Air Counsel, Regions I-X

Attachment (page 1 of 2)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 30 1993

MEMORANDUM

OFFICE OF
AIR AND RADIATION

SUBJECT: Fuel Switching to Meet the Reasonably Available Control Technology (RACT) Requirements for Nitrogen Oxides (NOx)

FROM: Michael H. Shapiro
Acting Assistant Administrator
for Air and Radiation (ANR-443)

TO: Director, Air, Pesticides and Toxics Management Division, Regions I and IV
Director, Air and Waste Management Division, Region II
Director, Air, Radiation and Toxics Division, Region III
Director, Air and Radiation Division, Region V
Director, Air, Pesticides and Toxics Division, Region VI
Director, Air and Toxics Division, Regions VII, VIII, IX, and X

I. Purpose

The purpose of this memorandum is to provide guidance to States on the use of fuel switching to meet the NOx RACT requirements. As described below, States can meet the NOx RACT requirements by adopting rules which use a long-term emissions averaging approach in a manner consistent with the Environmental Protection Agency's (EPA's) interim guidance for economic incentive programs (EIP's). The EIP guidance was published in the Federal Register (58 FR 11110, February 23, 1993).

II. Background

Title I of the Clean Air Act (Act) Amendments of 1990 contains new requirements for areas that have not attained the national ambient air quality standards (NAAQS). These new requirements include application of RACT on existing major stationary sources of NOx in certain areas that have not attained the ozone NAAQS and in the ozone transport region. The EPA guidance on these requirements is contained in 57 FR 55620, November 25, 1992.

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The EPA guidance identifies presumptive RACT for certain types of electric utility boilers in pounds of NOx per million British thermal units (Btu) on a 30-day rolling average:

1. 0.45 for tangentially-fired coal burning.

2. 0.50 for dry bottom, wall-fired (other than cell burner) coal burning.

3. 0.20 for tangentially-fired gas/oil burning.

4. 0.30 for wall-fired gas/oil burning.

For other source categories, the EPA guidance states that NOx RACT may be set at levels that are comparable to the above levels for certain utility boilers.

The EIP guidance is intended to stimulate the adoption of incentive-based, innovative programs that will assist States in meeting air quality goals through flexible approaches which allow for less costly control strategies and which provide stronger incentives for the development and implementation of innovative emissions reductions technology. As described in that guidance, long-term emissions averaging programs can be used by States to meet the Act's RACT requirements. Key provisions of the EIP guidance, with respect to the use of fuel switching to meet the NOx RACT requirements, are described below.

III. Definitions

A. Fuel Switching

As used in this guidance, fuel switching refers to instances where a unit historically burned one primary fuel, such as coal, and under a "fuel switching" program the unit would burn a cleaner fuel, such as natural gas, during the ozone season and may switch back to the "historic" fuel for some or all of the non-ozone season.

B. Base Year Fuel

For purposes of this guidance, the historical fuel refers to the fuel that a unit primarily used during calendar year (CY) 1990. The EPA believes that CY 1990 is appropriate since many Act requirements (such as reasonable further progress) stem from this date. States are required to develop a comprehensive 1990 inventory, and the CY 1990 inventory is likely to be the most accurate information readily available. Further, since this guidance utilizes an annual emissions equivalency (described below), the historical fuel needs to be based on an annual period.

More precisely, the historical fuel is defined as the fuel burned most, on a Btu-weighted basis, during CY 1990. Where CY 1991 or CY 1992 is demonstrated to be more representative of historic actual operating conditions, those years may be used. For example, where a unit burned 90 percent coal during 1990-1992, that unit is considered subject to the presumptive NOx RACT limits for coal-fired units; if the same unit used 60 percent gas in later years, it would still be subject to the presumptive NOx RACT limits for coal-fired units.

C. Ozone Season

For purposes of this guidance, the ozone season generally means the period of time that ozone monitoring is required for an area as defined in 40 CFR part 58, appendix D, section 2.5.

D. Presumptive NOx RACT

For purposes of this guidance, presumptive NOx RACT means the more stringent of the requirements:

1. adopted by the State into the State implementation plan (SIP) to meet the NOx RACT requirements, or

2. defined in EPA's guidance published in 57 FR 55620, November 25, 1992.

IV. NOx RACT for Fuel Switchers

Limited data indicate that, in some cases, a switch to natural gas from coal could result in emissions in the 0.10 to 0.40 (pounds of NOx per million Btu) range as compared to the EPA presumptive NOx RACT emissions rates for gas/oil of 0.20 to 0.30 and for coal of 0.45 to 0.50. This is a relatively broad range and is based on very little data. The EPA has determined that there is not enough data available to establish a presumptive NOx RACT level for a fuel-switcher category.

As a result, units that switch, for example, from coal (historic fuel) to gas could fall under either the presumptive coal or gas/oil NOx RACT limits. However, if fuel-switcher units were required to meet the presumptive gas RACT limits, those units would face the costs of both fuel switching and add-on controls, which would remove an important incentive for coal units to switch to gas. In these cases, EPA believes that the presumptive RACT limits for coal are appropriate for establishing the program baseline in an EIP because it is consistent with the EIP guidance, data are not available to set a fuel switcher presumptive NOx RACT level, there are clear environmental benefits (noted below) when units switch to clean fuels, and fuel switching might only occur under a coal baseline.

V. Fuel Switching to Meet NOx RACT Through Long-Term Averaging

A. EIP Approach

State rules which allow fuel switching to meet the NOx RACT requirements are approvable where the rules are consistent with the EIP guidance for long-term averaging and the guidance in this memorandum. This approach is applicable to utility boilers as well as any other source subject to the NOx RACT requirements. Any source which meets the NOx RACT requirements through a long-term averaging EIP must also meet all other relevant Act requirements.

B. Emissions Limitation Requirements

The State rules must include emissions limits on both an annual and ozone season basis, as described below.

C. Annual Emissions Limit

The EIP guidance provides States with the flexibility to meet new RACT requirements, such as the NOx RACT requirements, through an EIP that yields reductions in emissions at least equivalent to those which would result from unit-by-unit compliance with the presumptive RACT limit for that source category. Under a long-term emissions averaging EIP to meet NOx RACT, annual emissions of NOx must be less than or equal to annual emissions that would result from compliance with presumptive NOx RACT. The specific calculation methodology for determining annual equivalence is described in the enclosed appendix to this guidance.

D. Ozone Season Emissions Limit

An EIP that uses long-term emissions averaging to meet the RACT requirements must include long-term emissions requirements, as described above, and other requirements to show that the EIP is equivalent to the presumptive RACT on a short-term basis. For purposes of NOx RACT, a short-term emissions limit, in conjunction with an annual emissions limit, satisfies these EIP requirements. The short-term emissions limit must be applicable in the ozone season and at least as stringent as the presumptive NOx RACT limit. The more stringent of the State-adopted or EPA presumptive NOx RACT must be required during the ozone season.

As discussed in the long-term averaging section of the EIP guidance, a 24-hour averaging time is generally used to construct attainment demonstrations in ozone nonattainment plans. Accordingly, EPA believes that daily emissions limits should be considered in the development of the EIP short-term emissions limit requirements.

VI. EIP Cost/Environmental Considerations

In general, the EIP guidance indicates (58 FR 11121) that savings in compliance costs can result from EIP's and that consideration might be given to the sharing of that benefit between the regulated sources and the environmental goals of the Act. The EIP guidance also states (58 FR 11117) that new RACT requirements must be based on an analysis that considers the incentive mechanism upon which the EIP is based. The EPA's assessment of these issues for fuel switching is summarized below.

A. Fuel-Switching Cost Considerations

In general, a fuel-switching program would provide new flexibility to States and industry in meeting certain Act requirements, including the NOx RACT requirements. Fuel switching is a viable option for units where natural gas is readily available since the price of natural gas in the ozone season may be competitive with other fuels. While still meeting the Act requirements, industry could, in some cases, avoid much of the initial capital and operating costs associated with combustion modifications.

As described above, fuel switching is expected to reduce the cost to industry of meeting the NOx RACT requirements in some cases. In other cases, the cost of a fuel-switching program may exceed the cost of compliance with a presumptive RACT technology such as a low-NOx burner and overfire air. The costs of a fuel-switching program to industry will vary greatly from unit to unit due to the availability of gas, price of gas, extent of needed modifications to the boiler, and monitoring requirements.

B. Fuel-Switching Environmental Considerations

The EPA has considered the relative environmental benefits for fuel switching and presumptive NOx RACT. In terms of the primary purpose of NOx RACT, that is reducing ozone effects in areas of high concentrations, it is clear that the increased NOx emissions reductions due to burning a cleaner fuel during the ozone season would be much more effective than lesser emissions reductions at the presumptive NOx RACT levels, which would be evenly spread over an entire year. The use of natural gas instead of coal could also substantially reduce annual and summertime emissions of sulfur dioxide (SO_2), carbon dioxide (CO_2), PM-10 (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers), and associated toxic emissions such as mercury. Further, emissions reductions of these pollutants may be especially effective in the summer with respect to reducing regional haze and sulfate-related PM-10, both

of which tend to peak in the summer. Thus, the potential benefits that go beyond the title I ozone and NOx RACT goals include helping attain/maintain the NAAQS for SO_2 and PM-10, reducing mercury and other air toxic emissions, improving visibility, and cutting emissions of CO_2, a global warming gas.

The EPA has also considered evidence suggesting that, for certain ecosystems, reductions in nitrogen deposition that occur only during the summer would be less effective at reducing acid deposition and nutrient impacts than reductions that occur uniformly throughout the year. It is not possible at this time to fully determine or quantify this relative ecological impact. Moreover, due to the inherent limits on the amount of fuel switching that can occur and the effect of titles II and IV NOx reductions, wintertime nitrogen deposition would be projected to decrease in most areas regardless of fuel switching. In contrast, the ozone related and many of the additional potential benefits of fuel switching noted above are well known and quantifiable. In EPA's judgment, substantial additional ozone reductions occur from fuel switching; this benefit and the accompanying improvements in visibility, PM-10, air toxics, and global warming that also occur from fuel switching clearly outweigh the reduced wintertime benefits.

C. Conclusion

The above environmental and cost considerations are important in interpreting the EIP guidance for the use of fuel switching to meet NOx RACT. Based on these considerations, EPA believes that, in cases where fuel switching results in a lower cost to the source, requiring further environmental benefits would not be necessary for fuel switching. Moreover, the potential cost savings may need to be preserved to provide some incentive to sources to achieve these substantial environmental benefits.

VII. Enforcement

Each affected source in a long-term averaging program must comply with all requirements imposed by the program. Each long-term averaging program must:

1. Specify credible, workable, replicable and otherwise fully enforceable methodologies for appropriately determining compliance at all emissions units participating in the averaging program, including methodologies for quantifying emissions, where appropriate.

2. Require recordkeeping and reporting, consistent with the required compliance determination methodologies, including emissions quantification methodologies sufficient for determining

and documenting compliance with the program. These requirements must contain a mechanism for determining required data, including emissions at subject emissions units when data are missing, inadequate, or erroneous. This mechanism must ensure that owners of emissions units have a strong incentive to properly perform monitoring, recordkeeping, and reporting in the first instance.

3. Provide adequate civil and criminal sanctions for failure to comply with applicable program requirements, including emissions limitations and monitoring, recordkeeping, and reporting requirements. The program regulatory requirements and enforcement authorities must preserve the level of deterrence to noncompliance, at both the State and Federal levels, which would have otherwise applied in the absence of the averaging program.

VIII. Projected Results and Audit Procedures

A SIP revision that contains an EIP must include projections of the emissions reductions the State expects to achieve through implementation of the program. All EIP submittals must include documentation which clearly states how sources in an EIP are or will be addressed in the emissions inventory, reasonable further progress (RFP) plan (i.e., where the 3 percent RFP plan includes NOx substitution for required volatile organic compounds reductions) and attainment or maintenance plan, as applicable.

All EIP's must also contain program audit procedures designed to evaluate program implementation and track program results in terms of the actual emissions reductions obtained during program implementation. The program audit provisions must include a State commitment to ensure timely implementation of programmatic revisions or other measures which the State, in response to the audit, deems necessary for the successful operation of the program.

IX. Emissions Reduction Credits (ERC)

Annual emissions reductions achieved through the EIP that exceed the annual emissions reductions that would result from compliance with presumptive RACT may be used to establish ERC. However, this guidance does not address establishing or trading of seasonal ERC.

Appendix: Annual Equivalency Calculation Methodology

A. Emissions Averaging or Emissions Cap

As described below, a long-term averaging EIP may use either an emissions averaging or emissions cap basis to establish annual equivalency. Under emissions averaging, if production increases, emissions may increase proportionately; and if production decreases, emissions must decrease accordingly. Shutdowns and curtailments do not provide credit under an emissions averaging program. Where an emissions cap is set, actual emissions must be within the emissions cap for all appropriate averaging periods in the future. Shutdowns and curtailments may provide credit under an emissions cap under circumstances that will be described in future guidance.

Both of these options assume that the State has determined a RACT emissions rate value for each fuel i (up to N fuels) burned in equipment j (for M types of equipment). The constraints in this guidance presume that RACT is designated as an emissions rate per unit of production (in this case heat input). The RACT may also be designated as a percent reduction from representative historical emissions rates.[1] If a source wishes to implement a long-term average percent reduction, the values must be converted to emissions rate limits per unit of production.

Note, where multiple fuels are used in the base year, EPA generally expects the presumptive RACT to be applicable to the one primary fuel, and that different emissions rate limits would be used for other fuels. For example, where coal has been historically used 80 percent and oil 20 percent of the time in a wall-fired boiler, the EPA presumptive RACT emissions limit of 0.5 (pounds of NOx per million Btu) might be used in the coal-fired portion of the calculation; however, the EPA presumptive RACT of 0.30 for oil might not be appropriate for the oil-fired portion of the calculation since the presumed low NOx burner technology designed to meet 0.5 when burning coal might not be designed to meet 0.3 when burning oil. In this example, 0.35 might be more appropriate to include in the oil-fired portion of the calculation; the State needs to determine the appropriate emissions rate for the secondary fuel(s), considering the control equipment designed to meet the primary fuel limit.

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[1] Generally speaking, the term "historical" means calendar year 1990 unless another 12-month period is more representative of normal source operation. This alternative 12-month period must fall between January 1990 and December 1992.

B. Emissions Averaging

Emissions averaging allows an emissions unit to use a production-weighted average to meet the prescribed emissions rate limitation (in this case the presumptive RACT limit) on an annual basis. Actual annual emissions in each future compliance period (mass per year) must be less than the emissions that would have occurred if the presumptive RACT limit was met.

If RACT is designated as an emissions rate limitation, then mathematically the constraint that must be met for every annual compliance period in the future is as follows:

$\Sigma_{i=1\to N}\Sigma_{j=1\to M}RACT_{ij}$ X Annual Heat $Input_{ij} \geq$
Total Annual Actual NO_x Emissions

Where $RACT_{ij}$ generally equals the lowest federally enforceable emissions rate limitation that applies to unit j using fuel i. There are limited exceptions to this generalization where an emissions rate lower than $RACT_{ij}$ would apply (e.g., see the baseline section of the EIP guidelines). Further guidance is expected to be released on this soon.

C. Emissions Cap

An emissions cap is an averaging approach that imposes a limit on annual mass emissions from an emissions unit. The cap is set using historical production rates and RACT emissions rate limitations as shown below:

Emissions Cap = $\Sigma_{i=1\to N}\Sigma_{j=1\to M}$Historical Production $Rate_{ij}$ X $RACT_{ij}$

Where $RACT_{ij}$ is defined the same as above.

D. Example Determinations of Annual Equivalency

a. Single Fuel Emissions Averaging Example

$\Sigma_{i=1\to N}\Sigma_{j=1\to M}RACT_{ij}$ X Annual Heat $Input_{ij} \geq$
Total Annual Actual NO_x Emissions

i = 100% coal
j = wall-fired utility boiler
assume presumptive coal RACT = 0.5 (pounds NOx/MMBtu)

if 1996 actual annual heat input = 4×10^6 MMBtu
then actual 1996 annual emissions could not exceed:
(0.5) X (4×10^6) = 2 million pounds or 1000 tons NOx

b. Single Fuel Emissions Cap Example

i = 100% coal
j = wall-fired utility boiler
assume presumptive coal RACT = 0.5 (pounds NOx/MMBtu)

if historic (CY-90) production rates = 3×10^6 MMBtu/year
then the emissions cap is:
$(3 \times 10^6) \times (0.5)$ = 1.5 million pounds or 750 tons NOx/year

Annual emissions must, therefore, not exceed 750 tons for all future years.

c. Multiple Fuel Emissions Averaging Example

$\Sigma_{i=1\to N}\Sigma_{j=1\to M}RACT_{ij} \times$ Annual Heat $Input_{ij} \geq$ Total Annual Actual NO_x Emissions

i = 75% coal; 25% oil
j = wall-fired utility boiler
assume presumptive coal RACT = 0.5 (pounds NOx/MMBtu)
assume the State has determined that the low NOx burner technology designed for coal will result in a 0.35 emissions rate when burning oil

if 1996 actual annual heat input (coal) = 3×10^6 MMBtu and
1996 actual annual heat input (oil) = 1×10^6 MMBtu

then actual 1996 annual emissions could not exceed:
$(0.5) \times (3 \times 10^6)$ = 1.5 million pounds plus
$(0.35) \times (1 \times 10^6)$ = 0.35 million pounds
which = 1.85 million pounds or 925 tons NOx

d. Multiple Fuel Emissions Cap Example

Emissions Cap = $\Sigma_{i=1\to N}\Sigma_{j=1\to M}$Historical Production $Rate_{ij} \times RACT_{ij}$

i = 66.6% coal; 33.3% oil
j = wall-fired utility boiler
assume presumptive coal RACT = 0.5 (pounds NOx/MMBtu)
assume the State has determined that the low NOx burner technology designed for coal will result in a 0.35 emissions rate when burning oil

if historic (CY 1990) production rates for coal = 2×10^6 MMBtu/year and
historic (CY 1990) production rates for oil = 1×10^6 MMBtu/year,

then the emissions cap is:
$(2 \times 10^6) \times (0.5)$ = 1 million pounds plus
$(1 \times 10^6) \times (0.35)$ = 0.35 million pounds
which = 1.35 million pounds or 675 tons NOx

Annual emissions must, therefore, not exceed 675 tons for all future years.

12/19/93

STATUS OF AIR TOXICS RULES AND REPORTS

Under section 112 of the Clean Air Act, EPA is required to issue, by the year 2000, regulations governing major sources of 189 hazardous air pollutants; perform, or participate in, 13 special studies of national scope, evaluate and update the EPA's risk assessment methodologies, provide guidance to State and local air pollution control agencies on particular provisions of the Act; establish and maintain publicly-available data bases and Clearinghouses; initiate voluntary emission reduction programs; and establish a prevention program for accidental releases.

Significant progress has been made in all of the areas mentioned. Progress has been made on proposal of standards and reports to Congress covering the following:

Proposed Rules Issued:

- Section 112(j) Equivalent Emission Limitations
- Hazardous Organic NESHAP
- Pulp and Paper
- Industrial Cooling Towers
- Chromium Electroplating
- Degreasers
- General Provisions

Reports to Congress:

- Section 112(s) - Status Report on Toxics Program
- Hydrogen Sulfide Report

A copy of the executive summary from the section 112(s) report is provided on the following pages.

Fact sheets summarizing requirements of final regulations issued in the last year are also provided. These include:

Final Rules Issued:

- Coke Ovens
- Dry Cleaning
- Section 112(l) Delegation of Federal Programs
- Source Category List and Schedule
- Early Reductions Program

United States
Environmental Protection
Agency

Office of Air Quality
Planning and Standards
Research Triangle Park, NC 27711

EPA/453/R-93-024
August 1993

Air

EPA

Report to Congress on Implementation of Section 112 of the Clean Air Act Amendments of 1990

2.0 EXECUTIVE SUMMARY

I. INTRODUCTION

This report is being submitted to Congress in fulfillment of the requirements of section 112(s) of the CAA. Section 112(s) requires the EPA to submit a status report every 3 years, beginning in 1993, on the measures taken by the EPA and the States to implement the provisions of section 112 of the CAA. Section 112 pertains to emissions of hazardous air pollutants from routine as well as accidental releases. As required by section 112(s), this report includes a summary of standards-setting activities under section 112(d), information with respect to the costs of compliance with such standards, and discussions of the national urban air toxics program and the accidental release program.

Section 112 of the CAA requires EPA to issue, by the year 2000, regulations governing major sources of 189 hazardous air pollutants; perform, or participate in, 13 special studies of national scope; evaluate and update the EPA's risk assessment methodologies; provide guidance to State and local air pollution control agencies on particular provisions of the Act; establish and maintain publicly-available data bases and clearinghouses; initiate voluntary emission reduction programs; and establish a prevention program for accidental releases. The EPA has not met all of the deadlines required by section 112 to date. However, significant progress has been made in all of the areas mentioned above.

In addition to section 112, other efforts the EPA has underway under the authority of the CAA will reduce air toxics emissions. Section 129 of Title III requires EPA to regulate emissions from municipal solid waste incinerators. This regulation will have a significant impact on air toxics emissions from these sources. Title I of the CAA contains provisions requiring the control of volatile organic compounds, and Title II provisions relate to control of mobile source emissions. Actions under both of these Titles will reduce air toxics. The EPA has also initiated a voluntary emissions reduction program - the 33/50 program - which asks companies to voluntarily reduce releases of 17 air toxics to air, land and water. All of these efforts are also discussed in the Executive Summary because all are means to a common end: protection of public health and the environment from the effects of air toxics emissions.

This Executive Summary is divided into ten areas of air toxics activities and provides an overview of each area as well as highlights of some of the EPA's accomplishments in each. The ten areas are:

- Emission Standards,
- Implementation Programs,

- Special Studies/Programs,
- Technical Assistance,
- Regional Activities,
- State Activities,
- Risk Assessment Activities,
- Voluntary Programs,
- Outreach Activities, and
- Titles I and II Air Toxics Accomplishments.

Projects specific to section 112 are described individually in Section 4.0 of this report, including discussions of compliance costs where applicable. Other activities the EPA has undertaken to reduce emissions of air toxics that are not required by section 112 are also described in Section IV of this Executive Summary, but are not included in the detailed descriptions provided in Section 4.0.

II. SECTION 112 REQUIREMENTS OVERVIEW

Section 112 of the CAA requires EPA, over a 10 year period, to issue "maximum achievable control technology" (MACT) standards which cover all major sources of 189 specified hazardous air pollutants (HAP's). The primary consideration in establishing these standards must be demonstrated technology. Costs, non-air quality health and environmental impacts and energy requirements may also play a role in setting these standards. Standards are effective immediately, except that industries may have up to 3 years to comply with a standard for an existing source, according to a schedule established by EPA. If EPA determines, after MACT standards are applied, that additional standards to protect public health and the environment are required to provide an ample margin of safety, EPA will promulgate additional standards.

Other provisions of section 112 require controls on area sources to address the urban air toxics problem, measures to prevent accidental releases, and measures to protect the Great Lakes and coastal waters from atmospheric deposition of air toxics. A voluntary early emissions reduction program is also required to be established. The new amendments also place greater emphasis than in the past on health effects other than cancer and on the prevention of ecosystem damage.

Section 112 also recognizes the considerable role that State and local air pollution control agencies will play in the successful implementation of the CAA. Several provisions require the EPA to provide guidance addressing source modifications, delegation of State programs, and case-by-case equivalency determinations in the event the EPA fails to issue a standard according to the established regulatory schedule. National data bases and clearinghouses for technical and risk assessment

information are also to be maintained to assist State and local agencies and any other interested parties.

III. SECTION 112: THE FIRST TWO YEARS AND WHAT'S AHEAD

This section of the Executive Summary highlights the progress the EPA has made in implementing section 112. While this section highlights certain projects, Section 4.0 of this report summarizes the status and achievements of all section 112 activities. The following areas are discussed here:

- Emission Standards,
- Implementation Programs,
- Special Studies/Programs,
- Technical Assistance,
- Regional Activities, and
- State Activities.

Emission Standards

Although significant actions have been taken since passage of the 1990 CAA, the EPA has not met all of the section 112 deadlines for issuance of emissions standards. Reaching the degree of consensus necessary to issue the rules and to lay the groundwork for effective implementation has proven to be a lengthy process.

To date, three emission standards have been proposed. These standards regulate synthetic organic chemical manufacturing (otherwise known as the Hazardous Organic NESHAP, or HON standard), commercial and industrial dry cleaners (two distinct source categories), and steel coke ovens.

In developing the regulations implementing section 112 and consistent with CAA section 101(c), EPA is committed to promoting pollution prevention approaches. As part of the Source Reduction and Review Project (SRRP), the EPA has identified 17 industrial categories which may be affected by the development of environmental regulations, and has committed to identifying and promoting pollution prevention options as part of the regulatory development process. The emission standards that are being considered for the SRRP include:

- Industrial process cateogry,
- Acrylic fibers/modacrylic fibers,
- Degreasing operations,
- Integrated iron and steel manufacturing,
- Metal products and machinery,
- Paint stripper users,
- Paints, coatings, adhesives manufacturing,
- Paper and other web coatings,

- Pesticide formulating,
- Pharmaceuticals production,
- Plywood/particle board manufacturing,
- Polystyrene production,
- Printing/publishing,
- Pulp and paper production,
- Reinforced plastic composite production,
- Rubber chemicals manufacturing,
- Styrene, butadiene latex and rubber, and
- Wood furniture manufacturing.

Related to the section 112(d) emission standards is the Early Reductions Program required by section 112(i). The Early Reductions Program gives industries an incentive to achieve at least a 90 percent reduction in emissions prior to proposal of an applicable MACT standard. In exchange, the facility would be given 6 additional years to comply with the final emissions standard. This program has the potential to result in substantial emission reductions well before the compliance date for individual section 112(d) standards.

Achievement Highlights

- The proposed HON standard requires reductions in emissions of 149 HAP's and affects nearly 370 chemical manufacturing plants across the nation. The HON standard will reduce HAP emissions from this industry by 80 percent, or an estimated 552,000 tons per year - more than any other air toxics rule to be issued under the CAA. This rule will also reduce volatile organic compounds, which react to form ozone, by 1.1 million tons per year. The proposed rule, announced in October 1992, includes requirements to reduce equipment leaks; these requirements were developed through a regulatory negotiation which included industry, environmental groups, and State representatives. Also reflected in the proposal are the results of dozens of meetings the EPA held with the chemical industry, environmental groups, States, and other Federal agencies.

- Control technology standards for about 3,700 industrial and large commercial dry cleaners were proposed in November 1991 and will be finalized in September 1993. This proposal includes a "consumption cutoffs" provision that will exempt many small dry cleaners and thus minimize the regulatory impacts on small business.

- Regulatory negotiations produced an agreement on regulations to reduce toxic emissions from steel industry coke ovens. These regulations should be finalized in September 1993. The regulatory

negotiation committee included 22 parties representing EPA, States, the steel industry, labor unions and environmental and citizen groups. Use of regulatory negotiation also resulted in more control of emissions than required by the CAA, as well as a lower estimate of compliance costs for industry than was originally anticipated during Congressional debate over the CAA.

- The EPA has initiated work on 35 additional emission standards. These include the emission standards due 4 years after enactment and several that are due 7 years after enactment. Table 1 lists the source categories covered by this ongoing work.

- The final rule for the Early Reductions Program was announced in December 1992. As of July 1993, 91 enforceable commitments have been received and are being reviewed. If all of these commitments are carried out, the resulting reductions in HAP's would total 36 million pounds by January 1, 1994.

Implementation Programs

Nine implementation programs are being developed to assist State and local air pollution control agencies in implementing the requirements of section 112. The EPA is working to develop guidance for State and local agencies and, where necessary, rules establishing EPA policy and requirements. The nine programs are:

- the General Provisions which create the technical and administrative framework for implementing section 112 standards and programs,

- the section 112(c)(1) Source Category List which is an initial list of major and area sources of HAP's,

- the section 112(e) Source Category Schedule for Standards which is a schedule for the regulation of all source categories by November 15, 2000.

- the section 112(g) Modifications rule which requires control technology reviews for constructed, reconstructed, and modified major sources of pollutants,

- the section 112(j) Equivalent Emissions Limitations by Permit rule which requires States to issue operating permits to major sources based on a case-by-case control technology assessment, if the EPA fails to promulgate a standard within 18 months of the scheduled date,

Table 1. Emission Standards Currently Under Development

SOURCE CATEGORY
Aerospace Industry
Auto/Light-Duty Truck
Chelating Agents Production
Chlorine Manufacturing
Chromium Electroplating
Commercial Sterilizers
Electric Arc Furnaces: Carbon/Stainless Steel
Ferroalloys
Halogenated Solvent Cleaning - Degreasing
Iron/Steel Foundaries
Magnetic Tape
Medical Waste Incineration
Oil and Gas Production
Paper and Pulp (Combustion Sources)
Paper and Pulp (Noncombustion Sources)
Petroleum Refinery
Polymers and Resins I
Polymers and Resins II
Polymers and Resins III
Polymers and Resins IV
Portland Cement
Primary Copper
Primary Aluminum
Printing/Publishing
Rubber Chemicals Production
Secondary Lead
Secondary Lead Smelters
Secondary Aluminum
Shipbuilding
Solid Waste Treatment Storage and Disposal Facilities
Stage I (Gasoline Marketing)
Steel Pickling
Wood Treatment
Wood Furniture
Wool Fiberglass

- the section 112(l)(1) State Programs rule which establishes EPA requirements for the approval of State or local air toxics rules or programs, so that the federal air toxics program can be integrated with existing State programs,

- the section 112(l)(2) State Guidance for Implementation of Section 112(r), which provides guidance to States implementing the section 112(r) accidental release provisions,

- the section 112(r) List of Regulated Substances and Risk Management Program, which requires any facility having greater than the established threshold quantity of listed substances to develop a risk management program, and

- the Chemical Safety and Hazard Investigation Board, which will investigate accidental releases resulting in a fatality, serious injury, or substantial property damage.

Achievement Highlights

- In July 1992, an initial list of 174 industrial categories potentially subject to MACT standards was published. The list also includes eight categories of "area sources" which are sources that emit smaller amounts of HAP's than major sources, but were determined by the Administrator to present a threat of adverse effects to human health or the environment warranting regulation under section 112.

- A 10-year schedule for issuing the MACT standards was announced for public comment in September 1992. The draft schedule calls for the first standards to be issued for the synthetic organic chemical manufacturing industry, commercial and industrial dry cleaners, and steel industry coke ovens.

- A rule implementing the section 112(g) Modifications requirements, including a list of the 189 HAP's ranked in order of estimated hazard, has been drafted and is currently undergoing EPA review. The technical support documents for implementing this requirement, including case-by-case control technology assessment, have also been completed and are under EPA review.

- The section 112(l) State Programs rule was proposed on May 19, 1993.

- The section 112(j) rule, the equivalent standard provision was proposed on July 13, 1993.

- The General Provisions were proposed on August 11, 1993.

- Under section 112(r), EPA is required to develop a list of at least 100 chemicals which are known or reasonably anticipated to cause death, injury, or serious adverse effects to human health or the environment in the event of an accidental release. A proposed rule listing 162 substances was announced in January 1993.

Special Studies/Programs

Section 112 requires the EPA to either conduct or participate in 13 special studies on topics ranging from risk assessment methodologies to urban air toxics; work has been initiated on all of them. Several special studies, such as the Hydrogen Fluoride Study, the Hydrogen Sulfide Study and the National Academy of Sciences Study will be completed in 1993. The first in a series of biennial reports on the Great Waters Program and an interim report for the Utility Study will also be submitted to Congress in 1993. The special studies and programs are:

- Atmospheric Deposition to Great Lakes and Coastal Waters (Great Waters Program)
- Urban Area Source Program
- Electric Utilities Steam Generating Units
- Mercury Study
- Mercury Health Effects Study
- National Academy of Sciences Study
- Hazardous Materials Accident Safety Review
- Hydrogen Fluoride Study
- Hydrogen Sulfide Study
- Residual Risk Report
- Coke Oven Production Technology Study
- Publicly-Owned Treatment Works Study
- Mickey Leland Urban Air Toxics Research Center

Achievement Highlights

- The Great Waters Program under section 112(m) is evaluating the deposition of toxic air pollutants to the Great Lakes, Lake Champlain, Chesapeake Bay, and other coastal waters. Master research stations have been established in each of the Great Lakes and the data are being used to develop Lakewide Management Plans. The Chesapeake Bay Atmospheric Deposition Study is providing monitoring data on deposition to this region and other monitoring and research initiatives are either underway or under development for other geographic regions. The 1993 Great Waters report to Congress is on schedule for submission in

November 1993. The report will address sources of air pollutants, relative loading of air pollutants to the Great Waters, and exposure and effects of airborne pollutants in those waters.

- The Urban Area Source Program has a number of activities underway that will assist in drafting the national urban air toxics strategy, due to Congress in 1995. Three major geographical initiatives in Baltimore, Houston, and Chicago have been undertaken to develop improved emission inventories. Ambient air monitoring and receptor modeling, which is a tool for associating emission sources with samples from the ambient air, are also included in these efforts. A series of national surveys has also been commenced to better characterize the emissions of several selected HAP's. The EPA's Office of Research and Development has drafted a research report, which is currently undergoing review, covering ambient monitoring, source characterization, and consideration of atmospheric transformation. The final research report will be published in 1995 to complement the national urban air toxics strategy.

- The Utility Study is being coordinated with the Electric Power Research Institute and the Department of Energy to exchange information related to HAP emissions from utilities and to conduct several emission tests at representative facilities. The initial development of a Fourier transform infrared spectroscopy system has been completed. This system will be used to characterize HAP emissions from utility stacks. Work is also ongoing to design impact analyses and risk assessments. The study is scheduled to be submitted to Congress in November 1995.

- The Mercury Study program is receiving input from numerous interested parties including State agencies, industry and environmental groups, other Federal agencies and scientists in academia. A national emissions inventory for mercury is near completion as well as a health effects summary. Efforts well underway include long-range transport modeling and the enhancement of EPA's indirect exposure model. The Report to Congress, due in November 1994, is on schedule. The National Institute of Environmental Health Sciences has completed a final draft of their findings on threshold levels for mercury health effects as required by section 112(n)(1)(C) of the CAA. This report is on schedule for a November 1993 submittal to Congress.

- In order to provide input to the National Academy of Sciences' Study on risk assessment methodologies, the EPA completed and transmitted a report to the Academy which provided extensive information on air toxics, regulatory case studies, and past and present applications of EPA's risk assessment methods. The Academy currently plans to release its report in October 1993.

- The EPA has also completed a report to Congress entitled "Review of Federal Authorities for Hazardous Materials Accident Safety" as required by section 112(r)(10). The report is currently being reviewed by OMB.

- The reports on hydrogen fluoride and hydrogen sulfide are both being finalized for publication in September and October 1993, respectively.

- The Mickey Leland Urban Air Toxics Research Center has been established and has received $300,000 in funding which will be used to fund research focused on the effects of air toxics on human populations.

Technical Assistance

Section 112(s) requires EPA to maintain a data base on pollutants and sources subject to the provisions of section 112 and to include aggregate information from the data base in each triennial report. Individual data bases have already been established for several of the emissions standards projects. Where applicable, information from these data bases has been included in the project updates in Section 4.0 of this report. In addition, there are efforts underway to expand and enhance EPA's national data base, the Aerometric Information Retrieval System (AIRS), to include air toxics information, specifically for major sources of HAP's. Thus, information collected on the major sources of these pollutants would be stored in one data base. The EPA is also exploring what types of information will be needed for area sources of HAP's and what data base or data bases will be used to manage these data. Subsequent reports on section 112 implementation will include updated information from the data bases.

Section 112(l)(3) of the CAA requires the EPA to maintain an air toxics clearinghouse and centers to provide technical information and assistance to State and local agencies and, on a cost recovery basis, to others on control technology, health and

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Section 112(l)(3) of the CAA requires the EPA to maintain an air toxics clearinghouse and centers to provide technical information and assistance to State and local agencies and, on a cost recovery basis, to others on control technology, health and

ecological risk assessment, risk analysis, ambient monitoring and modeling and emissions measurement and monitoring.

Three technical assistance centers and a bulletin board system that deal primarily with air toxics issues are being operated and maintained. These are:

- the Control Technology Center (CTC), which, in 1986, began to provide emission and control technology assistance to State and local agencies as well as industry. The CTC services include a hotline, a computerized bulletin board which provides access to numerous other information systems, in-depth analysis of specific questions and publication of technical guidance on issues of national or regional interest. In early 1992, the CTC became the focal point for coordination of efforts among the four EPA information centers participating in the Federal Small Business Assistance Program. This program provides support primarily to the State small business assistance programs required under section 507 of the CAA. Assistance provided by this program includes information on Federal air pollution standards, air pollution control technologies, air emission testing and monitoring methods, accidental chemical release prevention, hazardous chemical emergency planning, and pollution prevention methods.

- the National Air Toxics Information Clearinghouse (NATICH), which was established in 1984 as a cooperative effort by EPA, the State and Territorial Air Pollution Program Administrators, and the Association of Local Air Pollution Control Officials. Components of NATICH include a computerized data base containing State and local information on air toxics and air toxics programs, a bimonthly newsletter, a telephone helpline, and publication of various special reports.

- the Air Risk Information Support Center (Air RISC), established in 1988, assists State and local agencies, other Federal agencies, and the public with questions concerning risk, exposure, and health effects of air pollutants. Air RISC serves as a focal point for providing health effects information primarily through operation of a hotline staffed by EPA scientists. The Air RISC also publishes special reports such as citizen's guides and publications dealing with specific pollutants.

- the EPA Clean Air Act Amendments (CAAA) computer bulletin board system that contains information on air toxics. The bulletin board is easily accessed with a computer and modem and stores information such as text of recently-signed air toxics rules, policy and guidance documents, and summaries of air toxics and other provisions.

The EPA is also currently operating two information centers which deal with ambient modeling and monitoring and emissions measurement and monitoring. These are the Emissions Measurement Technical Information Center (EMTIC) and the Ambient Monitoring Technical Information Center (AMTIC).

Achievement Highlights

- Services provided by the CTC were accessed over 15,000 times in fiscal year 1992. This includes over 2,700 calls to the hotline and more than 5,800 requests for CTC documents. This includes over 300 requests for documents specifically prepared for small businesses. The CTC bulletin board system was accessed more than 4,400 times, while the Reasonably Available Control Technology/Best Available Control Technology/Lowest Achievable Emission Rate (RACT/BACT/LAER) Clearinghouse Information System was accessed almost 2,000 times.

- Since enactment of the CAA, NATICH has expanded its bulletin board system to include the NATICH Newsletter, files from the Toxics Release Inventory, and a list of annual publications from the Office of Research and Development. Also since enactment, the NATICH helpline has received more than 1,200 calls and the NATICH data base of State and local air toxics information was accessed more than 5,400 times. The NATICH Newsletter is currently distributed to approximately 2,100 subscribers.

- The Air RISC hotline has seen demand for its services increase by over 30 percent since enactment of the CAA. The hotline staff has responded to over 3,500 calls since 1988 with the average number of calls received numbering about 900 per year. The Air RISC has also expanded its services to include all air pollutants rather than just air toxics.

- The EPA's AIRS data base is being expanded to accommodate air toxics information. The plan is for States to provide information on pollutants and sources available from their files and for EPA to provide information from source surveys. With these

enhancements, the EPA expects the data base to become a national repository of air toxics information.

EPA Regional Activities

The ten EPA Regional offices have all made implementation of section 112 a high priority. Significant efforts have focused on conducting outreach activities for the Early Reduction program, including workshops, guidance materials, and numerous meetings and presentations. The outreach activities have included industry as well as the States in the various Regions. The Regional offices are also working with individual States to ensure that the necessary State legislative authority exists to implement and enforce the section 112 requirements. Regional office staff are also extensively involved in EPA work groups that are working to interpret and implement the CAA provisions.

State Activities

Major efforts at the State and local level since enactment of the CAA have focused on how best to integrate the new CAA requirements into existing State and local air toxics programs. Representatives from State and local agencies are active participants on informal EPA work groups for every section 112 program and emission standard with emphasis on the Early Reductions Program, section 112(g) Modifications, and section 112(l) State Programs. Considerable effort is also being expended on helping the States develop rules to expand their legal authority to accept delegation of section 112 requirements.

IV. BEYOND SECTION 112: OTHER AIR TOXICS ACTIVITIES

Although section 112(s) requires the body of this report to address only ongoing section 112 air toxics activities, the EPA is including discussion of how it is implementing other programs to reduce emissions of air toxics. This section of the Executive Summary highlights several of these activities. The following areas are discussed here, but are not included in the detailed descriptions in Section 4.0 of this report:

- Risk Assessment Activities,
- Outreach Activities,
- Voluntary Programs, and
- Titles I and II Air Toxics Accomplishments.

Risk Assessment Activities

Although the more immediate focus of Title III is on development of control technology-based emission standards, the EPA also has several efforts underway to improve the EPA's risk assessment capabilities. These efforts range from acquiring

better health effects data to improving exposure models. The EPA will then be prepared to meet the provisions of section 112(f) which requires the EPA to evaluate whether additional standards are necessary to protect human health and the environment after application of section 112(d) controls. The risk assessment activities currently underway include:

- development of health effects benchmarks to evaluate short-term exposures,
- development of a tiered modeling approach (level of modeling/monitoring increases as available data increases) for conducting risk assessments,
- revision of the EPA's cancer guidelines,
- toxicity testing efforts, being performed by EPA's Office of Prevention, Pesticides and Toxic Substances, to generate needed health data for toxic pollutants, and
- improvement of EPA's exposure models.

Achievement Highlights

- The EPA's exposure modeling capabilities have been significantly improved by adding a feature that allows better characterization of uncertainties associated with risk estimates.
- A tiered modeling approach for conducting risk assessments was published in February 1992.
- A pilot study to write a test rule for 16 HAP's is in progress to determine if testing options under the Toxics Substances Control Act would provide sufficient health data for CAA purposes.
- Revisions to the EPA's cancer guidelines have been drafted and are undergoing EPA review.

Voluntary Programs

In addition to the Early Reductions Program discussed above, the EPA's Office of Prevention, Pesticides and Toxic Substances has initiated another voluntary program. The 33/50 project, begun in February 1991, asks companies to voluntarily reduce releases of 17 pollutants to the air, water, and soil.

Achievement Highlights

- As of July 1993, 1157 companies had pledged their support for the 33/50 program by agreeing to reduce their releases of the 17 chemicals by 354 million pounds.

Outreach Activities

The EPA has devoted considerable effort to outreach activities beyond providing the technical assistance required by section 112(l). For example, the EPA developed and sponsored the Hazardous Air Pollutants Implementation Workshop for State and local agencies and a workshop highlighting risk assessment issues.

Achievement Highlights

- The EPA developed and sponsored the Hazardous Air Pollutants Workshop which dealt specifically with section 112 issues. The workshop was attended by 240 participants with representatives from 37 State agencies, 22 local agencies, and all ten EPA regional offices. Also in 1992, a workshop was convened to facilitate discussion between EPA and State and local agencies on risk assessment issues. Three EPA offices were represented along with nine State and local agencies. As a result of this workshop, EPA now hosts a monthly conference call on risk assessment issues which is open to all State and local agencies and EPA Regional offices.

Titles I and II Air Toxics Accomplishments

In addition to Title III, Titles I and II of the CAA contain provisions that, when implemented, will also serve to reduce air toxics emissions. Title I deals with attainment and maintenance of the national ambient air quality standards. For geographical areas that do not achieve a national ambient air quality standard (called nonattainment areas), Title I includes a system that classifies the areas by the severity of the ozone pollution within their borders. In order of increasing severity, the classifications are marginal, moderate, serious, severe, and extreme. Title I requires EPA to publish Control Techniques Guidelines (CTG's) for several source categories. The CTG's describe reasonable achievable control technologies (RACT) effective in reducing emissions of volatile organic compounds (VOC's) which react to form ozone. Because most HAP's are also VOC's, concomitant control of HAP's will generally occur when the CTG's are implemented. Similarly, numerous provisions under Title II of the CAA will significantly reduce air toxics

emissions from mobile sources. For example, requirements for reformulated gasoline will reduce toxic emissions by at least 15 percent by 1995, and 20 percent by the year 2000. Reductions in toxic emissions will also be realized from vehicle inspection and maintenance programs, reductions in evaporative emissions and diesel particulate emissions, and clean-fuel vehicle programs.

Achievement Highlights

- Significant progress has been made on 11 CTG documents. Eight CTG's are in the process of being finalized, and three others are being coordinated with work ongoing to develop national emission standards for the same source categories. The status of the CTG's is summarized in Table 2.

- States were required to submit as part of their Title I State implementation plans (SIP's) VOC RACT rule corrections by May 15, 1991, for all ozone nonattainment areas rated marginal and above. These corrected rules now have tighter limits or are more easily enforced. The corrections cover VOC source categories for which EPA had issued CTG's prior to the CAA and other major sources of VOC. This has resulted in greater VOC emission reductions.

- States were required to submit, as part of their Title I SIP's, VOC "RACT catch-up" rules by November 15, 1992, for all moderate and above ozone nonattainment areas. Rules had to cover VOC source categories for which EPA had issued CTG's prior to the CAA and other major sources of VOC. These rules will shortly result in VOC reductions from new VOC rules that were never previously required in new nonattainment areas or new portions of existing nonattainment areas.

- States were required to submit, as part of their Title I SIP's, Stage II (vehicle refueling) vapor recovery rules by November 15, 1992, for all moderate and above ozone nonattainment areas. Moderate areas may eventually not be required to install Stage II vapor recovery since EPA plans to issue regulations for onboard refueling controls for new vehicles. Even so, serious and above ozone nonattainment areas were to have adopted the program and will shortly begin experiencing VOC emission reductions from the controls.

- The EPA has implemented reformulated gasoline initiatives to reduce motor vehicle pollut (including air toxics). In July 1991, April 1992, and February 1993, standards were proposed addressing several

different aspects of the reformulated gasoline regulations which, as described above, will significantly reduce emissions of toxic air pollutants.

- Final rules announced in 1991 that affect the sulfur content of diesel fuel will substantially cut diesel particulate pollution from urban buses. The EPA also finalized rules in March 1993 for urban buses that will reduce diesel particulate emissions (including HAP's that are particulates) 95 percent from uncontrolled levels.

- Vehicle inspection and maintenance programs, required in certain ozone nonattainment areas were finalized in November 1992. These programs will reduce emissions of VOC's (including HAP's) by 5 to 30 percent.

- A study on motor vehicle-related air toxics, required by section 202(6) of the CAA, was finalized on April 30, 1993. Section 202(6) also requires EPA to promulgate regulations by May 15, 1995 that apply at a minimum to benzene and formaldehyde.

Table 2. Status of Control Techniques Guidelines Documents

CTG Source Category*	Status (as of July 1993)
SOCMI Distillation	Final document scheduled for publication in Summer 1993.
SOCMI Reactors	
Industrial Wastewater	Draft in OMB review.
Volatile Organic Liquid Storage Tanks	
Batch Processes	Draft in final EPA review, prior to submittal to OMB.
Offset Lithography	
Plastic Parts - Auto	
Plastic Parts - Other	
Wood Furniture	Being coordinated with section 112 standards due in November 1994.
Aerospace	
Shipbuilding	

*SOCMI means synthetic organic chemical manufacturing industry.

FACT SHEETS FOR FINAL MACT STANDARDS

FACT SHEET
COKE OVEN NESHAP

WHAT ARE COKE OVEN EMISSIONS?

- Coke is used in blast furnaces for the conversion of iron ore to iron, which can be further refined to produce steel. The conversion of coal to coke is performed in coke oven batteries. A battery consists of a group of ovens connected by common walls.

- Coke oven emissions are among the most toxic of all air pollutants. Emissions from coke ovens include a mixture of polycyclic organic matter, benzene, and other chemicals that can cause cancer. Occupational exposure studies of coke oven workers have shown statistically significant excess mortality from cancers of the respiratory tract, kidney, and prostate and all cancer sites combined.

- At the current level of control, coke oven batteries emit an estimated 1660 MG/yr of coke oven emissions (810 MG from doors, lids, offtakes, and charging; and 850 MG from by-pass stacks).

- The risk of contracting cancer for the population exposed to coke oven emissions is high. The risk to an individual exposed to the maximum concentration (maximum individual risk) ranges from 1 in 10,000 to 1 in 100 with more than half the facilities having a maximum risk greater than 1 in 1,000.

REGULATORY BACKGROUND

- EPA and states have long been concerned about the health effects associated with coke oven emissions.

- EPA initiated a regulatory examination of coke oven emissions in the late 1970's and proposed a regulation to control these emissions in 1987.

- EPA and the Administration worked with Congress to develop new provisions to control coke oven emissions in the Clean Air Act Amendments of 1990. In the Amendments, Congress recognized the significant health effects associated with coke oven emissions.

- The new coke oven standards were proposed in the Federal Register on December 4, 1992. The 1987 proposal was withdrawn.

- A public hearing was held in Philadelphia, PA on January 15, 1993 to allow participation by local citizens who requested the public hearing.

- A total of 61 comments were received and considered in developing the final standard.

CLEAN AIR ACT AMENDMENTS OF 1990

- The Clean Air Act Amendments of 1990 include sweeping and complex provisions to limit emissions from both new and existing coke ovens.

- The Amendments require EPA to issue by December 31, 1992 coke oven emissions standards for maximum achievable control technology (MACT) for new and existing sources, and an even tighter control limit called "lowest achievable emissions rate" (LAER) for certain existing sources to be promulgated by December 31, 1992. The coke oven MACT and LAER standards will establish emission limits for a variety of different aspects of coke oven facilities, including coke oven doors, lids, offtakes, and seconds of charging.

- The Clean Air Act also requires EPA to issue "work practice standards" with Industry compliance by November 15, 1993, and so-called "residual risk" standards by November 15, 2000. These residual risk provisions require EPA to examine the remaining risk to the public after technology-based standards are imposed and to further reduce emissions, if appropriate.

- The coke oven emissions standards apply to all new and existing facilities that produce coke. The Amendments allow the coke oven industry a choice of two tracks of compliance. We call these tracks the "LAER" extension track and the "MACT" track.

  LAER EXTENSION TRACK: Affected companies can elect to qualify for an extension of compliance with the "residual risk" standards beyond the 01/01/03 compliance date by doing the following:

  - Comply with Clean Air Act limits by 11/15/93
  - Comply with LAER limits by 01/01/98
  - Comply with revised LAER limits by 01/01/10
  - Comply with residual risk standard by 01/01/20

  MACT TRACK: Companies can elect not to defer compliance with residual risk standards. These ovens must:

  - Comply with existing source MACT limits by 12/31/95.
  - Comply with residual risk standard by 01/01/03.

- Companies commencing construction of their ovens after December 4, 1992 (proposal date) must meet New Source MACT requirements, except for replacement capacity.

REGULATORY NEGOTIATION

- EPA has made widespread use of consultation in developing rules under the Clean Air Act. In some rulemakings including coke oven emissions, EPA has used formal regulatory negotiation, where parties negotiate and sign a formal agreement that becomes the basis for EPA's proposed rule.

- The Coke Ovens Regulatory Negotiation Committee is comprised of several interested parties: Environmental groups such as the National Resources Defense Council (NRDC) and Group Against Smog and Pollution (GASP), Industry associations such as American Iron and Steel Institute (AISI) and American Coke and Coal Chemicals Institute (ACCCI), representatives from the Steel Worker's Union, and State and local agencies.

- The Committee held a series of public meetings and informal workshops to identify and resolve the many issues associated with the regulation. At the final negotiating session on October 8, 1992, the Committee members conceptually resolved all outstanding major issues and decided to reach final agreement after reviewing and concurring on the draft regulation. The final Coke Oven Standard reflects the agreements reached by this Committee.

BENEFITS OF THE AGREEMENT AND FINAL RULE

- The negotiated agreement meets -- and in some cases exceeds -- the environmental goals of the coke oven provisions in the Clean Air Act. The agreement also provides industry with flexibility that will significantly reduce compliance costs.

  - Increased Emission Reduction: The Committee has agreed that flares be required to control emissions of raw coke oven gas during venting episodes. Flares will eliminate 850 MG/yr of coke oven emissions. The MACT and LAER standards will result in reductions of coke oven emissions from the doors, lids, offtakes and charging ranging from 540 to 720 MG/yr. (66% to 90% reduction)

  - Consistent Monitoring: Under the agreement, coke oven inspectors will have to undergo a rigorous certification program to qualify as observers. Also, the inspectors will be chosen by the enforcement agency instead of the company. These requirements ensure fairness and consistency in the application of the method.

- Improved Compliance: Industry has agreed to pay the enforcement agency or an independent contractor to monitor their coke oven batteries daily. This means there will be enforcement presence at every battery in the country every day. This is another significant result which we would not have achieved through normal regulation development.

- Work Practices: The work practice standards would require new or existing coke oven batteries to develop a written plan describing emission control work practices to be implemented for each battery. The plan must include provisions for training and procedures for controlling emissions from the battery. Work practices are implemented when performance standards are not in effect or when emission limits are violated.

- Alternative Door Leak Standard: The agreement provides industry the flexibility of an alternative door leak standard for coke oven batteries equipped with sheds. The alternative standard will be determined on a case-by-case basis, but it must achieve a greater reduction of coke oven emissions than the original door leak standard.

IMPACTS

- Coke Oven emissions: reduction of 1390 to 1570 MG/year.
- Annualized cost: increase of $84 million by 1998.
- MACT Captial cost: $66 million by 1995.
- LAER Capital cost: $444 million by 1998.

RELATED PROJECTS

- Another provision of the Clean Air Act Amendments is for the Department of Energy and EPA to jointly undertake a 6-year study to assess coke oven emission control technologies and assist in the development and commercialization of viable control technologies which have the potential to significantly reduce emissions from coke ovens. Each proposed project must be cost-shared, with Federal funding not to exceed 50% of the cost. A solicitation for research, development, and demonstration projects was announced by DOE in the June 2, 1992, issue of Commerce Business Daily.

COKE OVEN EMISSION LIMITS

- MACT AND LAER: The negotiated agreement includes the emission limits outlined in the following table. All numbers are rolling averages of the last thirty readings; that is, if no reading is taken on a day, nothing is entered for that day. The states are responsible for conducting the daily readings and nothing in this rulemaking precludes citizen suits under the Clean Air Act.

	MACT TRACK		LAER TRACK		
	12/31/95	Beyond 2003 (must meet residual risk)	11/15/93 (Act's Limits)	1/1/98	1/1/10
LIDS PLL % leaking lids	0.6	0.6	0.83	0.4	0.4
OFFTAKES PLO % leaking offtakes	3.0	3.0	4.2	2.5	2.5
CHARGING (log) s/charge	12	12	12	12	12
DOORS PLD % leaking doors TALL	6.0	5.5	7.0	4.3	4.0
SHORT	5.5	5.0	7.0	3.8	3.3
FOUNDRY	5.5	5.0	7.0	4.3	4.0

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FROM PERCHLOROETHYLENE DRY CLEANING FACILITIES--FINAL RULE

FACT SHEET

BACKGROUND

- Dry cleaners are a major source of perchloroethylene (also referred to as PCE, PERC, tetrachloroethene, and tetrachloroethylene), one of the toxic air pollutants Congress has required the Environmental Protection Agency (EPA) to regulate under the Clean Air Act of 1990. PCE is known to cause cancer in animals and is suspected to cause cancer in humans. PCE also has non-cancer toxic effects that make it desirable to minimize PCE emissions.

- Under Section 112 of the Clean Air Act, the EPA proposed on December 9, 1991, national emission standards for hazardous air pollutants (NESHAP) to limit PCE emissions from both new (constructed on or after December 9, 1991) and existing (constructed before December 9, 1991) dry cleaning facilities.

- In response to public comments received on the proposal, a notice of availability of new information on control of PCE emissions during clothing transfer was published on October 1, 1992. Additional comments were received.

- The final rule was published on September 22, 1993, in the Federal Register, volume 58, starting on page 49356.

REQUIREMENTS OF THE EPA DRY CLEANER RULE

- The rule breaks dry cleaners into three separate categories--small "area" sources, large "area" sources, and "major" sources--and contains different requirements for each category. (See Table 1.)

- There are two types of dry cleaning machine systems: dry-to-dry and transfer. A dry-to-dry machine consists of one machine, which does both the washing and the drying of the articles being cleaned. A transfer machine consists of two machines: a washer and a dryer. Transfer of clothing between a washer and a dryer is considered to be a significant source of emissions.

TABLE 1. REQUIREMENTS OF THE PCE DRY CLEANING NESHAP (PAGE 1 OF 2)

Requirement	Small Area Source	Large Area Source	Major Source
Applicability: Dry Cleaning Facilities with:	Consuming less than:	Consuming equal to or between:	Consuming more than:
(1) Only Dry-to-Dry Machines	140 gallons PCE/year	140-2,100 gallons PCE/year	2,100 gallons PCE/year
(2) Only Transfer Machines	200 gallons PCE/year	200-1,800 gallons PCE/year	1,800 gallons PCE/year
(3) Both Dry-to-Dry and Transfer Machines	140 gallons PCE/year	140-1,800 gallons PCE/year	1,800 gallons PCE/year
Process Vent Controls: Existing Facilities	None	Refrigerated condenser (or equivalent) Carbon adsorbers installed on existing machines before 9/22/93 can remain	
New Facilities	Refrigerated condenser (or equivalent)		Refrigerated condenser and small carbon adsorber (or equivalent)
Fugitive Controls: Existing Facilities	- Leak detection/repair - Store all PCE solvent & waste in sealed containers		Transfer machine systems are contained inside a room enclosure
New	- Leak detection/repair - Store all PCE solvent & waste in sealed containers - No new transfer machine systems allowed		

TABLE 1. REQUIREMENTS OF THE PCE DRY CLEANING NESHAP (PAGE 2 OF 2)

Requirement	Small Area Source	Large Area Source	Major Source
Monitoring:	New: Same as large area source Existing: None	Refrigerated condenser (RC): Measure the RC outlet temperature at the end of the cycle on a dry-to-dry machine or dryer. (Needs to be less than or equal to 45 °F.) Measure the RC inlet and outlet temperature difference on a washer. (Needs to be greater or equal to 20 °F.) Carbon adsorber (CA): Measure the PCE concentration out of the CA with a colorimetric detector tube. (Needs to be less than or equal to 100 ppm.)	
Operation/Maintenance:	Operate and maintain dry cleaning systems according to manufacturer's specifications and recommendations.		
Records:	Each facility must maintain records of PCE purchases and the calculation of yearly PCE consumption each month, along with dated records of all monitoring and leak detection and repair activities. The last five years of records must be kept.		
Reporting & Compliance: Existing Facilities	Each facility must submit an initial report by December 20, 1993 and compliance report by January 19, 1994. Reports must be certified by a responsible official. Each facility also has until December 20, 1993 to comply with pollution prevention and record-keeping requirements. Large Area and Major facilities must comply with process controls by September 23, 1996 and must submit an additional compliance report by October 22, 1996.		
New Facilities	All other new facilities must comply upon start-up with all requirements and submit a compliance report within 30 days from the date the dry cleaner must be in compliance. However, there are special compliance and notification requirements for dry cleaning systems that were constructed during December 9, 1991 and September 21, 1993.		

- The EPA's final rule requires all new dry cleaning machines to be dry-to-dry machines. It does not, however, require the replacement of existing transfer machines with new dry-to-dry machines.

- There are two sources of PCE emissions at dry cleaning facilities: process vent emissions (that is, the dry cleaning machine vent); and fugitive emissions (for example, clothing transfer, equipment leaks, and solvent exposed to air, and so forth). Process vent emissions are controlled through the use of refrigerated condensers or carbon adsorbers. Fugitive emissions from clothing transfer at transfer machines are controlled through room enclosures. Other fugitive emissions are controlled through leak detection and repair, keeping PCE and PCE wastes in sealed containers, keeping machine doors shut, and proper operation and maintenance of equipment .

- The EPA's rule requires control of process vent emissions at all new dry cleaning facilities. It also requires control of process vent emissions at existing large area source and major source dry cleaning facilities.

- The rule requires control of fugitive emissions at all new dry cleaning facilities. It also requires control of fugitive emissions at all existing dry cleaning facilities. However, only transfer machines at major source dry cleaning facilities are required to control fugitive emissions by installing a room enclosure.

- The rule requires the use of refrigerated condensers to control process vent emissions at new dry cleaning facilities. It also requires the use of refrigerated condensers to control process vent emissions at existing dry cleaning facilities, except those existing facilities that have already installed a carbon adsorber for control of process vent emissions prior to September 22, 1993. These facilities may continue to use this carbon adsorber to comply with the requirements of the rule.

- All existing dry cleaners must submit an initial notification report by December 20, 1993, to the EPA Region for each of their locations. The notification reporting requirements are in the rule. Forms supplied by EPA may be used to fulfill this notification requirement. Dry cleaning systems that were constructed between December 9, 1991, and September 21, 1993, can either meet the requirements for new facilities or comply with the special rule of Section 112 (i) (2) of the Clean Air Act. For assistance with complying with the special rule, refer to the EPA forms or contact EPA.

- Each existing facility must comply with all requirements of the rule except for the refrigerated condenser by December 20, 1993. Existing large area source and major source dry cleaning facilities must comply with installing a refrigerated condenser and also, for any major source transfer machines, a room enclosure, by September 23, 1996. All new dry cleaning facilities must comply with the rule when they begin operation. However, dry cleaning systems that were constructed between December 9, 1991, and September 21, 1993, can either comply with the requirements for new facilities or comply with the special rule of Section 112 (i) (2) of the Clean Air Act. For assistance with complying with the special rule, refer to the EPA forms or contact EPA.

- Each existing facility must submit a compliance report to EPA certifying that the facility is in compliance with all the requirements of the rule except for the refrigerated condenser installation requirement by January 19, 1994. Existing large area source and major source dry cleaning facilities must submit an additional compliance report to EPA certifying that the facility is in compliance with the control requirements for a refrigerated condenser and also, for any major source transfer machines, a room enclosure, by October 22, 1996. All new dry cleaners must submit a compliance report within 30 days from the date the dry cleaner constructs the new facility or installed the new dry cleaning machine or dry cleaning system.

IMPACTS

- Nationwide Impacts

  - Note: Impacts are estimates given for 1996. 1996 is the year that all facilities must comply with the rule, and will be the first year that the rule is expected to have its maximum impact.

  - In 1996 about 25,000 commercial and industrial dry cleaning facilities will be in operation. Although the dry cleaning industry's growth is currently stable, about 7,700 of these 25,000 facilities will be new facilities built to replace existing facilities that retire. Of these 7,700 new facilities, about 400 are estimated to be uncontrolled in the absence of the rule and, as a result of the rule, will be required to install process vent control. In addition, the EPA rule will require about 3,200 existing uncontrolled facilities to install controls on process vents.

- The rule will result in a total maximum national PCE emissions reduction of 6,600 megagrams (Mg) (7,300 tons) from projected 1996 emission levels.

- Energy: Total maximum national increase in electricity use (needed to operate the control devices) of 280,000 kilowatt hours per year (kwh/yr) in 1996 for new facilities and 2.5 million kwh/yr for existing facilities.

- Annualized Cost: Total national increase of $0.5 million per year for new dry cleaning facilities and $3.4 million per year for existing facilities in 1996.

- Capital Cost: Total national increase of $3 million for new dry cleaning facilities and $32 million for existing dry cleaning facilities in 1996.

• Typical facility impacts for an existing, uncontrolled, 35-pound dry-to-dry machine located at an area source:

- Perchloroethylene Emission Reductions: Individual reduction of 0.82 megagrams per year (0.91 tons per year) from projected 1996 emission levels.

- Wastewater: Total maximum increase of 0.03 kilograms per year (0.07 pounds per year) of PCE in wastewater in 1996.

- Solid Waste: No increase for the typical facility.

- Noise: No incremental impacts.

- Energy: The increase in electricity use (needed to operate refrigerated condenser) of 604 kilowatt hours (kwh) per year in 1996.

- Annualized Cost: Increase of $1,100 per year in 1996. This includes the annualized cost of purchasing a refrigerated condenser and the annual operation and maintenance costs associated with the refrigerated condenser.

- Capital Cost: Increase of $6,300 year in 1996. This is the average cost of a refrigerated condenser.

Please Note: This fact sheet is not a substitute for reading and understanding the EPA PCE dry cleaning rule.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

FACT SHEET
SECTION 112 (l) - DELEGATION OF FEDERAL AIR TOXICS PROGRAMS TO STATE AND LOCAL AGENCIES

WHAT IS SECTION 112(l) OF THE CLEAN AIR ACT?

- Section 112(l) provides flexibility for State and local agencies in meeting Federal requirements for controlling air toxics. Air toxics are air pollutants known or suspected of causing cancer or other serious health or environmental effects, such as birth defects or reproductive effects.

- Section 112(l) allows State and local air pollution control agencies, at their option, to:

  - substitute a Federal air toxics rule with an EPA approved industry-specific State rule that is no less stringent (e.g. an existing or new State rule requiring equivalent or greater emission reductions from the chemical manufacturing industry) or

  - substitute Federal air toxics rules with an EPA approved State air toxics program that is not less stringent than the Federal air toxics rules

- Section 112(l) also establishes the framework for EPA to delegate to States the authority to implement and enforce unchanged Federal air toxic standards.

WHO CAN USE THE SECTION 112(l) RULE?

State and local air pollution control agencies, territories, Indian tribes that wish to receive approval for delegation of authority to implement and enforce:

1) air toxics standards established by EPA under section 112 of the Act.

2) State rules and programs that differ from Federal air toxics standards under section 112 of the Act.

HOW DOES THE SECTION 112(l) RULE WORK?

- States that wish to obtain approval of State rules that differ from the Federal section 112 standards have options of one or any combination of:

  1. **Adjusting a Federal rule** - For this option, there is a "pre-approved" list of adjustments that the State or local air pollution control agency may make to a Federal rule.

  2. **Substituting State authorities for a Federal rule** - This option involves a comparison of a State rule or broad State authorities to a Federal rule. Demonstration of stringency is based on source-level emission reductions.

  3. **Substituting a State program for Federal emission standards for hazardous air pollutants** - For this option, States provide an upfront commitment through State law to regulate every source and emission point affected by Federal standards, and to incorporate the requirements into the operating permit in a format that matches the Federal requirement.

- The following are applicable to all options as well as for delegation of unchanged Federal section 112 standards:

  - States submit approval packages for EPA review
  - State rules or programs must meet specified criteria for approval
  - Opportunity for public notice and comment
  - State rules cannot be less stringent than Federal rules
  - Once approved, State rules or programs are federally enforceable in lieu of otherwise applicable Federal rules

- In addition, State and local agencies are subject to periodic program reviews and audits by EPA. Based upon the findings, the EPA may withdraw approval.

WHAT ARE THE BENEFITS?

1. **Public Health/Environment:** The new air toxic programs required under the Clean Air Act will help achieve significant reduction in risk to public health and the environment. This rule will allow States to maintain existing rules/programs that are at least as stringent as Federal rules.

2. **Industry:** The final rule can eliminate dual regulation wherever State rules or programs are at least as stringent as Federal rules. This will reduce regulatory agency and

industry costs and time involved in permitting and enforcement.

3. **States and Local Governments:** The final rule provides State and local agencies the opportunity to preserve and build upon existing State programs. It also makes Federally enforceable State or local air toxics rule/programs that are at least as stringent as the Federal requirements and that meet the approval criteria.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
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November 15, 1993

Final Schedule for Regulating Air Toxics Emissions under the 1990 Clean Air Act Amendments.

Today's Action: This Schedule sets the deadlines for establishing Federal emission standards, based on maximum achievable control technologies (MACT), for 174 listed categories of sources emitting hazardous air pollutants (air toxics). The 174 listed categories are divided into 4 groups with regulatory deadlines of either 2, 4, 7, or 10 years following enactment of the 1990 Clean Air Act Amendments.

The categories were prioritized by considering a number of factors including: (1) the quantity and location of emissions of hazardous air pollutants; (2) potential adverse effects of the hazardous air pollutants on public health and the environment; (3) the efficiency of grouping categories in the same timeframe due to similarities in processes or technologies; and (4) time needed to develop standards.

The Schedule has been developed such that the Synthetic Organic Chemical Manufacturing Industry, and five categories of the dry cleaning industry are scheduled for regulation within 2 years of enactment of the 1990 Amendments. A total of 45 categories are scheduled for regulation by November 15, 1994. The remaining 129 categories are scheduled for regulation within either 7 years of enactment of the 1990 Amendments (by November 15, 1997), or within 10 years (by November 15, 2000).

The Environmental Protection Agency (EPA) shall promulgate Federal emission standards for each of the categories according to the deadlines in this Schedule. If the EPA misses the deadlines in this Schedule for promulgating Federal emission standards by at least 18 months, section 112(j) of the 1990 Amendments requires State and local agencies to establish case-by-case emission standards. These case-by-case standards must be equal to the level of control that would have been required by the Federal emission standards.

THE SCHEDULE FOR PROMULGATING EMISSION STANDARDS FOR CATEGORIES OF SOURCES EMITTING HAZARDOUS AIR POLLUTANTS

Source Categories with Emission Standards Due by November 15, 1992

SYNTHETIC ORGANIC CHEMICAL MANUFACTURING [1]
COMMERCIAL DRYCLEANING (PERCHLOROETHYLENE) - DRY-TO-DRY MACHINES [2,4]
COMMERCIAL DRYCLEANING (PERCHLOROETHYLENE) - TRANSFER MACHINES [2,4]
COMMERCIAL DRYCLEANING (PERCHLOROETHYLENE) - TRANSFER MACHINES [2]
INDUSTRIAL DRYCLEANING (PERCHLOROETHYLENE) - DRY-TO-DRY MACHINES [2]
INDUSTRIAL DRYCLEANING (PERCHLOROETHYLENE) - TRANSFER MACHINES [2]

Source Categories with Emission Standards Due by November 15, 1994

ACRYLONITRILE-BUTADIENE-STYRENE PRODUCTION
AEROSPACE INDUSTRIES
ASBESTOS PROCESSING [4]
BUTYL RUBBER PRODUCTION
CHROMIC ACID ANODIZING
CHROMIC ACID ANODIZING [4]
COKE OVENS: CHARGING, TOPSIDE AND DOOR LEAKS (CAA MANDATED PROMULGATION BY DECEMBER 31, 1992) [3]
COMMERCIAL STERILIZATION FACILITIES
COMMERCIAL STERILIZATION FACILITIES [4]
DECORATIVE CHROMIUM ELECTROPLATING
DECORATIVE CHROMIUM ELECTROPLATING [4]
EPICHLOROHYDRIN ELASTOMERS PRODUCTION
EPOXY RESINS PRODUCTION
ETHYLENE-PROPYLENE RUBBER PRODUCTION
GASOLINE DISTRIBUTION - STAGE 1
HALOGENATED SOLVENT CLEANERS
HALOGENATED SOLVENT CLEANERS [4]
HARD CHROMIUM ELECTROPLATING
HARD CHROMIUM ELECTROPLATING [4]
HYPALON (TM) PRODUCTION
INDUSTRIAL PROCESS COOLING TOWERS
MAGNETIC TAPES (SURFACE COATING)
METHYL METHACRYLATE-ACRYLONITRILE-BUTADIENE-STYRENE PRODUCTION
METHYL METHACRYLATE-BUTADIENE-STYRENE TERPOLYMERS PRODUCTION
NEOPRENE PRODUCTION
NITRILE BUTADIENE RUBBER PRODUCTION
NON-NYLON POLYAMIDES PRODUCTION
PETROLEUM REFINERIES - OTHER SOURCES NOT DISTINCTLY LISTED
POLYETHYLENE TEREPHTHALATE PRODUCTION
POLYBUTADIENE RUBBER PRODUCTION

[1] rule proposed on December 31, 1992
[2] rule promulgated on September 22, 1993
[3] rule promulgated on October 27, 1993
[4] area source category

Source Categories with Emission Standards Due by November 15, 1994
(CONTINUED)

POLYSTYRENE PRODUCTION
POLYSULFIDE RUBBER PRODUCTION
PRINTING/PUBLISHING (SURFACE COATING)
SECONDARY LEAD SMELTING
SHIPBUILDING AND SHIP REPAIR (SURFACE COATINGS)
SOLID WASTE TREATMENT, STORAGE, & DISPOSAL FACILITIES (TSDF)
STYRENE-ACRYLONITRILE PRODUCTION
STYRENE-BUTADIENE RUBBER AND LATEX PRODUCTION
WOOD FURNITURE (SURFACE COATING)

Source Categories with Emission Standards Due by November 15, 1997

4-CHLORO-2-METHYLPHENOXYACETIC ACID PRODUCTION
2,4-D SALTS AND ESTERS PRODUCTION
4,6-DINITRO-O-CRESOL PRODUCTION
ACETAL RESINS PRODUCTION
ACRYLIC FIBERS/MODACRYLIC FIBERS PRODUCTION
AMINO RESINS PRODUCTION
BUTADIENE DIMERS PRODUCTION
CAPTAFOL PRODUCTION
CAPTAN PRODUCTION
CHLORONEB PRODUCTION
CHLOROTHALONIL PRODUCTION
CHLORINE PRODUCTION
CHROMIUM CHEMICALS MANUFACTURING
CYANURIC CHLORIDE PRODUCTION
DACTHAL (TM) PRODUCTION
FERROALLOYS PRODUCTION
FLEXIBLE POLYURETHANE FOAM PRODUCTION
HYDROGEN CYANIDE PRODUCTION
MINERAL WOOL PRODUCTION
NON-STAINLESS STEEL MANUFACTURING - ELECTRIC ARC FURNACE (EAF) OPERATION
NYLON 6 PRODUCTION
OIL AND NATURAL GAS PRODUCTION
PETROLEUM REFINERIES - CATALYTIC CRACKING (FLUID AND OTHER) UNITS, CATALYTIC REFORMING UNITS, AND SULFUR PLANT UNITS
PHARMACEUTICALS PRODUCTION
PHENOLIC RESINS PRODUCTION
POLYCARBONATES PRODUCTION
POLYETHER POLYOLS PRODUCTION
PORTLAND CEMENT MANUFACTURING
PRIMARY ALUMINUM PRODUCTION
PRIMARY COPPER SMELTING
PRIMARY LEAD SMELTING
PUBLICLY OWNED TREATMENT WORKS (POTW) EMISSIONS (CAA MANDATED PROMULGATION BY NOVEMBER 15, 1995)
PULP & PAPER PRODUCTION

Source Categories with Emission Standards Due by November 15, 1997
(CONTINUED)

REINFORCED PLASTIC COMPOSITES PRODUCTION
SECONDARY ALUMINUM PRODUCTION
SODIUM CYANIDE PRODUCTION
SODIUM PENTACHLOROPHENATE PRODUCTION
STAINLESS STEEL MANUFACTURING - ELECTRIC ARC FURNACE (EAF) OPERATION
STEEL PICKLING - HCl PROCESS
TORDON (TM) ACID PRODUCTION
WOOD TREATMENT
WOOL FIBERGLASS MANUFACTURING

Source Categories with Emission Standards Due by November 15, 2000

AEROSOL CAN-FILLING FACILITIES
ALKYD RESINS PRODUCTION
ALUMINA PROCESSING
AMMONIUM SULFATE PRODUCTION - CAPROLACTAM BY-PRODUCT PLANTS
ANTIMONY OXIDES MANUFACTURING
ASPHALT CONCRETE MANUFACTURING
ASPHALT PROCESSING
ASPHALT ROOFING MANUFACTURING
ASPHALT/COAL TAR APPLICATION - METAL PIPES
AUTO AND LIGHT DUTY TRUCK (SURFACE COATING)
BAKERS YEAST MANUFACTURING
BENZYLTRIMETHYLAMMONIUM CHLORIDE PRODUCTION
BOAT MANUFACTURING
BUTADIENE-FURFURAL COTRIMER (R-11)
CARBONYL SULFIDE PRODUCTION
CARBOXYMETHYLCELLULOSE PRODUCTION
CELLOPHANE PRODUCTION
CELLULOSE ETHERS PRODUCTION
CELLULOSE FOOD CASING MANUFACTURING
CHELATING AGENTS PRODUCTION
CHLORINATED PARAFFINS PRODUCTION
CHROMIUM REFRACTORIES PRODUCTION
CLAY PRODUCTS MANUFACTURING
COKE BY-PRODUCT PLANTS
COKE OVENS: PUSHING, QUENCHING AND BATTERY STACKS
DODECANEDIOIC ACID PRODUCTION
DRY CLEANING (PETROLEUM SOLVENT)
ENGINE TEST FACILITIES
ETHYLIDENE NORBORNENE PRODUCTION
EXPLOSIVES PRODUCTION
FLAT WOOD PANELING (SURFACE COATING)
FUME SILICA PRODUCTION
HAZARDOUS WASTE INCINERATION
HYDRAZINE PRODUCTION
HYDROCHLORIC ACID PRODUCTION
HYDROGEN FLUORIDE PRODUCTION

TABLE 2. CONCLUDED

Source Categories with Emission Standards Due by November 15, 2000
(CONTINUED)

INDUSTRIAL BOILERS
INSTITUTIONAL/COMMERCIAL BOILERS
INTEGRATED IRON & STEEL MANUFACTURING
IRON FOUNDRIES
LARGE APPLIANCE (SURFACE COATING)
LEAD ACID BATTERY MANUFACTURING
LIME MANUFACTURING
MALEIC ANHYDRIDE COPOLYMERS PRODUCTION
MANUFACTURE OF PAINTS, COATINGS & ADHESIVES
METAL CAN (SURFACE COATING)
METAL COIL (SURFACE COATING)
METAL FURNITURE (SURFACE COATING)
METHYLCELLULOSE PRODUCTION
MISCELLANEOUS METAL PARTS & PRODUCTS (SURFACE COATING)
MUNICIPAL LANDFILLS
OBPA/1,3-DIISOCYANATE PRODUCTION
ORGANIC LIQUIDS DISTRIBUTION (NON-GASOLINE)
PAINT STRIPPER USERS
PAPER AND OTHER WEBS (SURFACE COATING)
PHOSPHATE FERTILIZERS PRODUCTION
PHOSPHORIC ACID MANUFACTURING
PHOTOGRAPHIC CHEMICALS PRODUCTION
PHTHALATE PLASTICIZERS PRODUCTION
PLASTIC PARTS AND PRODUCTS (SURFACE COATING)
PLYWOOD/PARTICLE BOARD MANUFACTURING
POLYESTER RESINS PRODUCTION
POLYMERIZED VINYLIDENE CHLORIDE PRODUCTION
POLYMETHYL METHACRYLATE RESINS PRODUCTION
POLYVINYL ACETATE EMULSIONS PRODUCTION
POLYVINYL ALCOHOL PRODUCTION
POLYVINYL BUTYRAL PRODUCTION
POLYVINYL CHLORIDE AND COPOLYMERS PRODUCTION
PRIMARY MAGNESIUM REFINING
PRINTING, COATING & DYEING OF FABRICS
PROCESS HEATERS
QUATERNARY AMMONIUM COMPOUNDS PRODUCTION
RAYON PRODUCTION
ROCKET ENGINE TEST FIRING
RUBBER CHEMICALS MANUFACTURING
SEMICONDUCTOR MANUFACTURING
SEWAGE SLUDGE INCINERATION
SITE REMEDIATION
SPANDEX PRODUCTION
STATIONARY INTERNAL COMBUSTION ENGINES
STATIONARY TURBINES
STEEL FOUNDRIES
SYMMETRICAL TETRACHLOROPYRIDINE PRODUCTION
TACONITE IRON ORE PROCESSING
TIRE PRODUCTION
URANIUM HEXAFLUORIDE PRODUCTION
VEGETABLE OIL PRODUCTION

EPA's Early Reductions Program
for Hazardous Air Pollutants

FACT SHEET

- On October 29, 1992, EPA issued its final rule establishing its Early Reductions Program for emissions of air toxics.

Background

- The Clean Air Act Amendments for 1990 contain specific provisions that allow EPA to establish a program to give industry incentives for voluntarily achieving reductions in emissions of toxic air pollutants.

- Title III of the Clean Air Act Amendments establishes a 10-year regulatory schedule for implementing "maximum achievable control technology" (MACT) standards for controlling emissions of 189 statutorily-listed air toxics.

- One of the new features of the Act is a provision [Section 112(i)(5)] that allows existing sources to be granted six additional years to comply with the applicable MACT standards by volunteering to achieve early reductions of their emissions.

- On June 13, 1991, EPA proposed a rule in the Federal Register to implement the early reductions provisions of the Act.

- In order to be eligible for the extension, a source must obtain a 90% or more reduction of its air toxic emissions.

Benefits of the Early Reductions Program

- The program will benefit the environment by ensuring that reductions in potentially dangerous air toxics are achieved significantly earlier than would have been the case under the MACT schedule prescribed in the Clean Air Act Amendments.

- Companies will have flexibility to design cost-effective reduction plans. Moreover, the six year compliance extension affords companies time to develop less-costly approches to eventual compliance with MACT standards, including pollution prevention options.

- Companies participating in the early reduction program also benefit from the demonstrated marketing advantages associated with being a good corporate citizen and reducing public exposure to harmful toxics.

Program Requirements

- In most cases the emissions reduction will have to be achieved before EPA proposes applicable MACT standards. For the first set of MACT standards, however, sources that achieve the reduction after proposal, but before January 1, 1994, may qualify for the compliance extension if the source makes a commitment to achieve such reduction before EPA proposes the standard.

- An important aspect of the program is how EPA defines combinations of emission points for which the reduction must be achieved (the so-called "definition of source"). The proposed rule provides flexibility for industry to design their program for reductions from the entire plant site or for parts of the plant site, subject to certain limitations.

- Emission reduction will be determined by comparing the post-reduction emissions with verifiable and actual emissions in a base year of 1987 or later.

- To obtain a compliance extension under the early reductions program, a source must submit an application for an operating permit that contains a demonstration of the early reduction.

- For additional information on the Early Reductions program, interested parties may contact one of the EPA Regional Office representatives listed below.

Region I	- Janet Beloin	(617) 835-2734
Region II	- Harish Patel	(212) 264-6683
	Umesh Dholakia	(212) 264-6676
Region III	- Jim Baker	(215) 597-3499
Region IV	- Anthony Toney	(404) 347-2864
Region V	- John Pavitt	(312) 886-6858
Region VI	- Tom Driscoll	(214) 655-7549
Region VII	- Carmen Torres-Ortega	(913) 551-7873
Region VIII	- Cory Potash	(303) 293-1886
Region IX	- Ken Bigos	(415) 744-1240
Region X	- Chris Hall	(206) 553-1949

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

NOV 08 1993

MEMORANDUM

SUBJECT: Clarification of Issues Regarding the Contingency Measures that are due November 15, 1993 for Moderate and Above Ozone Nonattainment Areas

FROM: D. Kent Berry, Acting Director Steven G. Hitt, for
Air Quality Management Division (MD-15)

TO: Director, Air Pesticides and Toxics Management Division, Regions I and IV
Director, Air and Waste Management Division, Region II
Director, Air, Radiation and Toxics Division, Region III
Director, Air and Radiation Division, Region V
Director, Air, Pesticides and Toxics Division, Region VI
Director, Air and Toxics Division, Regions VII, VIII, IX, and X

The August 23, 1993 memorandum "Guidance on Issues Related to 15 Percent Rate-of-Progress Plans," from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, to you, set forth the policy on accepting nitrogen oxide (NOx) measures for a portion of the contingency measures that are due November 15, 1993, and for allowing committal State implementation plans (SIP's) for the contingency measure submittal. This memorandum provides additional clarification on a number of related issues that were raised after issuance of the August 23 memo.

NOx Reasonably Available Control Technology (RACT)

Section 172(c)(9) of the Clean Air Act (Act) states that moderate and above ozone nonattainment areas ". . . shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national ambient air quality standard."

In addition, section 182(c)(9) of the Act states that serious and above areas ". . . shall provide for the implementation of specific measures to be undertaken if the area fails to meet any applicable milestone."

Because the Act says that specific measures must be undertaken if the area fails to meet a milestone, any measures that are already required in any ozone nonattainment area would not be creditable for the 3 percent contingency measure requirement.[1] Therefore, since NOx RACT is already a requirement, it would not be accepted as a contingency measure. The only exception would be the early implementation of required measures scheduled for implementation at a later date in the SIP. In this case, if an area then failed to meet a milestone which triggered the implementation of the contingency measures, the State would have 1 year to backfill the shortfall.

Note that measures that provide for emissions reductions beyond RACT would be creditable as contingency measures.

Control Techniques Guidelines (CTG's)

States may adopt, as a contingency measure, rules for categories where the Environmental Protection Agency (EPA) plans to issue a CTG. When EPA finally issues the CTG, however, the State will have to revise its SIP to ensure implementation of the RACT rule by a date certain. In other words, the rule can no longer be a "contingency measure" that is triggered by failure to attain or failure to meet reasonable further progress. The rule would thus have to be replaced with another contingency measure after EPA issues the CTG because of the rationale stated above. When a CTG is issued by EPA, States can consider moving a rule or measure from its 15 percent plan to its contingency plan and replacing the 15 percent rule or measure with the CTG rule. This type of transaction would require a SIP revision.

Maximum Available Control Technology (MACT), and Other Federal Rules

Any reductions that occur because of implementing MACT or any Federal rule are not creditable toward the contingency measure requirement because of the rationale stated above. States may, however, use as contingency measures rules for categories for which EPA plans in the future to issue Federal rules. Note that such contingency measures must be replaced when EPA finally issues the rule. As stated in the discussion of CTG's, a SIP revision would be required when a State replaces rules or measures in their 15 percent plan with the new MACT standard or Federal rule and moves the replaced rule or measure to its contingency plan.

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[1]Note that an area may use as a contingency measure a rule or measure that is required for another pollutant (such as carbon monoxide) as long as it would provide reductions in volatile organic compounds (VOC) or NOx.

Episodic Strategies

Section 123 of the Act states that an emissions limitation may not be affected by any dispersion technique, which includes "any intermittent or supplemental control of air pollutants varying with atmospheric conditions." According to EPA guidance documents,[2] by November 15, 1993, EPA expects the regulations or measures that are adopted for the 15 percent rate-of-progress plan to be fully adopted, real, permanent, quantifiable, and enforceable. Therefore, since episodic strategies do not result in real, permanent, quantifiable, and enforceable emission reductions, they will not be approvable for the contingency measure requirement, as well as the 15 percent plan requirement. The EPA's policy was set forth in, "Stack Height Regulation; Final Rule," 50 FR 27892, July 8, 1985.

Committal SIP's

If a State elects to submit in its SIP a commitment for the contingency measure requirement, it must include a commitment to adopt, by November 15, 1994, the measures or rules for the entire 3 percent required. The commitment must provide as much information as possible, but we recognize that in some cases it may be difficult to list the measures that an area is considering with a schedule because the area's modeling may not yet be complete. Completion of modeling may be necessary in cases where a State is considering NOx controls as part of the contingency measures. Therefore, EPA will accept such commitments without a list of specific measures, but the commitment should at least note the possible kinds of measures under consideration for NOx and VOC.

Please forward this information to your State and local agencies. Your staff may contact Kimber Scavo at (919) 541-3354 with questions.

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[2]Two of which are: "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498, April 16, 1992, and "Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of-Progress Plans," EPA-452/R-93-002, March 1993.

cc: Air Branch Chief, Regions I-X
Gary Dolce
Howard Hoffman
Rich Ossias
Sara Schneeberg
John Seitz
Lydia Wegman
William Becker
Doug Grano
Phil Lorang
Kimber Scavo
Laurel Schultz
John Silvasi

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

NOV 30 1993

MEMORANDUM

SUBJECT: Use of Actual Emissions in Maintenance Demonstrations for Ozone and Carbon Monoxide (CO) Nonattainment Areas

FROM: D. Kent Berry, Acting Director
Air Quality Management Division (MD-15)

TO: Director, Air, Pesticides and Toxics Management Division, Regions I and IV
Director, Air and Waste Management Division, Region II
Director, Air, Radiation and Toxics Division, Region III
Director, Air and Radiation Division, Region V
Director, Air, Pesticides and Toxics Division, Region VI
Director, Air and Toxics Division, Regions VII, VIII, IX, and X

This memorandum provides guidance on the use of actual emissions in maintenance demonstrations for ozone and CO nonattainment areas seeking redesignation to attainment. This guidance supersedes previous Environmental Protection Agency (EPA) guidance set forth in the September 4, 1992 memorandum from John Calcagni to Air Division Directors, "Procedures for Processing Requests to Redesignate Areas to Attainment" (redesignation policy), which required emission projections for these areas to be based on allowable emissions.

The EPA has previously issued guidance on the use of actual emissions in projecting emissions to meet the requirements for the 15 percent rate-of-progress plans for ozone nonattainment areas.[1] For consistency, this memorandum extends the policy of using actual emissions to maintenance projections for ozone and CO areas, as well. This guidance is not intended to apply to emission projections in control programs for the other criteria pollutants (see discussion under "Other Pollutants").

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[1]See Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of Progress Plans (EPA-452/R-93-002, March 1993).

Ozone and CO Policy

Actual emissions from a source are the emissions based on the source's actual operating hours, production rates, and control equipment for the processes carried out at the source. Actual emissions take into consideration normal operating conditions as well as instances when deviations occur. For ozone and CO areas, the term allowable emissions refers to emissions estimates based on enforceable emission rates and actual production rates and hours.

Consistent with the earlier rate-of-progress plan guidance, ozone and CO maintenance projections may be based on actual emissions for sources or source categories that are currently subject to a regulation and that the State does not anticipate subjecting to additional regulation. Similarly, the maintenance projections may be based on actual emissions for sources or source categories that are currently unregulated and are not expected to be subject to future regulation. (The State still has the option of using allowable emissions for these two cases.) However, for sources that are expected to be subject to additional regulation, the projections must be based on the new allowable emissions limits because the new actual emissions are not yet known.

Upon approval of a redesignation request and associated maintenance plan by EPA, all future emissions calculations or projections to implement other air quality requirements for an area must be consistent with the maintenance demonstration (unless a more stringent requirement applies). For example, if projected emissions from a source used in the maintenance demonstration are based on actual emissions, that source must use actual emissions in determining the credit available for emissions trading, innovative strategies, economic incentive plans, and emissions budgets.

Other Pollutants

Under the redesignation policy, emissions projections for particulate matter (PM-10), sulfur dioxide (SO2), nitrogen dioxide, and lead (Pb) nonattainment areas are still required to follow current EPA modeling guidance.[2] The modeling guidance requires that maximum allowable emission limits for major point sources be used in demonstrating maintenance of short-term

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[2]The EPA-approved modeling guidance may be found in the following documents: "Guideline on Air Quality Models (Revised)" (EPA-450/2-78-027R, July 1987) and "PM-10 SIP Development Guideline" (EPA-450/2-86-001, June 1987).

standards.[3] It is necessary to continue the use of maximum allowable emissions when projecting emissions for these nonattainment areas because, in some cases, large point sources operating at full capacity could by themselves cause an exceedance of the applicable national ambient air quality standard. In contrast, large point sources are not likely to be dominant emission sources in inventories for ozone and CO nonattainment areas, and it is unlikely that the multitude of smaller sources would be operating at maximum capacity simultaneously.

For further information regarding the use of actual and allowable emissions for maintenance demonstrations for ozone and CO areas, please contact Carla Oldham at (919) 541-3347. For information on projecting emissions for SO2, PM-10, and Pb nonattainment areas, please contact Robin Dunkins at (919) 541-5335.

cc: Air Branch Chief, Regions I-X
John Cabaniss, OMS
Mary Henigin, OAQPS
Bob Kellam, TSD
Rich Ossias, OGC
John Rasnic, SSCD
John Seitz, OAQPS
Ann Goode, OAR
Lydia Wegman, OAQPS

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[3]Maximum allowable emissions are calculated using the enforceable (i.e., allowable) emission rate multiplied by the maximum operating capacity of that source at continuous operation (unless there are federally-enforceable limits on the hours of operation).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

DEC 9 1993

MEMORANDUM

SUBJECT: Credit for 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule

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

TO: Director, Air, Pesticides and Toxics Management Division, Regions I and IV
Director, Air and Waste Management Division, Region II
Director, Air, Radiation and Toxics Division, Region III
Director, Air and Radiation Division, Region V
Director, Air, Pesticides and Toxics Division, Region VI
Director, Air and Toxics Division, Regions VII, VIII, IX, and X

This memorandum supplements my memorandum of September 10, 1993 concerning State credit for reductions from the forthcoming Federal AIM coating rule. As you know, a number of States have indicated that reductions from this source category are crucial to their 15 percent rate-of-progress plans. In order to allow States to take credit for expected reductions from the Federal rule while still providing necessary safeguards, EPA will approve a committal State implementation plan (SIP) under section 110(k)(4) if the following conditions are met:

1. States must submit a SIP by April 1994 committing to adopt an AIM rule if EPA does not promulgate a national rule by February 1995.

2. The commitment must be to adopt and submit a State rule by March 1995 and to implement the rule and achieve reductions by November 1996.

3. Emissions reductions in the State-adopted rule must be equivalent to the committal SIP, or else a new plan must be submitted to make up the shortfall.

4. States that submit such a commitment will be allowed to take credit in their 15 percent rate-of-progress plans for these reductions.

If you have any questions or comments concerning this approach, please contact Laurel Schultz at (919) 541-5511.

cc: Kent Berry
Alan Eckert
Bruce Jordan
Mary Nichols
Rich Ossias

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 23 1993

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Guidance on Issues Related to 15 Percent Rate-of-Progress Plans

FROM: Michael H. Shapiro
Acting Assistant Administrator
for Air and Radiation (ANR-443)

TO: Director, Air Pesticides and Toxics Management Division, Regions I and IV
Director, Air and Waste Management Division, Region II
Director, Air, Radiation and Toxics Division, Region III
Director, Air and Radiation Division, Region V
Director, Air, Pesticides and Toxics Division, Region VI
Director, Air and Toxics Division, Regions VII, VIII, IX, and X

As you know, section 182(b)(1) of the Clean Air Act (Act) requires States to submit, by November 15, 1993 for all ozone nonattainment areas classified as moderate and above, a State implementation plan (SIP) that provides for a 15 percent reduction in emissions of volatile organic compounds (VOC) by November 15, 1996. The purpose of this memorandum is to provide guidance related to these SIP submissions.

Committal SIP's for 15 Percent Plan Control Measures

Several States asked to what extent will the Environmental Protection Agency (EPA) accept committal SIP's for the measures necessary to achieve the 15 percent reduction. Under section 110(k)(4) of the Act, EPA has the authority to conditionally approve a SIP submittal based on a commitment by the State to adopt specific enforceable measures by a date certain. A previous memorandum identified specific cases in which EPA would accept commitments for submittals which were due by November 15, 1992. For the 15 percent rate-of-progress plans, EPA will not allow commitments to adopt the measures needed to meet the 15 percent reduction requirement and any such plans would not be considered approvable.

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NOx Substitution for Contingency Measures

Section 172(c)(9) of the Act requires moderate and above ozone nonattainment areas to adopt contingency measures by November 15, 1993. These measures would have to be implemented if the area fails to make reasonable further progress (RFP) or to attain the national ambient air quality standards (NAAQS) by the applicable attainment date. In addition, section 182(c)(9) of the Act requires serious and above areas to adopt contingency measures which would be implemented if the area fails to meet any applicable milestone. When triggered, the contingency measures must be implemented without further action by the State or the EPA.

The "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13498, April 16, 1992) requires that the contingency measures generally must provide reductions of 3 percent of the emissions from the adjusted base year inventory. The reductions must be achieved in the year following that in which the failure has been identified. Three percent represents 1 year's worth of reductions under the post-1996 rate-of-progress requirement.

The contingency measures that are required to be adopted by November 15, 1993 are for both failure to achieve RFP and failure to attain. While the contingency measures to address failure to achieve RFP must be for VOC, the contingency measures for failure to attain may be for VOC and/or NOx. Since these measures will be implemented after 1996, and because these measures serve two purposes (i.e., failure to achieve RFP and failure to attain), the contingency measures could provide for less than 3 percent in VOC reductions as long as some of the measures are for VOC and the area would have the difference (up to 3 percent) in NOx reductions. Based on discussions with EPA's Office of General Counsel, we have determined that States must adopt a minimum of 0.3 percent in VOC measures of the 3 percent contingency measure requirement to be legally defensible. Therefore, in an area that has demonstrated that NOx controls are needed for attainment, 2.7 percent of the required 3 percent could be NOx contingency measures; at least 0.3 percent must still be VOC to cover the contingency requirement for meeting RFP. Note that this applies to moderate areas as well; moderate areas must submit an approvable plan that shows how they will achieve the 15 percent requirement but are not required to submit a demonstration that the milestone was achieved. Moderate areas, of course, must demonstrate that they have attained the NAAQS for ozone by November 15, 1996.

In order for NOx contingency measures to be acceptable, the State must adhere to EPA's forthcoming guidance on NOx substitution. In addition, States must show with modeling evidence that NOx reductions are needed in a particular nonattainment area. Therefore, in order to give States enough time to consult EPA's guidance on NOx substitution and to determine if NOx reductions are needed, EPA will accept committals for contingency measures that are due November 15, 1993. If the contingency measures themselves are not included with the November 15, 1993 submittal, that submittal must include a commitment, with schedule, for contingency measures to be adopted by November 15, 1994.

We believe that this is acceptable due to the fact that the earliest a contingency measure would be implemented would be in 1997. The first attainment date and milestone date for areas that are required to adopt contingency measures is November 15, 1996. The EPA will expect all actions needed to make the measures fully effective to occur within 60 days after EPA notifies the State of its milestone failure or within 6 months of its attainment failure. Therefore, the State would not need to implement the contingency measures until 1997 and EPA could accept measures that could not be implemented until 1997.

Upon activation of the contingency measures, reductions of up to 3 percent (or such lesser percentage that will cure the identified failure) must be achieved 1 year following the date on which the failure had been identified. The State must achieve these reductions while conducting additional control measure development and implementation as necessary to correct the shortfall if it is beyond the 3 percent the State would have already adopted. In determining what measures should be implemented if less than 3 percent reduction is needed to cure the failure, all VOC contingency measures should be required first followed by the appropriate percentage of NOx measures that will correct the shortfall.

15 Percent Waiver Provision

Under section 182(b)(1)(A)(ii), areas can submit plans demonstrating less than a 15 percent emission reduction if the following conditions are met. First, the State must demonstrate that the area has a new source review program equivalent to the requirement in extreme areas [section 182(e)], except that a "major source" must include any source that emits, or has the potential to emit, 5 tons per year (tpy) of VOC. Second, all major sources (down to those with emissions of 5 tpy of VOC or greater) in the area must be required to have RACT-level controls. Third, the State must demonstrate that the SIP includes all measures (both stationary and mobile) that are achieved in practice by sources in the same source category in nonattainment areas of the next higher classification. Fourth,

the plan must include all measures that can be feasibly implemented in the area, in light of technological achievability and cost.

If an area chooses to meet the requirements of section 182(b)(1)(A)(ii) to get a waiver of the 15 percent provision, EPA interprets title V to require operating permits for all VOC sources in that area that emit or have the potential to emit 5 tpy of VOC. This is because the definition of "major source" in title V expressly refers to "major stationary source" as defined in part D of title I. Since, under the waiver provision, "major stationary source" would be defined as having the potential to emit 5 tpy for the purposes of title I, this would become the definition of major source for the purposes of title V.

I suggest that you provide a copy of this memo to your affected State and local agencies. Inquiries may be directed to John Silvasi at (919) 541-5666.

cc: Air Branch Chief, Regions I-X
William Becker
Rich Ossias
Lydia Wegman
Dick Wilson

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

AUG 24 1993

MEMORANDUM

SUBJECT: Addressing Potential New National Ambient Air Quality Standards (NAAQS) Violations For PM-10, SO_2, and Lead

FROM: D. Kent Berry, Acting Director Steven J. Wilk, for
Air Quality Management Division (MD-15)

Robert G. Kellam, Acting Director Bob Kellam
Technical Support Division (MD-14)

TO: Director, Air, Pesticides and Toxics Management Division, Regions I and IV
Director, Air and Waste Management Division, Region II
Director, Air, Radiation and Toxics Division, Region III
Director, Air and Radiation Division, Region V
Director, Air, Pesticides and Toxics Division, Region VI
Director, Air and Toxics Division, Regions VII, VIII, IX, and X

This memorandum provides the Regional Offices with a status of the potential new PM-10 (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) NAAQS violations, first presented in the January 19, 1993 memorandum to the Air Branch Chiefs. It is the Office of Air Quality Planning and Standards' (OAQPS') intention to address PM-10 NAAQS violations and progress toward their resolution in a nationally consistent manner as part of the memorandum of agreement (MOA) process beginning in fiscal year (FY) 1994. The attachment to this memorandum includes the current information necessary to start this process. This approach (albeit much simpler) will be initiated next year for sulfur dioxide NAAQS exceedances and potential violations. The air quality data for lead will continue to be tracked through the lead NAAQS attainment strategy. New reporting procedures for the Regional Offices for PM-10 exceedances and potential NAAQS violations will be discussed in more detail in future guidance.

The potential new PM-10 NAAQS violation sites included in this memorandum are based on the January 19, 1993 memorandum to the Air Branch Chiefs. The Regional Offices were asked to review the material on exceedances for the sites in each Region and update the status as appropriate. The OAQPS received responses both in writing and through conversations with Regional Office staff. The responses are incorporated in the attached table and writeup of each site. This information shows the status of the information received and OAQPS' recommended NAAQS violation status of each site which has recorded one or more exceedances.

The attachment includes detailed information for 52 sites. Of the 52 sites on the January list which had one or more exceedances, 19 sites are recommended as not yet being in violation, 20 sites are recommended as being in violation, and 13 are in a provisional violation category. The sites in the provisional category include sites in which OAQPS has not received adequate documentation about recurrence claims. The other 19 sites are identified as not in violation, but must be reevaluated in the future pending results of daily sampling or saturation sampling results.

In order to resolve the status of each site in a nationally consistent manner, the FY 1994 MOA process should include each Regional Office's plan for addressing each site which has recorded one or more exceedances, as well as a priority on resolving recurrence claims and monitoring issues for the sites in the provisional category. For the Regional Offices addressing these issues in their MOA's, OAQPS would like a mid-year and end-of-year status report indicating progress toward their resolution through the MOA reporting system.

In the future, OAQPS plans on providing more formal guidance and procedures for making this decision-making process easier. Issues to be addressed include exceedance and violation reporting, handling of data affected by special events and conditions, and enhancing Aerometric Information Retrieval System-Air Quality Subsystem data storage and reporting capabilities. These changes will provide the Regional Offices with real-time data necessary to track exceedances and make potential violation determinations as they occur. If you have any questions, please contact Joe Paisie at 919-541-5556 concerning the MOA issues and reporting procedures, or Bill Hunt at 919-541-5559 concerning data contained in the attachment and any monitoring issues.

Attachment

cc: Joe Paisie
Bill Hunt
Jerry Stubberfield
Chief, Air Programs Branch, Regions I-X
Director, ESD, Regions I-X
PM-10 Contact, Regions I-X

ATTACHMENT

STATUS OF PM-10 POTENTIAL VIOLATIONS BY SITE

Region I

- Darien, CT (09-001-1401)

  ♦ Site had 1 exceedance in 1991, and was caused by the sandblasting of a bridge near the sampler. Sandblasting only occurs during infrequent repair of bridges and Region I believes the exceedance in Darien at this specific location should be classified as a nonrecurring event. Site still sampling on 1/6 frequency. Concentrations since July 1992 have been less than 58 ug/m3. Recommend no violation.

Region II

- Buffalo, NY (36-029-0017)

  ♦ Site had 1 exceedance in 1990 and was the result of nearby construction activities which were occurring at the time. Region II believes that exceedances like this one are not likely to recur, and indeed have not recurred. Site still sampling on 1/6 frequency. Concentrations since June 1990 have been less than 75 ug/m3. Recommend no violation.

Region III

- Vansant, VA (51-027-0003)

  ♦ Site had 2 exceedances in 1991 and have been flagged by Virginia as due to a forest fire. Region III does not believe the event is likely to recur. The site was sampling on a 1/2 frequency through January 1992 when the site was discontinued. Recommend no violation.

- Covington, VA (51-580-0007)

  ♦ Site had 1 exceedance in 1991 and has been flagged by Virginia as due to a forest fire. Region III does not believe the event is likely to recur. The site is still sampling on a 1/6 frequency. Concentrations since December 1991 have been less than 57 ug/m3. Recommend no violation.

Region IV

- North Charleston, SC (45-019-0019)

  ♦ Site had 1 exceedance in 1991 and was due to "an unusual occurrence at a nearby coal pile." An analysis of the filter showed the primary constituent to be bituminous coal. South Carolina has flagged the data as a special event.

Region IV does not believe that this event is likely to recur. Site still sampling on 1/6 frequency. Concentrations since the event in November 1991 have been less than 75 ug/m3. South Carolina has agreed to install a continuous PM-10 sampler at this site as soon as one can be procured and installed. South Carolina is in the process of applying for a special grant from Region IV to buy the sampler. Region IV will approve the request when received and have the sampler operational by September 30, 1993. **Recommend status determination be delayed and be dependent upon review of 1 year of continuous data with a minimum of 75 percent data capture.**

Region V

- Randolph County, IL (17-157-0002)

  ♦ Site had 2 exceedances in 1989, 2 in 1990, 1 in 1991, and 1 in 1992. The exceedances were due to emissions from a surface coal mine and its associated haul road. Daily sampling was begun in October 1989 and continued until the site was discontinued in December 1992. Mine ceased operation during third quarter 1992. Everyday sampling initiated January 1993 at site 17-157-0003. Although the site recorded violations, the source of the exceedances has been discontinued. **Recommend violation since estimated exceedances greater than 1.0.**

- Randolph County, IL (17-157-0003)

  ♦ Site had 4 exceedances in 1991 and 1 in 1992. The exceedances were due to emissions from an unpaved road used to haul coal refuse and clean coal. The site was sampling on a 1/6 frequency through the end of 1992 and then everyday sampling was supposedly begun. Mine ceased operation during third quarter 1992. Although the site recorded violations, the source of the exceedances has been discontinued. **Recommend violation since estimated exceedances greater than 1.0.**

- Rockdale, IL (17-197-1009)

  ♦ Site had 1 exceedance in 1990, and has been flagged by Illinois as being due to high winds. The site is still sampling on a 1/6 frequency. There is no statement as to recurrence claim. Concentrations since May 1990 have been less than 80 ug/m3. **Since everyday sampling not initiated and no recurrence claim was made, recommend classification as a violation.**

- Jeffersonville, IN (18-003-0003)

  ♦ Site had 1 exceedance in 1985 with a nonreference sampler. The site was discontinued in 1987, and moved to site 18-003-0005. Recommend no violation since exceedance was not corroborated by a reference sampler.

- Indianapolis, IN (18-097-0073)

  ♦ Site had 1 exceedance in 1991. Concentrations since the event have been less than 64 ug/m3. The site is still sampling on a 1/6 frequency. Since increased sampling not initiated, recommend classification as a violation.

- Bay County, MI (26-017-0906)

  ♦ Site had 1 exceedance in 1989. The site was discontinued in March 1991. The exceedance was probably due to either agriculture and/or Monitor Sugar. Three additional sites were started in April 1992 with everyday sampling. One of these sites (26-017-0911) measured 494 ug/m3 on June 17, 1992 and 286 ug/m3 on December 25, 1992. Recommend classification as a violation.

- Ludington, MI (26-105-0004)

  ♦ Site had 1 exceedance in 1990. Michigan has flagged the exceedance as due to chemical spills. The site is still sampling on a 1/6 frequency. Concentrations since September 1990 have been less than 96 ug/m3. Region V believes the event to be non-recurring. Recommend no violation.

- Muskegon, MI (26-121-0919)

  ♦ Site had 1 exceedance in 1989. The exceedance was flagged as due to construction. The site was discontinued in November 1989. Recommend violation subject to clarification of future construction activity in the monitoring area and non-recurrence claim.

- Noble County, Ohio (39-121-0001)

  ♦ Site had 1 exceedance in 1991 and has been flagged as due to infrequent large gatherings. The site is still sampling on a 1/6 frequency. Concentrations since July 1991 have been less than 82 ug/m3. There is no statement as to likelihood of recurrence. Recommend violation subject to demonstration that this was a rare event and is not likely to recur.

- Alliance, OH (39-151-4004)

  ♦ Site had 1 exceedance in both 1990 and 1991. Both exceedances have been flagged as due to chemical spills. There is no statement as to recurrence claim. The site is still sampling on a 1/6 frequency. Concentrations since February 1991 have been less than 69 ug/m3. Recommend violation since events are recurring with 2 exceedances in 2 years.

Region VII

- Mason City, IA (19-033-0011)

  ♦ Iowa has flagged 1 exceedance from the primary sampler and 2 exceedances from the collocated sampler in 1990 as being caused by high winds. The exceedance at the primary sampler occurred on January 11 and the collocated also measured an exceedance on the same day. However, the collocated sampler measured an exceedance on May 17, and there was no sample collected by the primary sampler on that day. Site continues to sample on 1/6 schedule. Concentrations since May 1990 have been less than 79 ug/m3, although no data reported to AIRS since July 1992. Daily sampling started at site 19-033-0014 (which is considered to be the area of maximum concentration) in October 1992 for 1 year. The everyday sampling at site 0014 was the result of exceedances measured at that site in May and June of 1992. Recommend violation since everyday sampling was not initiated in 1990 and there is no recurrence claim.

- Kansas City, KS (20-209-0011)

  ♦ There were 3 exceedances in 1987. These concentrations were due to construction activity in the vicinity of the sampler. The sampling site was discontinued, because the building site it was located on was demolished due to the construction activity. (Note: This information was documented in Attachment A of a November 4, 1989 memo from William Hunt to David Stonefield.) Region VII does not believe the construction is likely to recur. A continuous PM-10 sampler is expected to be installed this spring at site 20-209-0020. Recommend no violation.

Region VIII

- Alamosa, CO (08-003-0001)

  ♦ Site had 1 exceedance in 1989 and 1 in 1991. Daily sampling was begun in September 1989 and continues to the present with no additional exceedances through February 1993. Data not flagged due to insufficient documentation.

No statement as to what caused the exceedances or likelihood of recurrence. Recommend no violation since estimated exceedances for 1989-1992 are less than 1.0.

- Anaconda-Deer Lodge County, MT (30-023-0007)

  ♦ Site had 1 exceedance in 1985 with a nonreference sampler. Site was shut down in 1985, and replaced with a max concentration site. No exceedances reported at new superfund site and it may have been shut down 9/92. Based on 2½ years of data from 4 sites which show no exceedances, Region VIII believes area is in attainment. Recommend no violation since exceedance was not corroborated by a reference sampler.

- Jefferson County, MT (30-043-0711)

  ♦ Site had 1 exceedance in 1990 during a day when company was maintaining and repairing a haul road and holding pond dam. The company wanted to designate this exceedance as an special event, but Montana would not agree. Site was sampling on a 1/6 frequency through December 1992. Company has stopped all mining and property is up for sale. Although the site recorded violations, the source of the exceedances has been discontinued. Recommend Region consider the likelihood of problem recurring after the sale of property.

- Madison County, MT (30-057-0005)

  ♦ Site is on company property (not ambient air) near mining activities and had 1 exceedance in 1989. State requested better fugitive dust controls and negotiated agreement to operate 1 sampler an a 1/2 schedule for 2 years beginning 6/91 and implement better fugitive dusts controls. Numbers have been low since exceedance. Recommend no violation pending verification that property is inaccessible to public (i.e. presence of fence) and not ambient air.

- Park County, MT (30-067-0002)

  ♦ Site is on company property and not an ambient monitoring site. Site had 2 exceedances in 1988, 6 in 1989, 1 in 1990, 1 in 1991, and 1 in 1992. Sampling frequency went to 1/3 in May 1991. State wants this site to track tailing pile fugitive emissions and controls. Recommend no violation pending verification that property is inaccessible to public (i.e. presence of fence) and not ambient air.

- Sanders County, MT (30-089-0005)

  ♦ Site was a short-term site operated during a study in Thompson Falls. The site had 2 exceedances in 1991 and was discontinued in March 1991. The area is nonattainment based on another site.

- Fargo, ND (38-017-1001)

  ♦ Site had 1 exceedance in 1990 and has been flagged as being due to high winds. Site continues to operate on a 1/6 sampling frequency. Concentrations from February 1990-March 1993 show concentrations less than 63 ug/m3. Region VIII believes the event is not likely to recur. Recommend violation determination be made pending the receipt of additional information to support high wind claim.

- McLean County, ND (38-055-0111)

  ♦ Site was located on coal mine property and was not ambient air. The samplers were located incorrectly and the site has been moved away from the coal mine property with a new contractor to do the analyses. The site had 1 exceedance in 1988 and 2 in 1990. All of the data from this site have been deleted from AIRS. Recommend no violation pending verification that property is inaccessible to public (i.e. presence of fence) and not ambient air.

- Williston, ND (38-105-0001)

  ♦ Site had 1 exceedance in 1990 and has been flagged as being due to high winds. Site continues to operate on a 1/6 sampling frequency. Concentrations November 1990-March 1993 have been less than 40 ug/m3. Region VIII believes the event is not likely to recur. Recommend violation determination be made pending the receipt of additional information to support high wind claim.

- Brookings, SD (46-011-0002)

  ♦ Site had 1 exceedance in 1990. It has been flagged as due to high winds. Site continues to operate on a 1/6 frequency. Concentrations February 1990-December 1992 have been less than 89 ug/m3. Region VIII believes the event is not likely to recur. Recommend violation determination be made pending the receipt of additional information to support high wind claim.

- Rapid City, SD (46-103-1001)

  ♦ Site had 1 exceedance in February and 1 in December 1991. Daily sampling was started in July 1991 and continues with no additional exceedances through February 1993. Expected exceedances 1990-1992 are 0.75. Recommend no violation.

- Moab, UT (49-019-0004)

  ♦ Site had 1 exceedance in 1991. Utah presented information, which they believe shows the exceedance was due to high winds blowing desert sands. They did not flag the data. Based on Utah's interpretation, the exceedance was a special event, therefore no further action was required. However, there is no special event flag on AIRS for this event. Negotiations are on-going regarding this matter. Site continues to operate on a 1/6 frequency. Recommend violation determination be made pending the receipt of additional information to support high wind claim.

- Sweetwater County, WY (56-037-0013)

  ♦ Site had 1 exceedance in March 1991, and daily sampling performed July 1991-August 16, 1992. Site now samples on a 1/6 schedule. No exceedances recorded through December 1992. Estimated exceedances for 1990-1992 are less than 1.0. Recommend no violation.

Region IX

- Yosemite National Park, CA (06-043-1001)

  ♦ Site had 3 exceedances in 1990 and 1 in 1991. The site is still sampling on a 1/6 frequency. Region IX has indicated that there is no evidence these are special events, and will initiate the redesignation process for the area in 1993.

- Merced, CA (06-047-1001)

  ♦ Site had 1 exceedance in 1990. The site is still sampling on a 1/6 frequency. Merced County is part of the San Joaquin Valley PM-10 planning area and was addressed in the San Joaquin Valley PM-10 SIP submitted in 1991. When EPA published the revision to 40 CFR 51, Merced County was inadvertently left off the list of counties included in the nonattainment area. When EPA takes action on the PM-10 submittal, Region IX will correct 40 CFR Part 51 to include Merced County.

- Quincy-East Quincy, CA (06-063-1006)

  ♦ Site had 1 exceedance in 1991. The site is still sampling on a 1/6 frequency. Region IX is working with the California Air Resources Board and the Nevada Sierra Air Quality Management District to determine whether the District will initiate every day monitoring. Everyday sampling had not been started as of December 1992. Since increased sampling frequency not initiated, recommend classification as violation.

- Lucerne Valley (06-071-0013)

  ♦ Site had 2 exceedances in 1990 and 1 in 1991. The site was discontinued in September 1991. Lucerne is in San Bernardino County and has been proposed for redesignation to nonattainment for PM-10 (FR 57 43846).

- San Francisco, CA (06-075-0005)

  ♦ Site had 1 exceedance in 1990. The site is still sampling on a 1/6 frequency. The Bay Area Air Quality Management District chose not to initiate every day monitoring at this site. Region IX intends to initiate the redesignation process for this area in 1993. The boundary of the proposed area may include San Francisco County, Santa Clara County, and Alameda County. Everyday sampling had not been started as of December 1992. Since increased sampling frequency not initiated, recommend classification as violation.

- Stockton, CA (06-077-1002)

  ♦ Site had 1 exceedance in 1986 and 1987 with a nonreference sampler. One exceedance was also measured in 1990 with a reference sampler. The site is still sampling on a 1/6 frequency. Stockton is in San Joaquin County and is part of the San Joaquin Valley PM-10 Planning area. Everyday sampling had not been started as of December 1992. Since increased sampling frequency not initiated, recommend classification as violation.

- San Jose, CA (06-085-2003)

  ♦ Site had 1 exceedance in 1990 and 3 in 1991. The exceedances in 1991 have been deleted from AIRS. The site is still sampling on a 1/6 frequency. The Bay Area Air Quality Management District chose not to initiate every day monitoring at this site. The boundary of the proposed area may include San Francisco County, Santa Clara County, and Alameda County. Region IX intends to initiate the redesignation process for this area in 1993.

- Modesto, CA (06-099-0002)

  ♦ Site had 1 exceedance in 1990 and 1 in 1991. The site is still sampling on a 1/6 frequency. Modesto is in Stanislaus County and is part of the San Joaquin Valley PM-10 Planning area.

- Modesto, CA (06-099-0003)

  ♦ Site had 1 exceedance in 1986 with a nonreference sampler and 1 in 1988 with a reference sampler. The site was discontinued in April 1990. Modesto is in Stanislaus County and is part of the San Joaquin Valley PM-10 Planning area. Everyday sampling had not been started as of December 1992. Since increased sampling frequency not initiated, recommend classification as violation.

Region X

- Anchorage, AK (02-020-0026)

  ♦ Site had 2 exceedances in April 1990 and 11 exceedances in 1992 all due to volcanic eruptions. Region X has concurred with the 1990 exceedances. Site started sampling on a 1/1 frequency in July 1990 and continues 1/1 through December 1992. Region X stated the volcanic eruption event is not likely to recur after 1990, but it did. Recommend Region X further investigate the cause(s) of the 11 exceedances in 1992 prior to violation determinations.

- Pocatello, ID (16-005-0005)

  ♦ Site was designated as nonattainment in 1988. This site was included in the list because it could not be determined from the FR listing whether this site was located in the nonattainment area. This site had 1 exceedance in 1989. The site has been terminated due to noise complaints.

- Soda Springs, ID (16-029-0027)

  ♦ Site had 2 exceedances in 1988. The first exceedance was flagged as due to a forest fire. The second event in October was not a special event and the frequency was increased to 1/1 from October 1988-March 1989, then reduced to 1/2 in March 1989, and to 1/6 in April 1990. The site was discontinued in June 1990. Collocated data with an exceedance was deleted from AIRS. Recommend Region X further investigate this issue prior to violation determination.

- Hayden, ID (16-055-0007); Post Falls, ID (16-055-0009); Lewiston, ID (16-069-0009); and Lewiston, ID (16-069-0010)

  ♦ All sites had exceedances on the same day due to a wind storm. State has inserted flag as special event. Region X has conditionally ruled that the wind storm was rare. Site 16-055-0007 appears to have been discontinued in January 1992 and site 16-069-0010 discontinued in August 1992. The other 2 sites continue to operate on a 1/6 sampling frequency. Site 16-055-0009 also had 3 exceedances in 1992. Recommend violation determination be made pending the receipt of additional information to support high wind claim.

- Rosenburg, OR (41-019-0121)

  ♦ Site was sampling on a 1/2 frequency at the time of the exceedance in December 1990 during the winter (impact) season, and 1/6 frequency during the summer months. The property was sold and the site discontinued 3/92. Two replacement sites were established and one site operates 1/1 during the winter and 1/6 during the summer. The other site operates 1/6 year round. Recommend no violation.

- Lakeview, OR (41-037-0001)

  ♦ Site had 3 exceedances in 1991 and 1 in 1992, and none were due to special events. The site samples at 1/1 during the winter months and 1/6 during the summer months. Region X says the area is in the process of being classified as nonattainment.

- Portland, OR (41-051-0003)

  ♦ Site had 1 exceedance in 1991. The site was still operating on 1/6 frequency through December 1992. Frequency will be increased to 1/1 during the upcoming winter season. Recommend no violation at this time.

- Portland, OR (41-051-0009)

  ♦ Site had 1 exceedance in 1991. Site also had an exceedance in 1986 with a nonreference sampler. A saturation study will be performed in Portland during the winter months of 1992, 1993, and 1994. Recommend no violation pending results of saturation study.

- Pendleton, OR (41-059-0002)

  ♦ Site had exceedance on same day in November 1991 with other sites in the surrounding area. Region X has determined that the winds met the special event criteria.

However, there is no flag on data in AIRS indicating high winds. Site still sampling on 1/6 schedule. Recommend violation.

- Pendleton, OR (41-059-0121)

  ♦ Site had 1 exceedance in 1991 due to high winds, but there is no flag on AIRS for high winds. The site presently samples at 1/1 during the winter months and 1/6 during the summer months. Recommend no violation.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

SEP 10 1993

MEMORANDUM

SUBJECT: Credit Toward the 15 Percent Requirements from Architectural and Industrial Maintenance Coatings

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

ORIGINAL SIGNED BY JOHN S. SEITZ

TO: Director, Air, Pesticides and Toxics Management Division, Regions I and IV
Director, Air and Waste Management Division, Region II
Director, Air, Radiation and Toxics Division, Region III
Director, Air and Radiation Division, Region V
Director, Air, Pesticides and Toxics Division, Region VI
Director, Air and Toxics Division, Regions VII, VIII, IX, and X

The Environmental Protection Agency (EPA) is currently involved in negotiations concerning the development of a regulation for architectural and industrial maintenance (AIM) coatings. The AIM coatings are defined as coatings applied to stationary structures and their appurtenances, portable buildings, pavements, and curbs. These coatings include off-the-shelf paints sold to consumers, as well as certain industrial specialty products (e.g., traffic paints and coatings for such items as bridges and petroleum storage tanks). The negotiations are still under way, but it appears that the regulation will be successfully developed, possibly as a national rule.

States which are currently developing their 15 percent volatile organic compounds (VOC) plans which are due November 15, 1993 may want to take credit for reductions from this emissions category since it seems apparent that reductions will be achieved by the AIM rule by 1996. We anticipate that this rule will reduce AIM emissions by approximately 25 percent from current emissions from the same level of paint use. It will be acceptable for States to assume a 25 percent reduction from their AIM coatings emissions inventory and incorporate this reduction into their 15 percent VOC plan. Portions of plans incorporating such an assumption will be approvable by EPA.

I trust that this information will be helpful to you. If you have any questions, please call Bill Johnson at (919) 541-5245.

cc: Air Branch Chiefs, Regions I-IX

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

16 SEP 1993

MEMORANDUM

SUBJECT: Responses to Violations of the Lead National Ambient Air Quality Standards (NAAQS)

FROM: Joseph W. Paisie, Chief
SO_2/Particulate Matter Programs Branch (MD-15)

TO: Chief, Air Branch
Regions I-X

As you may recall John Seitz announced the lead NAAQS attainment strategy in September of 1990. Generally, the lead strategy identifies two steps to address ambient concentrations of lead: (1) identify any environmental problems; and (2) correct problems with the most appropriate tool available. To assess air quality, the strategy suggests operating at least two ambient monitors around the sources of concern. However, there appears to be some confusion about how to address subsequent monitored violations.

Currently, the EPA has three different tools [authorities under the Clean Air Act (Act)] which can be employed in correcting air quality problems. They include: (1) using the administrative or judicial enforcement authorities under section 113 of the Act for problems caused by lack of compliance with the existing requirements, (2) using the authority under section 107(d) to designate the area nonattainment, and/or (3) issuing a SIP call under section 110(k)(5) of the Act to notify the Governor of the State that the SIP is inadequate to attain and maintain the lead NAAQS and to call for a SIP revision as necessary to correct such inadequacies. Both of the latter actions are intended to strengthen the existing requirements applicable to affected sources.

In keeping with the philosophy of the lead NAAQS attainment strategy of addressing the air quality problems in the most efficient manner, OAQPS has encouraged Regions and States to pursue, where appropriate, the enforcement options first. In many cases, air quality problems are due to poor operation and maintenance or other resolvable compliance problems. In these instances, enforcement action can result in timely resolution of violations and avoid the sometimes lengthy regulation development

process. However, the Region should pursue one of the two regulatory options where: (1) the regulations are clearly inadequate, either because there are no applicable lead SIP requirements, or the source is in compliance with the existing regulations and an air quality problem still exists; or (2) the Region otherwise believes that even if the source were in compliance with the existing regulations, there would continue to be air quality problems.

There are advantages and disadvantages in using either the nonattainment designation or SIP call approach. For instance, the nonattainment designation process, in addition to requiring expeditious attainment of the standard, imposes the requirements applicable under part D, title I of the Act (e.g., RACM, RFP, nonattainment new source review and contingency measures), and requires sanctions and FIP's if the SIP is not developed and implemented. These part D requirements might be useful in effectively addressing the air quality problem.

The SIP submitted in response to a SIP call under section 110 must also provide for attainment of the NAAQS. In addition, plan development in the area may proceed quickly in response to a SIP call because the SIP call does not require the notification of the Governor and the subsequent notice and comment rulemaking associated with the nonattainment designation. However, a possible disadvantage associated with the SIP call is that some sanctions may apply only to nonattainment areas that are subject to SIP calls. The FIP requirement is wholly available for either option, however.

Regions should determine on a case-by-case basis which of these two approaches is most appropriate for each area. In making this decision, the Regions should also consult with OGC and OAQPS in determining the most appropriate path to take. The OAQPS in turn will arrange a peer review call with the Regional contacts. The purpose of the call will be to discuss the Regions preferred response and ensure national consistency. Following the peer review call, the Region should also be careful to document, for the record with a dated note "to the file," the rationale used in determining which option to use. The OAQPS has not required the use of one of the regulatory options over the other, but generally recommends that serious consideration be given to designating to the area as nonattainment.

Decisions about which regulatory approach to use should consider factors specific to the area. Among the factors the Region should consider are the following:

(1) The compliance record of the source to determine if the source is recalcitrant and may require the full leverage available under the designation process. Alternatively, the compliance record might show that the source has complied

with existing requirements and, thus, that the regulations themselves are inadequate.

(2) The magnitude of the violation. The Region should consider whether, in cases of extreme concentrations, the Agency's response demonstrates the appropriate level of action.

(3) The persistence of violations. The Region should consider whether, in the case of recurring violations, the Agency's response demonstrates both the appropriate level of action, and a consideration of timeliness.

(4) The source location (e.g., is it near a population center, near a school or preschool).

(5) The State's regulatory process (e.g., is it lengthy, does the legislature only meet periodically, would the timeline of one option fit better within the State's regulatory frame work).

(6) Other sources in the area (e.g., can culpability be clearly determined, would one process facilitate that determination of culpability over the other, is new source growth anticipated).

(7) The need for a more objective level of control (e.g., RACM/RACT).

(8) The type of information available for indicating a problem exists (monitoring, modeling, high blood lead levels, others).

(9) If there is uncertainty associated with modeling and/or past history of failing to attain the standard, does the action taken provide for appropriate contingencies that can be implemented if the area fails to provide a SIP or to attain and maintain the standards.

(10) Is there a need for long-range planning for the area and does the approach taken facilitate this planning effort.

The Region should also consider whether the approach taken would reduce the possibility of legal challenge; would one approach elevate public awareness of a problem and/or result in a more expeditious resolution.

This list is by no means exhaustive, and the decision to use one approach over the other can be difficult. However, because of the serious health problems associated with exposure to lead, I would urge the Regions to make their decisions as quickly as possible.

I hope this information is useful to you in the future. If my office can be helpful in any way during this process, please feel free to contact us. I can be reached at 919/541-5556 or you can speak with Laura McKelvey at 919/541-5497.

cc: Lead Contact, Regions I-X

I hope this information is useful to you in the future. If my office can be helpful in any way during this process, please feel free to contact us. I can be reached at 919/541-5556 or you can speak with Laura McKelvey at 919/541-5497.

cc: Lead Contact, Regions I-X

bcc: L. Byrd
L. McKelvey
C. Oh
V. Patton

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 17 1993

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992

FROM: Michael H. Shapiro
Acting Assistant Administrator
for Air and Radiation (ANR-443)

TO: Director, Air, Pesticides and Toxics Management Division, Regions I and IV
Director, Air and Waste Management Division, Region II
Director, Air, Radiation and Toxics Division, Region III
Director, Air and Radiation Division, Region V
Director, Air, Pesticides and Toxics Division, Region VI
Director, Air and Toxics Division, Regions VII, VIII, IX, and X

I. Purpose

The purpose of this memorandum is to address State requests to redesignate from nonattainment to attainment of the ozone and CO NAAQS under section 107. Specifically at issue are requests submitted on or after November 15, 1992 where outstanding Clean Air Act (Act) requirements have not been met. This memo provides guidance on the statutorily-mandated control programs that must be in the EPA-approved SIP if EPA is to approve the redesignation request. The Act's requirements for redesignation and a list of EPA's redesignation policy and guidance are included in Attachments A and B. In the future, further guidance may be provided for redesignations submitted after November 15, 1993.

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II. Policy Summary

Section 107(d)(3)(E)(v) of the Act as amended (amended Act) provides that the State must have met all applicable requirements of section 110 and part D in order to be redesignated. Furthermore, section 107(d)(3)(E)(ii) provides that the State must have a fully-approved SIP for the area seeking redesignation.

The EPA is interpreting these section 107 provisions to require satisfactory completion of the current Act planning requirements. Specifically, before EPA can act favorably upon any State redesignation request, the statutorily-mandated control programs of section 110 and part D (that were due prior to the time of the redesignation request) must have been adopted by the State and approved by EPA into the SIP.

Thus, with respect to redesignation requests submitted on or after the Act's deadline for submittal of the required programs, States must generally adopt and provide for implementation of their regulations for all of the programs that were due. States must submit these plans to EPA for incorporation into the SIP.[1] This would include such requirements as emissions inventories and/or emission statements. Such requirements must be met in order for the area to have a fully-approved SIP that meets all requirements applicable to the area under section 110 and part D.

The amended Act, however, also provides that upon redesignation, a State may move measures from the implemented SIP to the contingency plan portion of the SIP if the State demonstrates that such measures are not needed for maintaining the NAAQS. Many areas sought redesignation at or about the same time they were required to adopt and implement the requirements due on November 15, 1992. In many instances, the State will be able to immediately move these measures to the contingency plan without implementation.

III. Exceptions to Policy

The EPA decided to review the requirements to determine if something less than full adoption of these regulations would be acceptable under the Act for areas seeking redesignation. Exceptions to this policy on the States' need to complete the full planning and adoption process for the November 15, 1992 mandated programs are very limited. The language in the Act allows a degree of flexibility in only four program areas. These are: (1) basic inspection and maintenance (I/M), (2) annual updates of vehicle miles traveled (VMT) forecasts and annual

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[1]Note that this represents a departure from earlier guidance for part D new source review (NSR) regulations.

estimates of actual VMT for CO nonattainment areas, (3) nitrogen oxides (NOx) reasonably available control technology (RACT), and (4) small business programs (SBP).

These exceptions are only applicable in areas for which EPA approves a redesignation. The States should be aware that if EPA denies a redesignation request, rules submitted in accordance with this guidance may also be disapprovable. Finally, because EPA anticipates issuing onboard regulations by January 1994, States seeking redesignation of areas classified as moderate may have some flexibility with respect to the Stage II requirement.

Our guidance for State submittals covering these four programs is described in the following paragraphs.

Basic I/M

For areas where maintenance plans do not rely on implementation of a basic I/M program immediately following redesignation, the I/M component of the SIP should include:

1. Legislative authority for basic I/M such that implementing regulations can be adopted without any further legislative action.

2. A provision in the SIP providing that basic I/M be placed in the contingency measures portion of the maintenance plan upon redesignation.

3. An enforceable schedule and commitment by the Governor or his designee for adoption and implementation of a basic I/M program upon a specified, appropriate triggering event.

Note that, for purposes of consideration of a redesignation request submitted after November 15, 1992, the commitment as described in the I/M regulation (see 57 FR 52950, November 5, 1992) is not sufficient to meet the Act's requirement for a fully-approved SIP.

In addition, please note that, EPA's final I/M regulations in 40 CFR part 51 require a fully-adopted I/M program by November 15, 1993. At this time, our preliminary interpretative guidance on basic I/M in this memo is not discussed in the I/M regulations. Therefore, EPA is proceeding to establish this interpretation through regulatory action, thus enabling EPA to accept legislative authority and a commitment to adopt and implement basic I/M regulations for those areas being redesignated to attainment.

VMT Forecasting

The VMT forecasting SIP for CO should include:

1. Annual forecasts of VMT (i.e., average daily VMT for the peak 3-month CO seasons for 1993, 1994, and 1995 in moderate areas above 12.7 ppm, and until 2000 in serious areas).

2. An enforceable commitment by the Governor or his designee to estimate actual annual VMT for each of these years (by September 30 of the following year) and to update the forecast of the VMT in the remaining years.

3. A request that the commitment be moved to the contingency plan portion of the SIP upon redesignation, becoming a contingency provision triggered by a specified triggering event.

4. Adopted contingency measures to reduce CO emissions. The implementation of such measures is contingent upon either: (a) an annual estimate of actual VMT or updated forecast of VMT exceeding the previous forecast for that year, or (b) the area failing to attain by the CO attainment deadline. These contingency measures must meet the requirements of section 187(a)(3) as interpreted by the April 16, 1992, "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," including the requirement that no further action by the State is needed for them to take effect.

NOx RACT

Section 182(f) provides that States may request an exemption from the NOx RACT requirements. The NOx RACT requirements of section 182(f) do not apply if additional reductions of NOx would not contribute to attainment.[2] In an area that did not implement the section 182(f) NOx requirement but did meet the ozone standard, as demonstrated by adequate monitoring data consistent with EPA guidance, it is clear that the additional NOx reductions required by section 182(f) would not contribute to attainment, although they might contribute to maintenance. Therefore, EPA believes that if a State submits a redesignation request along with a section 182(f) exemption request based on monitoring data demonstrating attainment of the ozone NAAQS, further documentation is not required. The State may follow one of two approaches in making such a submittal:

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[2]Note that the section 182(f) exemption for NOx RACT and NSR requirements described in this section is applicable only for States outside an ozone transport region, since only those States fall under the section 182(f) "contribute to attainment" provision.

1. Submit a redesignation request along with a section 182(f) exemption request based solely upon monitoring data showing that the area's air quality is meeting the ozone NAAQS; and submit a maintenance plan SIP revision, which includes a NOx RACT program as a contingency measure. In lieu of adopted NOx RACT rules, such a NOx RACT program may consist of an enforceable schedule and commitment by the Governor or his designee to adopt and implement the NOx RACT rules upon a specified, appropriate triggering event.

2. An exemption request based on both ambient monitoring and urban airshed modeling consistent with EPA guidance that shows additional NOx reductions would not contribute to attainment in the area. In this case, NOx RACT rules do not have to be included as a contingency measure of the maintenance plan.

SBP

For several reasons, the Act can be interpreted as not requiring the section 507 SBP submittal in order for EPA to approve a redesignation request. The SBP submittal is required regardless of whether there are any designated nonattainment areas within the State. In addition, the SBP is not a control measure intended to contribute to the emission reductions achieved by an area; rather it is a service provided to help small businesses comply with requirements of the Act. For the above reasons, EPA is interpreting the SBP as not being an applicable requirement for any specific nonattainment area that is seeking redesignation. However, EPA will continue to ensure that States make SBP submittals in a timely fashion.

Stage II Vapor Recovery

Stage II vapor recovery remains an applicable requirement for moderate ozone nonattainment areas until EPA promulgates onboard vapor recovery regulations. Section 202(a)(6) of the Act provides that once onboard regulations are promulgated, the Stage II regulations required under section 182(b)(3) are no longer applicable for moderate ozone nonattainment areas. Therefore, final redesignation for a moderate nonattainment area that occurs after EPA's onboard regulations are promulgated does not have to include a Stage II SIP control program. For redesignation requests that are submitted before EPA promulgates onboard rules and that do not include Stage II rules for moderate areas, Regional Offices may prepare rulemaking actions proposing to approve the redesignation, if appropriate, as long as final approval occurs after EPA promulgates onboard regulations.

IV. Coordination of SIP Submittals and Redesignation Requests

If the State elects to follow the approach above, the State should submit the SIP control program as described above along with the redesignation request and maintenance plan. The EPA will review the required SIP submittal(s) against EPA policy and guidance and in coordination with the redesignation request and maintenance plan. Approvability of the redesignation is directly related to the approvability of the SIP submittals (i.e., EPA is precluded from approving a redesignation to attainment if the SIP is not approvable).

As a general policy, a State may not relax the adopted and implemented SIP for an area upon the area's redesignation to attainment. States should continue to implement existing control strategies in order to maintain the standard. However, section 175A recognizes that States may be able to move SIP measures to the contingency plan upon redesignation if the State can adequately demonstrate that such action will not interfere with maintenance of the standard. The type of demonstration necessary is dependent upon the pollutant for which the area has been redesignated to attainment.

In order to make such a demonstration for an area redesignated to attainment for CO, EPA believes that the State could submit a revised control strategy demonstration showing that the measure is not necessary to maintain the standard. For ozone, the State would need to submit an attainment modeling demonstration consistent with EPA's current "Guideline on Air Quality Models," showing that the control measure is not needed to maintain the standard. The EPA intends to be very cautious in approving such revisions in cases where the control measures were implemented during the time the area attained the standard; the State's demonstration should indicate an ample margin of safety with respect to maintenance of the standard.

V. Conclusion

In summary, full adoption of all of the statutorily-required programs, as well as a schedule and an enforceable commitment for an implementation date, are necessary for redesignation to attainment from nonattainment for ozone or CO if the redesignation request is submitted after the statutory due date for the program. The few exceptions to this requirement are basic I/M, annual updates of VMT forecasts, and estimates of actual VMT, NOx RACT, and SBP.

If you have any questions, please contact Sharon Reinders at (919) 541-5284, or Annie Nikbakht at (919) 541-5246.

Attachments

cc: Air Branch Chief, Regions I-X
Kent Berry, AQMD
Rob Brenner, OAR
Mary Henigin, OAQPS
Alan Eckert, OGC
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Jan Tierney, OGC
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Dick Wilson, OMS

Attachment A

Criteria For Redesignation Under Section 107(d)

Section 107(d)(3)(E) of the Act states five criteria that must be met before the Administrator may redesignate an area to attainment. The criteria are:

1. The EPA has determined that the NAAQS have been attained.

2. The applicable implementation plan has been fully approved by EPA under section 110(k).

3. The EPA has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions.

4. The State has met all applicable requirements for the area under section 110 and part D.

5. The EPA has fully approved a maintenance plan, including a contingency plan, for the area under section 175A.

Attachment B

The EPA policies for implementing section 107 of the Act for redesignations are contained in the following memorandums.

1. "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, September 4, 1992.

2. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," John Calcagni, Director, Air Quality Management Division, October 28, 1992.

3. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992.

4. "Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992.

In the event that EPA does not approve the redesignation, the applicable I/M program requirements and guidance can be found in 57 FR 52950, November 5, 1992 and in 40 CFR part 51. The applicable VMT forecast guidance is described in the document entitled, "Section 187 VMT Forecasting and Tracking Guidance," January 1992.

OPERATING PERMITS PROGRAM

The Clean Air Act requires States to develop operating permit programs that meet the requirements of Title V of the Act. States were required to submit these programs to EPA by November 15, 1993. EPA has 60 days to determine if the program submittals were complete, and if so, 1 year to determine if the program submittals are approvable. In cases where States do not adopt approvable programs, the statute requires EPA to adopt and implement a federal permit program.

As of December 1, 1993, 31 States and a number of local agencies submitted operating permit programs to EPA for review. State agencies that have submitted programs to EPA are listed on the following pages.

Copies of a number of program guidance documents that the Agency has developed to guide permitting agencies in developing their program submittals are also provided. These guidance documents include the following:

- -Title V Program Approval Criteria for Section 112 Activities
- -Delegations Issues Concerning Sections 111 and 112 Requirements and Title V
- -Approaches to creating federally-enforceable emission limits
- -Guidance for Optional federally-enforceable emission limits based on Volatile Organic Compound Use
- -Reissuance of Guidance on Agency review of State Fee Schedules for Operating Permits Programs Under Title V
- -Definition of Regulated Air Pollutant for Purposes of Title V

January 10, 1994

STATUS OF OPERATING PERMIT PROGRAM SUBMITTALS

When Congress amended the Clean Air Act in 1990, it included a requirement in Title V for States and Territories to develop and implement operating permit programs. While programs must be implemented statewide, the Governor can designate local agencies to implement the program within portions of the State. Title V operating permit programs were required to be submitted to the EPA for review and approval by November 15, 1993.

As of November 30, 1993, 31 States and a number of local agencies submitted programs. Since then 3 additional States (Alabama, Hawaii, and Nevada) have submitted their programs.

The program submittals listed below have not yet been fully reviewed by EPA for either completeness or approvability. The listing merely indicates if a submittal has been made. The CAA gives EPA 60 days to determine if a program submittal is complete and 1 year to approve or disapprove the submittal. The CAA also requires that EPA implement mandatory sanctions within 18 months in those cases where States do not submit a program by the statutory due date. However, the subsequent submittal of a complete program would stop the sanctions clock.

States (and local agencies) which have submitted operating permit programs to EPA include:

EPA RO 1 NONE YET RECEIVED

EPA RO 2 NEW YORK, NEW JERSEY, PUERTO RICO, VIRGIN ISLANDS

EPA RO 3 WEST VIRGINIA, VIRGINIA, PENNSYLVANIA, AND DELAWARE

EPA RO 4 MISSISSIPPI, NORTH CAROLINA (INCLUDING PROGRAMS FOR 3 LOCAL AGENCIES - FORSYTH COUNTY, MECKLENBERG COUNTY AND WESTERN NORTH CAROLINA), SOUTH CAROLINA, FLORIDA, GEORGIA, 2 LOCAL PROGRAMS IN TENNESSEE: KNOX AND NASHVILLE/DAVIDSON COUNTIES, AND ALABAMA* (INCLUDING PROGRAMS FOR HUNTSVILLE AND JEFFERSON COUNTY*)

EPA RO 5 ILLINOIS, MINNESOTA, MICHIGAN, AND OHIO

EPA RO 6 TEXAS, NEW MEXICO (INCLUDING ALBUQUERQUE), LOUISIANA, AND ARKANSAS

EPA RO 7 NEBRASKA (INCLUDING OMAHA AND LINCOLN) AND IOWA

EPA RO 8 COLORADO, S. DAKOTA, AND WYOMING

EPA RO 9 18 OF THE 34 CALIFORNIA AIR DISTRICTS; ARIZONA (INCLUDING PIMA COUNTY, PINAL COUNTY AND MARICOPA COUNTIES); HAWAII*; AND NEVADA* (INCLUDING WASHOE COUNTY*)

EPA RO 10 IDAHO, OREGON (INCLUDING 1 LOCAL PROGRAM), AND WASHINGTON (INCLUDING 7 LOCAL AGENCIES)

* Submittals since last report

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

APR 13 1993

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

MEMORANDUM

SUBJECT: Title V Program Approval Criteria for Section 112 Activities

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

TO: Director, Air Division, Regions I-X

Under title V of the Clean Air Act (Act) and its implementing regulations published at 40 CFR part 70, States are required to submit operating permits programs to the Environmental Protection Agency (EPA) by November 15, 1993. Section 112 of the Act (hazardous air pollutants) contains several types of applicable requirements which are intended to be carried out by States as a precondition of their title V program approval. While the broad authority contained in most States enabling legislation should support the mandated program for section 112, States may find it necessary to take certain interim steps in order to incorporate section 112 requirements into title V permits. Although ongoing EPA rulemakings related to section 112 may ultimately affect the final response to such questions, several Regions and States have asked for guidance now to direct the development of title V operating permits programs submittals. This memorandum, with its attachment, is intended to respond to these requests based on the part 70 regulations and the general structure and requirements of section 112. However, the policies set out in this memorandum and its attachment are intended solely as guidance, do not represent final Agency action, and cannot be relied upon to create any rights enforceable by any party.

This memorandum defines current Agency policy for evaluating part 70 submittals with respect to section 112 requirements. Under this guidance, in order to obtain a full approval from EPA, the part 70 submittal needs to contain authority and/or commitments to assure the compliance of part 70 permits issued by the State, or by independent permitting authorities therein, with all applicable section 112 requirements. Specifically, the Attorney General's statement should certify that the State has authority to issue part 70 permits that assure compliance with all currently applicable requirements (including section 112 of the Act), and that the State will expeditiously adopt any new authority needed to implement future EPA section 112 requirements. Where general statutory authority to issue permits implementing section 112 is present, but the Attorney General is

unable to certify explicit legal authority to carry out specific section 112 requirements at the time of program submittal, the Governor may instead submit commitments to adopt and implement additional regulations as needed to issue permits that implement applicable section 112 requirements. The EPA will rely on these commitments in granting part 70 program approvals provided that the underlying legislative authority would not prevent a State from meeting the commitments.

As for part 70 program revisions, no formal amendment to the initial title V program should typically be needed with respect to section 112 requirements taking effect after the effective date of the program. The State's up-front commitment and demonstrations (i.e., legal authorities and mechanisms to adopt additional section 112 requirements) coupled with EPA's ability to review individual permits and to audit part 70 programs periodically should provide reasonable assurance of adequate State implementation.

The EPA will make reasonable efforts to communicate to States when additional legal, technical, and financial resources may be necessary to implement new section 112 requirements as they become applicable. The State, however, remains responsible for maintaining and enhancing as necessary its authority to implement section 112, including any new regulations. In light of the demonstrations and/or commitments required for part 70 approval, the EPA will presume that a State's request for approval of its operating permits program will be an implicit request under section 112(l) for delegation of authority to implement federally-promulgated section 112 requirements in the same form in which EPA issues them. In lieu of this arrangement, States can opt to establish specific delegations where needed. In the latter case, States should revise the implementation agreement with a schedule for the timely adoption of all EPA requirements promulgated after the time of program submittal.

Under the above approaches, there should be few concerns which would require the process in 40 CFR 70.4(i) to revise the part 70 program. This process involves public participation and publication in the Federal Register. An example of where this process might be needed would be a pattern of proposed permits which fail to assure compliance with a certain section 112 requirements due to a lack of State authority. In such a case a part 70 program revision may well be needed. The EPA will be prepared to veto any permit that does not assure compliance with the Act and part 70, as required in section 70.8(c) and call for appropriate correction to the State program.

The attached information summarizes the guidance for Regions to follow when reviewing State title V submittals for specific section 112 concerns. The attachment also provides, where indicated, the "current best advice" with respect to certain

future section 112 rulemakings as they may affect title V programs. Please note that States are responsible for implementing all applicable requirements of section 112, including making and enforcing the case-by-case maximum achievable control technology decisions under sections 112(i)(5), 112(g) and (j), as well as making any offset determinations required under section 112(g). The attachment also summarizes EPA's position regarding fee demonstrations and interim approvals for section 112 activities.

I trust this guidance will be useful. If you have any questions, please contact Karen Blanchard at (919) 541-5503 on section 112 concerns, Michael Trutna at (919) 541-5345 on how title V interfaces with section 112 requirements, and Kirt Cox at (919) 541-5399 on general approval criteria for title V programs.

Attachment

cc: J. Beale, OPAR
K. Berry, AQMD
E. Davies, OSWER
A. Eckert, OGC
E. Gilberg, OE
B. Jordan, ESD
J. Rasnic, SSCD
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ATTACHMENT - TITLE V APPROVAL CRITERIA FOR SECTION 112 ACTIVITIES

The following information summarizes the Environmental Protection Agency's (EPA's) guidance for evaluating title V program submittals due on or before November 15, 1993 as well as EPA's current best advice regarding future rulemakings under section 112 in relation to title V programs. The result of granting approval under title V is important because it confers responsibility on the State for implementing all section 112 requirements. Citations are to the regulations published at 40 CFR part 70.

SCOPE OF THE PROGRAM

States must issue part 70 permits to all major sources of hazardous air pollutants (HAP's) regardless of whether there is any section 112 standard or requirement which currently applies to such sources (section 70.3(a)). A source meets the definition of "major" in section 70.2 if its potential to emit is 10 tons per year (tpy) or more of any pollutant listed in section 112(b), or 25 tpy or more for a combination of these pollutants. A source that reduces its potential to emit HAP's below the major source threshold would eliminate the need to obtain a part 70 permit and to comply with section 112 requirements that apply only to major sources. Future EPA rulemakings may identify additional means beyond those identified in the proposed part 70 regulations (see 56 FR 21725 which identifies several mechanisms, including SIP limits and permit conditions taken under EPA approved new source review and operating permits programs) for sources to reduce their potential to emit HAP's.

Under the final title V regulations, States may grant a temporary exemption to nonmajor part 70 sources (other than acid rain-affected sources and municipal waste incinerators) from the requirement to obtain a part 70 permit, including any nonmajor sources subject to section 112 standards in existence on July 21, 1992. The Agency intends to propose through rulemaking within 4 years of the first EPA-approved permit program whether to continue some exemption opportunity for these sources. The need to permit additional nonmajor sources which become subject to section 112 standards promulgated after the final part 70 regulations will be determined at the time a new standard is promulgated. In addition, EPA may at a later date establish lesser quantity emission rates for some or all HAP's under section 112(a) which increase the number of major sources which are required to have part 70 permits.

LEGAL AUTHORITY

Under this guidance, in order to obtain a full approval from EPA, the part 70 submittal needs to contain authority and/or commitments to assure the compliance of part 70 permits issued by the State, or by independent permitting authorities therein, with

all applicable section 112 requirements. Specifically, the Attorney General's statement should certify that the State has authority to issue part 70 permits that assure compliance with all currently applicable requirements (including section 112 of the Act), and that the State will expeditiously adopt any new authority needed to implement future EPA section 112 requirements. Where general statutory authority to issue permits implementing section 112 is present, but the Attorney General is unable to certify explicit legal authority to carry out specific existing section 112 requirements at the time of program submittal, the Governor in the part 70 program submittal may instead submit commitments to adopt and implement additional regulations as needed to issue permits that implement section 112 requirements. The EPA will rely on these commitments in granting part 70 program approvals, provided that the underlying legislative authority would not prevent a State from meeting the commitments.

The approach with regard to part 70 approvals should minimize the need for part 70 program revisions. Part 70 merely requires States to have authority to incorporate applicable requirements into part 70 permits, and to issue permits that assure compliance with those applicable requirements. Part 70 does not, however, dictate or restrict the legal mechanisms by which States may accomplish this result. The availability of particular mechanisms will likely be determined by the legal regime of the individual State. A State may, by virtue of its own legal regime, be required to seek formal delegations from EPA for each section 112 requirement before it can incorporate those requirements into permits (this mechanism reflects the historical practice in many States that have chosen to implement and enforce section 112 standards). Where the State does make use of recurring delegations from EPA in order to meet the part 70 requirement, these delegations will not in the normal course require a concomitant revision to the part 70 program.

States may alternatively possess mechanisms to satisfy this part 70 requirement that do not involve separate delegations from EPA for each section 112 requirement. For instance, State law may allow incorporation of a Federal standard directly into the part 70 permit without any interim steps to adopt the standard as State law or to seek formal delegation of that standard from EPA. The EPA would also consider this approach sufficient to meet the ongoing part 70 obligation for States to have adequate authority to implement through permits the applicable requirements of section 112.

Delegation agreements for all section 112 requirements can also be established on an automatic basis at the time of part 70 program approval. This approach can greatly improve the efficiency of program transfer. Accordingly, EPA will presume that in light of the required demonstration and/or commitments

required for part 70 approval, a State will automatically implement each new requirement unless the State advises EPA to the contrary. The EPA may request a review of individual State actions to ensure that the needed legal authority and/or technical capabilities are in place at the State level in time for their use in the part 70 permit process. Such evaluations should be limited to the exceptional case where EPA has strong reasons to believe that legal and/or resource problems exist. In lieu of general or automatic delegation arrangements, the State could opt to meet its obligations under part 70 by establishing a delegation agreement for each specific source category as discussed above.

SECTION 112(d),(f),AND (h) - EPA EMISSIONS STANDARDS

All National Emission Standard for Hazardous Air Pollutants (NESHAP) standards, maximum achievable control technology (MACT) standards, and residual risk standards must be incorporated and implemented within the part 70 permit. When required under specific standards, generally available control technology (GACT) standards must also be implemented within the part 70 permit. As described above, States are charged with acquiring all necessary legal authorities in order to guarantee this result and identifying a mechanism that ensures the timely acquisition of authority for future EPA standards. Under the part 70 rules, States must specifically agree: (1) not to issue any permit [or permit revision addressing any emissions unit subject to a newly promulgated section 112 standard] unless it would assure compliance with all applicable section 112 standards [section 70.6(a)(1)], and (2) to reopen part 70 permits which have 3 or more years remaining before their expiration date to incorporate any newly promulgated standard [section 70.7(f)(1)(i)]. The implementation agreement should be revised to contain specific milestones for timely State acquisition of any needed authority or capability to implement standards to prevent any unreasonable delay in permit issuance (i.e., in no event longer than 18 months after receipt of a complete application for any permit action).

GENERAL PROVISIONS

The implementation of all current NESHAP standards and future MACT (and residual risk) standards includes the implementation of any "general provisions" that EPA develops for these standards. Initial title V approval must assure that States will carry out these provisions as in effect at the time of any permit issuance or revision. States should be aware that EPA will soon be preparing revisions to the general provisions and that they may have to update their implementation authorities in accordance with EPA's rulemaking.

Revisions to the general provisions will contain (as do the existing general provisions) compliance-related requirements that supplement the compliance requirements specified in individual standards. These general provisions will also establish definitions and administrative procedures to make applicability determinations, grant compliance extensions, and perform preconstruction review and approval for new and reconstructed sources to assure compliance with applicable, promulgated standards, among other functions. Future EPA rulemakings may supplement the general provisions for new section 112 standards and programs by further clarifying how and when sources may limit their potential to emit toxic pollutants below major source threshold levels.

SECTION 112 (g) - CASE-BY-CASE MACT FOR MODIFIED/CONSTRUCTED AND RECONSTRUCTED MAJOR TOXIC SOURCES

The EPA anticipates that section 112(g) will involve a preconstruction review program with the subsequent incorporation of its results into the part 70 permit. The EPA expects States to implement this program fully.[1] Therefore, in order to obtain approval of a title V program, a State must commit to have authority to make all required section 112(g) determinations as well as subsequently to incorporate them into the part 70 permit.

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[1]The preamble to the proposed operating permits rule stated that States must have authority to "implement and enforce" certain section 112 provisions, including authority to "develop and enforce case-by-case determinations of MACT for new, reconstructed, or modified sources where no applicable emissions limitations have been yet established (112(g))." 56 Fed. Reg. 21722. The EPA believes that, for section 112(g), this is the proper interpretation of the State's duty under section 502(b)(5)(A) to have authority to assure compliance with all applicable requirements. The EPA interprets the phrase "the Administrator (or the State)" (referring to the entity responsible for making case-by-case determinations) in sections 112(g) and (j) to be a reference to the title V permitting authority. That section 112(g) is triggered on the effective date of the title V program further supports this reading of Congressional intent. This interpretation also is reasonable in that the title V permitting process will provide important information to the permitting authority implementing section 112(g). The EPA expects this benefit will begin to manifest itself even before sources are issued permits, as they will be required to assess and report emissions-related data in their permit applications.

In addition, the State must, on the effective date of the program, be able to implement section 112(g) in accordance with EPA regulations. If EPA's rulemaking to implement section 112(g) is not then final, the State must still implement section 112(g) since this program is triggered by the effective date of the part 70 program. In such cases, EPA expects to work closely with the State in making required section 112(g) determinations, including providing to the State the use of centralized EPA data bases and exploring with the State the possible use of general permits to establish a presumptive MACT for certain qualifying source categories.

SECTION 112 (i)(5) - EARLY REDUCTIONS

Each State must have adequate legal authority upon the effective date of its part 70 program to carry out EPA's final rule to implement section 112(i)(5) within the part 70 program. Section 112(i)(5) requires that States implement fully the requirements of the provision as part of its title V program. In the absence of an approval of a more stringent program under section 112(l), in designing federally enforceable permit conditions under the early reductions program, States may be more stringent only to the extent that requiring a greater than 90 percent emissions reduction for organic HAP's or 95 percent emissions reduction for particulate matter HAP's. The State may also opt to take temporary delegation of EPA's program for permitting sources that have entered into enforceable commitments under section 112(i)(5), if such a program is promulgated prior to the effective date of the part 70 program.

SECTION 112(j) - CASE-BY-CASE MACT HAMMER

Section 112(j) requires that the permitting authority perform case-by-case MACT determinations in the context of issuing title V permits to categories of sources for which EPA has failed to meet by more than 18 months the regulatory schedule established under section 112(e). Therefore, to obtain approval of a part 70 program, States must first have authority upon submittal of their part 70 program to require applications from sources subject to section 112(j) within 18 months after a missed deadline. A commitment is also needed from each State that it will obtain sufficient legal authority in a timely manner to make any required section 112(j) case-by-case determination and to incorporate it into a part 70 permit. Specific legal authority to implement and enforce limits as needed can be obtained on a source category basis for those sources and pollutants which are subject to the section 112(j) hammer requirement before permit issuance is required of the State under part 70. A revision to the part 70 program would not be necessary, provided that the State has made the general commitment to issue permits which

assure compliance with section 112 and any implementing regulations. States can, of course, also meet their part 70 responsibility by adopting a general legal authority to establish case-by-case MACT consistent with any final EPA rulemaking setting for the requirements of section 112(j).

SECTION 112(l) - STATE AIR TOXICS PROGRAMS

The applicable requirements, including those of section 112, must each be included in part 70 permits and enforced (as necessary) by the State. States are free under sections 116, 506(a), and 112(d)(7) to be more stringent than Federal requirements as a matter of State law. However, any additional State restrictions will in general be identified in the part 70 permit as not being federally enforceable [section 70.6(b)(2)]. Future rulemaking under section 112(l) could allow States to establish alternative terms in the part 70 permit which would be no less stringent than the corresponding requirement in section 112 and, once approved, would be federally enforceable in lieu of the section 112 requirement.

Future guidance to implement section 112(l) will provide additional insight into the available options for delegation of section 112 standards, including where the State proposes to implement the Federal standards exactly as promulgated by EPA (see previous discussion in **Legal Authority**).

SECTION 112(r) - ACCIDENTAL RELEASE PLANS

States must demonstrate adequate legal authority to assure compliance with the applicable requirements of section 112(r) for any source subject to part 70. In order to qualify for full approval of their part 70 submittal with respect to section 112(r), a State must have legal authority sufficient to: (1) determine whether a part 70 source is obligated to register and submit a risk management plan; (2) secure verification from part 70 sources that any required submittal was prepared and submitted to appropriate authorities (permit authority, EPA, and/or another State authority);[2] (3) obtain annual certifications from these sources as to whether their risk management plans are being properly implemented; and (4) include the obligation to submit such a plan in accordance with a compliance schedule in the part

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[2]States must identify the group in the State (if not the permitting authority) which has been designated to receive the risk management plans for part 70 sources in accordance with section 112 (r).

70 permit for any source failing to make its required plan submittal.

States can opt to implement more of this program through part 70 permits, but States are not encouraged to put the actual plan in the part 70 permit. In its demonstration of adequate resources, a State must account for the costs associated with the requirements listed above. The costs incurred from any other permit review and subsequent oversight of these plans that is accomplished within the permit program must also be addressed.

RESOURCE ADEQUACY

A State's submittal must contain demonstrations that adequate resources will be available to implement its part 70 program [section 70.4(b)(8)]. In general, section 112 requirements, to the extent they are carried out through title V permiting, must be supported by title V permit fees. These requirements would include activities related to determinations, incorporation and implementation of any standards under section 112(d), (f) and (h), and case-by-case MACT requirements under sections 112(g) and 112(j), and oversight of accidental release plans (to the extent required in the permit). The test for initial approval of a part 70 program is that sufficient fees must be collected to cover the costs of program implementation, including all section 112 requirements (section 70.9(b)). The EPA in reviewing a State's permit fee program submittal will generally presume that it is adequate if the State would collect in aggregate, revenues greater than the $25/tpy (1989 basis) presumptive fee schedule. After the program is launched, adjustments to any approved fee schedule can be required by EPA if poor implementation is linked to inadequate resources.

Some States may, instead of relying on the presumptive approach, opt to make a detailed showing that the indirect and direct costs of their permits program will be offset from fee revenues. Other States may be required to do so if compelling evidence exists that the presumptive fee schedule is inadequate (i.e., prediction of actual program costs are higher than the revenue programs which would be obtained using the presumptive fee schedules). In addition, a detailed demonstration would be required where a State is trying to demonstrate the adequacy of a fee schedule which is less than the presumptive one. States, in making detailed fee demonstrations, should be aware of the additional complexity associated with toxics programs. For example, development of emissions estimates, measurement strategies, and control technologies is much more contaminant specific. For further discussion, please contact Karen Blanchard at (919) 541-5503.

INTERIM APPROVAL

Other issues dealing with title V program approval concern when and how the concept of interim approval would be appropriate. Under part 70, the State may be able to defer applicability of the part 70 program to certain source categories and obtain interim approval. However, the EPA views the source category-limited option as a grant of extraordinary relief available only for States that substantially meet the source coverage requirements of part 70 but that, for compelling reasons, fall short of the source coverage necessary for full approval. All permits that are issued within the interim program must address all applicable requirements, including all section 112 requirements [section 70.4(d)] [but not title VI requirements] that apply to sources subject to the interim program. Therefore, a source must be totally exempted from title V coverage under an interim program to avoid incorporation of section 112 requirements into a title V permit. (Notwithstanding, any exempted source would remain subject to applicable MACT and NESHAP standards.) Of course, this could occur only the extent that the interim program nevertheless "substantially meets" the source coverage requirements of part 70.

Another issue related to interim approval concerns the trigger for making section 112(g) determinations. Section 112(g) provides that such determinations must be made for source modifications upon the effective date of a title V program, including interim programs. States should assume, in the case of interim programs, that the section 112(g) responsibility is triggered for only those sources covered by the interim approval. This is consistent with the obligation of only sources covered by the interim program to submit applications. However, EPA will not grant interim approval where the proposed program would fail to cover certain major source categories solely on the grounds that applying section 112(g) to these sources would be too burdensome.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

DEC 10 1993

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

MEMORANDUM

SUBJECT: Straight Delegations Issues Concerning Sections 111 and 112 Requirements and Title V

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

TO: Director, Air, Pesticides and Toxics Management Division, Regions I and IV
Director, Air and Waste Management Division, Region II
Director, Air, Radiation and Toxics Division, Region III
Director, Air and Radiation Division, Region V
Director, Air, Pesticides and Toxics Division, Region VI
Director, Air and Toxics Division, Regions VII, VIII, IX, and X

Several questions have been raised concerning the ways in which authority to implement and enforce sections 111 and 112 requirements exactly as promulgated by EPA (i.e., "straight delegations") can now be delegated to the States, both independent of and in conjunction with State part 70 operating permits programs being developed to meet the requirements of title V. This memo and its attachment, my April 13, 1993 memorandum ("Title V Approval Criteria for Section 112 Requirements"), and the final section 112(l) rules should be taken as Agency policy regarding straight delegations of these requirements. This guidance, however, does not represent final Agency action and cannot be relied upon to create any rights enforceable by any party. Approval of State requirements that differ from and are no less stringent than section 112 requirements are addressed in EPA's recently signed regulations to implement section 112(l).

Some of the key points found in the attachment are summarized as follows:

1. The Environmental Protection Agency's (EPA) ability to delegate section 112 requirements to States is now governed by the new section 112(l) rulemaking process added by the Clean Air Act Amendments (CAAA) of 1990. The approval of a part 70 operating permits program provides an excellent opportunity for

States to receive concurrent EPA approval under section 112(l) of a "mechanism" by which straight delegation of section 112 requirements, as they apply to sources covered by the permitting program, can occur expeditiously. The detailed procedures comprising this mechanism and the responsibilities of each party should be specified in a title V implementation agreement or other memorandum of agreement (MOA). (For the purposes of this memorandum and attachment, the term "MOA" will refer to the specific agreement used by a State and associated EPA Regional Office for establishing specific procedures to implement the section 112 delegations process, regardless of whether this agreement is in the form of a title V implementation agreement or a more general MOA between the State and the Region.) This approval will eliminate the need to conduct a section 112(l) rulemaking for each new requirement that applies to these sources. In addition, this rulemaking should presumptively accomplish section 112(l) delegation for any currently applicable section 112 requirements which are delegatable, still undelegated, and applicable to sources covered by the State's part 70 permit program. As noted in paragraph number 4 below and discussed in the attachment there may be certain exceptions to this (see question 6). It may also be possible for this rulemaking to provide for partial delegation of certain information-receipt responsibilities for some future section 112 requirements, as long as the details of this delegation are agreed to in an MOA, and the State has the ability to obtain necessary enforcement authority on a timely basis.

2. Until the time of part 70 approval or in cases where sources not subject to the part 70 program are covered by a section 112 requirement, Regions can, in many instances, effectively transfer much of the technical and administrative burden of implementing and enforcing a particular standard by establishing an MOA with the State. Alternatively, the Region can delegate responsibility for section 112 requirements by accomplishing notice and comment rulemaking under section 112(l)(5) in the most efficient manner. Possible approaches include use of "direct final" actions, where appropriate, and programs which prospectively deal with delegation of section 112 requirements.

3. The options for delegation of section 111 standards prior to the 1990 CAAA remain available to the States and EPA since the language in section 111(c) was not changed. Again, the title V program approval provides an excellent new opportunity for delegation.

4. States must acquire any new legal authority as needed to implement the applicable requirements of sections 111 and 112 on a timeframe sufficient to assure timely issuance or revision of part 70 permits. For applicable requirements existing at the time of the State's part 70 program submittal, the State must

demonstrate adequate existing legal authority to implement these requirements presumptively by the effective date of the part 70 program. Under certain circumstances, a State may negotiate with the Region a later date for acquiring such responsibility for a particular standard. This approach will be acceptable only if it is consistent with the timely phase-in of the part 70 program, and if the State presents a detailed implementation strategy convincing the Region that the necessary legal authority will be secured consistent with its strategy.

5. There is no immediate need for a State to obtain delegation for a standard which currently applies to sources not in that State. However, the State and Regional Office should develop a strategy describing how new sources of this type will be addressed without delaying issuance of their part 70 permits.

6. The EPA anticipates that States will accept full delegation to implement and enforce applicable sections 111 and 112 requirements for all major and nonmajor sources subject to them. Some States have requested that EPA partially delegate certain sections 111 or 112 requirements on the basis of source coverage. This would be done by withholding delegation of requirements as they apply to nonmajor sources and retaining this responsibility for EPA implementation. The EPA Regions can consider such requests on a case-by-case basis but this type of delegation should be reserved for those rare cases where a State can demonstrate that the approach would still meet the requirements of title V (e.g., a standard clearly applies in part to a set of smaller sources which are not potentially subject to part 70).

The responses contained in the attachment have been previously coordinated with your staff and will be placed on the Technology Transfer Network bulletin board. If you have any further questions on title III/title V delegation concerns, please contact Michael Trutna at 919-541-5345, Rich Damberg at 919-541-5592, or Julie Andresen at 919-541-5339. For other title III issues not involving title V, please contact Karen Blanchard, who is managing the effort to guide the implementation of section 112, at 919-541-5647.

Attachment

cc: K. Berry
B. Jordan
A. Schwartz
L. Wegman

ATTACHMENT

QUESTIONS AND ANSWERS TO STRAIGHT DELEGATION ISSUES CONCERNING SECTIONS 111 AND 112 REQUIREMENTS AND TITLE V

1. How can "straight delegation" (i.e., where the State will implement and enforce the requirement exactly as promulgated by EPA) of section 112 requirements be accomplished before and after the approval of a part 70 program?

a. Section 112(l) Rulemaking Required for Future Delegations

Section 112(l) of the Clean Air Act (CAA) provides the mechanism for approval of programs for the delegation of Federal standards and programs to the States: "A program submitted by a State under this subsection may provide for partial or complete delegation of the Administrator's authorities and responsibilities to implement and enforce emission standards and prevention requirements. . . ." This language in section 112(l) was enacted in 1990 and replaces that formerly found in section 112(d). Thus, section 112(l) now provides the exclusive pathway for delegation of section 112 requirements. Section 112(l)(5) prescribes the specific requirements for EPA approval, following notice and comment rulemaking, of State air toxics programs addressing, among other things, delegation of standards. There is no basis to distinguish this rulemaking in its application to pre-1990 section 112 standards versus its application to the "new" standards and programs. As a result, this rulemaking requirement applies to all future section 112 delegations, regardless of whether they are for new MACT standards, infrastructure programs (such as those in sections 112(g) and (j)), or pre-1990 NESHAPS for which a State failed to take delegation in the past.

Once a State's part 70 program has been approved, the State typically will not have to submit a separate request for approval under section 112(l) for straight delegation of section 112 requirements which apply only to sources subject to the part 70 program. A separate request is presumptively not needed for two main reasons: 1) meeting part 70 approval requirements will suffice in meeting the section 112(l) approval requirements, and 2) approval of a part 70 program confers the responsibility to implement and enforce all "applicable requirements" of section 112 for sources subject to the part 70 permit program. The extent to which a part 70 program meets the requirements of section 112(l) is further discussed in section (d).

States will need to take additional steps to receive "straight delegation" of section 112 requirements which apply to sources not covered by that State's part 70 program. For many States, only major sources will initially be subject to the part 70 program. As a result, certain sources subject to section 112

requirements will not face part 70 permitting obligations, including area sources deferred from permitting requirements in the part 70 rule, area sources deferred from permitting by specific section 112 standards (e.g. dry cleaners), or sources subject to the 112(r) accidental release program but not required to obtain a part 70 permit.

There are two primary options for obtaining delegation of requirements as they apply to sources not subject to the part 70 permit program. Both involve section 112(l) rulemaking. The most administratively streamlined rulemaking option is for a State to submit a request to EPA for approval of a program for "straight delegations" under subpart 63.91 of the 112(l) rule. Here EPA would conduct a 112(l) rulemaking which would provide for public notice and comment on the State's proposed program for receiving straight delegation from the EPA for section 112 requirements as they apply to sources outside the part 70 permit program. Under this program, States would then, without further rulemaking, receive delegation for specific section 112 requirements upon their request in accordance with the memorandum of agreement (MOA) between the State and EPA.

The second rulemaking option would involve separate submittals from the State requesting delegation of specific section 112 requirements as they apply to sources not required to obtain a part 70 permit. The EPA would need to conduct a 112(l) rulemaking for each individual State request, although "direct final" rulemakings could be used wherever appropriate [the "direct final" process is discussed in section (b)]. Separate section 112(l) rulemakings may be appropriate for expedited delegation of section 112 requirements promulgated before the State receives part 70 program approval (e.g., degreasing National Emissions Standard for Hazardous Air Pollutants (NESHAP), the Hazardous Organic NESHAP, chrome electroplating NESHAP, and cooling towers NESHAP).

Both of these rulemaking options require submittal of State demonstrations that the State has adequate legal authority, resources and an expeditious schedule for implementation. The content of these submittals is discussed in section (c).

Another option, one which does not constitute section 112(l) rulemaking but can provide quick transfer of many implementation responsibilities to States, involves the expanded use of MOA's. Where a section 112(l) rulemaking is not practical (e.g., short time before part 70 approval expected), EPA can still enter into an MOA with a willing State to transfer the effective workload of a particular section 112 requirement. These MOA's, which can be similar in form to the pre-1990 delegation practices under section 112(d), can be used to contract with the State to perform the technical and administrative implementation of the requirement (and enforcement as well if the State has adequate

legal authority to enforce in State court). However, an MOA cannot, standing alone, be the basis for a formal delegation under section 112(l). Therefore, while this approach is potentially valuable in certain situations, it would not serve to formally delegate a section 112 requirement and so would not, for example, allow the State to replace EPA as a point of receipt for required reports or other information. The EPA Regions and States must weigh the relative merits associated with this use of MOA's as compared with delegations accomplished by section 112(l) rulemaking before selecting the most appropriate means for implementing a particular section 112 requirement.

b. Nature of Section 112(l) Rulemakings by EPA

Procedurally, section 112(l) requires a State submittal of a request for approval, notice in the Federal Register that EPA has received a request for approval, a public comment period of at least 30 days, and notice in the Federal Register that EPA has approved or disapproved the request. The content of the EPA rulemaking to transfer the responsibility to implement and enforce section 112 requirements as promulgated can vary widely. As discussed in section (d), the substance of a section 112(l) notice can be extremely short where implementation in large part depends on the adequacy of resources and legal authority otherwise required under the part 70 permit program. Where the State intends to implement and enforce the section 112 requirement as promulgated by EPA, this notice and comment rulemaking, even where it cannot be combined with the part 70 approval process, can also be expeditiously accomplished in many cases.

One approach available to expedite future straight delegations outside of a part 70 program approval is based on EPA's ability to approve a program for the delegation of section 112 requirements as promulgated. Such an approval would have a prospective effect in that it would obviate the need to repeat the notice and comment procedures of section 112(l)(5) for each delegation. The function of this rulemaking is to take comment on a mechanism for the transfer of section 112 responsibilities from EPA to the State, as well as on the State's general authority and resource strategy to implement that mechanism. The proposed section 112(l) approval notice would discuss the delegations mechanisms proposed by the State and would include a finding that the State has the broad statutory authority necessary to implement the mechanism, as well as a finding that the State now has or will be able to obtain the resources necessary to implement and enforce section 112 requirements.

The approval of a program for straight delegation of section 112 requirements must also be accompanied by an MOA between EPA and the State which details the mechanism for transfer of responsibilities. Options for structuring such an agreement are

essentially those that existed prior to the 1990 Amendments, as described in the Good Practices Manual. The MOA must also establish some method of continuing oversight, so that EPA can continue to assure that the criteria of section 112(l)(5) are met. If the State fails to meet these criteria subsequent to approval of a program for straight delegations because it was unable to meet its commitment to provide adequate resources, the auditing and withdrawal mechanism in the section 112(l) regulations would allow EPA to withdraw approval for all or part of the program.

The approval of a program for straight delegation and the actual delegation of existing section 112 standards are not mutually exclusive. A section 112(l) approval can accomplish both simultaneously if the State wishes to structure the approval in that way. Accordingly, as part of any program for straight delegations, a State that wishes to establish any delegations for specific requirements under section 112(l) or modify any delegations approved in the past might submit documentation of adequate authorities, resources, and expeditious schedule for section 112(l) at the same time it submits a request to EPA for the program authorizing straight delegations. Alternatively, a State could obtain approval of a program for straight delegations and then accomplish those same specific delegation actions pursuant to that program.

Where a prospective program is not chosen, the direct final rulemaking approach may be a procedural streamlining mechanism available for accomplishing certain straight delegations. In general, direct final rulemaking is more likely to be appropriate where the only action being noticed is the delegation of a single section 112 standard. In situations where EPA does not expect any adverse comment upon publication of a notice of approval, the notice can specify that the approval would become effective in 30 days unless adverse comments were received. If adverse comments were received, then EPA would have to re-propose the approval and provide for a 30-day comment period. The time and resource savings from this use of the direct final approach would thus depend on the correctness of the Agency's judgement regarding whether or not any adverse comments would be submitted. For a more complete discussion of the direct final procedure, see 47 FR 27073 (June 23, 1982).

The content of the Federal Register notice accomplishing a straight delegation under section 112(l) can also be very brief. It can be as simple as a re-statement of EPA's findings concerning the adequacy of statements and/or demonstrations contained in the State's submittal. The contents of State submittals are discussed in the next section.

As part of the approval for either the delegation of a particular standard or of a program for straight delegation, the

Region may consider the appropriateness of one or more partial delegations which would allow the State to become the point of receipt for notices and reporting required prior to the compliance date for a particular section 112 standard or requirement. Such a partial delegation would precede the more complete delegation that would occur once the State gains the ability to fully implement and enforce the standard. The partial delegation of information-receipt responsibilities may avoid redundant reporting where the State will be the primary enforcer of the standard, as will be the case, for instance, for sources covered by a part 70 program. In the case of approval of a program for straight delegations, the availability of this type of partial delegation should be detailed in the MOA that accompanies the program approval.

Regions must make case-by-case judgements as to the appropriateness of such a partial delegation based upon the nature of the particular standard and the likelihood that the State will be able to implement and enforce the standard for all covered sources on a timely basis. The shifting of information-receipt responsibilities would not be appropriate, for example, where the State's schedule for obtaining enforcement authority may result in sources reaching the compliance deadline before the State is able to enforce the standard. To guard against this possibility, any such partial delegation should be accompanied by an MOA which assures the Region that notices and reports received by the State will be transferred to the Regional Office if the State anticipates it will not be able to enforce the standard on a timely basis.

c. State Submittals Required for Straight Delegations of Section 112 Requirements

The EPA will consider a State's submittal for a part 70 operating permits program to be also an implicit request for approval of a program for delegation of all section 112 requirements as they involve applicable requirements for sources covered by the State's part 70 program (see next section). In order to take delegation of section 112 requirements for other sources, a State will need to provide EPA with a separate submittal pursuant to one of two options described in this section.

A submittal for approval of a program for the delegation of section 112 requirements as promulgated by EPA must meet the criteria in section 63.91(b). However, the content of a submittal for approval of such a program will necessarily be less detailed than a submittal for delegation of a specific requirement, since the subject of a program approval will be a more general mechanism for future delegation actions. As noted in the previous section, the primary purpose of a program approval is to provide for notice and comment on a mechanism for

the future transfer of section 112 standards as promulgated. The State must therefore indicate in its submittal the type of mechanism (e.g., automatic or case-by-case delegation) it intends to use to accept delegation. The details of this mechanism will be established through the MOA between the State and EPA. A demonstration of authority to implement and enforce a particular requirement will occur at the time of delegation of that requirement pursuant to the MOA. In the case of a request for approval of the 112(r) accidental release program as promulgated by EPA, the State must also submit information necessary to meet the approval criteria specified in section 63.95.

For approval of a program for straight delegations, the State, pursuant to section 63.91(b)(1), must submit an opinion from the State Attorney General (for local agencies, a similar representative) demonstrating that it has the broad legislative authority necessary to implement the chosen mechanism for delegation. Authority to implement a particular standard need not be demonstrated as part of the opinion, although general enforcement, inspection, and information gathering authority required by section 63.91(b)(1) must be demonstrated. Once a State has obtained approval of a program for straight delegations, the EPA will not require additional Attorney General opinions for each delegation accomplished pursuant to that program.

Section 63.91(b)(3) requires a demonstration of resource adequacy and certain descriptions of State agency organization. Here, the State submittal should include descriptions of current organization as appropriate, as well as a description of how the State plans to obtain and maintain adequate resources to implement delegations that occur pursuant to the approved program. As with the requirement for adequate authority, a demonstration of adequate resources to implement a particular requirement should accompany requests for delegation performed pursuant to the program. The content of this more specific demonstration should be detailed in the MOA and can be relatively brief, consistent with prior practice under the 1983 Good Practices Manual.

The remaining criteria in section 63.91(b) concern demonstrations associated with the delegation of particular requirements. For example, section 63.91(b)(2) requires submittal of copies of all statutes, regulations, and other material granting authority to implement and enforce the requirement. Sections 63.91(b)(4) and (5) require submittal of plans for expeditious implementation and enforcement, respectively, of the section 112 requirement. These demonstrations should be provided for in the MOA that accompanies the program approval, so that EPA can ensure that these criteria are met at the time each section 112 requirement is delegated and on a continuing basis for as long as the State retains approval

of the program. However, consistent with the prospective nature of such a program for straight delegations, these demonstrations will not require the repetition of a rulemaking under section 112(l)(5).

State submittals requesting delegation for individual section 112 requirements (the second option discussed in the previous section) must also meet the criteria set forth in section 63.91(b) of the section 112(l) regulation. (Requests for approval of programs to implement section 112(r) requirements as promulgated by EPA must also meet the approval criteria specified in section 63.95.) Here section 63.91(b)(1) requires an opinion by the State Attorney General stating that the State has the necessary legal authority to implement and enforce the section 112 requirement exactly as promulgated by EPA, as well as require compliance by applicable sources with all emission limits, test methods, and reporting and monitoring requirements specified in the Federal requirement. The State must also demonstrate that it has adequate legal authority to bring enforcement actions against noncomplying sources in State court.

Section 63.91(b)(3) requires in the case of a specific section 112 requirement that the State show it has adequate resources to implement and enforce the applicable section 112 requirement. A statement of resource adequacy should suffice where the State has had experience regulating similar sources through an existing State requirement. In other cases, the State should show that the estimated workload for implementing and enforcing the standard does not exceed available resources (including any grants provided by EPA for non-part 70 activities).

The EPA wishes to clarify that, in requiring section 112(l) submittals to have enforcement authority required by section 70.11, section 63.91 implicitly recognizes the same interim flexibility as would be the case for a State seeking approval of a part 70 program. Just as a State may receive interim approval under part 70 for up to two years if its enforcement authority "substantially meets" the requirements of section 70.11, a State may receive approval of a section 112(l) program under the same circumstances and subject to the same restrictions if its enforcement authority "substantially meets" these criteria. Were this not the case, a State could obtain approval of a part 70 program, be required to implement and enforce all section 112 requirements at part 70 sources, and yet not be able to receive formal delegation from EPA to implement and enforce those same requirements. This intent of the section 112(l) rule is evidenced by statements in the preambles to the proposed and final rule that a State submittal meeting part 70 criteria would also meet the criteria for section 112(l) approval. See, e.g., 58 F.R. 29299 (May 19, 1993), and 58 F.R. 62271 (November 26, 1993).

d. Relationship to Part 70 Program Approval

In order to obtain approval of a part 70 operating permits program, a State is obligated to incorporate all section 112 applicable requirements into permits and assume the primary responsibility for enforcing these requirements. The part 70 submittal (see April 13, 1993 memorandum entitled "Title V Approval Criteria for Section 112 Requirements") must guarantee this result by containing an Attorney General's statement of adequate legal authority and/or commitments by the Governor to adopt and implement additional requirements as needed to assure timely issuance or revision of part 70 permits which implement in part these section 112 requirements. The EPA, therefore, considers the approval of the part 70 program to be an excellent contemporaneous opportunity to approve a program for straight delegations under section 112(l), to the extent that it applies to sources subject to the permit program.

The approval notice addressing section 112(l) can be extremely brief and can largely rely on the demonstrations required for part 70 approval. This is because the part 70 approval will consider essentially the same approval criteria with respect to legal authority and resource adequacy required to be met under section 112(l)(5) and will provide an adequate opportunity for oversight of future State actions to implement and enforce section 112 requirements at part 70 sources. Because part 70 approval is conditioned on a State's ability to implement and enforce section 112 requirements for sources subject to the part 70 program, EPA will treat the request for approval under part 70 as a request under section 112(l) for approval of a program for straight delegation of all section 112 requirements applying to part 70 sources subject to the permit program. The EPA will so indicate this position in notices proposing to approve the part 70 program. Unless a State specifically requests otherwise, EPA intends to establish this program for prospective straight delegations at the same time that a part 70 program would become effective for that State. This same rulemaking could also accomplish straight delegations for any existing section 112 applicable requirements for which the State had not yet taken delegation.

As discussed in section (b) above, the approval of a program for straight delegations may also, for certain standards, allow for the partial delegation of information-receipt responsibilities prior to the delegation of enforcement responsibilities. Such partial delegations may be particularly useful where there is some delay between Federal promulgation and the time when the State is able to enforce the Federal Standard. This will sometimes occur in the context of the part 70 program. In these cases, partial delegation of the information-receipt responsibilities with regard to part 70 sources may facilitate the permitting of these sources, while reducing the reporting

burden. As noted in the preceding discussion, partial delegations of this sort will not be appropriate in all instances, and should not be undertaken unless there is assurance through an MOA that any information received by the State will be timely transferred to EPA where EPA will carry an enforcement responsibility for any period of time. This understanding can be included within the more comprehensive part 70 implementation agreement.

One additional concern relates to the timing sequence of these two rulemakings. Section 112(l)(5) requires that EPA's notice and comment rulemaking occur within 6 months of a complete State submittal, while the rulemaking in response to a part 70 submittal by a State needs to occur within 12 months of a complete State submittal. Although approval under section 112(l) in not necessarily a precondition for part 70 approval, a State may want to propose the two rulemakings in the Federal Register concurrently. In such cases, the EPA Region can delay the start of the 6-month clock associated with section 112(l) rulemaking until the time that the part 70 submittal for the State is proposed for approval unless the State specifically requests a different schedule for approval under section 112(l). This delayed start will facilitate compliance with section 112(l)'s six month timeframe for approval in cases where the presumption of an approved part 70 program is needed to demonstrate adequate legal authority and resources. That is, unless a proposed approval of the part 70 program occurs or an independent demonstration of adequacy is provided, a submittal for section 112(l) rulemaking would be incomplete. Thus, a simultaneous proposal for approval of a submittal under part 70 and section 112(l) would serve to start the 6-month time period for conducting section 112(l) rulemaking. This strategy also offers sufficient flexibility to complete the part 70 rulemaking within the year following a complete submittal from the State.

The procedural steps necessary before a State may incorporate a federally-promulgated standard into the part 70 permit will vary as a matter of State law. In several instances this may require rulemaking at the State level (perhaps through incorporation of the Federal requirement by reference). A State may also have mechanisms available to satisfy part 70 requirements that allow incorporation of a Federal standard directly into the part 70 permit without any interim steps to promulgate the standard through State rulemaking or to seek formal delegation of the standard from EPA. Regardless of the necessity under State law for a formal delegation, EPA will consider the formal delegation for all delegatable provisions to have occurred, at the latest, when the part 70 permit is issued, so that the point of receipt for any reporting requirements will shift from EPA to the State at that time (unless some earlier time is established pursuant to section 112(l) rulemaking).

The EPA may request a review of individual State rulemaking and/or other actions taken to ensure that the needed legal authority and/or technical capabilities are in place at the State level in time for their use in the part 70 permit process. Such evaluations should be limited to the exceptional case where EPA has strong reasons to believe that legal and/or resource problems exist. Thus, unless a State is legislatively barred or has made a specific request for delegation under section 112(l), EPA will presume that the State receiving approval for its part 70 program will implement the Federal sections 111 and 112 requirements as promulgated and will adopt any new authority at the State level needed to assure timely inclusion as applicable in part 70 permits in order to maintain its part 70 approval.

2. How can section 111 standards be transferred before and after the approval of a part 70 program?

Section 111(c), which governs the transfer of new source performance standards (NSPS), was not changed by the 1990 Amendments. Therefore, the prior options for delegating such standards remain in effect.

Approval of part 70 programs requires, in part, that States must be able to implement and enforce current section 111 standards and commit to take any necessary steps to implement and enforce future standards promulgated by EPA so as to assure the timely issuance or revision of part 70 permits. Therefore, this approval process provides a new and convenient opportunity to establish a prospective delegation agreement with the State to implement future NSPS, as well as to implement NSPS in effect at this time. Accordingly, EPA will assume that the part 70 submittal is an implicit request to establish a delegation agreement for the State to implement, as promulgated by EPA, all section 111 requirements applicable to sources subject to the part 70 program. States retain the option, however, of submitting separate requests for delegation authority pursuant to section 111(c) when this arrangement for automatic delegation is not appropriate. Even in this case, EPA will explore options with individual States to establish the presumption where possible that the point of receipt for any section 111 reporting requirement will shift from EPA to the State and any separate delegation requests will involve petitions to obtain the remaining implementation and enforcement responsibilities.

3. Are there portions of any section 111 requirement which cannot be delegated to States?

Most provisions of these requirements can be delegated to States. However, as stated in the Good Practices for Delegation of NSPS and NESHAPS (February, 1983), certain activities such as

issuance of certain waivers, approval of alternate test methods and monitoring, and some general authority provisions cannot be delegated.

4. Must States accept delegation for all existing and all new sections 111 and 112 standards, or only for those for which applicable sources currently exist in the State?

Under current part 70 rules States must have adequate legal authority to issue or revise part 70 permits in a timely fashion to all major sources of hazardous air pollutants. States may also opt to subject nonmajor sources covered by a particular national standard to their part 70 permit program. Explicit legal authority to implement a particular standard, however, may not be necessary if the State determines that there are presently no sources located in the State subject to a given standard, and there is no likelihood that such a source would construct in the State in the immediate future. It is important that States acquire the appropriate legal authority on a timeframe commensurate with the probability that sources will locate in the State. The State must be able to demonstrate that it can acquire any necessary legal authority quickly enough to issue a timely part 70 permit, or revision if a new source of this type were to locate in the State. The States are encouraged to provide for a strategy to address such a prospect (e.g., through milestones in a MOA or part 70 implementation agreement).

5. If a State applies under section 112(l) to substitute a State requirement as being no less stringent, must the State implement the otherwise applicable section 112 requirement "as is" until it receives section 112(l) approval?

Part 70 requires States to issue permits in a timely fashion which assure compliance with all applicable requirements, including those developed pursuant to section 112. The section 112 requirements are those promulgated by EPA, unless the State obtains section 112(l) approval to substitute a specific State requirement for a Federal requirement. If the State submits its own "equivalent" requirement for approval under section 112(l), the State must still incorporate the applicable Federal section 112 requirements into part 70 permits until it receives EPA approval to do otherwise.

A State may be able to obtain some relief in this interim period by structuring its transition plan such that sources affected by a different State requirement could be acted on last during the 3-year phase-in of the part 70 program. Another possibility for relief is for the State to issue a permit that includes both its own State standard (designated in the permit at issuance as not federally enforceable as required by section

70.6(b)(2)) as well as the Federal standard it would replace upon section 112(l) approval. This permit would contain a condition that upon EPA's approval of the State requirement pursuant to section 112(l), the permit will be administratively amended such that the former requirement would supersede the latter as the federally enforceable requirement.

6. Must States have delegation of authority for all existing sections 111 and 112 requirements <u>prior</u> to submitting their operating permit programs? If not, by what date must States take delegation of these standards--prior to EPA's final program approval or prior to issuing a title V permit to a source covered by one of these standards?

States must acquire any new legal authority as needed to implement both sections 111 and 112 in a timeframe sufficient to assure timely issuance or revision of part 70 permits. The procedural steps necessary before a State may incorporate a federally-prcmulgated standard into the part 70 permit will vary as a matter of State law. A State may have mechanisms available to satisfy part 70 requirements that do not involve a delegation from EPA under section 112(l) for section 112 requirements. For instance, State law may allow incorporation of a Federal standard directly into the part 70 permit without any interim steps to promulgate the standard through rulemaking or to seek formal delegation of the standard from EPA. Regardless of the necessity under State law, EPA will consider delegation pursuant to section 112(l) to have occurred for all applicable requirements which can be delegated, at the latest, when the part 70 permit is issued, so that after part 70 program approval the point of receipt for any reporting requirements required of sources subject to the permit program will shift from EPA to the State.

For applicable section 112 requirements in effect on November 15, 1993 (the date for submittal of part 70 programs), the States must demonstrate adequate existing legal authority to implement these requirements presumptively by the effective date of the part 70 program. Only under unusual circumstances could the Region negotiate with the State a later date to acquire such authority for a particular standard, but it still must be consistent with the timely issuance of permits to applicable sources as they are phased-in as part of the part 70 program. This could only be done if the State presents a detailed implementation strategy to do so, has no legislative impediment to the delegation, and demonstrates to the Region that the legal authority necessary to accomplish this delegation will be secured in a timely manner.

7. If a State intends to defer area sources from title V applicability, can the State accept delegation of a section 111

or 112 requirement only for the major sources which exist in the State and not for the nonmajor or area sources to which the standard may also apply?

Although EPA strongly encourages States to take full delegation of all section 112 requirements, States may submit a request to EPA for partial delegation of such requirements. In addition to previously discussed options for shifting the initial implementation responsibilities of certain section 112 requirements (see response to question 1), partial delegations can also be accomplished with respect to source coverage. For example, the request for delegation may exclude those nonmajor sources which the State within its discretion under part 70 has allowed to be exempt from the requirement to obtain a part 70 permit. The EPA may partially delegate such standards to a State and withhold delegation of the area sources in that category for EPA implementation. However, this type of partial delegation should be reserved for those rare cases where total delegation does not meet the requirements of title V. To qualify for this delegation, the State must demonstrate that such a delegation would only apply to source categories subject to a section 111 or 112 standard which can easily be separated into exempt and subject sources (i.e., not involve difficult section 111 or 112 applicability decisions), and only to sources which are not otherwise required to get a part 70 permit (e.g., are not major sources due to emissions of some criteria pollutant).

8. Will EPA have to issue operating permits to sources if States do not take timely delegation of a particular MACT standard? If EPA has to issue the permit, will it only cover the MACT requirement(s), or will it cover all CAA requirements applicable to the source?

The EPA will object to any proposed part 70 permit which does not contain sufficient terms and conditions to assure compliance with all applicable requirements of the CAA, including those of section 112. If the State does not adequately respond to an EPA objection, (e.g., for failure to include a recently-established section 112 standard), the Agency must veto the permit and issue a Federal permit addressing <u>all</u> applicable CAA requirements (not just those pertaining to the deficiency identified by EPA). A failure to adopt new legal authority as needed to impose a new section 112 standard would likely lead to the issuance of a comprehensive EPA permit for sources subject to the new section 112 standard. A significant number of such situations may lead EPA to conclude that the State has failed to administer its approved part 70 program and that EPA should implement a Federal title V program in that State.

9. Will the delegations of section 112 standards be tracked on a national data base? Can the delegations themselves be tracked and implemented through the AFS Permitting Enhancements Title V data management system?

There are currently no plans to track the national progress in accomplishing the delegations of section 112 standards. Individual Regions may choose to use a MOA or a part 70 implementation agreement to establish milestones for State enhancement of their legal authority as needed to implement section 112 standards and to submit (at the option of the Region) evidence of this enhancement (e.g., rules or policy statements).

10. What type of sections 111 and 112 commitments can qualify a State submittal for part 70 program approval?

In order to obtain full approval from EPA, the part 70 submittal must contain authority and/or commitments adequate to ensure that the part 70 permit will assure compliance with all applicable sections 111 and 112 requirements. Where general statutory authority to issue or revise permits implementing sections 111 and 112 is present, but the Attorney General is unable to certify explicit legal authority to carry out certain specific requirements at the time of program submittal, the Governor may instead submit commitments to adopt and implement additional regulations as needed to issue part 70 permits. The EPA will rely on these commitments in granting part 70 program approvals, provided that (1) the underlying legislative authority would not prevent a State from meeting the commitments, and (2) the State can demonstrate the commitments will be satisfied by the time the State has to issue or revise permits to sources subject to the sections 111 and/or 112 requirements for which the State now lacks adequate authority to implement.

The nature of such commitments can vary widely depending on what is needed by the State to implement and enforce a particular standard. For example, one State might be able to carry out a particular section 111 or 112 requirement under its existing program while another State might require rulemaking to allow it to enforce this Federal requirement. The commitments contained in the letter of submittal from the Governor should outline the timetable by which any required additions to existing legal authority would be acquired and any major interim milestones needed to ensure that this deadline will be met.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

NOV 3 1993

MEMORANDUM

SUBJECT: Approaches to Creating Federally-Enforceable Emissions Limits

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

TO: Director, Air, Pesticides and Toxics Management Division, Regions I and IV
Director, Air and Waste Management Division, Region II
Director, Air, Radiation and Toxics Division, Region III
Director, Air and Radiation Division, Region V
Director, Air, Pesticides and Toxics Division, Region VI
Director, Air and Toxics Division, Regions VII, VIII, IX, and X

The new operating permits program under title V of the Clean Air Act (Act), combined with the additional and lower thresholds for "major" sources also provided by the 1990 Amendments to the Act, has led to greatly increased interest by State and local air pollution control agencies, as well as sources, in obtaining federally-enforceable limits on source potential to emit air pollutants. Such limits entitle sources to be considered "minor" for the purposes of title V permitting and various other requirements of the Act. Numerous parties have identified this as a high priority concern potentially involving thousands of sources in each of the larger States.

The issue of creating federally-enforceable emissions limits has broad implications throughout air programs. Although many of the issues mentioned above have arisen in the context of the title V permits program, the same issues exist for other programs, including those under section 112 of the Act. As discussed below, traditional approaches to creating federally-enforceable emissions limits may be unnecessarily burdensome and time-consuming for certain types and sizes of sources. In addition, they have been of limited usefulness with respect to creating such limits for emissions of hazardous air pollutants (HAP's).

The purpose of this memorandum is to respond to these needs by announcing the availability of two further approaches to creating federally-enforceable emissions limits: the extension of existing criteria pollutant program mechanisms for HAP program

purposes, and the creation of certain classes of standardized emissions limits by rule. We believe that these options are responsive to emerging air program implementation issues and provide a reasonable balance between the need for administrative streamlining and the need for emissions limits that are technically sound and enforceable.

Background

Various regulatory options already exist for the creation of federally-enforceable limits on potential to emit. These were summarized in a September 18, 1992 memorandum from John Calcagni, Director, Air Quality Management Division. That memorandum identified the five regulatory mechanisms generally seen as available. These are: State major and minor new source review (NSR) permits [if the NSR program has been approved into the State implementation plan (SIP) and meets certain procedural requirements]; operating permits based on programs approved into the SIP pursuant to the criteria in the June 28, 1989 Federal Register (54 FR 27274); and title V permits (including general permits). Also available are SIP limits for individual sources and limits for HAP's created through a State program approved pursuant to section 112(l) of the Act.

Regional Office and State air program officials realize that these five options are generally workable, but feel that the programs emerging from the 1990 Amendments present certain further needs that are not well met. They note that NSR is not always available, title V permitting can be more rigorous than appropriate for those sources that are in fact quite small, and that general permits have limitations in their usefulness. The use of State operating permits approved into the SIP pursuant to the June 28, 1989 Federal Register is generally considered to be a promising option for some of these transactions; however, these programs do not regulate toxics directly.

State Operating Permits for Both Criteria Pollutants and HAP's

As indicated above, State operating permits issued by programs approved into the SIP pursuant to the process provided in the June 28, 1989 Federal Register are recognized as federally enforceable. This is a useful option, but has historically been viewed as limited in its ability to directly create emissions limits for HAP's because of the SIP focus on criteria pollutants.

Since that option was created, however, section 112 of the Act has been rewritten, creating significant new regulatory requirements and conferring additional responsibilities and authorities upon the Environmental Protection Agency (EPA) and the States. Section 112 now mandates a wide range of activities:

source-specific preconstruction reviews, areawide approaches to controlling risk, provisions for permitting pursuant to the title V permitting program, and State program provisions in section 112(l) that are similar to aspects of the SIP program. A result of these changes is that implementation of toxics programs will entail the use of many of the same administrative mechanisms as have been in use for the criteria pollutant programs.

Upon further analysis of these new program mandates and corresponding authorities, EPA concludes that section 112 of the Act, including section 112(l), authorizes it to recognize these same State operating permits programs for the creation of federally-enforceable emissions limits in support of the implementation of section 112. Congress recognized, and longstanding State practice confirms, that operating permits are core-implementing mechanisms for air quality program requirements. This was EPA's basis for concluding that section 110 of the Act authorizes the recognition and approval into the SIP of operating permits pursuant to the June 28, 1989 promulgation, even though section 110 did not expressly provide for such a program. Similarly, broad provision of section 112(l) for "a program for the implementation and enforcement . . . of emission standards and other requirements for air pollutants subject to this section" provides a sound basis for EPA recognition of State operating permits for implementation and enforcement of section 112 requirements in the same manner as these permitting processes were recognized pursuant to section 110.

In implementing this authority to approve State operating permits programs pursuant to section 112, it should be noted that the specific criteria for what constitutes a federally-enforceable permit are also the same as for the existing SIP programs. The June 28, 1989 Federal Register essentially addressed in a generic sense the core criteria for creating federally-enforceable emissions limits in operating permits: appropriate procedural mechanisms, including public notice and opportunity for comment, statutory authority for EPA approval of the State program, and enforceability as a practical matter. The EPA did this in the context of SIP development, not because these criteria are specific to the SIP, but because section 110 of the Act was seen as our only certain statutory basis for this prior to the 1990 Amendments. Based on the discussion above, States can extend or develop State operating permits programs for toxics pursuant to the criteria set forth in the June 28, 1989 Federal Register. The EPA is also evaluating analogous opportunities to enhance State NSR programs to address toxics and will address this in future guidance.

This is a significant opportunity to limit directly the emissions of HAP's. It also offers the advantage of the administrative efficiencies that arise from using existing

administrative mechanisms, as opposed to creating additional ones.

States are encouraged to consult with EPA Regional Offices to discuss the details of adapting their current programs to carry out these additional functions. The EPA will consider State permitting programs meeting the criteria in the June 28, 1989 Federal Register as being approvable for HAP program functions as well. States may submit their programs for implementing this process with their part 70 program submittals, or at such other time as they choose. The EPA has various options for administratively recognizing these State program submittals. The EPA plans initially to review these State programs as SIP review actions, but with official recognition pursuant to authorities in both sections 110 and 112. Once rulemaking pursuant to section 112(l) of the Act is completed, EPA expects to use the process developed in that rule for approving State programs for HAP's. The section 112(l) process may be especially useful prior to EPA approval and implementation of the State title V programs. The reader may wish to refer to the process for certain section 112(l) approvals proposed on May 19, 1993 (58 FR 29296) (see section 63.91).

The General Provisions (40 CFR part 63) establish the applicability framework for the implementation of section 112. In the final rule, EPA will indicate that State operating permits programs which meet the procedural requirements of the June 28, 1989 Federal Register can be used to develop federally-enforceable emissions limits for HAP's, thereby limiting a source's potential to emit. In addition, after we gain implementation experience, EPA will be evaluating the usefulness of further rulemaking to define more specific criteria by which this process may be used in the implementation of programs under section 112 of the Act. Any such rulemaking could similarly be incorporated into the General Provisions in part 63.

State-Standardized Processes Created by Rule to Establish Source-Specific, Federally-Enforceable Emissions Limits

State air program officials have highlighted specific types of sources that are of particular administrative concern because of their nature and number. These include sources whose emissions are primarily volatile organic compounds (VOC) arising from use of solvents or coatings, such as automobile body shops. Another example is fuel-burning sources that have low actual emissions because of limited hours of operation, but with the potential to emit sulfur dioxide in amounts sufficient to cause them to be classified as major sources.

The EPA recognizes that emissions limitations for some processes can be created through standardized protocols. For example, limitations on potential to emit could be established

for certain VOC sources on the basis of limits on solvent use, backed up by recordkeeping and by periodic reporting. Similarly, limitations on sulfur dioxide emissions could be based on specified sulfur content of fuel and the source's obligation to limit usage to certain maximum amounts. Limits on hours of operation may be acceptable for certain others sources, such as standby boilers. In all cases, of course, the technical requirements would need to be supported by sufficient compliance procedures, especially monitoring and reporting, to be considered enforceable.

The EPA concludes that such protocols could be relied on to create federally-enforceable limitations on potential to emit if adopted through rulemaking and approved by EPA. Although such an approach is appropriate for only a limited number of source categories, these categories include large numbers of sources, such as dry cleaners, auto body shops, gas stations, printers, and surface coaters. If such standardized control protocols are sufficiently reliable and replicable, EPA and the public need not be involved in their application to individual sources, as long as the protocols themselves have been subject to notice and opportunity to comment and have been approved by EPA into the SIP.

To further illustrate this concept and to provide implementation support to the States, EPA has recently released guidance on one important way of using this process. This document, entitled "Guidance for State Rules for Optional Federally-Enforceable Emissions Limits Based on Volatile Organic Compound Use," was issued by D. Kent Berry, Acting Director, Air Quality Management Division, on October 15, 1993. It describes approvable processes by which States can create federally-enforceable emissions limits for VOC for large numbers of sources in a variety of source categories.

States have flexibility in their choice of administrative process for implementation. In some cases, it may be adequate for a State to apply these limits to individual sources through a registration process rather than a permit. A source could simply submit a certification to the State committing to comply with the terms of an approved protocol. Violations of these certifications would constitute SIP violations, in the case of protocols approved into the SIP, and be subject to the same enforcement mechanisms as apply in the case of any other SIP violation. Such violations would, of course, also subject the source to enforcement for failure to comply with the requirements that apply to major sources, such as the requirement to obtain a title V permit or comply with various requirements of section 112 of the Act.

Some States have also indicated an interest in more expansive approaches to implementing this concept, such as making

presumptive determinations of control equipment efficiency with respect to particular types of sources and pollutants. While such approaches are more complicated and present greater numbers of concerns in the EPA review process, they offer real potential if properly crafted. The EPA will evaluate State proposals and approve them if they are technically sound and enforceable as a practical matter.

States may elect to use this approach to create federally-enforceable emissions limits for sources of HAP's as well. Based on the same authorities in section 112 of the Act, as cited above in the case of operating permits, EPA can officially recognize such State program submittals. As with the operating permits option discussed in the preceding section, EPA plans initially to review these activities as SIP revisions, but with approval pursuant to both sections 110 and 112 of the Act, and approve them through the section 112(l) process when that rule is final.

Implementation Guidance

As indicated above, the creation of federally-enforceable limits on a source's potential to emit involves the identification of the procedural mechanisms for these efforts, including the statutory basis for their approval by EPA, and the technical criteria necessary for their implementation. Today's guidance primarily addresses the procedural mechanisms available and the statutory basis for EPA approval.

The EPA will be providing further information with respect to the implementation of these concepts. As described above, the first portion of this guidance, addressing limits on VOC emissions, was issued on October 15, 1993. My office is currently working with Regional Offices and certain States in order to assist in the development of program options under-consideration by those States. We will provide technical and regulatory support to other State programs and will make the results of these efforts publicly available through the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network bulletin board.

We will provide further support through the release of a document entitled "Enforceability Requirements for Limiting Potential to Emit Through SIP Rules and General Permits," which is currently undergoing final review within EPA. In addition, EPA will be highlighting options for use of existing technical guidance with respect to creating sound and enforceable emissions limits. An important example of such guidance is the EPA "Blue Book," which has been in use by States for the past 5 years as part of their VOC control programs.

States are encouraged to discuss program needs with their EPA Regional Offices. The OAQPS will work with them in addressing approvals. As indicated, additional technical guidance for implementing these approaches is underway and will be made publicly available soon. For further information, please call Kirt Cox at (919) 541-5399.

cc: Air Branch Chief, Regions I-X
Regional Counsel, Regions I-X
OAQPS Division Directors
A. Eckert
M. Winer
A. Schwartz
E. Hoerath

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

OCT 15 1993

MEMORANDUM

SUBJECT: Guidance for State Rules for Optional Federally-Enforceable Emissions Limits Based on Volatile Organic Compound (VOC) Use

FROM: D. Kent Berry, Acting Director
Air Quality Management Division, OAQPS (MD-15)

TO: Air Division Director, Regions I-X

The 1990 Amendments to the Clean Air Act (Act), including the title V operating permits program, have made source status as a "major" stationary source of considerably greater relevance to air quality programs. The lower major source thresholds now included in the Act have made an unprecedented number of sources "major." Many of these sources are actually emitting air pollutants in amounts less than the major thresholds but are major on the basis of their potential to emit. Certain categories of these sources are comprised of sources that are in fact rather small and, in some cases, are not addressed in detail by State air quality programs. Examples include auto body shops, dry cleaners, printers, and surface coaters.

Many of these sources will seek federally-enforceable limits in their potential to emit so as to avoid the obligation to obtain a title V operating permit. The Environmental Protection Agency (EPA), State air agencies, and industry are all interested in creating these emissions limits in the most efficient manner consistent with having reasonable assurance that these are in fact enforceable and being complied with. There are a variety of approaches available for creating federally-enforceable emissions limits. While the creation of federally-enforceable emissions limits generally requires a source-specific evaluation created through an approved State permitting program, EPA recognizes that, for certain types of sources or emissions, the limits can be created through more streamlined processes that do not involve detailed review or public process for each individual source.

Probably the greatest need for such limits involves those sources, such as auto body shops and surface coaters, that would be major on the basis of use of raw materials containing VOC's. To aid States in developing generic enforceable emissions limits for such sources, we have developed technical guidance materials that States can use in creating such requirements. States seeking to use these approaches may submit appropriate regulations as State implementation plan revisions or, in the case of toxics, as section 112(l) plan provisions. The technical guidance materials, along with draft forms that States may use in implementing this process are attached to this memorandum. States may, of course, opt to develop their own approaches for creating such documents. The attached language and forms are provided as technical support to States and to provide an indication of what sorts of practices EPA considers approvable. Alternate approaches will be considered on their individual merits.

For further information about this guidance, please contact Kirt Cox at (919) 541-5399 or Eric Noble at (919) 541-5362. To discuss individual State regulatory provisions and issues, please contact your Regional Office title V permits program contact. Any questions on practical enforceability should be brought to the attention of Sally Mitoff at (703) 308-8692 or Clara Poffenburger at (703) 308-8709. The EPA is considering further options for use of these streamlined procedures with other pollutants and is interested in working with States in developing such approaches. Suggestions are invited and may by made by calling Mr. Cox or Mr. Noble.

Attachments

cc: Air Branch Chief, Regions I-X
Operating Permits Program Contact, Regions I-X
Regional Counsel, Regions I-X
Division Directors, OAQPS
A. Schwartz, OGC
E. Hoerath, OE

Attachment 1

CRITERIA FOR A DRAFT MODEL RULE
FOR VOLATILE ORGANIC COMPOUNDS (VOC'S)
AND HAZARDOUS AIR POLLUTANT (HAP) SOURCES

PURPOSE: To provide a federally-enforceable mechanism by which certain sources emitting VOC's may certify that they are not major sources of those pollutants in a manner that can be recognized as federally enforceable. For the purpose of this guidance, "VOC" also encompasses HAP's as defined pursuant to section 112 of the Clean Air Act (Act) that are VOC's (including those that are not photochemically reactive).

APPLICABILITY: This approach is available to sources which opt to assume limitations on the quantities of materials used in their production processes which contain VOC's. It does not apply to VOC's that are produced as part of the manufacturing processes. That is, this approach applies limits on emissions resulting from the use of VOC-containing materials. To that end, all the VOC's and HAP's present in the source materials, such as paints and solvents, are assumed to be emitted to the atmosphere (VOC in equals VOC out). Because this rule relies on simple calculation procedures based on recordkeeping, sources seeking recognition of emissions limits based on the use of emissions control devices, which require more complex determinations, would not be able to take advantage of this approach. This approach would not be available to sources which are subject to title V requirements for other reasons (e.g., that have the potential to emit other pollutants in major amounts).

To be approvable, a State rule must require that the source owner or operator specifically apply for coverage. Such applications could take the form of a relatively simple certification of compliance with the applicability criteria and the requirements of the rule. An example of such a certification that EPA would find acceptable is attached as Attachment 2.

BASIS FOR THE CRITERIA: This approach applies to sources which agree to limit their annual emissions. The basis for determining compliance is the maintenance of records with respect to the use of VOC-containing materials and the periodic submittal of this information to the permitting authority. States may elect to streamline this process further by reducing the frequency and level of detail of this reporting for those sources accepting limits on emissions that are very substantially below the threshold for major source status. As described below, EPA suggests three different levels of reporting requirements for sources, depending on the degree of limitation that the source opts to take. Individual State rules developed pursuant to this approach should, of course, replace the threshold percentages

listed herein with actual quantities in tons per year appropriate to the areas subject to those rules. For example, the threshold for major source status for VOC's in ozone nonattainment areas designated as "serious" is 50 tons per year.

1. Sources which commit only to limiting their VOC emissions to less than the major source threshold.

These sources would be required to do more comprehensive recordkeeping and reporting than those smaller sources that accept more limited emissions caps. The EPA suggests that these requirements include:

a. Preparation of monthly consumption records of all materials used containing VOC's. Sources would make a separate record for each such material. These records would include the VOC and/or individual HAP content of each such material on the same form. Table 2 of Attachment 3 provides an example of such a form that States might find useful.

b. Summation of VOC and individual HAP emissions on a monthly or more frequent basis. Table 1 of Attachment 3 is offered as an example form. Such reports would be submitted to the State agency on a monthly basis.

c. Submittal of an annual inventory to the reviewing agency listing monthly VOC totals and total VOC emissions for the previous year.

d. Maintenance of purchase orders and invoices of VOC-containing materials which must be made available to the State agency upon request for use in confirming the general accuracy of the reports submitted pursuant to item b, above, regarding materials usage.

e. Retention of purchase orders and invoices for a period sufficient to support enforcement efforts.

f. Reporting of any exceedance of a requirement of this rule within 1 week of occurrence.

g. Certification of all submittals as to the truth completeness, and accuracy of all information recorded and reported.

2. Sources which commit to limiting their VOC emissions to 25 percent of the major source threshold.

These sources would also be required to meet all the above requirements, except that annual reports would need to be submitted annually, rather than monthly, for compliance with item b.

3. Truly small sources which commit to limiting their VOC emissions to 5 percent of the major source threshold.

These sources could dramatically limit their recordkeeping and reporting obligations. Such sources need only report total gallons of paints or solvents used on an annual basis. Table 3 of Attachment 3 could serve as a standard means for sources to maintain this tabulation and could be submitted to satisfy the annual reporting requirement of item c above. Such sources would be required to meet the same general obligations regarding purchase records and general compliance reporting obligations as sources in the other categories (items d-g).

ADDITIONAL CRITERIA:

- A source cannot rely on these emissions caps to justify violation of rate-based emissions limits or other applicable requirements of the Act.
- A State may require additional restrictions, e.g., limitations on monthly VOC use in the peak ozone formation season.
- The State must make a list of the sources which are subject to these requirements publicly available.
- All records shall be maintained at the site and available for inspection on demand.
- A violation of these requirements is a violation of the SIP or of the State's section 112 program, or both, depending on the particular EPA approval mechanism used. A violation also subjects the source to enforcement action for failure to meet requirements applicable to a major stationary source.

There are, of course, a variety of ways in which States may elect to implement this concept based on their particular air quality program needs and policy inclinations. The above is offered as one suggestion that states might find useful. States wishing to develop alternative approaches should contact their EPA Regional Office to discuss their approvability.

Attachment 2

OPERATING AGREEMENT FOR A SURFACE COATING OPERATION

Source Name: _____

Address: _____

Source Description: _____

_____

Emission Units: [e.g., Paint Spray Booths]

Number [e.g., 3]

Material Used Over Past 12 Months:

	Product				Actual Usage		
	Maker	Type	Number	#VOC/gal* (MSDS)	gal/day	gal/mo	gal/year
1)							
2)							
3)							
4)							
5)							
6)							

Maximum Annual Material Usage in Future:

	Product				Maximum Predicted Usage		
	Maker	Type	Number	#VOC/gal* (MSDS)	gal/day	gal/mo	gal/year
1)							
2)							
3)							
4)							
5)							
6)							

* Sources may require this input to be in #VOC/gallon solids (paint or solvent less water).

CERTIFICATION:

I certify that this source will not emit volatile organic compounds or volatile hazardous air pollutants (as defined pursuant to section 112 of the Clean Air Act) in excess of the amounts specified in [indicate which of the 3 size classes]. I further certify that all information submitted pursuant to this agreement is true, accurate, and complete.

Plant Owner/Operator _____ _____ _____

Name (print) Signature Date

Attachment 3

Table 1

MONTHLY EMISSIONS RECORD[1]

Plant Name _____

Address _____

Report for (month/ year)

Report Date (day/month/year)

	POTENTIAL EMISSIONS[2]					
	Volatile Organic Compound (VOC) Totals		Hazardous Air Pollutant (HAP) Totals			
			High Individual		All HAPS	
Months	1	Last 12	1	Last 12	1	Last 12
Units	pounds	tons	pounds	tons	pounds	tons
PAINT A	200	2.5	16	0.096	100	1.25
PAINT B						
PAINT C						
PAINT D						
SOLVENT 1						
SOLVENT 2						
SOLVENT 3						
SOLVENT 4	[from T X]					
TOTALS	650	4.2	900	5.4	2100	12.6

[1] Data in this table summarizes information from the table 1 worksheets for individual paints and solvents and other VOC and HAP sources at the listed stationary source.

[2] Assumes all VOC and HAPs in paint or solvent are released into the atmosphere.

Attachment 3

Table 2

EMISSIONS WORKSHEET FOR MINOR VOC AND HAP SOURCES [3,4]

Plant Name _____ Record for (month/year)
Address _____ Date Prepared (day/month/year)

Paint/Solvent Manufacturer _____
Paint/Solvent Name A Code No. _____

		A	B	C
	Paint/Solvent Constituents	Fraction in Paint/Solvent	Usage/Emissions Totals	
			Last Month	Last 12 Months
1	Paint/Solvent	---	500 lbs [gal x S.G.]	6.25 tons [sum of totals for last 12 months]
2	Total VOC	.40 [u]	200 lbs [A2 x B1]	2.5 tons [A2 x C1]
3	Total HAP	.20 [v]	100 lbs [A3 x B1]	1.25 [A3 x C1]
4	HAP A	w	[A4 x B1]	[A4 x C1]
5	HAP B	x	etc.	etc.
6	High Individual HAP		16 lbs	0.096 tons

[3] Assumes all VOC and HAPs in paint or solvent are released into the atmosphere.

[4] Separate worksheet (table 1) required for each paint or solvent used.

Attachment 3 Table 3

EMISSIONS WORKSHEET FOR MINOR VOC AND HAP SOURCES [5,6]

Plant Name _____
Address _____

Record for (month/year)
Date Prepared (day/month/year)

Paint/ Solvent	Usage Totals (gallons)												
	Month												12 Month Total
	1	2	3	4	5	6	7	8	9	10	11	12	
Paint A													
Paint B													
Paint C													
Solvent A													
Solvent B													
Solvent C													
Solvent D													
Totals													

[1] Assumes all VOC and HAPs in paint or solvent are released into the atmosphere.

[6] Separate worksheet (table 1) required for each paint or solvent used.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

AUG 4 1993

MEMORANDUM

SUBJECT: Reissuance of Guidance on Agency Review of State Fee Schedules for Operating Permits Programs Under Title V

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

TO: Air Division Director, Regions I-X

On December 18, 1992, I issued a memorandum designed to provide initial guidance on the Environmental Protection Agency's (EPA's) approach to reviewing State fee schedules for operating permits programs under title V of the Clean Air Act (Act). Today's memorandum updates, clarifies, revises, and replaces the earlier memorandum.

Section 502(b)(3) of the Act requires that each State collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V permits program. [As used herein, the term "State" includes local agencies.] The final part 70 regulation contains a list of activities discussed in the July 21, 1992 preamble to the final rule (57 FR 32250) which must be funded by permit fees. This memorandum and its attachment provide further guidance on how EPA interprets that list of activities, as well as the procedure for demonstrating that fee revenues are adequate to support the program.

The memorandum and attachment set forth the principles which will generally guide our review of fee submittals. The EPA believes that these positions are consistent with the preamble and final rule and are useful in explaining the broad language in the promulgation, but in no way supplant the promulgation itself. In evaluating State program submittals, EPA will make judgments based on the particular design and attributes of the State program, as well as the requirements of section 70.9 of part 70.

The policies set out in this memorandum and attachment are intended solely as guidance, do not represent final Agency action, and cannot be relied upon to create any rights enforceable by any party.

Several substantive revisions to the earlier guidance that are reflected in this document deserve special mention. First, with respect to activities which relate to provisions of the Act in addition to title V, the revisions clarify that the cost of those activities would be permit program costs only to the extent the activities are necessary for part 70 purposes. For example, this qualification would apply to activities undertaken pursuant to sections 110, 111, and 112 of the Act. In determining which of the activities normally associated with State Implementation Plan (SIP) development are to be funded by permit fees, for instance, States should include those activities to the extent they are necessary for the issuance and implementation of part 70 permits. Accordingly, if a SIP provision requires that a State perform or review a modeling demonstration of a source's impact on ambient air quality as part of the permit application process, the State's costs which arise from the modeling demonstration (which are ordinarily not permit program costs) must be covered by permit fees.

Second, the revisions provide that case-by-case maximum achievable control technology determinations for modified/ constructed and reconstructed major toxic sources under section 112(g) of the Act are considered permit program costs, even if the determination preceded the issuance of the part 70 permit. This position is consistent with the Agency's guidance on Title V Program Approval Criteria for Section 112 Activities (issued April 13, 1993). In that guidance, EPA explained that in order to obtain approval of their title V permit programs, States must take responsibility for implementing all applicable requirements of section 112, including section 112(g), to fulfill their broader obligation to issue title V permits which incorporate all applicable requirements of the Act. For this reason, these section 112 activities are appropriately viewed as permit program costs and thus funded with permit fees.

Third, the revisions clarify in section II.L that enforcement costs incurred prior to the filing of an administrative or judicial complaint are considered permit program costs, including the issuance of notices, findings, and letters of violation, as well as development and referral to prosecutorial agencies of enforcement cases. This approach is based on legislative history which indicates that Congress viewed the filing of complaints as the beginning of enforcement actions for purposes of the statutory provision that excludes "court costs or other costs associated with any enforcement action" from the costs to be recovered through permit fees.

Fourth, the revisions take a different approach to "State-only" requirements which are part of the title V permit by concluding that part 70 does not require that permit fees cover the costs of implementing and enforcing such conditions, since the rule requires that States designate these requirements as not federally enforceable.

Fifth, the attachment modifies the discussion of the extent to which title V fees must fund the costs of permit programs under provisions of the Act other than title V. After carefully considering section 110(a)(2)(L) (which requires that every major source covered by a permit program required under the Act pay a fee to fund the permit program), as it relates to section 502(b)(3) in general, and section 502(b)(3)(A)(ii) in particular, EPA has concluded that title V fees must cover the costs of implementing and enforcing not only title V permits but of any other permits required under the Act, regardless of when issued. This result makes sense, since the title V permit will incorporate the terms of other permits required under the Act so that enforcing title V permits will have the effect of implementing and enforcing those permit requirements as well. However, the costs of reviewing and acting on applications for permits required under Act provisions other than title V need not be recouped by title V fees. In conclusion, the costs of implementing and enforcing all permits required under the Act must be considered in determining whether a State's fee revenue is adequate to support its title V program. However, States may opt to retain separate mechanisms and procedures for collecting permit fees for other permitting programs under the Act, provided the fees covering the costs of implementing and enforcing permits are included in the determination of fee adequacy for purposes of title V.

Although most of the changes outlined today are not expected to affect significantly whether EPA will find fee programs based on the earlier guidance adequate, we will assist States in resolving any difficulties which may have resulted from reliance on the December 18 guidance.

As a means of providing support for the Regional Offices and States on fee approval issues, we invite early submittal of fee analyses (separate from the entire program submittal) from States, particularly those which propose to charge less than the presumptive fee minimum. We will assist Regional Offices in reviewing these submittals with respect to the requirements of title V. Case-by-case reviews of fee programs which you believe are ripe for review offer a timely opportunity to provide additional guidance on this issue.

If you would like us to assist with review of a State's fee program, please contact Kirt Cox. For further information, you may call Kirt at (919) 541-5399 or Candace Carraway at (919) 541-3189.

Attachment

cc: Air Branch Chief, Regions I-X
Regional Counsel, Regions I-X
M. Shapiro
J. Kurtzweg
A. Eckert
B. Jordan
R. Kellam
J. Rasnic

ATTACHMENT

GUIDANCE FOR STATE FEE PROGRAM DEVELOPMENT

I. GENERAL PRINCIPLES

- States must collect, from part 70 sources, fees adequate to fund the reasonable direct and indirect costs of the permits program.

- Only funds collected from part 70 sources may be used to fund a State's title V permits program. Legislative appropriations, other funding mechanisms such as vehicle license fees, and section 105 funds cannot be used to fund these permits program activities.

- The 1990 Amendments to the Clean Air Act (Act) generally require a broader range of permitting activities than are currently addressed by most State and local permits programs. Title V and part 70 contain a nonexclusive list of types of activities which must be funded by permit fees.

- Title V fees present a new opportunity to improve permits program implementation where funding has been inadequate in the past.

- The fee revenue needed to cover the reasonable direct and indirect costs of the permits program may not be used for any purpose except to fund the permits program. However, title V does not limit State discretion to collect fees pursuant to independent State authority beyond the minimum amount required by title V. The evaluation of State fee program adequacy for part 70 approval purposes will be based solely on whether the fees will be sufficient to fund all permit program costs.

- Any fee program which collects aggregate revenues less than the $25 per ton per year (tpy) presumptive minimum will be subject to close Environmental Protection Agency (EPA) scrutiny.

- If credible evidence is presented to EPA which raises serious questions regarding whether the presumptive minimum amount of fee revenue is sufficient to fund the permits program adequately, the State must provide a detailed demonstration as to the adequacy of its fee schedule to fund the direct and indirect costs of the permits program.

The EPA encourages State legislatures to include flexible fee authority in State statutes so as to allow flexibility to manage fee adjustments if needed in light of program experience, audits, and accounting reports. States should be able to adapt their fee schedules in a timely way in response to new information and new program requirements.

II. ACTIVITIES EXPECTED TO BE FUNDED BY PERMIT FEES

A. Overview.

- Permits program fees must cover all reasonable direct and indirect costs of the title V permits program incurred by State and/or local agencies. For example, fees must cover the cost of permitting affected units under section 404 of the Act, even though such sources may be subject to special treatment with respect to payment of permit fees.

- In making the determination as to whether an activity is a title V permits program activity, EPA will consider the design of the individual State's title V program and its relationship to its comprehensive air quality program. State design of its air program, including its State Implementation Plan (SIP), will in some cases determine whether a particular activity is properly considered a permits program activity. For example, if a SIP provision requires that a State perform or review a modeling demonstration of a source's impact on ambient air quality as part of the permit application process, the State's costs which arise from the modeling demonstration (which are ordinarily not permit program costs) would be part of the State's title V program costs. Because the nature of permitting-related activities can vary from State to State, the EPA intends to evaluate each program individually using the definition of "permit program costs" in the final regulation.

- In general, EPA expects that title V permit fees will fund the activities listed below. However, in evaluating State program submittals, EPA will consider the particular design and attributes of the State program. It is important to note that the activities listed below may not represent the full range of activities to be covered by permit fees. Implementation experience may demonstrate that additional activities are appropriately added to this list. Additionally, some States may have further

program needs based on the particularities of their own air quality issues and program structure.

- States may use permit fees to hire contractors to support permitting activities.

B. Initial program submittal, including:

- Development of documentation required for program submittal, including program description, documentation of adequate resources to implement program, letter from Governor, Attorney General's opinion.

- Development of implementation agreement between State and Regional Office.

C. Part 70 program development, including:

- Staff training.

- Permits program infrastructure development, including:

  * Legislative authority.

  * Regulations.

  * Guidance.

  * Policy, procedures, and forms.

  * Integration of operating permits program with other programs [e.g., SIP, new source review (NSR), section 112].

  * Data systems (including AIRS-compatible systems for submitting permitting information to EPA, permit tracking system) for title V purposes.

  * Local program development, State oversight of local programs, modifications of grants of authority to local agencies, as needed.

  * Justification for program elements which are different from but equivalent to required program elements.

- Permits program modifications which may be triggered by new Federal requirements/policies, new standards [e.g., maximum achievable control technology (MACT), SIP, Federal implementation plan], or audit results.

D. Permits program coverage/applicability determinations, including:

- Creating an inventory of part 70 sources.
- Development of program criteria for deferral of nonmajor sources consistent with the discretion provided to States in part 70.
- Application of deferral criteria to individual sources.
- Development of significance levels (for exempting certain information from inclusion on permits application).
- Development and implementation of federally-enforceable restrictions on a source's potential to emit in order to avoid it being considered a major source.

E. Permits application review, including:

- Completeness review of applications.
- Technical analysis of application content.
- Review of compliance plans, schedules, and compliance certifications.

F. General and model permits, including:

- Development.
- Implementation.

G. Development of permit terms and conditions, including:

- Operational flexibility provisions.
- Netting/trading conditions.
- Filling gaps within applicable requirements (e.g., periodic monitoring and testing).
- Appropriate compliance conditions (e.g., inspection and entry, monitoring and reporting).
- Screen/separate "State-only" requirements from the federally-enforceable requirements.

- Development of source-specific permit limitations [e.g., section 112(g) determinations, equivalent SIP emissions limits pursuant to 70.6(a)(1)(iii)].

- Optional shield provisions.

H. Public/EPA participation, including:

- Notices to public, affected States and EPA for issuance, renewal, significant modifications and (if required by State law) for minor modifications (including staff time and publication costs).

- Response to comments received.

- Hearings (as appropriate) for issuance, renewal, significant modifications, and (if required by State law) for minor modifications (including preparation, administration, response, and documentation).

- Transmittal to EPA of necessary documentation for review and response to EPA objection.

- 90-day challenges to permits terms in State court, petitions for EPA objection.

I. Permit revisions, including:

- Development of criteria and procedures for the following different types of permit revisions:

  * Administrative amendments.

  * Minor modifications (fast-track and group processing).

  * Significant modifications.

- Analysis and processing of proposed revisions.

J. Reopenings:

- For cause.

- Resulting from new emissions standards.

K. Activities relating to other sections of the Act which are also needed in order to issue and implement part 70 permits, including:

- Certain section 110 activities, such as:
  * Emissions inventory compilation requirements.
  * Equivalency determinations and case-by-case reasonably available control technology determinations if done as part of the part 70 permitting process.
- Implementation and enforcement of preconstruction permits issued to part 70 sources pursuant to title I of the Act, including:
  * State minor NSR permits issued pursuant to a program approved into the SIP.
  * Prevention of significant deterioration/NSR permits issued pursuant to Parts C and D of title I of the Act.
- Implementation of Section 111 standards through part 70 permits;
- Implementation of the following section 112 requirements through part 70 permits:
  * National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated under section 112(d) according to the timetable specified in section 112(e).
  * The NESHAP promulgated under section 112(f) subsequent to EPA's study of the residual risks to the public health.
  * Section 112(h) design, equipment, work practice, or operational standards.
- Development and implementation of certain section 112 requirements through part 70 permits, including:
  * Section 112(g) program requirements for constructed, reconstructed, and modified major sources.

* Section 112(i) early reductions.

* Section 112(j) equivalent MACT determinations.

* Section 112(l) State air toxics program activities that take place as part of the part 70 permitting process.

* Section 112(r)(7) risk management plans if the plan is developed as part of the permits process.

L. Compliance and enforcement-related activities to the extent that these activities occur prior to the filing of an administrative or judicial complaint or order. These activities include the following to the extent they are related to the enforcement of a permit, the obligation to obtain a permit, or the permitting regulations:

- Development and administration of enforcement legislation, regulations, and policy and guidance.

- Development of compliance plans and schedules of compliance.

- Compliance and monitoring activities.

  * Review of monitoring reports and compliance certifications.

  * Inspections.

  * Audits.

  * Stack tests conducted/reviewed by the permitting authority.

  * Requests for information either before or after a violation is identified (e.g., requests similar to EPA's section 114 letters).

- Enforcement-related activities.

  * Preparation and issuance of notices, findings, and letters of violation [NOV's, FOV's, LOV's].

  * Development of cases and referrals up until the filing of the complaint or order.

- Excluded are all enforcement/compliance monitoring costs which are incurred after the filing of an administrative or judicial complaint.

M. The portion of the Small Business Assistance Program which provides:

- Counseling to help sources determine and meet their obligations under part 70, including:
  * Applicability.
  * Options for sources to which part 70 applies.
- Outreach/publications on part 70 requirements.
- Direct part 70 permitting assistance.

N. Permit fee program administration, including:

- Fee structure development.
- Fee demonstration.
  * Projection of fee revenues.
  * Projection of program costs if detailed demonstration is required.
- Fee collection and administration.
- Periodic cost accounting.

O. General air program activities to the extent they are also necessary for the issuance and implementation of part 70 permits.

- Emissions and ambient monitoring.
- Modeling and analysis.
- Demonstrations.
- Emissions inventories.
- Administration and technical support (e.g., managerial costs, secretarial/clerical costs, labor indirect costs, copying costs, contracted services, accounting and billing).

- Overhead (e.g., heat, electricity, phone, rent, and janitorial services).

- States will need to develop a rational method based on sound accounting principles for segregating the above costs of the permits program from other costs of the air program. The cost figures and methodology will be reviewed by EPA on a case-by-case basis.

III. FLEXIBILITY IN FEE STRUCTURE DESIGN

A. A State may design its fee structure as it deems appropriate, provided the fee structure raises sufficient revenue to cover all reasonable direct and indirect permits program costs.

B. Provided adequate aggregate revenue is raised, States may:

- Base fees on actual emissions or allowable emissions.

- Differentiate fees based on source categories or type of pollutant.

- Exempt some sources from fee requirements.

- Determine fees on some basis other than emissions.

- Charge annual fees or fees covering some other period of time.

IV. INITIAL PROGRAM APPROVABILITY CRITERIA

A. Elements of State program submittals which relate to permit fees.

- Demonstration that fee revenues in the aggregate will adequately fund the permits program.

- Initial accounting to demonstrate that permit fee revenues required to support the reasonable direct and indirect permits program costs are in fact used to fund permits program costs.

- Statement that the program is adequately funded by permit fees (which is supported by cost estimates for the first 4 years of the permits program).

B. Methods by which a State may demonstrate that its fee schedule is sufficient to fund its title V permits program:

- Demonstration that its fee revenue in the aggregate will meet or exceed the $25/tpy (with CPI adjustment) presumptive minimum amount.

- Detailed fee demonstration.

  * Required if fees in the aggregate are less than the presumptive minimum or if credible evidence is presented raising serious questions during public comment on whether fee schedule is sufficient or information casting doubt on fee adequacy otherwise comes to EPA's attention.

C. Computation of $25/tpy presumptive minimum.

- The emissions inventory against which the $25/tpy is applied is calculated as follows:

  * Calculate emissions inventory using actual emissions (and estimates of actual emissions).

  * From the total emissions of part 70 sources, exclude emissions of carbon monoxide (CO) and other pollutants consistent with the definition of "regulated pollutant (for presumptive fee purposes)."

  * States may:

    • Exclude emissions which exceed 4,000 tpy per pollutant per source.

    • Exclude emissions which are already included in the calculation (i.e., double-counting is not required).

    • Exclude insignificant quantities of emissions not required in a permit application.

  * States have two options with respect to emissions from affected units under section 404 of the Act during 1995 through 1999.

    • If a State <u>excludes</u> emissions from affected units under section 404 from its inventory, fees from those units may <u>not</u> be used to show that the State's fee revenue meets or exceeds the $25/tpy presumptive minimum amount (see paragraph IV.E below).

- 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 (see paragraph IV.E below.)

- Computation of the presumptive minimum amount is a surrogate for predicting aggregate actual program costs. Once this aggregate cost has been determined, the method used for computing it does not restrict a State's discretion in designing its particular fee structure. States may impose fees in a manner different from the criteria for calculating the presumptive amount (e.g., charging fees for CO emissions and for emissions which exceed 4,000 tpy per pollutant per source).

D. Establishing that fee revenue meets or exceeds the presumptive minimum.

- Fee revenue in the aggregate must be equivalent to $25/tpy (as adjusted by CPI) as applied to the qualifying emissions inventory.

- States have flexibility in fee schedule design as outlined in paragraph III above and are not required to adopt any particular fee schedule.

E. Fees collected from affected units under section 404.

- States may not use emissions-based fees from "Phase I" affected units under section 404 for any purpose related to the approval of their operating permits programs for the period from 1995 through 1999. The EPA interprets the prohibition contained in section 408(c)(4) of the Act as preventing EPA from recognizing the collection of such fees in determining whether a State has met its obligation for adequate program funding. Furthermore, such fees cannot be used to support the direct or indirect costs of the permits program. However, 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.

  * All units initially classified as "Phase I" units are listed in Table I of 40 CFR part 73. In addition, units designated as active substitution units under section 404(b) are considered "Phase I" affected units under section 404.

- States may collect fees which are not emissions based (e.g., application or processing fees) from such units.

- Role of nonemissions-based fees in determining adequacy of aggregate fee revenue.

  * Such fees may be used as part of a detailed fee demonstration (which does not rely on the $25/tpy presumption).

  * Such fees may not be used to establish that aggregate fees meet or exceed the presumptive minimum amount unless the State exercises its discretion to include emissions from affected units under section 404 in the emissions inventory against which the $25/tpy is applied.

F. Fee program accountability.

- Initial accounting (required as part of program submittal) comprised of a description of the mechanisms and procedures for ensuring that fees needed to support the reasonable direct and indirect costs of the program are utilized solely for permits program costs.

- Periodic accounting every 2-3 years to demonstrate that the reasonable direct and indirect costs of the program were covered by fee revenues.

- Earlier accounting or more frequent accountings if EPA determines through its oversight activities that a program's inadequate implementation may be the result of inadequate funding.

G. Governor's statement assuring adequate personnel and funding for permits program.

- Submitted as part of program submittal.

- A statement supported by annual estimates of permits program costs for the first 4 years after program approval and a description of how the State plans to cover those costs.

  * Detailed description of estimated annual costs is not required if the State has relied on the presumptive minimum amount in demonstrating the adequacy of its fee program.

* Detailed description of estimated costs for a 4-year period showing how program activities and resource needs will change during the transition period is required if State proposes to collect fee revenue which is less than the presumptive minimum amount.

- Projection of annual fee revenue for a 4-year period with explanation of how State will handle any temporary shortfall (if projected revenue for any of the 4 years is less than estimated costs).

V. FUTURE ADJUSTMENTS TO FEE SCHEDULE

A. Continuing requirement of fee revenue adequacy.

- Obligates the States to update and adjust their fee schedules periodically if they are not sufficient to fund the reasonable direct and indirect costs of the permits program.

B. Changes in fee structure over time are inevitable and may be required by the following events:

- Results of periodic audits/accountings.

- Revised number of part 70 sources (discovery of new sources, new EPA standards, expiration of the deferral of nonmajor sources).

- Changes in the number of permit revisions.

- Changes in the number of affected units under section 404 (e.g., substitution units).

- CPI-type adjustments.

- Different activities during post-transition period.

NOTICE

The policies set out in this guidance document are intended solely as guidance and do not represent final Agency action and are not ripe for judicial review. They are not intended, nor can they be relied upon, to create any rights enforceable by any party in litigation with the United States. The EPA officials may decide to follow the guidance provided in this guidance document, or to act at variance with the guidance, based on an analysis of specific circumstances. The EPA also may change this guidance at any time without public notice.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

APR 26 1993

MEMORANDUM

SUBJECT: Definition of Regulated Air Pollutant for Purposes of Title V

FROM: Lydia N. Wegman, Deputy Director
Office of Air Quality Planning and Standards (MD-10)

TO: Air Division Director, Regions I-X

In response to requests for guidance on the definition of regulated air pollutant, this memorandum clarifies the approach set forth by the definition in the 40 CFR part 70 regulations and indicates the ways in which the class of regulated air pollutants can change. The attachment provides a compilation of the lists of pollutants which are considered regulated air pollutants for purposes of the operating permits programs under title V of the Clean Air Act (Act). This memorandum also provides guidance on the Environmental Protection Agency's (EPA's) definition of air pollutant, as that term is used in determining major source status pursuant to section 302 of the Act. Finally, this memorandum emphasizes the ability of permitting authorities to designate certain quantities of emissions of regulated air pollutants as "insignificant" with respect to the obligation to report emissions of those pollutants in permit applications. The policies set out in this memorandum and attachment are intended solely as guidance, not final Agency action, and cannot be relied upon to create any rights enforceable by any party.

I. Regulated Air Pollutants

The definition of regulated air pollutant, found at 40 CFR 70.2, is important because it determines which pollutants and emissions units must be addressed in a source's title V permit application. In addition, this definition can affect whether a State's fee revenue is presumed adequate to fund its title V program and, in some cases, the amount of permit fees a source must pay. Each of these roles is discussed below.

Once a source is subject to a title V permitting program, its emissions of all regulated air pollutants (except those which meet the permitting authority's criteria for "insignificant"

emissions) must be described in the permit application along with all emissions of pollutants for which the source is considered major. Similarly, applications must describe all emissions units which emit regulated air pollutants (except those deemed insignificant).

In addition, the concept of regulated air pollutant plays a significant role in the area of permit fees. Most importantly, the definition of regulated air pollutant is the starting point for determining which pollutants must be included when relying on the $25 ton per year (as adjusted by the Consumer Price Index) presumptive minimum program cost as a basis for demonstrating the adequacy of a State's projected fee revenue. As part of this demonstration, the State projects its revenue using a subset of regulated air pollutants [i.e., regulated pollutant (for presumptive fee calculation)].

The population of regulated air pollutants is composed of the following categories of pollutants:

(1) Nitrogen oxides (NO_x) and volatile organic compounds (VOC). The definition of regulated air pollutant specifically includes these two significant precursors to ozone (O_3) formation. This approach is consistent with the Act's treatment of VOC and NO_x pursuant to part D of title I of the Act [these O_3 precursors are combined with the criteria pollutants for purposes of the attached list of regulated pollutants].

(2) Any pollutant for which a national ambient air quality standard has been promulgated [i.e., particulate matter (measured as PM-10: particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers), sulfur dioxide, O_3, nitrogen dioxide, carbon monoxide, and lead].

(3) Any pollutant that is subject to a new source performance standard promulgated under section 111 of the Act [including section 111(d)], which requires new and modified sources to satisfy emissions standards, work practice standards, and other requirements.

(4) Any of the O_3-depleting substances specified as a Class I (primarily chlorofluorocarbons) or Class II substance (hydrochlorofluorocarbons) under title VI of the Act [all of which became regulated pollutants when they became subject to standards and requirements for servicing of motor vehicle air conditioners, and restrictions on the sale of O_3-depleting substances promulgated into 40 CFR part 82 (57 FR 31242, July 14, 1992)].

(5) Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Act, including section 112(g)(2), (j), and (r) of the Act.

It is important to note that it is EPA's interpretation that if a pollutant is regulated for one source category by a standard or other requirement, then the pollutant is considered a regulated air pollutant for all source categories. This concept is relevant to all the pollutants listed under items (3), (4), and (5) above, with one exception: those which are the subject of case-by-case maximum achievable control technology (MACT) determinations under section 112(g)(2).

The issue of when a substance regulated under section 112 becomes a regulated air pollutant merits further discussion.

- When a permitting authority makes a case-by-case MACT determination under section 112(g)(2), then the pollutant for which the determination is made is regulated even though EPA has not issued a standard for that pollutant. However, the pollutant is considered regulated only with respect to the individual source for which the MACT determination was made.

- A pollutant will become regulated under section 112(j) of the Act [the MACT hammer] if the Administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Act. Pursuant to section 112(j), permitting authorities will be required to make case-by-case MACT equivalent determinations. The pollutants become regulated nationwide upon the date this provision takes effect for the pollutant [i.e., 18 months after the missed deadline for the standard, but not prior to 42 months after the enactment of the Act Amendments of 1990 (1990 Amendments)]. Pollutants so regulated are considered regulated air pollutants for all sources that emit the pollutant because the hammer provision is a broadly-applicable surrogate for the promulgation of a MACT standard. This is in contrast to the section 112(g)(2) determinations which are triggered only for the single source subject to the requirement, rather than nationwide.

- The EPA's proposed rule [required by section 112(r)(3)] listing substances which could cause, or may reasonably be anticipated to cause, death, injury, or serious adverse effects to human health or the environment, if accidentally released, was published in the Federal Register on January 19, 1993 (58 FR 5102). All of the listed pollutants will become regulated air pollutants upon promulgation of the list.

The attachment to this memorandum contains a list of pollutants which are regulated, as well as a list of pollutants which are subject to regulation under section 112 in the future, as discussed above. It is also important to note that the attached lists are dynamic and subject to change. For example, the EPA is required to review periodically the statutory list of pollutants in section 112(b) and is authorized to delete and add substances if the scientific data demonstrate that such a change is appropriate.

We have attempted to note the likely near-term changes in the regulations that determine which pollutants are regulated air pollutants, and we will provide updates to this guidance periodically.

The definition of regulated air pollutant does not limit the air pollutants which a State may choose to regulate, nor does it limit the information (such as for permit applications) which a State may require of a source. States are free to adopt more expansive approaches to the regulation of toxic air pollutants than is required by part 70.

II. Definition of Air Pollutant Pursuant to Section 302

Considerable interest has been expressed in a related but distinct area: the definition of air pollutant contained in section 302(g) of the Act. This definition governs which pollutants are to be considered in determining whether a source is "major" pursuant to section 302(j) of the Act. This is important to the operating permits programs because all major sources must obtain a title V permit. Although section 302(g) can be read quite broadly, so as to encompass virtually any substance emitted into the atmosphere, EPA believes that it is more consistent with the intent of Congress to interpret this provision more narrowly. Were this not done, a variety of sources that have no known prospect for future regulation under the Act would nonetheless be classified as major sources and be required to apply for title V permits. Of particular concern would be sources of carbon dioxide or methane.

As a result, EPA is interpreting "air pollutant" for section 302(g) purposes as limited to all pollutants subject to regulation under the Act. This would include, of course, all regulated air pollutants plus others specified by the Act or by EPA rulemaking. This approach results in the inclusion of the pollutants on the list of hazardous air pollutants in section 112(b) that are not otherwise regulated. It should be noted that the 1990 Amendments did include provisions with respect to carbon dioxide (section 821) and methane (section 603), but these requirements involve actions such as reporting and study, not

actual control of emissions. Therefore, these provisions do not preempt EPA's discretion to exclude these pollutants in determining whether a source is major. If the results of the studies required by the 1990 Amendments suggest the need for regulation, these pollutants could be reconsidered at that time for classification as pollutants subject to regulation under the Act.

This approach to interpreting section 302(g) is similar to the traditional practice of the prevention of significant deterioration (PSD) program under part C of title I of the Act [e.g., Implementation of North County Resource Recovery PSD Remand, Gerald Emison, Director, Office of Air Quality Planning and Standards, dated September 22, 1987].

III. De Minimis Thresholds

With the 1990 Amendments, the Act expressly addresses a significantly broader range of pollutants. The EPA believes that this will confer real benefits to air quality management, and that the title V permits program offers the flexibility for efficient implementation of these requirements. This function includes providing information about emissions of these pollutants, through the permit application process, even if the particular pollutant is not currently required to be controlled at the individual source. The EPA also realizes that in many cases these pollutants are emitted in amounts of no significance to air quality management. It would be unduly burdensome to require permit applicants to quantify all emissions of these pollutants, especially given their considerable number and, in some cases, difficulty in quantification.

The part 70 promulgation recognized this fact but gave only very general guidance as to the approvable options for States in developing their part 70 programs. Section 70.5(c) provides that "[T]he Administrator may approve as part of a State program a list of insignificant activities and emissions levels which need not be included in permit applications." The regulation further provides that "[T]he permitting authority shall require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information needed to collect any permit fees owed under the fee schedule approved pursuant to section 70.9(b) of this part" [section 70.5(c)(3)(i)].

In order to aid States in establishing their approaches to insignificant activities and emissions levels, EPA intends to review various approaches to setting de minimis thresholds for reporting of emissions of air pollutants and provide advice and guidance as needed on what constitutes acceptable approaches for setting de minimis levels. This effort will include evaluation of data compiled by EPA's national toxics program as well as

review of current practices among some States that have been regulating these pollutants. The EPA recognizes that the particular thresholds selected by individual States can vary based on their air quality management needs and professional judgement. The EPA's further efforts in this area will be offered as technical support and guidance to State and local programs in addressing these challenging issues, not as mandatory program minima. The EPA will work with States to develop part 70 programs that will best meet their program needs.

For further information, please contact Kirt Cox or Candace Carraway of my staff at (919) 541-5399 and (919) 541-3189, respectively.

Attachments

cc: Air Branch Chief, Regions I-X
Operating Permits Program Contacts, Regions I-X
OAQPS Division Directors

Attachment 1

LIST OF REGULATED AIR POLLUTANTS
(As of April 1993)

I. Pollutants for Which National Ambient Air Quality Standards (NAAQS) Have Been Established

lead
sulfur dioxide
nitrogen dioxide
carbon monoxide
particulate matter (PM-10)
ozone, including precursors:
- nitrogen oxides (NO, NO_2, NO_3, N_2O, N_2O_3, N_2O_4, N_2O_5)
- volatile organic compounds (VOC)

As defined in 40 CFR 51.100(s), the term VOC includes any compound of carbon (excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate) which participates in atmospheric photochemical reactions. The EPA has developed a list of substances (which is subject to change) which are excluded from the VOC definition because of their negligible reactivity. The EPA's proposal to exclude perchloroethylene from the definition was published in 57 FR 48490 (October 26, 1992).

The following organic compounds are excluded from the definition of VOC because they have been determined to have negligible photochemical reactivity:

methane
ethane
methylene chloride (dichloromethane)
1,1,1-trichloroethane (methyl chloroform)
1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113)
trichlorofluoromethane (CFC-11)
dichlorodifluoromethane (CFC-12)
chlorodifluoromethane (CFC-22)
trifluoromethane (FC-23)
1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114)
chloropentafluoroethane (CFC-115)
1,1,1-trifluoro 2,2-dichloroethane (HCFC-123)
1,1,1,2-tetrafluoroethane (HFC-134a)
1,1-dichloro 1-fluoroethane (HCFC-141b)
1-chloro 1,1-difluoroethane (HCFC-142b)
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
pentafluoroethane (HFC-125)
1,1,2,2-tetrafluoroethane (HFC-134)
1,1,1-trifluoroethane (HFC-143a)
1,1-difluoroethane (HFC-152a)

perfluorocarbon compounds which fall into these classes:

(i) Cyclic, branched, or linear, completely fluorinated alkanes;

(ii) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(iii) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(iv) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

II. Pollutants Regulated Under New Source Performance Standards (NSPS)

Criteria pollutants (including VOC and NO_x) plus:

dioxin/furan (defined in 40 CFR 60.53a to mean total tetra through octachlorinated dibenzo-p-dioxins and dibenzofurans)*
fluorides
hydrogen chloride*
hydrogen sulfide (H_2S)
sulfuric acid mist
total reduced sulfur
reduced sulfur compounds
total suspended particulate

* The NSPS for municipal waste combustors (MWC) controls emissions of dioxin/furans and hydrogen chloride gas (40 CFR 60.53a and 60.54a) as surrogates for controlling emissions of organic compounds and acid gases which are emitted in the exhaust gases from MWC units. Thus, the indicated dioxin/furan compounds and hydrogen chloride are regulated pollutants.

Note that the EPA has drafted a proposed revision to the NSPS for MWC's which will regulate substances like cadmium which are not currently regulated air pollutants. As this revised NSPS and other standards are developed, there may be additions to the list of regulated pollutants.

III. Class I and Class II Substances Under Title VI

Class I Substances:

carbon tetrachloride
chlorofluorocarbon-11 (CFC-11)
chlorofluorocarbon-12 (CFC-12)
chlorofluorocarbon-13 (CFC-13)
chlorofluorocarbon-111 (CFC-111)
chlorofluorocarbon-112 (CFC-112)
chlorofluorocarbon-113 (CFC-113)
chlorofluorocarbon-114 (CFC-114)
chlorofluorocarbon-115 (CFC-115)
chlorofluorocarbon-211 (CFC-211)
chlorofluorocarbon-212 (CFC-212)
chlorofluorocarbon-213 (CFC-213)
chlorofluorocarbon-214 (CFC-214)
chlorofluorocarbon-215 (CFC-215)
chlorofluorocarbon-216 (CFC-216)
chlorofluorocarbon-217 (CFC-217)
halon-1211
halon-1301
halon-2402
methyl chloroform

Class II Substances:

hydrochlorofluorocarbon-21 (HCFC-21)
hydrochlorofluorocarbon-22 (HCFC-22)
hydrochlorofluorocarbon-31 (HCFC-31)
hydrochlorofluorocarbon-121 (HCFC-121)
hydrochlorofluorocarbon-122 (HCFC-122)
hydrochlorofluorocarbon-123 (HCFC-123)
hydrochlorofluorocarbon-124 (HCFC-124)
hydrochlorofluorocarbon-131 (HCFC-131)
hydrochlorofluorocarbon-132 (HCFC-132)
hydrochlorofluorocarbon-133 (HCFC-133)
hydrochlorofluorocarbon-141 (HCFC-141)
hydrochlorofluorocarbon-142 (HCFC-142)
hydrochlorofluorocarbon-221 (HCFC-221)
hydrochlorofluorocarbon-222 (HCFC-222)
hydrochlorofluorocarbon-223 (HCFC-223)
hydrochlorofluorocarbon-224 (HCFC-224)
hydrochlorofluorocarbon-225 (HCFC-225)
hydrochlorofluorocarbon-226 (HCFC-226)
hydrochlorofluorocarbon-231 (HCFC-231)
hydrochlorofluorocarbon-232 (HCFC-232)
hydrochlorofluorocarbon-233 (HCFC-233)
hydrochlorofluorocarbon-234 (HCFC-234)
hydrochlorofluorocarbon-235 (HCFC-235)
hydrochlorofluorocarbon-241 (HCFC-241)
hydrochlorofluorocarbon-242 (HCFC-242)

hydrochlorofluorocarbon-243 (HCFC-243)
hydrochlorofluorocarbon-244 (HCFC-244)
hydrochlorofluorocarbon-251 (HCFC-251)
hydrochlorofluorocarbon-252 (HCFC-252)
hydrochlorofluorocarbon-253 (HCFC-253)
hydrochlorofluorocarbon-261 (HCFC-261)
hydrochlorofluorocarbon-262 (HCFC-262)
hydrochlorofluorocarbon-271 (HCFC-271)

IV. Pollutants Regulated Under § 112

Pollutants for which national emission standards for hazardous air pollutants (NESHAP) have been established:

arsenic
asbestos
beryllium
benzene
mercury
radionuclides
vinyl chloride

Attachment 2

POLLUTANTS SUBJECT TO REGULATION UNDER § 112

I. Pollutants listed in § 112(b):

The 189 pollutants listed in § 112(b) are not considered regulated air pollutants until addressed in a requirement that the pollutant be controlled by a source. None of the listed pollutants meets the definition except asbestos, benzene, and vinyl chloride (for which NESHAP have been established); and hydrogen chloride (gas), dibenzofurans, and 2,3,7,8-Tetrachlorodibenzo-p-dioxin (regulated under the municipal waste combustor NSPS). Most of the listed pollutants will become regulated when EPA promulgates the Hazardous Organic NESHAP (HON) which is discussed below. The remaining pollutants will become regulated: (1) when EPA promulgates a maximum achievable control technology (MACT) standard for the pollutant under § 112(d); (2) for a particular source, when case-by-case MACT determinations are made under § 112(g) for the source; or (3) the later of June 15, 1994 or 18 months after EPA fails to issue emissions standards for categories of sources in compliance with the timetable promulgated pursuant to § 112(e) as mandated by § 112(j).

The § 112(b) list contains some technical errors which will be corrected in subsequent rulemaking. The majority of the technical corrections likely to be made are noted below. Also, the pollutants from the § 112(b) list which are addressed in the proposed HON are followed by an asterisk.

Chemical Abstract Service (CAS) Number	Chemical Name
75070	Acetaldehyde*
60355	Acetamide*
75058	Acetonitrile*
98862	Acetophenone*
53963	2-Acetylaminofluorene*
107028	Acrolein*
79061	Acrylamide*
79107	Acrylic acid*
107131	Acrylonitrile*
107051	Allyl chloride*
92671	4-Aminobiphenyl*
62533	Aniline*
90040	o-Anisidine*
1332214	Asbestos

71432	Benzene (including benzene from gasoline)*
92875	Benzidine*
98077	Benzotrichloride*
100447	Benzyl chloride*
92524	Biphenyl*
117817	Bis(2-ethylhexyl)phthalate (DEHP)*
542881	Bis(chloromethyl)ether*
75252	Bromoform*
106990	1,3-Butadiene*
156627	Calcium cyanamide
105602	Caprolactam*
133062	Captan
63252	Carbaryl
75150	Carbon disulfide*
56235	Carbon tetrachloride*
463581	Carbonyl sulfide*
120809	Catechol*
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid*
532274	2-Chloroacetophenone*
108907	Chlorobenzene*
510156	Chlorobenzilate
67663	Chloroform*
107302	Chloromethyl methyl ether*
126998	Chloroprene*
1319773	Cresols/Cresylic acid (isomers and mixture)*
95487	o-Cresol*
108394	m-Cresol*
106445	p-Cresol*
98828	Cumene*
94757	2,4-D (2,4-Dichlorophenoxyacetic acid, including salts and esters)*
	DDE* [recommended technical correction: CAS number 72559] (1,1-dichloro-2,2-bis(p-chlorophenyl) ethylene)
334883	Diazomethane*
132649	Dibenzofurans* [recommended technical correction: Dibenzofuran]
96128	1,2-Dibromo-3-chloropropane*
84742	Dibutylphthalate*
106467	1,4-Dichlorobenzene(p)* [recommended technical correction: 1,4-Dichlorobenzene]
91941	3,3-Dichlorobenzidene* [recommended technical correction: 3,3'-Dichlorobenzidine]
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)*
542756	1,3-Dichloropropene*
62737	Dichlorvos
111422	Diethanolamine*

121697 N,N-Diethyl aniline (N,N-Dimethylaniline)* [recommended technical correction: N,N-Dimethylaniline]
64675 Diethyl sulfate*
119904 3,3-Dimethoxybenzidine* [recommended technical correction: 3,3'-Dimethoxybenzidine]
60117 Dimethyl aminoazobenzene*
119937 3,3',-Dimethyl benzidine* [recommended technical correction: 3,3',-Dimethylbenzidine]
79447 Dimethyl carbamoyl chloride* [recommended technical correction: Dimethylcarbamoyl chloride]
68122 Dimethyl formamide* [recommended technical correction: N,N-Dimethylformamide]
57147 1,1-Dimethyl hydrazine* [recommended technical correction: 1,1-Dimethylhydrazine]
131113 Dimethyl phthalate*
77781 Dimethyl sulfate*
4,6-Dinitro-o-cresol, and salts* [recommended technical correction to remove CAS number]
51285 2,4-Dinitrophenol*
121142 2,4-Dinitrotoluene*
123911 1,4-Dioxane (1,4-Diethyleneoxide)*
122667 1,2-Diphenylhydrazine*
106898 Epichlorohydrin (1-Chloro-2,3-epoxypropane)*
106887 1,2-Epoxybutane*
140885 Ethyl acrylate*
100414 Ethyl benzene* [recommended technical correction: Ethylbenzene]
51796 Ethyl carbamate (Urethane)*
75003 Ethyl chloride (Chloroethane)*
106934 Ethylene dibromide (Dibromoethane)*
107062 Ethylene dichloride (1,2-Dichloroethane)*
107211 Ethylene glycol*
151564 Ethylene imine (Aziridine) [recommended technical correction: Ethyleneimine (Aziridine)]
75218 Ethylene oxide*
96457 Ethylene thiourea*
75343 Ethylidene dichloride (1,1-Dichloroethane)*
50000 Formaldehyde*
76448 Heptachlor
118741 Hexachlorobenzene*
87683 Hexachlorobutadiene*
77474 Hexachlorocyclopentadiene
67721 Hexachloroethane*
822060 Hexamethylene-1,6-diisocyanate*
680319 Hexamethylphosphoramide*
110543 Hexane*
302012 Hydrazine*

7647010	Hydrochloric acid [recommended technical correction: Hydrochloric acid (hydrogen chloride)(gas only)]
7664393	Hydrogen fluoride (Hydrofluoric acid)
123319	Hydroquinone*
78591	Isophorone*
	Lindane (all isomers) [Recommended technical correction: 1,2,3,4,5,6-Hexachlorocyclohexane (all stereo isomers, including lindane)]
108316	Maleic anhydride*
67561	Methanol*
72435	Methoxychlor
74839	Methyl bromide (Bromomethane)*
74873	Methyl chloride (Chloromethane)*
71556	Methyl chloroform (1,1,1-Trichloroethane)*
78933	Methyl ethyl ketone (2-Butanone)*
60344	Methyl hydrazine* [recommended technical correction: Methylhydrazine]
74884	Methyl iodide (Iodomethane)*
108101	Methyl isobutyl ketone (Hexone)*
624839	Methyl isocyanate*
80626	Methyl methacrylate*
1634044	Methyl tert butyl ether* [recommended technical correction: Methyl tert-butyl ether]
101144	4,4-Methylene bis(2-chloroaniline)* [recommended technical correction: 4,4'-Methylenebis(2-chloroaniline]
75092	Methylene chloride (Dichloromethane)*
101688	Methylene diphenyl diisocyanate (MDI)* [recommended technical correction: 4-4' Methylenediphenyl diisocyanate (MDI)]
101779	4,4,-Methylenedianiline*
91203	Naphthalene*
98953	Nitrobenzene*
92933	4-Nitrobiphenyl*
100027	4-Nitrophenol*
79469	2-Nitropropane*
684935	N-Nitroso-N-methylurea*
62759	N-Nitrosodimethylamine*
59892	N-Nitrosomorpholine*
56382	Parathion
82688	Pentachloronitrobenzene (Quintobenzene)
87865	Pentachlorophenol
108952	Phenol*
106503	p-Phenylenediamine*
75445	Phosgene*
7803512	Phosphine
7723140	Phosphorus
85449	Phthalic anhydride*

1336363	Polychlorinated biphenyls (Aroclors)*
1120714	1,3-Propane sultone*
57578	beta-Propiolactone*
123386	Propionaldehyde*
114261	Propoxur (Baygon)*
78875	Propylene dichloride (1,2-Dichloropropane)*
75569	Propylene oxide*
75558	1,2-Propylenimine (2-Methyl aziridine)*
91225	Quinoline
106514	Quinone*
100425	Styrene*
96093	Styrene oxide*
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin*
79345	1,1,2,2-Tetrachloroethane*
127184	Tetrachloroethylene (Perchloroethylene)*
7550450	Titanium tetrachloride
108883	Toluene*
95807	2,4-Toluene diamine* [recommended technical correction: 2,4-Toluenediamine]
584849	2,4-Toluene diisocyanate*
95534	o-Toluidine*
8001352	Toxaphene (chlorinated camphene)
120821	1,2,4-Trichlorobenzene*
79005	1,1,2-Trichloroethane*
79016	Trichloroethylene*
95954	2,4,5-Trichlorophenol*
88062	2,4,6-Trichlorophenol*
121448	Triethylamine*
1582098	Trifluralin*
540841	2,2,4-Trimethylpentane*
108054	Vinyl acetate*
593602	Vinyl bromide*
75014	Vinyl chloride*
75354	Vinylidene chloride (1,1-Dichloroethylene)*
1330207	Xylenes (isomers and mixture)*
95476	o-Xylenes* [recommended technical correction: o-Xylene
108383	m-Xylenes* [recommended technical correction: m-Xylene]
106423	p-Xylenes* [recommended technical correction: p-Xylene]
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
0	Beryllium Compounds
0	Cadmium Compounds
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
0	Cyanide Compounds [1]
0	Glycol ethers* [2]

0 Lead Compounds
0 Manganese Compounds
0 Mercury Compounds
0 Fine mineral fibers [3]
0 Nickel Compounds
0 Polycylic Organic Matter [4]* [recommended technical correction: Polycyclic Organic Matter]
0 Radionuclides (including radon) [5]
0 Selenium Compounds

NOTE: For all listings above which contain the word "compounds" and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (i.e., antimony, arsenic, etc.) as part of that chemical's infrastructure.

1 X'CN where X = H' or any other group where a formal dissociation may occur.
For example KCN or $Ca(CN)_2$

2 Includes mono- and di- ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH2CH2)n-OR' where

n = 1, 2, or 3

R = alkyl or aryl groups

R' = R, H, or groups which, when removed, yield glycol ethers with the structure: $R-(OCH2CH)_n-OH$ [recommended technical correction: $R-(OCH2CH2)_n-OH$]. Polymers are excluded from the glycol category.

3 Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral-derived fibers) of average diameter 1 micrometer or less.

4 Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100°C. [Recommended technical correction: limited to, or refers to, products from incomplete combustion of organic compounds (or material) and pyrolysis processes having more than one benzene ring, and which have a boiling point greater than or equal to 100°C.]

5 A type of atom which spontaneously undergoes radioactive decay.

II. Pollutants Subject to the HON:

As part of the effort to regulate pollutants listed in § 112(b), the EPA has developed the HON which will apply to the synthetic organic chemical manufacturing industry and will control emissions of 149 volatile hazardous air pollutants (HAP's). All of the pollutants listed in the HON are among the 189 HAP's listed in § 112(b) and are identified (with an asterisk) in the preceding section of this document. Pollutants addressed by the HON will become regulated on the effective date specified in the HON.

III. Pollutants Listed Under § 112(r):

Section 112(r)(3) requires that EPA promulgate an initial list of at least 100 substances with threshold quantities which would cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment if accidentally released. The EPA's proposed rule to implement § 112(r)(3) was published in the Federal Register on January 19, 1993 (58 FR 5102). The proposed list of substances includes 100 acutely toxic substances, 62 flammable gases and volatile flammable liquids, and commercial explosives (classified by the Department of Transportation in Division 1.1). The listed pollutants will become "regulated" for purposes of title V upon final promulgation of the list.

The toxic and flammable substances listed in the proposed rule are arranged alphabetically and by CAS number on the attached lists.

NOTICE

The policies set out in this guidance document are intended solely as guidance and do not represent final Agency action, and are not ripe for judicial review. They are not intended, nor can they be relied upon, to create any rights enforceable by any party in litigation with the United States. The EPA officials may decide to follow the guidance provided in this guidance document, or to act at variance with the guidance, based on an analysis of specific circumstances. The EPA may also change this guidance at any time without public notice.

TABLE 1 TO § 68.130.—LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION

[Alphabetical Order—100 Substances]

Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
Acetone cyanohydrin	75-86-5	5,000	(3)
Acrolein	107-02-8	1,000	(3)
Acrylonitrile	107-13-1	10,000	(3)
Acrylyl chloride	814-68-6	1,000	(3)
Allyl alcohol	107-18-6	5,000	(3)
Allylamine	107-11-9	1,000	(3)
Ammonia (anhydrous)	7664-41-7	1,000	(2, 3)
Ammonia (aqueous solution, conc 20% or greater)	7664-41-7	5,000	(2, 3)
Aniline	62-53-3	5,000	(3)
Antimony pentafluoride	7783-70-2	1,000	(3)
Arsenous trichloride	7784-34-1	5,000	(3)
Arsine	7784-42-1	500	(3)
Benzal chloride	98-87-3	1,000	(3)
Benzenamine, 3-(trifluoromethyl)-	98-16-8	1,000	(3)
Benzotrichloride	98-07-7	500	(3)
Benzyl chloride	100-44-7	1,000	(3)
Benzyl cyanide	140-29-4	1,000	(3)
Boron trichloride	10294-34-5	1,000	(3)
Boron trifluoride	7637-07-2	1,000	(3)
Boron trifluoride compound with methyl ether (1:1)	353-42-4	5,000	(3)
Bromine	7726-95-6	1,000	(2, 3)
Carbon disulfide	75-15-0	10,000	(3)
Chlorine	7782-50-5	1,000	(2, 3)
Chlorine dioxide	10049-04-4	500	(3)
Chloroethanol	107-07-3	1,000	(3)
Chloroform	67-66-3	10,000	(3)
Chloromethyl ether	542-88-1	500	(3)
Chloromethyl methyl ether	107-30-2	1,000	(3)
Crotonaldehyde	4170-30-3	10,000	(3)
Crotonaldehyde, (E)-	123-73-9	10,000	(3)
Cyanogen chloride	506-77-4	1,000	(3)
Cyclohexylamine	108-91-8	5,000	(3)
Diborane	19287-45-7	500	(3)
Trans-1,4-dichlorobutene	110-57-6	1,000	(3)
Dichloroethyl ether	111-44-4	10,000	(3)
Dimethyldichlorosilane	75-78-5	1,000	(3)
Dimethylhydrazine	57-14-7	5,000	(3)
Dimethyl phosphorochloridothioate	2524-03-0	1,000	(3)
Epichlorohydrin	106-89-8	10,000	(3)
Ethylenediamine	107-15-3	10,000	(3)
Ethyleneimine	151-56-4	1,000	(3)
Ethylene oxide	75-21-8	5,000	(2, 3)
Fluorine	7782-41-4	500	(3)
Formaldehyde	50-00-0	500	(3)
Formaldehyde cyanohydrin	107-16-4	5,000	(3)
Furan	110-00-9	1,000	(3)
Hydrazine	302-01-2	5,000	(3)
Hydrochloric acid (solution, conc 25% or greater)	7647-01-0	5,000	(3)
Hydrocyanic acid	74-90-8	500	(2, 3)
Hydrogen chloride (anhydrous)	7647-01-0	1,000	(2, 3)
Hydrogen fluoride	7664-39-3	500	(2, 3)
Hydrogen peroxide (conc > 52%)	7722-84-1	5,000	(3)
Hydrogen selenide	7783-07-5	500	(3)
Hydrogen sulfide	7783-06-4	1,000	(2, 3)
Iron, pentacarbonyl-	13463-40-6	500	(3)
Isobutyronitrile	78-82-0	10,000	(3)
Isopropyl chloroformate	108-23-6	5,000	(3)
Lactonitrile	78-97-7	5,000	(3)
Methacrylonitrile	126-98-7	1,000	(3)
Methyl bromide	74-83-9	5,000	(3)
Methyl chloride	74-87-3	10,000	(3)
Methyl chloroformate	79-22-1	1,000	(3)
Methyl hydrazine	60-34-4	5,000	(3)
Methyl isocyanate	624-83-9	1,000	(2, 3)
Methyl mercaptan	74-93-1	1,000	(3)
Methyl thiocyanate	556-64-9	10,000	(3)
Methyltrichlorosilane	75-79-6	1,000	(3)
Nickel carbonyl	13463-39-3	500	(3)
Nitric acid	7697-37-2	5,000	(3)
Nitric oxide	10102-43-9	1,000	(3)
Nitrobenzene	98-95-3	10,000	(3)
Parathion	56-38-2	1,000	(3)
Peracetic acid	79-21-0	1,000	(3)
Perchloromethylmercaptan	594-42-3	1,000	(3)
Phenol (liquid)	108-95-2	10,000	(3)
Phosgene	75-44-5	500	(2, 3)
Phosphine	7803-51-2	1,000	(3)
Phosphorus oxychloride	10025-87-3	1,000	(3)

TABLE 1 TO § 68.130.—LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION—Continued

[Alphabetical Order—100 Substances]

Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
Phosphorus trichloride	7719-12-2	5,000	(3)
Piperidine	110-89-4	5,000	(3)
Propionitrile	107-12-0	1,000	(3)
Propyl chloroformate	109-61-5	5,000	(3)
Propyleneimine	75-55-8	10,000	(3)
Propylene oxide	75-56-9	10,000	(3)
Pyridine, 2-methyl-5-vinyl-	140-76-1	1,000	(3)
Sulfur dioxide	7446-09-5	1,000	(2, 5)
Sulfuric acid	7664-93-9	1,000	(3)
Sulfur tetrafluoride	7783-60-0	1,000	(3)
Sulfur trioxide	7446-11-9	1,000	(2, 5)
Tetramethyllead	75-74-1	1,000	(3)
Tetranitromethane	509-14-8	1,000	(3)
Thiophenol	108-98-5	1,000	(3)
Titanium tetrachloride	7550-45-0	500	(3)
Toluene 2,4-diisocyanate	584-84-9	1,000	(1)
Toluene 2,6-diisocyanate	91-08-7	1,000	(3)
Toluene diisocyanate (unspecified isomer)	26471-62-5	1,000	(3)
Trichloroethylsilane	115-21-9	1,000	(3)
Trimethylchlorosilane	75-77-4	1,000	(3)
Vinyl acetate monomer	108-05-4	5,000	(3)
Vinyl chloride	75-01-4	10,000	(3)

Basis for Listing:
*Mandated for listing by Congress.
*On EHS list, vapor pressure 0.5 mm/Hg or greater.
*On EHS list, vapor pressure less than 0.5 mm/Hg, but has been involved in accidents resulting in death or injury.
*Toxic gas.
*Listed based on toxicity of hydrogen chloride, potential to release hydrogen chloride, and history of accidents.

TABLE 2 TO § 68.130.—LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION

[CAS Number Order—100 Substances]

CAS No.	Chemical name	Threshold quantity (lbs)	Basis for listing
50-00-0	Formaldehyde	500	(3)
56-38-2	Parathion	1,000	(3)
57-14-7	Dimethylhydrazine	5,000	(3)
60-34-4	Methyl hydrazine	5,000	(3)
62-53-3	Aniline	5,000	(3)
67-66-3	Chloroform	10,000	(3)
74-83-9	Methyl bromide	5,000	(3)
74-87-3	Methyl chloride	10,000	(3)
74-90-8	Hydrocyanic acid	500	(2, 5)
74-93-1	Methyl mercaptan	1,000	(3)
75-01-4	Vinyl chloride	10,000	(3)
75-15-0	Carbon disulfide	10,000	(3)
75-21-8	Ethylene oxide	5,000	(2, 5)
75-44-5	Phosgene	500	(2, 5)
75-55-8	Propyleneimine	10,000	(3)
75-56-9	Propylene oxide	10,000	(3)
75-74-1	Tetramethyllead	1,000	(3)
75-77-4	Trimethylchlorosilane	1,000	(3)
75-78-5	Dimethyldichlorosilane	1,000	(3)
75-79-6	Methyltrichlorosilane	1,000	(3)
75-86-5	Acetone cyanohydrin	5,000	(3)
78-82-0	Isobutyronitrile	10,000	(3)
78-97-7	Lactonitrile	5,000	(3)
79-21-0	Peracetic acid	1,000	(3)
79-22-1	Methyl chloroformate	1,000	(3)
91-08-7	Toluene 2,6-diisocyanate	1,000	(3)
98-07-7	Benzotrichloride	500	(3)
98-16-8	Benzenamine, 3-(trifluoromethyl)	1,000	(3)
98-87-3	Benzal chloride	1,000	(3)
98-95-3	Nitrobenzene	10,000	(3)
100-44-7	Benzyl chloride	1,000	(3)
106-89-8	Epichlorohydrin	10,000	(3)
107-02-8	Acrolein	1,000	(3)
107-07-3	Chloroethanol	1,000	(3)
107-11-9	Allylamine	1,000	(3)
107-12-0	Propionitrile	1,000	(3)
107-13-1	Acrylonitrile	10,000	(3)
107-15-3	Ethylenediamine	10,000	(3)
107-16-4	Formaldehyde cyanohydrin	5,000	(3)
107-18-6	Allyl alcohol	5,000	(3)
107-30-2	Chloromethyl methyl ether	1,000	(3)

TABLE 2 TO § 68.130.—LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION—Continued

[CAS Number Order—100 Substances]

CAS No.	Chemical name	Threshold quantity (lbs)	Basis for listing
108-05-4	Vinyl acetate monomer	5,000	(3)
108-23-6	Isopropyl chloroformate	5,000	(3)
108-91-8	Cyclohexylamine	5,000	(3)
108-95-2	Phenol (liquid)	10,000	(3)
108-98-5	Thiophenol	1,000	(3)
109-61-5	Propyl chloroformate	5,000	(3)
110-00-9	Furan	1,000	(3)
110-57-6	Trans-1,4-dichlorobutene	1,000	(3)
110-89-4	Piperidine	5,000	(3)
111-44-4	Dichloroethyl ether	10,000	(3)
115-21-9	Trichloroethylsilane	1,000	(3)
123-73-9	Crotonaldehyde, (E)	10,000	(3)
126-98-7	Methacrylonitrile	1,000	(3)
140-29-4	Benzyl cyanide	1,000	(3)
140-76-1	Pyridine, 2-methyl-5-vinyl	1,000	(3)
151-56-4	Ethyleneimine	1,000	(3)
302-01-2	Hydrazine	5,000	(3)
353-42-4	Boron trifluoride compound with methyl ether (1:1)	5,000	(3)
506-77-4	Cyanogen chloride	1,000	(3)
509-14-8	Tetranitromethane	1,000	(3)
542-88-1	Chloromethyl ether	500	(3)
556-64-9	Methyl thiocyanate	10,000	(3)
584-84-9	Toluene 2,4-diisocyanate	1,000	(3)
594-42-3	Perchloromethylmercaptan	1,000	(3)
624-83-9	Methyl isocyanate	1,000	(3) (4)
814-68-6	Acrylyl chloride	1,000	(3)
2524-03-0	Dimethylphosphorochloridothioate	1,000	(3)
4170-30-3	Crotonaldehyde	10,000	(3)
7446-09-5	Sulfur dioxide	1,000	(3) (5)
7446-11-9	Sulfur trioxide	1,000	(3) (5)
7550-45-0	Titanium tetrachloride	500	(3)
7637-07-2	Boron trifluoride	1,000	(3)
7647-01-0	Hydrogen chloride (anhydrous)	1,000	(3) (5)
7647-01-0	Hydrochloric acid (solution, conc 25% or greater)	5,000	(3) (5)
7664-39-3	Hydrogen fluoride	500	(3) (5)
7664-41-7	Ammonia (anhydrous)	1,000	(3) (5)
7664-41-7	Ammonia (aqueous solution, conc 20% or greater)	5,000	(3) (5)
7664-93-9	Sulfuric acid	5,000	(3)
7697-37-2	Nitric acid	5,000	(3)
7719-12-2	Phosphorus trichloride	5,000	(3)
7722-84-1	Hydrogen peroxide (conc > 52%)	5,000	(3)
7726-95-6	Bromine	1,000	(3) (5)
7782-41-4	Fluorine	500	(3)
7782-50-5	Chlorine	1,000	(3) (5)
7783-06-4	Hydrogen sulfide	1,000	(3) (5)
7783-07-5	Hydrogen selenide	500	(3)
7783-60-0	Sulfur tetrafluoride	1,000	(3)
7783-70-2	Antimony pentafluoride	1,000	(3)
7784-34-1	Arsenous trichloride	5,000	(3)
7784-42-1	Arsine	500	(3)
7803-51-2	Phosphine	1,000	(3)
10025-87-3	Phosphorus oxychloride	1,000	(3)
10049-04-4	Chlorine dioxide	500	(3)
10102-43-9	Nitric oxide	1,000	(3)
10294-34-5	Boron trichloride	1,000	(3)
13463-39-3	Nickel carbonyl	500	(3)
13463-40-6	Iron, pentacarbonyl	500	(3)
19287-45-7	Diborane	500	(3)
26471-62-5	Toluene diisocyanate (unspecified isomer)	1,000	(3)

Basis for Listing:
* Mandated for listing by Congress.
* On EHS list, vapor pressure 0.5 mmHg or greater.
* On EHS list, vapor pressure less than 0.5 mmHg, but has been involved in accidents resulting in death or injury.
* Toxic gas.
* Listed based on toxicity of hydrogen chloride, potential to release hydrogen chloride, and history of accidents.

TABLE 3 TO § 68.130.—LIST OF REGULATED FLAMMABLE SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION

[Alphabetical Order—62 Substances]

Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
Acetaldehyde	75-07-0	10,000	(3)
Acetylene	74-86-2	10,000	(3)
Bromotri- fluoroethylene	598-73-2	10,000	(3)
1,3-Butadiene	106-99-0	10,000	(3)

TABLE 3 TO § 68.130.—LIST OF REGULATED FLAMMABLE SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION—Continued

[Alphabetical Order—62 Substances]

Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
Butane	106-97-8	10,000	(3)
1-Butene	106-98-9	10,000	(3)
2-Butene	107-01-7	10,000	(3)
Butene	25167-67-3	10,000	(3)
2-Butene-cis	590-18-1	10,000	(3)
2-Butene-trans	624-64-6	10,000	(3)
Carbon oxysulfide	463-58-1	10,000	(3)
Chlorine monoxide	7791-21-1	10,000	(3)
2-Chloropropylene	557-98-2	10,000	(3)
1-Chloropropylene	590-21-6	10,000	(3)
Cyanogen	460-19-5	10,000	(3)
Cyclopropane	75-19-4	10,000	(3)
Dichlorosilane	4109-96-0	10,000	(3)
Difluoroethane	75-37-6	10,000	(3)
Dimethylamine	124-40-3	10,000	(3)
2,2-Dimethylpropane	463-82-1	10,000	(3)
Ethane	74-84-0	10,000	(3)
Ethyl acetylene	107-00-6	10,000	(3)
Ethylamine	75-04-7	10,000	(3)
Ethyl chloride	75-00-3	10,000	(3)
Ethylene	74-85-1	10,000	(3)
Ethyl ether	60-29-7	10,000	(3)
Ethyl mercaptan	75-08-1	10,000	(3)
Ethyl nitrite	109-95-5	10,000	(3)
Hydrogen	1333-74-0	10,000	(3)
Isobutane	75-28-5	10,000	(3)
Isopentane	78-78-4	10,000	(3)
Isoprene	78-79-5	10,000	(3)
Isopropylamine	75-31-0	10,000	(3)
Isopropyl chloride	75-29-6	10,000	(3)
Methane	74-82-8	10,000	(3)
Methylamine	74-89-5	10,000	(3)
3-Methyl-1-butene	563-45-1	10,000	(3)
2-Methyl-1-butene	563-46-2	10,000	(3)
Methyl ether	115-10-6	10,000	(3)
Methyl formate	107-31-3	10,000	(3)
2-Methylpropene	115-11-7	10,000	(3)
1,3-Pentadiene	504-60-9	10,000	(3)
Pentane	109-66-0	10,000	(3)
1-Pentene	109-67-1	10,000	(3)
2-Pentene, (E)-	646-04-8	10,000	(3)
2-Pentene, (Z)-	627-20-3	10,000	(3)
Propadiene	463-49-0	10,000	(3)
Propane	74-98-6	10,000	(3)
Propylene	115-07-1	10,000	(3)
Propyne	74-99-7	10,000	(3)
Silane	7803-62-5	10,000	(3)
Tetrafluoroethylene	116-14-3	10,000	(3)
Tetramethylsilane	75-76-3	10,000	(3)
Trichlorosilane	10025-78-2	10,000	(3)
Trifluoro- chloroethylene	79-38-9	10,000	(3)
Trimethylamine	75-50-3	10,000	(3)
Vinyl acetylene	689-97-4	10,000	(3)
Vinyl ethyl ether	109-92-2	10,000	(3)
Vinyl fluoride	75-02-5	10,000	(3)
Vinylidene chloride	75-35-4	10,000	(3)
Vinylidene fluoride	75-38-7	10,000	(3)
Vinyl methyl ether	107-25-5	10,000	(3)

Basis for Listing:
[1]Flammable gas.
[2]Volatile flammable liquid.

TABLE 4 TO § 68.130.—LIST OF REGULATED FLAMMABLE SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION

[CAS Number Order—62 Substances]

CAS No.	Chemical name	Threshold quantity (lbs)	Basis for listing
60-29-7	Ethyl ether	10,000	(3)
74-82-8	Methane	10,000	(3)
74-84-0	Ethane	10,000	(3)
74-85-1	Ethylene	10,000	(3)
74-86-2	Acetylene	10,000	(3)
74-89-5	Methylamine	10,000	(3)
74-98-6	Propane	10,000	(3)

TABLE 4 TO § 68.130.—LIST OF REGULATED FLAMMABLE SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTIAL RELEASE PREVENTION—Continued

[CAS Number Order—62 Substances]

CAS No.	Chemical name	Threshold quantity (lbs)	Basis for listing
74-99-7	Propyne	10,000	(1)
75-00-3	Ethyl chloride	10,000	(1)
75-02-5	Vinyl fluoride	10,000	(1)
75-04-7	Ethylamine	10,000	(1)
75-07-0	Acetaldehyde	10,000	(2)
75-08-1	Ethyl mercaptan	10,000	(2)
75-19-4	Cyclopropane	10,000	(1)
75-28-5	Isobutane	10,000	(1)
75-29-6	Isopropyl chloride	10,000	(2)
75-31-0	Isopropylamine	10,000	(2)
75-35-4	Vinylidene chloride	10,000	(2)
75-37-6	Difluoroethane	10,000	(1)
75-38-7	Vinylidene fluoride	10,000	(1)
75-50-3	Trimethylamine	10,000	(1)
75-76-3	Tetramethylsilane	10,000	(2)
78-78-4	Isopentane	10,000	(2)
78-79-5	Isoprene	10,000	(2)
79-38-9	Trifluorochloroethylene	10,000	(1)
106-97-8	Butane	10,000	(1)
106-98-9	1-Butene	10,000	(1)
106-99-0	1,3-Butadiene	10,000	(1)
107-00-6	Ethyl acetylene	10,000	(1)
107-01-7	2-Butene	10,000	(1)
107-25-5	Vinyl methyl ether	10,000	(1)
107-31-3	Methyl formate	10,000	(2)
109-66-0	Pentane	10,000	(2)
109-67-1	1-Pentene	10,000	(2)
109-92-2	Vinyl ethyl ether	10,000	(2)
109-95-5	Ethyl nitrite	10,000	(1)
115-07-1	Propylene	10,000	(1)
115-10-6	Methyl ether	10,000	(1)
115-11-7	2-Methylpropene	10,000	(1)
116-14-3	Tetrafluoroethylene	10,000	(1)
124-40-3	Dimethylamine	10,000	(1)
460-19-5	Cyanogen	10,000	(1)
463-49-0	Propadiene	10,000	(1)
463-58-1	Carbon oxysulfide	10,000	(1)
463-82-1	2,2-Dimethylpropane	10,000	(1)
504-60-9	1,3-Pentadiene	10,000	(1)
557-98-2	2-Chloropropylene	10,000	(2)
563-45-1	3-Methyl-1-butene	10,000	(1)
563-46-2	2-Methyl-1-butene	10,000	(2)
590-18-1	2-Butene-cis	10,000	(1)
590-21-6	1-Chloropropylene	10,000	(2)
598-73-2	Bromotrifluoroethylene	10,000	(1)
624-64-6	2-Butene-trans	10,000	(1)
627-20-3	2-Pentene, (Z)	10,000	(2)
646-04-8	2-Pentene, (E)	10,000	(2)
689-97-4	Vinyl acetylene	10,000	(1)
1333-74-0	Hydrogen	10,000	(1)
4109-96-0	Dichlorosilane	10,000	(1)
7791-21-1	Chlorine monoxide	10,000	(1)
7803-62-5	Silane	10,000	(1)
10025-78-2	Trichlorosilane	10,000	(2)
25167-67-3	Butene	10,000	(1)

Basis for Listing:
[1]Flammable gas.
[2]Volatile flammable liquid.

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BILLING CODE 6560-50-M

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Office of Program Management Operations U.S. EPA, 6102 401 M Street,SW Washington, DC 20460	(202) 260-7415
Office of Policy Analysis and Review U.S. EPA, 6103 401 M Street, SW Washington, DC 20460	(202) 260-5580
Office of Radiation and Indoor Air U.S. EPA, 6601J 401 M Street, SW Washington, DC 20460	(202) 233-9320
Office of Air Quality Planning and Standards U.S. EPA, MD-10 Research Triangle Park, NC 27711	(919) 541-5615
Office of Mobile Sources U.S. EPA, 6401 401 M Street, SW Washington, DC 20460	(202) 260-7645
Office of Atmospheric Programs U.S. EPA, 6201J 401 M Street, SW Washington, DC 20460	(202) 233-9140

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Office of Solid Waste and Emergency Response	
Chemical Emergency Preparedness and Prevention Office U.S. EPA, 5101 401 M Street SW Washington, DC 20460	(202) 260-8600
Office of General Counsel	
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Office of Research and Development	
Office of the Assistant Administrator U.S. EPA, 8101 401 M Street, SW Washington, DC 20460	(202) 260-7676

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Office and Address	Telephone Number
Region I - Air, Pesticides and Toxics Management Division U.S. EPA - Region I One Congress Street John F. Kennedy Building Boston, MA 02203-2211	(617) 565-3800
(Connecticut, Maine,Massachusetts, New Hampshire, Rhode Island, Vermont)	
Region II - Air and Waste Management Division U.S. EPA - Region II Jacob K. Javits Federal Building 26 Federal Plaza New York, NY 10278	(212) 264-2301
(New Jersey, New York, Puerto Rico, Virgin Islands)	

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Region III -	Air, Radiation and Toxics Division U.S. EPA - Region III 841 Chestnut Building Philadelphia, PA 19107	(215) 597-9390

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Region VII -	Air and Toxics Division U.S. EPA - Region VII 726 Minnesota Avenue Kansas City, KS 66101	(913) 551-7020

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Region VIII -	Air and Toxics Division U.S. EPA - Region VIII 999 18th Street 1 Denver Place - Suite 500 Denver, CO 80202-2405	(303) 293-1438

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Region IX - Air and Toxics Division **U.S. EPA - Region IX** **75 Hawthorne Street** **San Francisco, CA 94105**	**(415) 744-1219**
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Region X - Air and Toxics Division **U.S. EPA - Region X** **1200 Sixth Avenue** **Seattle, WA 98101**	**(206) 553-4152**
(Alaska, Idaho, Oregon, Washington)	

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CAA GENERAL	Rob Brenner/John Beale (202)260-5580
	John Bachmann/Jeff Clark (919)541-5359/(919)541-5557
OZONE (GROUND LEVEL): GENERAL	Tom Helms/John Silvasi (919)541-5527/(919)541-5666
Areas Affected/Nonattainment Boundaries	Barry Gilbert (919)541-5238
Air Quality Data	Tom Curran (919)541-5467
Data for Nonattainment Classifications and Designations	Barry Gilbert (919)541-5238
Mobile Source Requirements (See Below)	
Stationary Source Requirements	Bill Johnson (919)541-5245
CTG's, Stationary Source Controls * see list of CTG's on last page	Susan Wyatt/Bill Johnson (919)541-5674/(919)541-5245
Marine Vessel Loading	David Markwordt (919)541-0837
Architectural/Structural Coatings Reg/Neg	Bruce Madariaga (919)541-5290
Control Strategy Development/ Demonstration of Attainment	John Silvasi (919)541-5408
Emissions Inventory Guidance	David Misenheimer/David Mobley (919)541-5473/(919)541-4676
Emission Statements	Mary Warner-Selph (919)541-1192
Ozone Modeling	Ned Meyer/Joe Tikvart (919)541-5594/(919)541-5562
RACT Fixups	Bill Johnson (919)541-5245
Tracking/ % Reduction Calculations	Kimber Scavo (919)541-3354

Enhanced Ozone and VOC Monitoring	Ogden Gerald/Geri Dorosz-Stargerdt (919)541-5652/(919)541-5492
OZONE (STRATOSPHERIC): GENERAL	Stratospheric Ozone Protection Hotline (800)296-1996
Recycling	
Mobile Sources	Lena Nirk (202)233-9147
Stationary Sources	Debbie Ottinger (202)233-9149
Labelling	Kate Van Slyck (202)233-9742
Nonessential Uses	Matt Dinkel (202)233-9194
Safe substitutes	Drusilla Hufford (202)233-9101
CFC Phaseout	Peter Voigt (202)233-9185
CFC Enforcement	Bob Labens (703)308-8683
Greenlights Program	Greenlights Hotline (202)775-6650
MOBILE SOURCES: GENERAL	Paula Van Lare (202)260-3450
Reformulated Gasoline	Paul Machiele (313)668-4264
Clean Fueled Cars	Jeff Alson (313)668-4296
Oxygenated Fuels	Al Mannato (202)233-9050
Auto Tailpipe Requirements	Paula Van Lare (202)260-3450
Inspection/Maintenance	Gene Tierney (313)668-4456
CARBON MONOXIDE: GENERAL	Tom Helms (919)541-5527

Mobile Source Requirements (See Above)	
Nonattainment Classifications and Designations/Boundaries	Barry Gilbert (919)541-5238
Data for Nonattainment Classifications and Boundaries	Barry Gilbert (919)541-5238
Air Quality Data	Tom Curran (919)541-5467
CO Modeling	Tom Braverman (919)541-5383
Emission Inventories	David Misenheimer (919)541-5473
Control Strategy Development/ Demonstration of Attainment	John Silvasi (919)541-5666
PARTICULATE MATTER (PM-10): GENERAL	Joe Paisie (919)541-5556
Areas Affected	Larry Wallace (919)541-0906
Control Requirements	Ken Woodard/Charlene Spells (919)541-5697/(919)541-5255
SIPs	Larry Wallace (919)541-0906
Air Quality Data	Neil Frank (919)541-5560
Emissions Inventory Guidance	Bill Kuykendall (919)541-5372
RACM/BACM Technical Guidance	
Residential Wood Combustion	Chris Stoneman (919)541-5497
Fugitive Dust	Robin Dunkins (919)541-5335
Smoke Management	Andy Smith (919)541-5398
Air Quality Modeling	Gary Blais (919)541-5223

NAAQS REVIEW: GENERAL	John Haines (919)541-5533
LEAD	
SIPs	Laura McKelvey (919)541-5497
SULFUR DIOXIDE: GENERAL	Ken Woodard (919)541-5697
Areas Affected	Andy Smith (919)541-5398
SIP Requirements	Andy Smith (919)541-5398
Air Quality Modeling/Stack Heights	Gary Blais (919)541-3223
Air Quality Data	Lee Byrd (919)541-5367
ACID RAIN: GENERAL	Acid Rain Hotline (617)674-7377
Allowance Trading	Linda Critchfield/Kenon Smith (202)233-9087/(202)233-9164
Auctions/Sales	Linda Critchfield (202)233-9087
Allowance Tracking	Kenon Smith (202)233-9164
Allowance Allocations	Kathy Barylski/Craig Hillock (202)233-9074/(202)233-9105
Opt-In	Julie Rosenberg (202)233-9154
Conservation/Energy Reserve	Barry Solomon (202)233-9166
Permit Issuance	Donna Deneen/Drew Willison (202)233-9089/(202)233-9175
Permits Phase I Extension/Forms	Karen Kent (202)233-9119
Compliance Certification	Donna Deneen (292)233-9089

Data Recordation and Reporting	Larry Moritz (202)233-9144
Flow Monitors and Alternative Systems	John Schakenbach (202)233-9158
Accuracy of Data	Brian Bloomer (202)233-9078
Excess Emissions	Donna Deneen (202)233-9089
Program Evaluation	Robert Newman (202)233-9104
Low NOx Burner Technology	Arthur Lee (202)233-9133
NOx Compliance Options	Peter Tsirigotis (202)233-9171
Research, US/Canada Negotiations, NAPAP	Dennis Leaf (202)233-9129
VISIBILITY: GENERAL	Bruce Polkowsky/John Bachmann (919)541-5532/(919)541-5359
Report to Congress on Progress/Improvements	Bruce Polkowsky (919)541-5532
Report to Congress on Modeling, Source Impact	Joe Tikvart/Ned Meyer (919)541-5562/(919)541-5594
Visibility Transport Commissions	Bruce Polkowsky (919)541-5532
TOXICS: GENERAL	Bruce Jordan/Fred Dimmick (919)541-5571/(919)541-5625
Source Category List/Source Category Sources	Chuck French/Dave Svendsgaard (919)541-0467/(919)541-5608
Pollutants/Pollutant Categories	Nancy Pate (919)541-5347
Technology	Susan Wyatt/Jim Crowder (919)541-5674/(919)541-5596
Automobile Coatings	David Salman (919)541-0859

Petroleum Refineries	Jim Durham (919)541-5672
Paints and Coatings	Jim Berry (919)541-5605
Waste/Wastewater	KC Hustvedt (919)541-5395
Benzene Waste	Bob Lucas (919)541-0884
Bakeries	Martha Smith (919)541-2421
Gasoline Marketing	Steve Shedd (919)541-5397
POTW	Eric Crump (919)541-5032
Storage Vessels	Randy McDonald (919)541-5402
Batch Operations	Randy McDonald (919)541-5402
Pulp and Paper	Penny Lassiter (919)541-5396
Polymer and Resins	Bob Rosensteel (919)541-5608
Painting	David Salman (919)541-0859
Accidental Releases	Elaine Davies (202)260-8600
Electric Utilities	Bill Maxwell/Jim Crowder (919)541-5430/(919)541-5596
Great Lakes	John Bachmann/ Melissa McCullough (919)541-5359/(919)541-5646
Coke Ovens	Sims Roy/Amanda Agnew (919)541-5263/(919)541-5268
Hazardous Organic NESHAP (HON)	Jan Meyer/Linda Herring (919)541-5654/(919)541-5358

Drycleaning	Fred Porter/George Smith (919)541-5251/(919)541-1549
OPERATING PERMIT PROGRAM	Mike Trutna/Ed Lillis (919)541-5345/(919)541-5586
ENFORCEMENT	John Rasnic (703)308-8600
	Mamie Miller/Sally Mitoff (703)308-8685/(703)308-8692
COSTS/ECONOMIC CONSIDERATIONS	Jim DeMocher/Rob Brenner/Alan Basala (202)260-8980/(202)260-5580/(919)541-5622
NEW SOURCE REVIEW/PSD	David Solomon (919)541-5375
RESEARCH AND DEVELOPMENT	Jean Croft/Judy Rohrer/Stacy Katz (202)260-7678/(202)260-7678/(202)260-7669
RADIATION/RADIONUCLIDES	Albert Colli/Fran Jonesi (202)233-9300/(202)233-9229
Subpart T (Uranium Mill Tailings	Gale Bonanno (202)233-9219
Subpart I (NRC-licensed Facilities Facilities not under Subpart H	David O'Very (202)233-9483
Phosphogypsum	Jacolyn Dziuban (202)233-9474
INDIANS	Denise Gerth (919)541-5550
TRAINING	Ron Townsend (919)541-2498
SMALL BUSINESS ASSISTANCE	Raqueline Shelton/Deborah Elmore (919)541-0898/(919)541-5437
	Karen Brown/Bob Rose (703)305-5291
OUTER CONTINENTAL SHELF	Bill Johnson (919)541-5245
ECONOMIC INCENTIVE PROGRAMS	Karen Martin/Bill Beal (919)541-5274/(919)541-5667

Karen Martin
(919)541-5274

CTG's BEING PREPARED IN ACCORDANCE WITH CLEAN AIR ACT AMENDMENTS FOR 11 CTG's IN THREE YEARS (ACTIVE PROJECTS)

PROJECT	SECTION CHIEF	ENGINEER
SOCMI* Distillation	Bob Rosensteel (919)541-5608	Les Evans (919)541-5410
SOCMI Reactor Vents	Bob Rosensteel (919)541-5608	Les Evans (919)541-5410
Batch Operations	Bob Rosensteel (919)541-5608	Randy McDonald (919)541-5402
Vol. Organic Liquid Storage	Bob Rosensteel (919)541-5608	Mark Morris (919)541-5416
Wastewater (SOCMI, Paper and Pulp Pesticides, Pharmaceuticals, Hazardous Waste)	Kent Hustvedt (919)541-5605	Penny Lassiter (919)541-5396
Plastic Parts - Business Machines	Jim Berry (919)541-5605	Dave Salman (919)541-0859
Plastic Parts - Other	Jim Berry (919)541-5605	Dave Salman (919)541-0859
Wood Furniture	Jim Berry (919)541-5605	Madeline Strum (919)541-2383
Offset Lithography	Jim Berry (919)541-5605	Dave Salman (919)541-0849
Autobody Refinishing	Bob Rosensteel (919)541-5608	Mark Morris (919)541-5416
Cleanup Solvents	Jim Berry (919)541-5605	Mohammed Serageldin (919)541-2379

OTHER CTG's REQUIRED BY AMENDMENTS (Not Active: Plan to Start FY9?)

Aerospace	Linda Herring (919)541-5358	Vickie Booth (919)541-0164
Shipbuilding and Repair	Jim Berry (919)541-5605	Mohammed Serageldin (919)541-2379

*SOCMI - Synthetic Organic Chemical Manufacturing Industry

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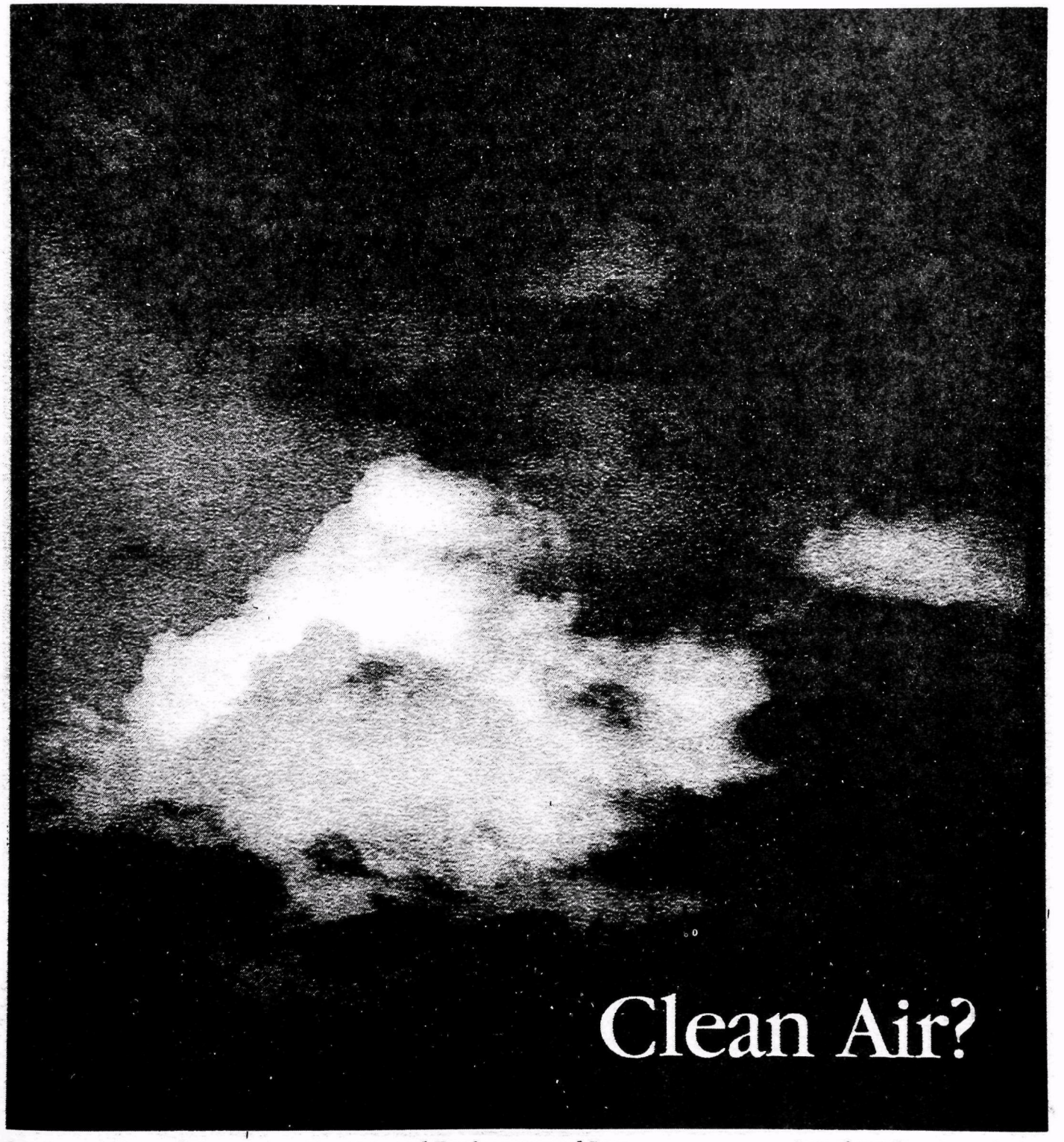

Section of Natural Resources, Energy, and Environmental Law

American Bar Association

How States Can Successfully Implement the New Operating Permit Title

Michael R. Barr

Are the states ready to adopt operating permit programs to carry out new Title V of the Clean Air Act and EPA's recent part 70 implementing regulations? Not yet. Is EPA worried about states not being able to adopt approvable Title V operating permit programs by the November 1993 deadline? Very. Is there still a chance that states can successfully implement the new operating title? Maybe, but decisive, early action by states will be critical. The final part 70 rules give states many options and states should use them fully. Perhaps most important, the early and constructive involvement of the regulators, industries and EPA regions to help each state choose appropriate options under Title V will make the implementation of a successful operating permit program much more likely.

Operating permit programs for air pollutant sources are not new to the states. More than forty states have operating permit programs, many of which have been up and running for a decade or more. Large, industrialized states like California and Texas have issued tens of thousands of operating permits to air pollutant sources for years without major problems. Many states also followed the development of the new part 70 regulations closely and even participated in the rulemaking. It would be reasonable to suppose that most states will have few problems implementing permitting programs under the new part 70 rules.

However, serious concerns remain about the states' abilities to carry out Title V. Title V started out in Congress as a simple provision aimed at raising fees so that states and local agencies could prepare nonattainment plans, regulate major sources in nonattainment areas, track emissions of nonattainment pollutants, and enforce new nonattainment regulations. When the President signed the bill, though, Title V had grown to more than five thousand words and one hundred subsections. Its coverage had expanded to many mid-sized (and even small-sized) sources located in all nonattainment and attainment areas and to air toxics and acid rain precursors. The federal operating permit program will now affect all states and many sources for the first time. States will have to amend all of their existing permit programs and the amendments will add complex mandatory program elements (such as EPA permit review) which are completely new and controversial.

A second reason for concern is that Title V is based on EPA's Clean Water Act NPDES permitting program implemented in the early 1970s. That program was difficult for EPA to implement, even though it only applied to several hundred sources which individually had only one or a handful of water pollutant discharge points. States were very reluctant to take over even that limited permit program. By contrast, Title V will apply to tens of thousands of sources across the country, many of which contain dozens or even hundreds of separate emissions points. States do not have the resources to apply a Clean Water Act-type program to air pollution sources.

Third, the current recession has put enormous pressure on state and local agencies and the regulated community. This has already resulted in greater resistance to state regulatory expansion, especially when the new regulation, like part 70, imposes large public and private costs. The significant and complex economic and administrative burdens of implementing Title V by the statutory deadline of November 15, 1993, will tax the financial resources and political will of many states to the limits. There is hope for successful state implementation, however, if states keep the main objectives of Title V in mind and sensibly exercise the options EPA has provided for them in the final part 70 regulations.

Essential Purposes of Title V

Title V aims to achieve three essential purposes:

- Realizing the burdens imposed by the Clean Air Act Amendments of 1990, Congress wanted to find a way to *raise more money for state and local air pollution control agencies* without federal subsidies.
- Title V is also intended to improve the *tracking* of emissions and emissions changes. Better emissions data will be used for a variety of purposes including calculating fees, planning in nonattainment areas, identifying priorities for air toxics regulation and implementing

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plantwide emission limits or other market-based approaches.

• Title V tries to improve federal, state and local *enforcement* of air quality regulations. Enhancements include requiring permit writers to express clearly all applicable emission limitations and other requirements in the operating permit itself for ease of reference by any interested party and requiring EPA review of operating permits issued by state and local agencies.

Like so many titles and sections of the 1990 Clean Air Act Amendments, the statute itself is just the beginning. EPA proposed Title V rules on May 10, 1991, six months before the Title V rulemaking deadline. On June 25, 1992, more than a year later, EPA Administrator Reilly signed the final Title V regulations (40 C.F.R. part 70). Because of the looming November 15, 1993, deadline for states to submit their operating permit programs for EPA approval, state decisionmakers should focus immediately on several *basic options* and numerous *specific options* available to them under EPA's final Title V regulations.

Title V tries to improve federal, state and local* enforcement *of air quality regulations.

Basic State Options

Many existing state permit programs already achieve the three essential purposes of Title V. Can a state simply substitute the state or local operating permit program for the Title V program? Many states commented in the Title V rulemaking that their existing operating permit programs should simply be dovetailed or grandfathered into the Title V program. EPA seriously considered a broad "equivalency" option, as requested by California EPA Secretary James Strock, but declined to include it in the final part 70 rules. However, EPA recently wrote Secretary Strock that it will not insist that each state program element be identical to the part 70 rules. "Similar" program elements will be approvable.

Before discussing detailed options available to states under EPA's flexible approach, it is important to consider several basic options. The first is for the state to *do nothing and let EPA impose sanctions*, CAA § 502(d); 40 C.F.R. § 70.10.

This option would avoid changes to the existing state permit program and the difficulties of obtaining sufficient new state legislation. Legislative difficulties can be significant. In New Jersey, for example, the state agency hoped to obtain an attorney general's opinion that no legislative changes would be necessary to implement the Title V program because it feared that the New Jersey legislature would not pass legislation authorizing higher fees of any sort. Another problem is that some state legislatures only meet every other year or for a very short annual legislative session. Letting EPA implement Title V could save the state money up front (including state and local rulemaking resources) and allow EPA to take the heat and bear the burden of shaking down the Title V program.

However, the disadvantages of this first option are daunting. The state or local agency could appear inept and unwilling to protect the environment. It may lose significant new permit fees to EPA. This option could also lead to an independent or duplicative EPA permit program in the state. Perhaps worst of all, EPA has various new, expensive sanctions to use against states in expressing its unhappiness with any state which chooses this option. Given the flexibility for states built into the final part 70 rules, it should not be necessary for any state to choose this option.

A second basic option is for the state or local agency to *apply for interim approval*, CAA § 502(g); 40 C.F.R. § 70.4(d). States can implement this approach quickly. It also quickly channels new fees to state and local agencies, and may qualify the agencies for EPA grants. Another very important benefit is that this option will do the least damage to the existing state operating permit program.

Interim approval also allows the state or local agency and industry to "ramp up" the state permitting program to full EPA approval. In fact, many state agency officials are adopting a "ramping up" approach to gain some experience with the new operating permit program before launching a full Title V program. Texas, a state with significant air quality permitting experience and a high level of preparedness for Title V, experimented with one of its own permits as a simulated Title V permit application. On their first run, issuing the Title V permit took six months and six engineers dedicated to the task. Ramping up to Title V may be critical to the success of many state permitting programs over the next few years.

Interim approval may also make it easier to obtain state legislative approvals for adoption and implementation of the full Title V program because the agency can pick the right time for new legislation and rulemaking. Under an interim approval, the additional time available may be as long as three to four years (including EPA's one- to two-year approval period). The interim approval option also lowers the political stakes, imposes the least burden on the state's economy, and allows the most chance to develop innovative rules, performance-based approaches and other permit improvements.

There are several disadvantages of interim approval. It delays full approval and could reduce leverage for imposing the toughest parts

of the full Title V program. It also requires two rounds of changes to the state or local program, which is probably the biggest downside of this approach.

The third approach, *applying for full approval*, puts all the issues on the table up front and finishes the job. It offers the best opportunity for industry and others to work proactively with states and EPA regions to install the most flexibility in the revised state or local operating permit program.

However, the final part 70 rules make it very clear that this approach will require a major effort in many states, which may be difficult given the tight economy and agency budgets. It also maximizes disputes up front (concerning problems that may be largely theoretical) and may lead to long delays in state or local submissions of Title V programs, perhaps well past the Act's submission deadline of November 15, 1993.

In summary, states which have the resources and authority to apply for full approval should probably do so. But states, local agencies and interested parties should also seriously consider the interim approval approach because EPA has made this approach so relatively easy. When applying for interim approval, states and local agencies can use their existing public participation procedures, enforcement authorities and fee structures. These are some of the most contentious potential issues for states under Title V. In adopting the part 70 rules, EPA has recognized that many states have had long experience with operating permits and that both states and EPA need a sensible transition. The interim approval approach can promote public health and the environment as well as provide a useful ramp up to a full Title V program.

Specific State Options

For states wishing to adopt the full program or complete elements of a partial or interim program, EPA has practiced what it has often preached—at least in terms of providing flexibility to state and local permitting agencies. The following are some of the specific options offered to the state and local agencies under the final part 70 rules:

1. *Definitions*, 40 C.F.R. § 70.2. EPA allows departures from its defined terms. However, in most cases states and local agencies should probably adopt the EPA definitions, with the fewest changes to fit state statutes and rule books. Departing from EPA definitions has created some of the thorniest and most unnecessary problems facing California agencies over the years. Other states should be wary.

2. *Exemption for Non-Major Sources*, 40 C.F.R. § 70.3(b). State and local agencies should seriously consider opting in favor of the exemption in part 70 for non-major sources. This is a built-in transition provision and is not likely to harm larger sources or the area's long-term air quality goals. Alternatively, states and local agencies should consider adopting a ramp up approach: require smaller sources to report and pay fees, but impose no other requirements for five years. This would accomplish two of the three essential purposes of an operating permit program (fees and tracking) without overloading the agency or smaller sources.

3. *Interim Approval*, 40 C.F.R. § 70.4(d). States and local agencies should seriously consider interim approval (as discussed above). They also should use "partial approval" for substate regions, like local air districts, 40 C.F.R. § 70.4(c).

4. *Confidentiality*, 40 C.F.R. § 70.4(b)(3)(viii). States and local agencies should add confidentiality protections at least as broad as EPA's.

5. *Application Time*, 40 C.F.R. § 70.5(a)(1). States and local agencies should provide the full twelve-month period for initial permit applicants and for new sources to apply for an operating permit after commencing operation. This is very important for smooth functioning as the program ramps up.

6. *Completeness Criteria and Processing Deadlines*, 40 C.F.R. §§ 70.5(a)(2), 70.7(a)(1). States and local agencies should add detailed, clear permit application completeness criteria and procedures, if they do not already have them. The final rules contain an important provision deeming applications complete if the agency does not request additional information within sixty days, 40 C.F.R. § 70.7(a)(4). California's system is a well-tested model. California air districts are now moving beyond the statutory minimum requirements for expeditious processing. One progressive California local agency is even shooting for *one day* permits for the 30 percent or so of permit and renewal applications which are most simple and repetitive.

7. *Forms*, 40 C.F.R. § 70.5(c). States and local agencies are allowed to and should utilize existing state forms as much as possible. States can continue to utilize lists of insignificant activities and should continue to use them.

8. *Operating Flexibility*, 40 C.F.R. § 70.7. States and local agencies should provide for full operating flexibility, netting and emission trading. This is essential to the early success of the new program. Title V does not change netting under Title I or affect emission reduction credit banks or similar, substantive elements of the state or local program.

Continued on page 47

States which have the resources and authority to apply for full approval should probably do so.

Successful Implementation

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9. *Paperwork*, 40 C.F.R. § 70.6(a)(3). States and local agencies should minimize compliance paperwork and only require reports that will actually be read and used by the state or local agency, especially in terms of frequency of submissions (annually, if possible, but no more often than every six months). States may find it necessary to require more reporting as part of market-based approaches, such as plantwide emission limits. A reasonable price for companies to pay to use more flexible compliance methods is likely to be real-time daily monitoring, monthly reporting, and quarterly or monthly plantwide emissions limits.

10. *Permit Terms*, 40 C.F.R. § 70.6(a)(2). States and local agencies should issue operating permits for the full five-year terms allowed by the part 70 rules to minimize the costs and burdens of the program to agencies and the affected sources. Shorter terms of less than three years may not be worth the now very limited "permit shield" protection, 40 C.F.R. § 70.6(f). EPA will accommodate states and local agencies whose existing permit programs do not technically meet this requirement of the Title V program. For instance, a state agency which renews permits every fifteen years—instead of the required five or less—could still qualify for program approval if the state had the authority to reopen permits and either had an administrative pattern and practice of doing so every five years or supplemented its program submittal with a commitment to reopen permits every five years.

11. *Monitoring*, 40 C.F.R. § 70.6(a)(3). States and local agencies should use the full flexibility provided by EPA to allow a variety of cost-effective monitoring methods. Continuous emissions monitors (CEMs) are *not* required by Title V. The final permit rules require "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit," 40 C.F.R. § 70.6(a)(3)(i)(B).

12. *State Permit Terms*, 40 C.F.R. § 70.6(b)(2). Some permit terms will be required only by state law. States and local agencies should use the full authority allowed by EPA to designate these permit terms as *not* federally enforceable. Based on experience in California, this will avoid confusion once permits are issued.

13. *General Permits*, 40 C.F.R. § 70.6(d). States and local agencies should promote general permits for "numerous similar sources" and they should use the full flexibility allowed by general permits. For example, a system for sources to notify the agency by postcard when they are relying on a general permit can minimize applicability disputes.

14. *Permit Shield*, 40 C.F.R. § 70.6(f). States and local agencies should consider allowing sources to use the permit shield (even though it may be more of a fig leaf than a shield). Industry should consider using the shield only where it is really needed and makes sense, such as where recent pollution control investments make further equipment changes highly costly and marginally beneficial.

15. *Permit Amendments and Modifica-*

States and local agencies should use the full flexibility provided by EPA to allow a variety of cost-effective monitoring methods.

Industry should work with state and local agencies to provide for adequate fees to cover "permit program costs."

tions, 40 C.F.R. § 70.7. States and local agencies should adopt the streamlined permit amendment and modification procedures allowed by EPA. This will be very important for smooth functioning of the program during its early years. These sections of the final part 70 rules were the focus of so much debate and controversy on the federal level that it will not be wise to repeat the debate on the state or local level.

16. *Reopening for Cause*, 40 C.F.R. § 70.7(f). EPA's final regulation allows states and local agencies to define "cause" to fit their own needs and current state or local operating permit program requirements. Doing so should reduce the burden on states, local agencies and permit holders of unnecessary or unproductive permit reopenings by invoking "cause" only when reopening can provide a significant environmental benefit.

17. *"Significance" Levels*, 40 C.F.R. § 70.7(e)(4). States and local agencies should take the opportunity to define which changes are "significant" and which are not, using established state or local permit program criteria where they exist. Examples include the Texas standard exemption list and California de minimis exemption lists. "Insignificant" changes will be reviewed on a fast track while significant changes will require the full permit review process.

18. *Public Participation*, 40 C.F.R. § 70.7(h). States and local agencies should use their existing public participation procedures, as allowed by EPA, rather than copying EPA's. Current EPA procedures are incomplete and have not been tested for Title V purposes.

19. *Fees*, 40 C.F.R. § 70.9. Industry should work with state and local agencies to provide for adequate fees to cover "permit program costs." Fair and adequate fees will be essential to the smooth and effective functioning of the program. In exchange, the state or local agency should justify its fee schedule, submit to annual audits and publish the results in an understandable form.

20. *State Reports to EPA*, 40 C.F.R. § 70.8(a). States and local agencies can and should supply their EPA regions with summaries of applications for operating permits rather than copies of all complete applications. States and local agencies should focus EPA's attention only on those operating permit applications which are truly significant. This will help avoid confusion in EPA regions.

21. *State Role During EPA Review*, 40 C.F.R. § 70.8. States and local agencies will have an opportunity to defend any permits which are questioned by EPA or other states during the review periods required by the final part 70 regulations. To protect the integrity of operating permits issued by state and local agencies, the agencies should be provided with adequate resources to defend their permits and specific directions to do so.

22. *Enforcement*, 40 C.F.R. § 70.11. States and local agencies should use existing state enforcement authorities to the maximum extent to satisfy EPA's requirements for enforcement authority. Solid enforcement may be a very significant determinant in the level of autonomy and flexibility states are able to obtain and maintain in the Title V operating permit program.

These are not all of the options available to states under the new part 70 rules. States developing new operating permit programs should tailor their statutes and rules to take advantage of all of the flexibility allowed by EPA. For the forty or so states that have existing permitting programs, understanding and exercising the options available under the Title V regulations can significantly reduce the changes required to adapt the state program to meet the Title V mandate.

As with any new program as complex and massive as Title V, a substantial risk exists that it may become so burdensome or unmanageable as states try to implement it that it fails to achieve the essential purposes of Title V. It would be especially unfortunate if the Title V program interferes with state and local initiatives to apply quality management approaches to permitting, improve agency permitting services, and reduce

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permitting costs and delays. The flexibility allowed to states and local agencies under EPA's final part 70 rules significantly reduces the risk of failure and increases their ability to innovate. Every state and local agency which creatively uses the options provided by EPA to meet the unavoidable mandate of Title V will help both its economy and its environment.

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Assembly Bill No. 2288

CHAPTER 1166

An act to amend Sections 40507, 40752, 42300, 42301, 42350, 42400, 42400.3, 42402, and 42402.3 of, and to add Sections 39053.3, 39053.5, 42301.10, 42301.11, 42301.12, and 42400.4 to, the Health and Safety Code, relating to air pollution.

[Approved by Governor October 11, 1993. Filed with Secretary of State October 11, 1993.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2288, Quackenbush. Air pollution: permits.

(1) Existing law authorizes an air pollution control district or air quality management district to establish a permit system, requires the district regulations to provide that a permit is valid only for a specified period, renewable upon the payment of specified fees, and limits to one year the time during which an order of the South Coast Air Quality Management District Board granting a permit shall be effective.

This bill would delete that one-year limit in the case of the south coast district, and, in the case of the districts generally, delete the provision for renewal on payment of specified fees, and require the expiration date of a permit to be extended upon completion of an annual review, except as specified.

(2) Existing law requires the air pollution control officer of a district to observe and enforce all orders, regulations, and rules prescribed by the district board.

This bill would require the officer to additionally observe and enforce permit conditions, thereby imposing a state-mandated local program, and would authorize the officer to enforce an applicable air quality implementation plan.

(3) Existing law requires a permit system adopted by a district to prohibit the issuance of a permit unless the permitted article, machine, equipment, or contrivance will comply with prescribed orders, rules, regulations, and statutes.

This bill would authorize a district air pollution control officer to subject the issuance of a permit to compliance with an applicable implementation plan, and would subject the issuance of the permit to other specified requirements of federal law. The bill would impose additional requirements on the districts, and impose penalties for violations, relating to the federal law, thereby imposing a state-mandated local program by imposing new duties on the districts and creating new crimes.

(4) Existing law authorizes any person to apply for a variance from a specified statute or from rules and regulations of the district, but not from the requirement for a permit to build, erect, alter, or

replace.

This bill would also prohibit the granting of a variance from the requirement for a permit to operate or use, and would authorize the issuance of a permit for activities for which a variance has been granted, including an abatement order which has the effect of a variance.

(5) This bill would also make additional changes proposed by AB 2107, to be operative only if AB 2107 and this bill are both chaptered and become effective on January 1, 1994, and this bill is chaptered last.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature that this act provide authority in state law for the implementation of the operating permit program required by Title V of the federal Clean Air Act (42 U.S.C. 7661 et seq.) without affecting the issuance of permits as required by any other provision of state law.

SEC. 2. Section 39053.3 is added to the Health and Safety Code, to read:

39053.3. "Title V" means Title V of the federal Clean Air Act (42 U.S.C. Sec. 7661 et seq.).

SEC. 3. Section 39053.5 is added to the Health and Safety Code, to read:

39053.5. "Title V source" means only a stationary source required by federal law to be included in an operating permit program established pursuant to Title V of the federal Clean Air Act (42 U.S.C. Secs. 7661 to 7661f, incl.) and the federal regulations adopted pursuant to Title V.

SEC. 4. Section 40507 of the Health and Safety Code is amended to read:

40507. The south coast district board, in making any order granting a permit, may specify the time during which the order shall be effective and may require the payment of fees established by the south coast district board.

SEC. 5. Section 40752 of the Health and Safety Code is amended to read:

40752. The air pollution control officer shall observe and enforce all of the following:

(a) This part and Part 4 (commencing with Section 41500).

(b) All orders, regulations, and rules prescribed by the district board.

(c) All variances and standards which the district hearing board has prescribed.

(d) All permit conditions imposed pursuant to Sections 42301 to 42301.10, inclusive.

SEC. 6. Section 42300 of the Health and Safety Code is amended to read:

42300. (a) Every district board may establish, by regulation, a permit system that requires, except as otherwise provided in Section 42310, that before any person builds, erects, alters, replaces, operates, or uses any article, machine, equipment, or other contrivance which may cause the issuance of air contaminants, the person obtain a permit to do so from the air pollution control officer of the district.

(b) The regulations may provide that a permit shall be valid only for a specified period. However, the expiration date of any permit shall be extended upon completion of the annual review required pursuant to subdivision (e) of Section 42301 and payment of the fees required pursuant to Section 42311, unless the air pollution control officer or the hearing board has initiated action to suspend or revoke the permit pursuant to Section 42304, 42307, or 42390, that action has resulted in a final determination by the officer or the board to suspend or revoke the permit, and all appeals have been exhausted or the time for appeals from that final determination has been exhausted.

(c) The annual extension of a permit's expiration date pursuant to subdivision (b) does not constitute permit issuance, renewal, reopening, amendment, or any other action subject to the requirements specified in Title V.

SEC. 7. Section 42301 of the Health and Safety Code is amended to read:

42301. A permit system established pursuant to Section 42300 shall do all of the following:

(a) Ensure that the article, machine, equipment, or contrivance for which the permit was issued does not prevent or interfere with the attainment or maintenance of any applicable air quality standard.

(b) Prohibit the issuance of a permit unless the air pollution control officer is satisfied, on the basis of criteria adopted by the district board, that the article, machine, equipment, or contrivance will comply with all of the following:

(1) All applicable orders, rules, and regulations of the district and of the state board.

(2) All applicable provisions of this division.

(c) Prohibit the issuance of a permit to a Title V source if the Administrator of the Environmental Protection Agency objects to its issuance in a timely manner as provided in Title V. This subdivision is not intended to provide any authority to the Environmental Protection Agency to object to the issuance of a permit other than that authority expressly granted by Title V.

(d) Provide that the air pollution control officer may issue to a Title V source a permit to operate or use if the owner or operator of the Title V source presents a variance exempting the owner or operator from Section 41701, any rule or regulation of the district, or any permit condition imposed pursuant to this section, or presents an abatement order that has the effect of a variance and that meets all of the requirements of this part pertaining to variances, and the requirements for the issuance of permits to operate are otherwise satisfied. The terms and conditions of any variance or abatement order may be incorporated into the permit as a compliance schedule, to the extent required by Title V.

(e) Require, upon annual renewal, that each permit be reviewed to determine that the permit conditions are adequate to ensure compliance with, and the enforceability of, district rules and regulations applicable to the article, machine, equipment, or contrivance for which the permit was issued which were in effect at the time the permit was issued or modified, or which have subsequently been adopted and made retroactively applicable to an existing article, machine, equipment, or contrivance, by the district board and, if the permit conditions are not consistent, require that the permit be revised to specify the permit conditions in accordance with all applicable rules and regulations.

(f) Provide for the reissuance or transfer of a permit to a new owner or operator of an article, machine, equipment, or contrivance. An application for transfer of ownership only, or change in operator only, of any article, machine, equipment, or contrivance which had a valid permit to operate within the two-year period immediately preceding the application is a temporary permit to operate. Issuance of the final permit to operate shall be conditional upon a determination by the district that the criteria specified in subdivisions (b) and (e) are met, if the permit was not surrendered as a condition to receiving emission reduction credits pursuant to banking or permitting rules of the district. However, under no circumstances shall the criteria specify that a change of ownership or operator alone is a basis for requiring more stringent emission controls or operating conditions than would otherwise apply to the article, machine, equipment, or contrivance.

SEC. 8. Section 42301.10 is added to the Health and Safety Code, to read:

42301.10. In any district that has a permit system established pursuant to Section 42300, the air pollution control officer may include, in any permit issued to a Title V source, emission limits, standards, and other requirements that ensure compliance with all federal Clean Air Act "applicable requirements," as that term is defined in regulations adopted by the Environmental Protection Agency pursuant to Title V, including those requirements specified in an applicable implementation plan as defined by Section 7602(q) of Title 42 of the United States Code, and Parts C (42 U.S.C. Sec. 7470

et seq.) and D (42 U.S.C. Sec. 7501 et seq.) of Title 1 of the Clean Air Act.

SEC. 9. Section 42301.11 is added to the Health and Safety Code, to read:

42301.11. It is the intent of the Legislature that, in implementing Title V, districts do all of the following:

(a) Develop, in recognition that districts are obligated to issue one-third of the Title V permits within one year of the Title V program's approval by the Environmental Protection Agency, and in recognition that sources are allowed one year to submit a Title V permit application, an equitable program for ensuring that all sources receive as much time as feasible to develop and submit permit applications. In developing the program the districts shall recognize the complexity and size of the facilities, the number and similarity of facilities within each industry category, the level of effort required to develop the permit application, and the resources available to complete the application. The districts should also consider potential incentive programs to promote voluntary early permit application submissions.

(b) Consider the merits and benefits of including the permit shield authorized by subsection (f) of Section 70.6 of Title 40 of the Code of Federal Regulations in all Title V permits to clarify the federal compliance responsibilities of Title V sources.

(c) Consistent with state and federal regulations, allow the use of emission monitoring alternatives, when available and having the accuracy required to ensure enforcement and compliance, in lieu of the use of continuous emission monitors.

(d) Give priority to the issuance of Title V permits for five-year terms.

SEC. 10. Section 42301.12 is added to the Health and Safety Code, to read:

42301.12. (a) Any district permit system or permit provision established by a district board to meet the requirements of Title V shall minimize the regulatory burden on Title V sources and the district and shall meet all of the following criteria:

(1) Apply only to Title V sources, as defined in Section 39053.5.

(2) Issue permits pursuant to Title V only after the Environmental Protection Agency has approved the district's Title V permit program.

(3) Identify in the permit, to the greatest extent feasible, permit terms and conditions which are federally enforceable and those which are not federally enforceable, so that requirements imposed only by the state are not made federally enforceable solely as a result of being included as part of a Title V permit. A district may make that identification by either of the following means:

(A) Identifying in the permit the terms and conditions which are federally enforceable because they are imposed pursuant to a federal requirement.

(B) Identifying in the permit the terms and conditions which are imposed pursuant to state law or district rules and are not federally enforceable.

(4) Utilize, to the extent reasonably feasible, general permits and similar methods to reduce source and district permitting burdens for Title V sources.

(5) Establish clear and simple application completeness criteria.

(6) To the extent possible, minimize the burden of federally mandated paperwork such as recordkeeping and reporting documents.

(7) Allow sources maximum flexibility in selecting cost-effective, reliable, and representative monitoring methods consistent with applicable state and federal requirements.

(8) If a permit is required to be reopened to comply with Title V requirements, base the reopening upon the federal criteria for reopening and limit the reopening to only the federal component of the Title V permit. This paragraph is not intended to limit in any way the authority under state law to reopen permits.

(9) Authorize administrative permit amendments and minor permit modifications as required by federal law.

(10) Provide that, unless the district determines that a Title V application is not complete within 60 days of receipt of the application, the application shall be deemed to be complete.

(11) Authorize, to the extent consistent with existing state law, mandatory operational flexibility provisions required pursuant to subparagraphs (i) and (iii) of paragraph (12) of subsection (b) of Section 70.4 of, and paragraphs (9) and (10) of subsection (a) of Section 70.6 of, Part 40 of the Code of Federal Regulations, and consider optional operational flexibility provisions established pursuant to subparagraph (ii) of paragraph (12) of, and paragraphs (14) and (15) of, subsection (b) of Section 70.4 of, and subparagraph (iii) of paragraph (1) of subsection (a) of Section 70.6 of, Part 40 of the Code of Federal Regulations. Nothing in this paragraph is intended to affect whatsoever any pending litigation.

(12) Make every reasonable effort, in partnership with Title V sources and the state board, to evaluate and respond to the substance of any objection to a proposed permit and to obtain expeditious approval of Title V permits submitted to the Environmental Protection Agency.

SEC. 11. Section 42350 of the Health and Safety Code is amended to read:

42350. (a) Any person may apply to the hearing board for a variance from Section 41701 or from the rules and regulations of the district.

(b) (1) If the district board has established a permit system by regulation pursuant to Section 42300, a variance, or an abatement order which has the effect of a variance, may not be granted from the requirement for a permit to build, erect, alter, or replace.

(2) Title V sources shall not be granted a variance, or an abatement order which has the effect of a variance, from the requirement for a permit to operate or use.

SEC. 12. Section 42400 of the Health and Safety Code is amended to read:

42400. (a) Except as otherwise provided in Section 42400.1, 42400.2, or 42400.3, any person who violates this part, or any rule, regulation, permit, or order of the state board or of a district, including a district hearing board, adopted pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is guilty of a misdemeanor and is subject to a fine of not more than one thousand dollars ($1,000) or imprisonment in the county jail for not more than six months, or both.

(b) If a violation under subdivision (a) with regard to the failure to operate a vapor recovery system on a gasoline cargo tank is directly caused by the actions of an employee under the supervision of, or of any independent contractor working for, any person subject to this part, the employee or independent contractor, as the case may be, causing the violation is guilty of a misdemeanor and is punishable as provided in subdivision (a). That liability shall not extend to the person employing the employee or retaining the independent contractor, unless that person is separately guilty of an action that violates this part.

(c) The recovery of civil penalties pursuant to Section 42402, 42402.1, 42402.2, or 42402.3 precludes prosecution pursuant to this section for the same offense. When a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds requiring the dismissal of any civil action brought pursuant to this article for the same offense.

(d) Each day during any portion of which a violation of subdivision (a) occurs is a separate offense.

SEC. 13. Section 42400.3 of the Health and Safety Code is amended to read:

42400.3. (a) Any person who willfully and intentionally emits an air contaminant in violation of any provision of this part or any rule, regulation, permit, or order of the state board or of a district, pertaining to emission regulations or limitations is guilty of a misdemeanor and is subject to a fine of not more than fifty thousand dollars ($50,000) or imprisonment in the county jail for not more than one year, or both.

(b) The recovery of civil penalties pursuant to Section 42402, 42402.1, 42402.2 or 42402.3 precludes prosecution pursuant to this section for the same offense. When a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds requiring the dismissal of any civil action brought pursuant to this article for the same offense.

(c) Each day during any portion of which a violation occurs

constitutes a separate offense.

SEC. 14. Section 42400.4 is added to the Health and Safety Code, to read:

42400.4. (a) In any district where a Title V permit program has been fully approved by the Environmental Protection Agency, any person who knowingly violates any federally enforceable permit condition or any fee or filing requirement applicable to a Title V source is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars ($10,000).

(b) In any district in which a Title V permit program has been fully approved by the Environmental Protection Agency, any person who knowingly makes any false material statement, representation, or certification in any form or in any notice or report required of a Title V source of a federally enforceable permit requirement, or who knowingly renders inaccurate any monitoring device or method required of a Title V source, is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars ($10,000).

(c) The recovery of civil penalties pursuant to Section 42402, 42401.1, 42402.2, or 42404.3 precludes prosecution pursuant to this section for the same offense. When a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds requiring the dismissal of any civil action brought pursuant to this article for the same offense.

(d) Each day during any portion of which a violation of subdivision (a) or (b) occurs is a separate offense.

(e) This section shall not become operative in a district until the Environmental Protection Agency fully approves that district's Title V permit program.

(f) This section is applicable only to federally enforceable permit conditions which are not otherwise enforceable pursuant to Sections 42400, 42400.1, 42400.2, and 42400.3.

SEC. 15. Section 42402 of the Health and Safety Code is amended to read:

42402. (a) Except as otherwise provided in subdivision (b) or in Section 42402.1, 42402.2, or 42402.3, any person who violates this part, any order issued pursuant to Section 42316, or any rule, regulation, permit, or order of a district, including a district hearing board, or of the state board issued pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is strictly liable for a civil penalty of not more than one thousand dollars ($1,000).

(b) (1) Any person who violates any provision of this part, any order issued pursuant to Section 42316, or any rule, regulation, permit, or order of a district, including a district hearing board, or of the state board issued pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is strictly liable for a civil penalty of not more than ten thousand dollars ($10,000).

(2) Where a civil penalty in excess of one thousand dollars ($1,000) for each day in which the violation occurs is sought, there is no liability under this subdivision if the person accused of the violation alleges by affirmative defense and establishes that the violation was caused by an act which was not the result of intentional or negligent conduct. In a district in which a Title V permit program has been fully approved, this paragraph shall not apply to a violation of federally enforceable requirements that occurs at a Title V source.

(c) Each day during any portion of which a violation occurs is a separate offense.

SEC. 15.5. Section 42402 of the Health and Safety Code is amended to read:

42402. (a) Except as otherwise provided in subdivision (b) or in Section 42402.1, 42402.2, or 42402.3, any person who violates this part, any order issued pursuant to Section 42316, or any rule, regulation, permit, or order of a district, including a district hearing board, or of the state board issued pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is strictly liable for a civil penalty of not more than one thousand dollars ($1,000).

(b) (1) Any person who violates any provision of this part, any order issued pursuant to Section 42316, or any rule, regulation, permit, or order of a district, including a district hearing board, or of the state board issued pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is strictly liable for a civil penalty of not more than ten thousand dollars ($10,000).

(2) (A) Where a civil penalty in excess of one thousand dollars ($1,000) for each day in which the violation occurs is sought, there is no liability under this subdivision if the person accused of the violation alleges by affirmative defense and establishes that the violation was caused by an act which was not the result of intentional or negligent conduct. In a district in which a Title V permit program has been fully approved, this paragraph shall not apply to a violation of federally enforceable requirements that occurs at a Title V source.

(B) This paragraph does not apply to a person who is determined to have violated an annual facility emissions cap established pursuant to a market-based incentive program under Section 39620.

(c) Each day during any portion of which a violation occurs is a separate offense.

SEC. 16. Section 42402.3 of the Health and Safety Code is amended to read:

42402.3. (a) Any person who willfully and intentionally emits an air contaminant in violation of this part or any rule, regulation, permit, or order of the state board, or of a district, pertaining to emission regulations or limitations, is liable for a civil penalty of not more than fifty thousand dollars ($50,000).

(b) Each day during any portion of which a violation occurs is a

separate offense.

SEC. 17. Section 15.5 of this bill incorporates amendments to Section 42402 of the Health and Safety Code proposed by both this bill and AB 2107. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, (2) each bill amends Section 42402 of the Health and Safety Code, and (3) this bill is enacted after AB 2107, in which case Section 15 of this bill shall not become operative.

SEC. 18. (a) No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

(b) No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution to the extent that the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

(c) Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

Chapter 122. Federal Operating Permits

The Texas Air Control Board (TACB) adopts new §§122.10-122.12, 122. 120, 122.122, 122.130, 122.132-122.134, 122.136, 122.138, 122.139, 122.141, 122.143, 122.145, 122.150, 122.152-122.155, 122.161, 122.163-122.165, 122.201, 122.202, 122.204, 122.210-122.213, 122.215-122.217, 122.219-122.221, 122.231, 122.233, 122.241, 122.243, 122.310-122.312, 122.314, 122.316, 122.410, 122.411, 122.420-122.422, 122.425, 122.427, 122.430, 122.432, 122.434, 122.435, 122. 437, 122.438, and 122.440, concerning Federal Operating Permits. Sections 122. 10-122.12, 122.120, 122.122, 122.130, 122.132-122.134, 122.136, 122.138, 122. 139, 122.141, 122.143, 122.145, 122.150, 122.152-122.155, 122.161, 122.163-122. 165, 122.201, 122.202, 122.204, 122.210-122.213, 122.215-122.217, 122.219-122. 221, 122.231, 122.233, 122.241, 122.243, 122.311, 122.312, 122.314, 122.316, 122.411, 122.420, 122.421, 122.430, 122.432, 122.434, 122.435, 122.437, and 122.440 are adopted with changes to the proposed text as published in the May 11, 1993, issue of the *Texas Register* (18 TexReg 3017). Sections 122. 310, 122.410, 122.422, 122.425, 122.427, and 122.438 are adopted without changes and will not be republished.

The new chapter is written to adopt the federal operating permit program as required in new Part 70 of Chapter I: Title 40 of the Code of Federal Regulations (40 CFR 70). Title V of the Federal Clean Air Act Amendments of 1990 (FCAAA or the Act), enacted on November 15, 1990, requires the United States Environmental Protection Agency (EPA) to promulgate regulations within 12 months of enactment that require and specify the minimum elements of state operating permit programs. The new CFR Part 70 contains these provisions. The new TACB Regulation XII is created to adopt the regulatory authority of the federal operating permit program required under §70.4(b) of 40 CFR 70 regarding elements of the initial program submission. Throughout the preamble, "Regulation XII" refers to Chapter 122; "Regulation VI" refers to Chapter 116.

The chapter is organized into five subchapters: Subchapter A-Definitions; Subchapter B-Permit Requirements; Subchapter C-Permit Issuances, Revisions, and Renewals; Subchapter D-Affected State Review, EPA Review, and Citizen Petition; and Subchapter E-Acid Rain. There is a state-only requirement included in §122.132(a)(5) of this title (relating to Application and Required Information) to establish a maximum emission rate and operational limitation for grandfather facilities. This applies to facilities which were constructed prior to September 1, 1971 and thereby predate the Texas new source review program. One section in the new rules, §122.122 (relating to Potential to Emit), will become part of the Texas State Implementation Plan. Regulation XII does not include a permit shield which is an optional provision of the federal rules in Part 70.

Comments were solicited by the TACB on issues under consideration for adopting a permit shield.

On February 22, March 10, March 24 and 25, and April 8, 1993, roundtable meetings were held by the staff with the regulated community and the general public. The purpose of the roundtable meetings was to solicit comments from the regulated community and the general public regarding the draft rules.

Public hearings were held on June 2, 1993, in Houston, on June 3, 1993, in Arlington, and on June 4, 1993, in Austin to consider the proposed new rules. The public comment period closed on June 11, 1993. Testimony was received from 56 commenters. The following commenters generally supported the proposed rules with some suggested changes: Pennzoil Company (Pennzoil); Texas Mid-Continent Oil & Gas Association (TMOGA); Ensearch Processing Incorporated (Ensearch); Marathon Oil Company (Marathon); Dupont; Texas Utilities Services (TU); El Paso Electric Company (El Paso); 3M Company (3M); Exxon Company, U.S.A. (Exxon-Houston); Lone Star Chapter of the Sierra Club (Sierra); Texas Chemical Council (TCC); Chevron U.S.A. Products Company (Chevron Products); Natural Gas Pipeline Company of America (Natural Gas); Houston Lighting & Power (HL&P); Union Carbide Chemicals and Plastics Company Inc. (Union Carbide); ARCO Oil and Gas Company (AOGC); Gas Processors Association (GPA). The following commenters suggested changes to the proposed rules without stating their position on the overall proposal: Small, Craig and Werkenthin (Small-Craig); Exxon Chemical Americas (Exxon Chem); Texas Instruments Incorporated (TI); American Electronics Association (AEA); Jones, Day, Reavis and Pogue (Jones-Day); Lower Colorado River Authority (LCRA); Phillips Petroleum Company (Phillips); Gulf States Utilities Company (GSU); U.S. Environmental Protection Agency (EPA); Central Power and Light (CP&L); Rescar Incorporated (Rescar); Browning-Ferris Industries (BFI); Lone Star Gas Company (Lone Star); Chevron U. S.A. Production Company (Chevron Production); Enron Pipeline and Liquids Group (ENRON); Lloyd, Gosselink, Fowler, Blevins & Mathews, P.C. (Lloyd-Gosselink); Southwestern Public Service Company (SPSC); International Association of Drilling Contractors (IADC); and eight individuals. One of the eight individual commenters expressed total opposition to the proposed rules.

The following commenters generally supported the proposed rules without making specific suggestions: Mobil Oil Corporation; Monsanto; Texas Paper Industry; Fina Oil and Chemical Company; Greater Houston Partnership; and GATX Terminals Corporation. Amoco Oil Company, Exxon Company U.S.A. (Exxon-Baytown), and Diamond Shamrock supported the comments by TMOGA. Ethyl Corporation; Dow Chemical Company; Amoco Chemical Company; Hoinam Texas Limited Partnership; and ASARCO Incorporated supported the comments by TCC. A total of 26 commenters supported the proposed concept of separating the federal operating permit from the new source review permit and three commenters were opposed to the concept. Amoco Chem, Pennzoil, and Marathon supported the use of General Permits as proposed by the staff. Marathon, TMOGA, and Mobil supported the staff's concept on addressing grandfather sources in the context of the rule. Mobil and Pennzoil supported the staff's concept of the application shield. Pennzoil commented that the definition of emission unit is an improvement, as far as clarity, on the federal definition. Ensearch and Mobil supported the definition of major source as proposed by the staff. Under the definition of major source, subparagraph (B), GPA and Lone Star supported the exclusion of fugitive emissions in non-listed source categories.

The proposed rule preamble solicited comments on a permit shield which is an optional feature of the 40 CFR 70 program and which Texas has chosen not to include in its program. A total of 28 comments were received on this issue with 20 in favor of the shield and eight opposed. There were seven written responses to a list of 15 questions relating to the permit shield that were included in the rule preamble.

A new §122.152(d) (Notifications of TACB and Others) has been added to provide for notice to the agency of publication of public notice and to provide consistency with other public notice requirements. AOGC, Pennzoil, and Chevron Production commented that the proposed rule does not incorporate all of the federal requirements from 40 CFR 70, including those pertaining to emissions trading and alternate operating scenarios. Marathon and TMOGA also commented that the final rule should encourage the use of alternate operating scenarios. 3M requested that the final rule allow anticipated operating scenarios to be identified in operating permits as required in 40 CFR 70. 3M commented that the final rule should authorize emissions caps for each site, if requested, and allow emissions trading

within the site. 3M suggested language for two new subsections under §122.141 to allow for both these changes. The staff recognizes that both emissions trading and alternate operating scenarios were included in 40 CFR 70. The staff designed the proposed operating permit program (permit content and scope) to allow such changes provided that such changes do not affect an applicable requirement, and provided that Regulation VI and the Texas State Implementation Plan (SIP) allows such emission trading and alternate operating scenarios. Regulation VI does not allow for a facility to "trade emissions" without best available control technology (BACT) and an emissions impacts review. Nor does Regulation VI allow a source to vary its operating scenario, unless expressly allowed under an existing preconstruction authorization. The staff believes that both emissions trading and alternate operating scenarios are appropriately addressed under the current Regulation VI New Source Review (NSR) program.

Union Carbide commented that the TACB's proposed interim approval was appropriate for the state. The commenter suggested that the maximum allowable control technology (MACT) determinations required under the FCAAA, §112(g) and §112(j) "not be implemented across all sources until they are formally covered by the (state's) complete/final program." The staff believes the responsibility to implement §112(g) and §112(j) is not restricted only to the time after the full program approval is obtained. The staff understands, based on guidance from EPA, that the §112(g) provisions (case-by-case MACT determinations, triggered by new construction, reconstruction, or modifications of major, named sources) of the FCAAA apply only to those sources for which a permit is required. This would mean the responsibility to apply for §112(g) MACT determinations would fall only to those sources required to submit permit applications under the interim program. All sources would be required to meet §112(g) requirements upon full delegation of the program. The staff has added §122.161(c) to reflect the effective date of §112(g). The omission of similar guidance concerning the §112(j) program by EPA is interpreted by the staff to mean that all sources affected by §112(j) will be required to apply for MACT determination regardless of their status under an interim program. The §112(j) program requires the states to make source category wide MACT determinations if the EPA fails to promulgate a standard according to a predetermined schedule. Since this program is not isolated to source by source determinations of a standard, as is the §112(g) program, basing source applicability determinations on the date a source becomes subject to the permitting program is not appropriate. The staff believes the MACT standards are intended to apply to all major sources covered by the §112(c) source category list. The responsibility of an individual source to abide by the standards is not a function of the applicability date of the permit program, but rather the applicability date of the standard. The staff intends to request delegation of the §112(j) program from EPA after the proposed §112(j) and §112(l) rules are promulgated. For those sources not covered by the interim program, §112(j) standards will be determined and administered by the state after delegation through §112(l). No change has been made to the proposal since this comment is outside the scope of this rule package. The staff believes these implementation issues are best addressed during rulemaking specific to these programs. All determinations will eventually become part of the permits issued under Regulation XII and adequate authority is provided in the proposed chapter.

TMOGA commented that language should be added in the preamble or in a guidance document to indicate that the applicant can assign a numbering scheme to the emission units, if so desired. The commenter pointed out that this would allow for consistency with the current system used in emission inventories. The staff agrees with this suggestion but proposes to address it in the guidance documents, rather than in the final rule.

Pennzoil requested that the staff develop and issue the General Application Form for Federal Operating Permit (referenced in §122.132(a)) as soon as possible. Natural Gas suggested that a standard permit application format be developed for the natural gas transmission industry in order to streamline the review process for both the industry and the agency. 3M recommended that the staff develop a "Permit Manual" to help applicants navigate through the new application and review process and stated that such a manual would greatly assist applicants in their efforts to comply with the regulations and conserve staff resources by acting as a practical reference for the regulated community. The staff agrees that well written and "user friendly" guidance documents and application forms are essential to the implementation of this program. The proposed timing of the program submittal to EPA is such that the forms will be among the final items submitted to EPA by November 15, 1993. The staff believes that it is extremely important to have clear and concise application requirements in the forms. Following the program submittal in November, the staff intends to develop further and more detailed guidance documents for the regulated community's use.

TCC made suggestions for changes in writing style and capitalization of all defined terms throughout the regulation which do not alter the meaning of the proposed rules. Some of the suggested language will enhance the clarity of the final rule and this has been changed. Due to the large number of minor language changes requested such as punctuation and capitalization, the staff does not note in the comments each minor change recommended in the final rule. Other significant changes requested by TCC to the content of the proposed rule are noted in the comments. There are additional clarifications to the proposed rules.

DuPont recommended the use of general permits to incorporate new applicable requirements at a site. TCC requested and suggested specific language in §122.143(1)(H) and §122.233(c) of the proposed rule describing this use. As was discussed at the roundtables, the staff does envision the general permits serving this function and the proposed version of the rule did allow for such use. However, since the staff cannot envision every possible use of these permits, the staff does not recommend narrowly defining their use in the final rules.

Chevron Production requested that the staff clearly identify which fugitive emissions must be included in the Title V applicability determination and which must be addressed in the permit application. The staff believes that the first part of this comment refers to the definition of major source. In subparagraph (A) of the definition, no mention is made of any exclusion allowed for fugitive emissions. The staff understands, from EPA, that all fugitive emissions must be included in the determination of major under this subparagraph. The second condition of major in subparagraph (B) allows the exclusion of fugitive emissions except for the source categories noted. The third condition of major source in subparagraph (C) has been revised to allow, consistent with federal rules, the same exclusion noted in subparagraph (B). The staff intends to develop guidance documents to aid the applicant supplying the required information. The staff believes that these documents are the appropriate forum to address how the fugitive emissions should be included in the application.

EPA commented that the final rule should specifically prohibit the use of variances under a federal operating permit program. The staff agrees with EPA's position that no variances may be issued from the requirements to obtain a federal operating permit. Therefore, a new subsection (b) has been added to §122.141.

GPA suggested allowing concurrent NSR and federal operating permit reviews to facilitate a single public notification process. The staff recognizes that the situation posed by GPA may occur and concurs that efforts should be made to conduct a simultaneous review when circumstances permit. The staff believes that the final rule does not prohibit simultaneous review, however, such review may not always be possible. Therefore, no change to the rule language has been made.

Rescar requested that changes which qualify under operational flexibility (§122.221) should not require permit amendments under Regulation VI. Revision of Regulation VI is beyond the scope of this proposal. The staff believes that the requirements of the current NSR program serve a valuable function in maintaining and improving the air quality in the state. The staff believes that the requirements of the NSR program should remain intact, and independent of the implementation of the federal operating permit program.

One individual suggested the 30-day public comment period for each permit be extended an additional 30 days. The 30-day comment period is a statutory provision in the Texas Clean Air Act (TCAA), §382.0561. Section 122.316(2)(C) provides that if a hearing is requested during the public comment period, the comment period is automatically extended to the close of the hearing. The staff believes that the proposed comment period allows sufficient time for the public to comment on the permit application.

EPA noted that, at this time, there is no final EPA policy on what constitutes an acceptable phase-in schedule for sources under an interim program. EPA further stated that the staff must provide any required information in the request for interim approval. The staff intends, in the program submittal, to provide compelling reasons for interim program approval by EPA. The staff will provide all information requested by EPA related to interim approval with the program submittal.

One individual requested that the final rules require that a pollution prevention plan be developed and submitted with each permit application and that TACB should pressure EPA into an agreement with Mexico to develop a program similar to the federal operating permit program. Pollution prevention plans are not required under Part 70; consequently, this request is beyond the scope of this rulemaking. The staff agrees that pollution prevention is a worthwhile objective. However, the federal operating permits are intended to be codifying permits only, the program is not intended to address this issue.

The second comment does not require any changes to the proposed rules and is beyond the scope of this rule package.

One individual opposed allowing any general permits to be issued under the final rule. In support of this position, the commenter cited the staff's long held belief in case-by-case determinations. 40 CFR Part 70 §70.6(d) provides that general permits must comply with all requirements applicable to other Part 70 permits and the general permit must identify the criteria by which a source may qualify for such a permit. The staff does believe that the proposed utilization of general permits will result in efficient use of state resources to provide effective and enforceable permits. The general permits concept has many similarities to the Standard Exemption List which the TACB has administered for years. For these reasons, the staff is retaining the general permits, as proposed.

TCC suggested changes to various sections of the proposed rule to make clear that the federal operating permit does not affect the ability to commence construction or modification of a facility, only the ability to operate the facility under certain circumstances. The staff agreed with the intent of TCC's suggestion and §122.161(b) is added for clarification.

In addition to the testimony received, the staff has identified two areas where rule changes are necessary to ensure the smooth implementation of the new permitting process. First, the staff has added a new §122.152(d), relating to Notification of TACB and Others, to provide for notice to the agency of publication of public notice. The staff also noted during review of the comments that the proposed rules failed to make it clear that an owner or operator of a site which satisfies the criteria of §122.120, concerning Applicability, must not only apply for, but also obtain, a permit in order to operate. A new subsection (f) to §122.201, concerning Permits addresses this oversight.

In the preamble of the proposed rule the agency requested comments from the public on 16 issues for consideration in determining whether or not to include a permit shield as an option in the Federal Operating Permit Program. A number of commenters who supported inclusion of the permit shield chose to respond to those issues. One commenter who opposed inclusion of the permit shield also responded to the 16 issues. Following this paragraph are the sixteen issues from the proposed rule and a brief summary of the commenters' responses.

Should a permit shield as written in 40 CFR §70.6(f), or some variation of that permit shield, be part of the Federal Operating Permit Program in Texas?

Generally, the commenters responded that the permit shield, since allowed by federal rule, should also be included in the state rule and consequently, the state program. As noted, one commenter opposed inclusion of the permit shield. Many of the commenters who supported the inclusion of a permit shield also noted that the permit shield should be included in order to provide the permittee protection from enforcement due to a reinterpretation of an applicable requirement by the permitting authority.

How would enforceable regulatory language be written which would provide for a narrow permit shield (for example, for reinterpretation of an applicable requirement in the permit)?

Overall, the commenters stated that the permit shield had been narrowed sufficiently during federal rulemaking. Several commenters stated that in general they did not support a permit shield which would allow the staff to reinterpret an applicable requirement, after a permit is issued and during its five-year term, without reopening the permit pursuant to the procedural requirements in the final rules. One commenter stated that it is unnecessary to define narrow language for a shield because proper operation is the only "shield" necessary.

In what ways is a permit shield necessary to make a proper applicability determination?

One commenter acknowledged that the existence of a permit shield in Texas is not necessary to make proper applicability determinations but noted that it would protect them from enforcement for reinterpretation of applicable requirements after permit issuance. Other commenters maintained that the availability of a permit shield offers an added incentive to industry to come forward with difficult applicability questions early in the permit application in order to obtain a permit shield for protection from enforcement when applicability determinations are reinterpreted by the staff subsequent to issuance of the permit. One commenter stated that a permit shield is not necessary to make a proper applicability determination.

What additional planning certainty would the permit shield provide to the regulated community beyond what is currently available through proper applicability determinations?

Generally, the commenters responded that the permit shield provides stability to the regulated community since it offers protection from enforcement due to reinterpretation of the applicable requirements by the staff or general public. The commenters believed that the permittees would be able to operate with a high degree of confidence that compliance with the permit will result in avoidance of enforcement proceedings, hence the permit would provide a credible base for business and compliance planning. One commenter stated that planning certainty is not the goal of the Texas Clean Air Act, protection of the clean air resources and public health is the goal. Proper plant operation, accurate permit information, and compliance will give planning certainty to the regulated community.

A permit shield would only apply to the operating permit. Therefore, how would the permit shield be written such that it does not promote confusion over what applicable requirements are subject to enforcement because of their inclusion in other permits or regulations, even though they are shielded in the operating permit?

The commenters were split in their opinions of exactly what would be shielded from enforcement action. Some commenters believed that the permit shield would provide protection from enforcement of the applicable requirement, regardless of whether the applicable requirement was in a permit or rule outside of the federal operating permit program. Other commenters believed that the permit shield would not extend to state only requirements. These commenters suggested that the permit must delineate which requirements are federally enforceable and requirements that are included pursuant to the state's authority. One commenter stated that to avoid confusion over enforcement, the staff should avoid writing a permit shield that some might construe as a defense against agency or public action against corporate abuse, nuisance, or health hazard even while operating under the terms of the permit since the permit may not be complete and may not be adequate to avoid impacts.

Since the Operating Permit Program is being implemented as a separate program from the pre-construction NSR program in Texas, how would the permit shield be written in order to avoid enforcement inconsistencies in a two-permit system?

Again, the commenters varied in their responses, depending on their opinion of how extensive the enforcement protection provided by the permit shield would be. Those commenters who believed that the permit shield would provide complete protection from enforcement of the applicable requirement acknowledged that inconsistencies could occur. However, these commenters believed that the inconsistency in enforcement would be resolved when the operating permit was modified to incorporate the NSR permit, at renewal of the operating permit, or when the staff reopened and revised the operating permit. Other commenters, who believed that the permit shield would shield only enforcement action under the operating permit, believed no inconsistencies would occur. One commenter stated that compliance with the representations in the permit application and the operating permit is necessary and noncompliance should be cause for agency action.

How would the permit shield be written such that it would not interfere with the use of the operating permit as an enforcement tool?

The commenters pointed out that the permit shield would offer no protection from noncompliance with the terms and conditions of the permit. One commenter stated that the operating permit is intended as an enforcement tool and all complicating interference, such as a proposed shield against enforcement, should be avoided.

How would the permit shield be written to avoid inequities in enforcement between major sources that hold operating permits and minor sources that do not hold operating permits, and consequently could not use the permit shield?

The commenters believed that the permit shield would not create inequities in enforcement between major and minor sources. The commenters noted that the staff would not target minor sources for enforcement based on a change in agency policy or regulatory interpretation. The commenters also pointed out that the major sources are subject to a detailed regulatory analysis as well as extensive monitoring and recordkeeping requirements, thus resulting in a higher degree of enforcement exposure for major sources. At least two commenters suggested that the permit shield concept be extended to minor sources and standard exemptions under Regulation VI. One commenter stated that to avoid inequities between major sources with operating permits and minor sources without operating permits the permit shield should not be adopted.

How would a permit shield affect the filing of citizen's suits or affect enforcement actions taken by local governments and the Environmental Protection Agency?

The commenters generally agreed that the permit shield would not affect the filing of citizen suits. The commenters believed that the protection offered by the permit shield is from enforcement action based on a reinterpretation of an applicable requirement. One commenter stated that compliance and good corporate behavior are the best "shield" and corporate abuse of permit language to the extent that public or agency action is indicated should not be impeded in the protection of the clean air resources by some narrowly written protection of a "shield."

What mechanisms would be available to correct misapplication of the permit shield and provide timely compliance with applicable requirements?

The commenters suggested that the compliance with the correct applicable requirements could be insured through any of the following: an agreed order, reopening, and revision of the permit, or at renewal of the permit. One commenter stated that it would appear that there would be no effective mechanism to correct misapplication of a permit shield. The same commenter also noted that there could be unforeseen health impacts or nuisance conditions without legal remedy, a result clearly not in the public interest.

How would the permit shield be written such that it would not significantly slow or affect review of operating permit applications and subsequent issuance?

The commenters generally believe that the permit shield would provide protection against later reinterpretations of the applicable requirements. This, the commenters stated, would encourage a more thorough regulatory review of the application by the agency prior to issuance of the permit. The commenters also noted that the staff may require additional information needed for the application review to be submitted in a timely manner consistent with the 18-month review period. One commenter stated that the inclusion of the permit shield might make the permit reviewer more cautious and slow permit issuance since there would be less opportunity to take action to correct a permit that allowed a condition of pollution to occur.

How would the benefits of the permit shield outweigh the resource requirements on the part of the State to implement the permit shield?

The commenters, for the most part, did not believe that a resource limited environment should prevent implementation of the permit shield as an option in the program given the degree to which the program will be funded through the emission fees. The commenters also stated that the benefits of a more thorough regulatory analysis would far outweigh any additional cost to the program. One commenter stated that there are no perceived benefits to the state or the public from the inclusion of a permit shield in the final rule.

How would the permit shield be written in order to encourage thorough applications by the regulated community?

In general, the commenters supported the language in the federal rule for use in the final rules. Again they stated that such use would create a strong incentive for the applicant to supply a thorough and complete application to the staff. One commenter stated that it is likely that a more complete and accurate application will be submitted if there is no shield against future enforcement.

How would the permit shield be written such that the responsibility for applicability determinations remains with the regulated community?

The commenters indicated that the permit shield will not influence the regulated community's responsibility concerning applicability determinations. Rather, it will insure that the burden is on the applicant to come forward during the review and identify questions regarding the applicability of the requirements. The commenters noted again that granting a permit shield will not prevent the agency from reviewing the basis for such grant and revoking the permit shield through a reopening and revision of the permit, if appropriate. One commenter stated that the applicant will take more care and more responsibility with the permit if he realizes that he is not shielded from enforcement action for impacts from his facility.

What mechanisms, other than a permit shield, could provide for equitable protection in enforcement due to changes in interpretation of applicable requirements?

The commenters had several suggestions for other mechanisms for addressing this issue. One commenter suggested that the enforcement rules be revised to address enforcement subsequent to a new interpretation of an applicable requirement. Another commenter suggested that protection from enforcement in this situation could be addressed in a formal agency enforcement policy. And one commenter suggested that no changes be made in the interpretation of the applicable requirements during the permit term unless the permit goes through the procedural requirements of reopening, including notice and comment procedures. One commenter stated that the Board has always taken a responsible course in its dealings with industry in the past and any need for a permit change would be based on justified health or nuisance impacts and not engender enforcement action unless egregious corporate behavior occurred.

Please consider other issues that are germane to the implementation of a permit shield in the operating permit program.

One commenter stated that protection of public health concerns is more important than protection of a business right to pollute the air.

Several commenters also suggested language regarding the permit shield for the final rules. Their proposed language, for the most part, had the same intent and was at least as broad as the language regarding the permit shield in the federal rule. The commenters who opposed the permit shield believed that industry should be held responsible for operations at their sites and to allow otherwise is contrary to the public interest. TCC suggested a new section, §122.166, to reconcile the various positions discussed on the permit shield issue during the roundtables held on the draft Regulation XII. The staff reviewed carefully all the comments regarding the permit shield. The staff does not agree with all the comments provided by the commenters supporting inclusion of the permit shield on each of the 16 issues. The staff does agree with a number of commenters who believed that the regulated community should not be shielded from responsibility for their operations and emissions. However, based on the analysis of the comments, the staff does not believe that the commenters who support inclusion of the permit shield are necessarily requesting such protection. Rather, it appears the commenters who support inclusion of the permit shield are requesting some assurance, in the final rules, of the consistency, certainty, and validity of staff interpretations of the language of the applicable requirements upon which applicability determinations can be made in permit applications. The staff agrees that it is the appropriate responsibility of the agency to provide interpretations of regulatory language and believes that one of the functions of the operating permit program is to provide such interpretations. Therefore, §122.145 (Permit Content Requirements) has been revised to include a subsection (e) which allows for interpretations of specific language and the definition of specific terms in an applicable requirement to be attached to the permit. Thereafter, those interpretations may not be modified and subsequent en-

forcement action taken until the permittee is notified and the permit revised. This subsection serves the dual purpose of insuring consistent and certain interpretations of the language of the applicable requirements by the staff and providing consistent and timely compliance for the regulated community. At the same time, the regulated community retains responsibility for their operations and emissions.

Marathon, TMOGA, Amoco, Exxon Baytown, Ethyl, DuPont, and Chevron supported the definitions of grandfather sources and the methods outlined to establish grandfather rates. Eight individuals stated that grandfather facilities should be permitted at their existing emission rates and not in excess of their verified historical production rates. The staff agrees and believes the procedures outlined in the proposed rules provide for the concerns raised by the commenters. The proposed rules require the applicant to propose an actual grandfather rate or a presumptive grandfather rate for each grandfather emission unit. The actual grandfather rate, as defined, would limit the emission unit to the maximum annual emission rate or parameters that are related to emissions (e.g., production, fuel firing rate, throughput, sulfur content, etc., as appropriate) at which the emission unit actually operated and emitted prior to September 1, 1971, for 12 consecutive months. The staff believes this approach satisfies the commenters' request of only allowing the units to emit or operate at their verified historical production rate. The presumptive grandfather rate will seek to establish a grandfather rate that as closely as possible reflects the actual grandfather rate. The staff review involves the determination of the reasonableness of the information provided to establish the actual grandfather rate or the presumptive grandfather rate. If the information is determined to not reflect grandfather rates, additional information may be requested or alternate procedures may be required for establishing the grandfather rate. The establishment of a grandfather rate shall not affect the requirement that any facility must operate in compliance with all TACB rules and regulations including 31 TAC Chapter 116.

Pennzoil suggested that approval of rates for grandfathered facilities should be made at the regional office level. The staff believes that this is an appropriate function of the application review process and approval should remain a central office function. The regional office will be involved at the request of the central office in conducting the application review.

Jones-Day questioned why the establishment of grandfather levels was being undertaken in the Title V operating permit program. It is their opinion that establishing grandfather rates and units are applicable only to Regulation VI permits. Since Regulation VI permits and Title V permits are to be separated into a dual permit system, they believe that TACB should deal with the grandfather issue in the context of Regulation VI, or combine new source review and Title V into a single permit system. This issue was discussed at the roundtables and there was general agreement to establish grandfather rates in the proposed rules. The staff does not believe that it is necessary to have a single permit system to address the grandfather issue in the operating permit. Therefore, the grandfather rules will be retained as proposed.

SPSC commented that limiting grandfathered units to maximum emission rates based on known or approximated actual, historical emissions is an unconstitutional taking of property and a contradiction of legislative intent. The TCAA, §382.0518 requires a construction permit for any person who constructs any new facility or engages in the modification of any existing facility which may emit air contaminants into the air. The staff agrees that stationary sources that existed prior to August 30, 1971, and that met the requirements of now repealed §382.060, were not required to obtain a permit from the TACB at the time the TCAAA were amended to provide permitting authority to the TACB. However, the staff disagrees with the commenter that those sources that met this criteria were allowed to operate at full design capacity if they had not previously operated at that level. Regulation VI established an effective date of September 1, 1971, for registration of new or modified sources. March 1, 1972, was the effective date for requiring a permit for construction of new or modified sources. If a source needed to increase its operating capacity on or after March 1, 1972, the source was, and is, required to obtain a construction permit from the TACB. The TCAA, §382.003(a) defines a "modification" to be "any physical change in, or change in the method of operation of a stationary source which increases the amount of any air pollutant emitted by such source into the atmosphere or that results in the emission of any air pollutant not previously emitted." The definition of "modification" set a regulatory limit on a facilities operation and any physical change or operational change which results in a significant increase in emissions requires such a facility to obtain a TACB permit pursuant to §382.0518(a). The staff also disagrees that the longstanding interpretation of grandfather rates constitutes an unconstitutional taking of design capacity. The definition of "modification" clearly indicates that any changes to the method of operation that result in a significant increase in air pollutants or result in the emission of a new pollutant will require a permit. The staff does not agree that the Regulation XII requirement for establishing grandfather rates is a "taking of property." Any activity that meets the criteria of a "modification" is merely required to undergo a TACB Regulation VI preconstruction permit review.

Chevron Production and Union Carbide stated that the presumptive grandfather rate procedure should provide amnesty for any company found in violation of 31 TAC Chapter 116. This issue was discussed in the roundtables and the staff agreed to the establishment of presumptive grandfather rates in addition to actual grandfather rates to address the concerns of the regulated community regarding the impact of the final rule on potential enforcement actions. Therefore, staff has not added any provision to the final rule to grant amnesty for any violation of Chapter 116 or any other chapter of this title.

EPA and SPSC commented that Kansas or Colorado could fall under the definition of affected states since both those states are within 50 miles of a Texas border. Exxon Chem and Exxon Baytown recommended that the term be more narrowly defined as a state whose air quality is affected to the extent that a Prevention of Significant Deterioration (PSD) increment may be exceeded. The staff agrees that Kansas or Colorado could potentially be affected states and recommends their inclusion on the list of potentially affected states in the affected states definition. Limiting the right of an affected state to comment on a permit application is prohibited by 40 CFR 70; consequently, the staff has not incorporated the second revision.

Chevron Production commented that the staff has exceeded the requirements of 40 CFR 70 by defining under air pollutant, in §122.010, all pollutants listed under Title I of the Act, §112(b) or §112(r), rather than those pollutants listed under Title I of the Act, §112(b) or §112(r) and which are also subject to a standard covering a specific source category. EPA commented that the definition was not complete since subparagraph (F) did not specifically reference the Act, §112(g) or (j). EPA stated that potentially some pollutants regulated under Title I of the Act, §112 would not fall under the proposed definition. HL&P suggested modifying subparagraph (E), to allow for an EPA determination that Title VI requirements need not be contained in a federal operating permit. The staff agrees with Chevron Production and the definition of subparagraph (F) has been revised to reflect the requirements of 40 CFR 70. The staff points out that subparagraph (F) of the definition does reference the Act, §112(b) which lists all pollutants regulated under the Act, §112(g) or (j). Subparagraph (E) has been revised to allow for such an EPA exclusion through future rulemaking.

EPA made the following comments on the definition of applicable requirement. First, under subparagraph (A), EPA stated that the specific references to the Texas SIP approved chapters are incorrect. EPA recommended that all references to specific state rules be deleted and the final rule just reference the SIP in general terms. Secondly, under subparagraph (B), EPA commented that references to Part C and Part D of Title I of the Act should be deleted. Finally, under subparagraph (L) of the definition, EPA suggested that the final rule should not explicitly state that the National Ambient Air Quality Standards (NAAQS) are not applicable requirements. The TCC and DuPont recommended revising subparagraph (B) in order to clarify which preconstruction permits are applicable requirements under the final rule. Pennzoil commented that the language in subparagraph (A) in the definition clarifies the SIP requirements which may be applicable to a facility. Pennzoil supported such clarity in that it will enhance both compliance and enforcement of the final rule.

HL&P, SPSC, and Pennzoil noted an apparent publishing error in subparagraph (D). Pennzoil requested that the error be corrected according to the printed copy of the proposed rule distributed by the staff. TCC commented that subparagraph (F) should be

deleted since the proposed rule, in effect, would be adopting by reference various EPA rules that have not yet been promulgated. This would, TCC commented, constitute an unconstitutional delegation of TACB's rulemaking powers. TCC made the same comment on subparagraphs (A)(ii) and (B) in the definition of major source, as well as in other sections. TCC suggested that, to allay EPA's concerns about "failure to adopt future rules", the agency should make a commitment in the submittal package to EPA to initiate rulemaking at such time as EPA initiates its rulemaking.

In the staff's opinion, this definition forms the cornerstone for the federal operating permit program. The staff believes that the regulated community and the general public must have available a detailed and understandable list of the state and federal requirements which are applicable requirements under this program. To accomplish this goal, the staff has delineated, very carefully, the specific applicable requirements under this program. The staff believes that the proposed definition in the final rule meets the requirements of 40 CFR 70, and therefore, the changes suggested by EPA will not be incorporated. In the interest of clarification the staff has made the change in subparagraph (B) suggested by TCC and Dupont. The error noted by HL&P, SPSC, and Pennzoil was apparently a printing error and does not appear in the final rule. 40 CFR 70 requires that the state submit a program that, at a minimum, assures adequate authority to issue permits in compliance with all the requirements of Title V of the Act and of 40 CFR 70 (including any requirements established pursuant to the Act, §504(b) or §114(a)(3)), all applicable requirements of Title IV of the Act and regulations promulgated thereunder, and all applicable requirements of Title I of the Act. Should EPA promulgate any later requirements, the staff will conduct any required rulemaking to implement such rulemaking. 40 CFR §70.10 provides for sanctions if the state fails to submit an approvable program. Therefore, the final rule provides for adequate authority as required by 40 CFR 70 and there will be no changes with regards to these comments.

TCC commented that the definition of deviation was too vague to be implemented in the real world. TCC suggested that the definition be clarified and that the definition reflect compliance with applicable requirements rather than permit requirements. The staff agrees that the definition should reflect compliance with an emission limitation or standard rather than a permit requirement and has made such change. However, the staff disagrees with the proposed clarification which would, in effect, limit the definition of deviation to actual violations of the emission limitation or standard. This inappropriately places the permittee in the position of determining its own violations, rather than the regulatory agency. The definition has been revised to track the definition of deviation in the draft of the proposed 40 CFR 64.

DuPont recommended that the definition of emission unit be rewritten to allow grouping of emission points into emission units. TCC recommended that the definition of emission unit be rewritten to allow several emission units to be assigned a single emission unit number. EPA requested that the definition unit be clarified with regard to fugitive emissions. The staff agrees with these comments insofar as similar emission units could be grouped together in the application as long as the applicable requirements and the permit requirements are the same for each permit unit in the grouping. The staff has grouped the similar emission units together under §122.132 (regarding Application and Requirement Information), rather than rewriting the definition. The staff has clarified the definition to comply with EPA's request.

One individual requested that the term "reasonably" be defined in the definition of fugitive emissions. The definition of fugitive emissions in Regulation XII closely tracks the definition in 40 CFR §70.2. Therefore, there will be no change to the definition.

Chevron Production and EPA commented that 40 CFR 70 limits inclusion of fugitive emissions to those belonging to "those air pollutants that have been regulated for that category," which is more explicit than the §122.10 definition of major source which simply includes, under subparagraph (B)(xxvii) , those fugitive emissions for sources in a stationary source category. They suggested listing those categories of stationary sources that will include fugitive emissions in the determination of whether a source is major. 3M recommended that the definition of major source be rewritten to allow the exclusion of all emissions resulting from research and development/laboratory operations. The staff agrees with Chevron and EPA; however, the Administrative Procedure and Texas Register Act (APTRA) does not allow any change in the proposed rule that is more restrictive. Therefore, the proposed language has been retained under subparagraph (B)(xxvii). The Board agrees with 3M's concern about research and development operations and addressed this by allowing a separation for those facilities in the definition of site.

In subparagraph (C) of the definition of major source, EPA and Pennzoil noted that no provision had been made to include major sources in nonattainment areas designated after adoption of the final rule. EPA commented that the oil and gas exclusion in subparagraph (D) can only be used for the purpose of determining whether a Title III source is major. Pennzoil requested that the term "associated equipment" used in subparagraph (D), be specifically defined in §122.10 of the final rules. Pennzoil included suggested language for the definition. An individual was opposed to the oil and gas exclusion in subparagraph (D).

Lloyd-Gosselink commented that subparagraph (A) should specifically state whether fugitive emissions are to be included when determining whether a site is a major source and requested that the fugitive emissions of hazardous air pollutants not be considered in that determination. The staff agrees with the commenters and has revised the definition to include major sources in nonattainment areas designated after adoption of the final rule in subparagraph (C)(i). The staff has clarified subparagraph (D) to comply with EPA's comment. Since the staff cannot envision every possible piece of equipment that might quality under this term, Pennzoil's suggested revision to subparagraph (D) is not included. The staff notes that the oil and gas exclusion in subparagraph (D) is part of the Act, §112.

Further, the staff agrees with the intent of the exclusion, which is to eliminate the applicability of emissions which are located at such a distance from the site as to have virtually no impact on the area surrounding the site. The definition of major source in 40 CFR 70 which corresponds to subparagraph (A) does not allow any exclusion for fugitive sources. The exclusion of the fugitive emissions noted in the previous comment would potentially allow the exclusion of a major source and thus is prohibited by the federal rule. The revision suggested by Lloyd-Gosselink is not included. The staff will consider writing General Permits for these type of facilities.

EPA proposed minor language changes in order to clarify the definition of both proposed permit and site. The definitions have been clarified to comply with EPA's comments by replacing an incorrect reference in the definition for proposed permit and adding "under common control" after "persons" in the definition for site.

Small-Craig commented that the definition of preconstruction authorization should refer to Chapter 120 (relating to certain solid and hazardous waste management facility units) where appropriate. The staff agreed that preconstruction authorization should refer to Chapter 120 and also to Chapter 121, and has changed the definition of preconstruction authorization.

DuPont commented that the definition of relevant emission unit should be revised to allow the exclusion of insignificant activities as listed in 40 CFR 70. 40 CFR 70 provides for defining insignificant activities in the states' program; however, it is not a requirement of 40 CFR 70. The staff has studied the merits of using insignificant activities as allowed under 40 CFR 70. The staff takes the viewpoint that attempting to include in the final rule all activities which would qualify as insignificant is not practical, considering the variety of activities at the sites. The staff chose, instead, to eliminate certain activities at a site by the determination of whether the emission units involved are "relevant," which means, is the emission unit subject to one of the applicable requirements? This approach is consistent with the intent of the program and limits the number of activities and emission units requiring review at each site. This definition is retained in the final rule as originally proposed.

An individual was opposed to using 1980 dollars in the subparagraph (A) of the definition of responsible official. The commenter suggested that 1992 dollars be used. Pennzoil requested that the staff clarify the definition to indicate that affected sources refers only to acid rain sources. The definition in the proposed rule is identical to the definition of responsible official in 40 CFR 70. The staff does not believe it is appropriate to deviate from the federal definition and the language in subparagraph (A) has been retained. Affected source is a defined term in

§122.12 (Acid Rain Definitions); throughout the proposed rule, affected source is used only as defined in the definition. Consequently, Pennzoil's suggested change has not been incorporated.

TU and TMOGA commented that the stationary sources included in the definition of site should be limited to those belonging to a single major industrial grouping. To support their position, TU and TMOGA cited consistency with 40 CFR 70, and the federal permitting programs. The TU and TMOGA also proposed language to accomplish the change. The staff believes that a great deal of confusion would be created in attempting to sort out which emission units belong or support a particular major industrial grouping. The integrity of the site as far as applicability under the final rule has been maintained.

DuPont recommended that the definition of state only requirement be rewritten to address whether the state only requirement is an applicable requirement under the final rule. EPA commented that the reference to the federal operating permit program should be deleted from the definition. The staff agrees that the portion of the proposed rule noted as a state only requirement was not intended to be an applicable requirement under the proposed rule. The staff has revised the definition to clarify that applicable requirements are not state only requirements. The staff agrees with EPA and has revised the definition to delete the reference to Federal Operating Permits.

EPA suggested that the definition of Title I modification be deleted from the final rule. In order to promote a general understanding of the program, the staff has attempted to present the requirements of the federal operating program as clearly as possible in the proposed rule. The staff believes that the meaning of Title I modification is subject to misinterpretation and the term will not be deleted.

Pennzoil and SPSC commented that in an apparent misprint, the Texas Register version of the proposed rule combined the definitions of Title I modification and stationary source. The error noted was apparently a printing error and does not appear in the final rule.

GSU, LCRA, SPSC, TU, El Paso, CP&L, and HL&P commented that the grandfather definitions in §122.11 would make it very difficult for them to operate their electric grandfathered generators in the manner that is often required to meet peak electrical demands or to respond to major electrical outages in the power grid. They stated that the units are designed with a maximum power generation potential and while the use of full potential may not have been required prior to September 1, 1971, the unit and/or units may currently be operating at much higher levels than any level of operation prior to September 1, 1971, and it would be impossible to drop back to the pre-1971 operational level. This issue was also raised in the roundtables held on the draft Regulation XII. The staff responded to these issues by conducting two separate meetings with the electric utilities to discuss the issues raised during the roundtables and the issues commented on during the public comment period of the rulemaking procedure. The first meeting was conducted on May 25, 1993, and the main topic of discussion centered on the operational strategies employed by the utilities during different seasonal peaks and emergencies. At this meeting, a revised definition for actual grandfather rate was presented to the staff for consideration. The problem, as defined, was limited to electric utilities and most of the units involved would be required to obtain an acid rain permit under 40 CFR 72 as a part of a federal operating permit. The staff revised the definition proposed by the electric utilities at the May 25, 1993, meeting and distributed the revised definition to each utility by letter dated June 30, 1993. Another meeting was conducted on July 14, 1993, to consider a final definition. During this meeting a final definition was agreed upon by the parties involved. Therefore, the staff has included a definition for actual grandfather rate for electric utilities in Subchapter E (Acid Rain) of the final rules. The final definition, contains the term "Maximum Continuous Rating." This term has been added to the definitions in §122.12 (Acid Rain Definitions) as "The heat input required to attain the maximum documented steam condition or to achieve the maximum documented electrical output."

Sierra commented, in §122.11 (Definitions), that the actual grandfather rate should be defined as "the emission rate, production rate for today, supported by accurate historical data to support the representations made by the applicant." The staff agrees and believes the procedures outlined in the proposed rule provided for the concerns of the commenter. The proposed rule requires the applicant to establish for each grandfather emission unit an actual grandfather rate or a presumptive grandfather rate. The definition for actual grandfather rate, as proposed, is consistent with established policy for defining grandfather rates. The proposed grandfather rate is subject to review by the staff at the time the application is submitted. Section 122.132(a)(5)(B)(ii) provides for review of an actual grandfather rate representation and allows for the staff to require revisions to the application if the representations for an actual grandfather rate do not appear to be correct. The staff may also require the determination of a presumptive grandfather rate in lieu of an actual grandfather rate. Section 122.132(a)(5)(E) states that establishment of the presumptive grandfather rate does not remove any liabilities or potential enforcement action for past or future exceedances of the actual grandfather rate in violation of 31 TAC Chapter 116. In addition, the revised definition for presumptive grandfather rate makes it clear that regardless of grandfather rates compliance with all rules and regulations of the TACB including Chapter 116 is required. Therefore, the proposed methods of establishing the grandfather rates will remain in the final rule with only minor clarifying changes made in §122.132 rather than in the definitions.

AOGC, DuPont, and TCC suggested language changes to the definition of grandfather facilities to clarify the terms. There are minor revisions to the first three definitions in §122.11 to clarify the definitions.

EPA suggested that all definitions contained in 40 CFR §72.2 or, at a minimum, the definitions contained in the Model Acid Rain Rule be incorporated by reference. Section 122.411(b) has been revised to clarify that the final rule incorporates all of the Acid Rain Rules, including the definitions, by reference.

Chevron Production requested that the staff formally exempt in §122.120 of the proposed rules all non-major sources until EPA, as outlined in 40 CFR 70, removes any non-major source type from exemption. DuPont made the same request for a specific category of non-major sources. TCC requested that the final rule contain the specific source category exemptions identified in 40 CFR 70. The staff has no objection to the final rule noting the general exemption of the non-major sources allowed under 40 CFR 70 and the change has been made. However, the staff finds it redundant to list each specific source category exemption.

TU requested that the final rules mirror 40 CFR 70 and specifically state, in §122.120 (Applicability), that a source is not required to obtain a permit solely because it is subject to regulations or requirements under the Act, §112(r). The staff agrees that it is appropriate to narrow the list of non-major sources which may be brought under the final rule through further EPA rulemaking, and this change has been added as §122.120(4)(B).

EPA noted that §122.120 does not provide for the applicability of non-major sources which, as a result of rulemaking by EPA, are no longer exempt from the obligation to obtain a federal operating permit. EPA further noted that applicability of solid waste incineration units had not been addressed in the proposed rule. The staff agrees with both comments and §122. 120 has been revised to acknowledge the applicability of solid waste incineration units and the potential applicability of non-major sources.

Pennzoil recommended that in order to clarify that the certified registrations discussed in §122.122 of the proposed rules will be a means to limit a site's potential to emit, the staff should either define in §122.10 the term "certified registration," or reference §122.122 in the definition of potential to emit. The intent of §122.122 (concerning Potential to Emit) is to allow federally enforceable emission limits at a site in order for the site to limit its potential to emit. The staff understands the concerns of the commenter and clarifications have been made to §122.122.

Chevron Production noted that §122.122 (Potential to Emit) would allow federally enforceable limitations on a source's potential to emit. TCC and DuPont suggested rewriting this section to clarify both the federal enforceability of the registrations and the source's ability to lower the emission rates even below past operational rates. Section 122.122 has been revised to clarify that the registrations are federally enforceable. Regarding the emission rates, in the proposed rule no lower limit was placed on the emission rates listed in the registrations. This issue will not be addressed to any greater extent.

An individual requested that under §122.122 all upsets, releases, spills, etc. be included in

the certified registration of emissions, and only so many per year allowed. Emissions from upsets, releases, and spills are not included in calculating a site's potential to emit as defined in the federal rules. Therefore, this section has been left intact with regard to this comment. Situations regarding upsets are addressed under TACB Chapter 101.

EPA commented that §122.122 must be incorporated into the Texas SIP in order for those certified registration of emissions, proposed under §122.122, to be federally enforceable. The staff intends to submit to EPA, as a SIP revision, the adopted version of §122.122.

Exxon Chem recommended that §122.122(b) apply only to those emissions which fall under an applicable requirement. The intent of the proposed section is to establish a federally enforceable emission limit for the entire site to determine applicability of the final rule. Regardless of whether an applicable requirement exists for a particular pollutant at that site, applicability will be determined on the basis of whether any air pollutant is emitted at rates defined as major. Therefore, staff has not placed any further limitation on the type of emissions included in the registration. However, the staff has added §122.122(d) to clearly place the burden on the applicant to insure that the registration adequately limits the site's potential to emit.

An individual requested that §122.122(d) be rewritten to require registration to be kept at the site and to maintain constant accessibility of the registration. This issue was discussed at the roundtables, where the staff was reminded that many of the sites which may maintain these registrations are in remote locations and without a physical structure available to house the registration. The staff agreed that allowing access at an agreed location is sufficient for enforcement and compliance purposes.

AOGC commented that the proposed interim application submittal schedule in §122.130 does not track the federal requirement such that one-third of the applications for those sources received during the interim program may be either approved or disapproved in the first year of the interim program. The staff disagrees with this comment and believes that one-third of the permits in the interim program will be issued under the proposed schedule in the first year after program approval from EPA.

Chevron Production commented that the proposed interim application submittal schedule in §122.130 imposes a significant burden on the smaller sources. Chevron Production requested that the staff consider other options for scheduling the application submittal. This issue was discussed at the roundtables and general understanding for the proposed schedule was reached. In determining which sources to pull into the interim program, the staff considered a number of options including delineating sources by SIC codes, counties, attainment/nonattainment areas, and complexity of the source types. The staff believes that the schedule proposed in the final rule allows the most reasonable utilization of resources on the part of both the state and private sector.

HL&P recommended staggering the issuance of the Title IV Acid Rain Permits in order to best utilize staff resources both in the TACB and in the regulated community. The commenter recommended allowing a 12-month application schedule for all sources subject to the final rule. The proposed rule provided for as much flexibility as possible while still assuring EPA that applications will be submitted in sufficient time to allow for issuance of one-third of the permits in the first year as required in 40 CFR 70. In order to meet the mandatory permitting deadlines in the federal Acid Rain Rules, the staff believes it is necessary to call the affected sources in as quickly as possible and opposes the suggested change.

Natural Gas requested that the natural gas transmission industry be given 18 months under the interim application submittal schedule in §122.130(b) to submit all applications. 40 CFR 70 requires all applications under both the interim and full program to be submitted no later than 12 months after each approval date.

TCC, DuPont, ENRON, Pennzoil, TMOGA, and Dow recommended that §122.130 be rewritten in order to clarify the intent of this section. SPSC commented that §122.130(b) appears contradictory in that all affected sources are required to submit applications with six months of the effective date of the interim program and are also required, in §122.130(b)(1)(B)(iii), to submit 10% of any applications belonging to an owner/operator within six months of the same date. Exxon Chem suggested changing §122.130 (Responsibility to Apply) to clarify the use of preconstruction authorization as a trigger date for permit applications. In light of the number of requests for clarifying changes, the staff has written §122.130 solely for the purpose of clarifying those requirements contained therein.

Small-Craig commented that the interim approval approach for the permitting program leaves the effective date of the §112(g) case-by-case MACT determination requirement in doubt. This commenter suggested that §122.130(b) be revised to reflect that the §112(g) requirements apply only to sources required to submit permit applications under the interim program. Consistent with guidance from the EPA, the staff believes the Act, §112(g), provisions (case-by-case MACT determinations, triggered by new construction, reconstruction, or modifications of major, named sources) should apply only to those sources for which a permit is required. This would mean the responsibility to apply for §112(g) MACT determinations would fall only to those sources required to submit permit applications under the interim program. All sources would be required to meet §112(g) requirements upon full approval of the program by EPA. Section 122.161 has been revised to reflect the effective date of §112(g).

TU requested that the applicability date in §§122.130(d), 122.133(a), and 122.163(b) be changed to the date the site commences operation, rather than the issuance or approval date of the preconstruction authorization. This issue was discussed at the roundtables, where the participants could not develop a definition identifying the commencement of operation. Consequently, the consensus appeared to be tying the applicability date to a readily identified action such as permit issuance. The staff still supports this concept.

Chevron Production, 3M, and DuPont requested that the staff list, in §122. 132, insignificant activities which the applicant need not include in the application and also, as allowed in 40 CFR 70, list emission limits below which the applicant need not quantify emission levels. The staff has studied the merits of using insignificant activities and emission limits as allowed under 40 CFR 70. The staff takes the viewpoint that attempting to include in the final rule all activities or emissions which would qualify as insignificant is not practical, considering the variety of activities and emissions at the sites. The staff chose instead to eliminate certain activities at a site by the determination of whether the emission units involved are "relevant," which means, is the emission unit subject to one of the applicable requirements. This approach is consistent with the intent of the program and limits the number of activities and emission units requiring review at each site. The proposed language in the final rule will be retained.

EPA commented that §122.132 is written too narrowly and should instead mirror 40 CFR §70.5(c). EPA suggested such changes in two subsections of §122.132. The staff believes that §122.132 (Application and Required Information) should broadly outline the information required in the federal rule and give the staff the authority to require such information. This suggestion would be more appropriately addressed in the application forms and the guidance document which will follow, more narrowly, the requirements of 40 CFR §70.5(c).

AEA and TI commented that certain emissions units should be combined for the purposes of proposing monitoring, recordkeeping, and reporting protocol, as required under §122.132(a). The staff has no objection to combining similar emission units which have the same applicable requirements. Section 122.132(a)(1) has been revised.

DuPont commented, in §122.132(a), that the applicable protocol should be submitted rather than a proposed protocol. The staff believes that, particularly in the case of the new monitoring, recordkeeping, and reporting requirements under 40 CFR 70 and 40 CFR 72, the permit engineer should review the proposed protocols.

TCC and TMOGA suggested that, rather than request a proposed protocol for each emission unit, the language in §122.132(a) should be modified to ask for proposed protocol as required for each emission unit; thus implying that some relevant emission units would not be required to submit some or all of the protocols referenced. Marathon commented that §122.132(a) should be rewritten to clarify the fact that not all relevant emission units at a site require monitoring, testing, recordkeeping, or reporting conditions in the permit. Although the federal rule allows recordkeeping to substitute for monitoring in some cases, 40 CFR 70 does require monitoring, recordkeeping, and reporting require-

ments for each relevant emission unit. Consequently, the suggested changes are prohibited by the federal rule.

An individual requested that the term "relevant" be removed from §122. 132(a)(2), stating that all emission units are relevant. Relevant emission unit is a defined term in the proposed rule. The term "relevant" refers only to whether any applicable requirements apply to that unit, not to the relative value or importance of the unit at the site.

AOGC commented that §122.132(a)(5)(A) does not provide for determining emissions limitations as required for compressor engines regulated under TACB Standard Exemption 6. AOGC recommends that a procedure similar to that for grandfather units be used to establish emission limitations. The engines or engine trains installed under Standard Exemption 6, referenced by AOGC, were apparently installed in accordance with applicable provisions of Regulation VI, and therefore, appear to be in compliance with the Standard Exemption as it existed at that time. The units are not grandfathered and cannot utilize the procedures for presumptive grandfather emission units. However, Regulation VI provides for establishing federally enforceable emission limitations for standard exemptions. Also, for determining the applicability of the federal operating permit program, stationary sources without other federally enforceable emission limitations may limit their potential to emit by maintaining a certified registration of emissions. Therefore, the staff believes that the rule will adequately address AOGC's concerns.

DuPont commented that §122.132(a) requires the submittal of too much information, some of which could be supplied through other agency programs. DuPont recommended using these programs to supply information to the federal operating permit program. The staff believes that in order to process the applications in a timely manner, the reviewing permit engineer should receive information directly from the applicant rather than searching the other programs in the agency for data which may be out-of-date or incorrect. The staff agrees that the amount of information required under this program is significant. The staff envisions a sophisticated computer database as the only reasonable means of handling the large volume of information necessary for this program. The staff is actively pursuing the development of such a computer system.

Enron and Exxon Houston commented that §122.132(a) should require only reasonable and reasonably available information rather than any information deemed necessary by the staff. The staff envisions the application as the end result of a thorough regulatory review of the applicable requirements for the emission units at the site. In order to audit such a review, the staff must have access to information on those emission units. The proposed rule allows the staff the authority to review the necessary information. The staff understands the commenter's concerns and believes that the application forms and the guidance document will more appropriately address the type of information the reviewing engineer might require.

HL&P commented that no basis exists in 40 CFR 70 for the requirement in §122.132(a) to submit information identifying potentially applicable requirements. HL&P recommended this requirement be taken out. Enron, TMOGA, and Marathon commented that the basis for why an applicable requirement does not apply should not be a requirement of this section. The commenters further suggested a statement of negative applicability be substituted for this requirement. In order to properly audit an application, the staff believes that the reviewing engineer should be aware of the reason why a potentially applicable requirement does not apply to a particular emission unit. A simple statement of negativity would not provide an acceptable degree of assurance.

Enron recommended that the requirement in §122.132(a), to submit a risk management plan in accordance with the Act, §112(r)(7), be revised to reflect the possibility that the federal rule may not be promulgated prior to the application submittal deadline. The staff understands that the last element of the federal rule referenced will be proposed in November of 1993. The staff also understands that the federal rule is scheduled to be promulgated prior to the first application submittal deadline listed in the final rule. Consequently, §122.132(a) has been retained intact with regard to this comment.

TMOGA commented that §122.132(b)(2) should be rewritten to reference the requirement in §122.143(1)(H) that any permit with more than three years remaining to expiration shall be reopened to reflect new regulatory requirements. The staff believes that referencing a requirement to reopen a permit in the section discussing the compliance plan is confusing.

Union Carbide commented that §122.132(b) could be interpreted to require a compliance plan for an entire site rather than the relevant emission units under the permit. Union Carbide requested clarification of the intent of this subsection. The staff agrees with the commenter and §122.132(b)(1) and (2) has been revised to require a compliance plan for the relevant emission units in the application.

TCC commented that the compliance certification discussed in §122.132(c) is a periodic report that follows after permit issuance and that 40 CFR 70 only requires the application to include the applicant's plans to submit future compliance certifications. TCC requested that this subsection be revised to distinguish between a statement of intent to comply and the periodic compliance certifications required after permit issuance. The staff disagrees with the commenter. Section 70.5(c)(9) of the federal rule clearly requires that a compliance certification be submitted with each application. Section 122.132(c) will be retained intact with regard to this comment.

An individual requested that §122.132(d) be rewritten to require the applicant to send a copy of the application to the local air pollution control agencies. The proposed rule does not prohibit the review of the applications by the local air pollution control agencies. To determine the breadth and depth of the local programs' participation in the federal operating permit, the staff intends to hold discussions with the local programs to develop an agreement much like the implementation agreement with EPA. The staff believes that such involvement should be addressed through agency policy and guidance documents rather than in the final rule.

EPA commented that §122.133 should include the 40 CFR 70 requirement that applications be submitted no earlier than 18 months prior to expiration of the permit. In order to comply with the 40 CFR 70 requirement, the change has been made in this section and also in §122.241(b) (Permit Renewals).

HL&P suggested language with the intent of clarifying the meaning of "timely" in §122.133(a). TMOGA was concerned that §122.133(a) could be construed to supersede §122.130 (Responsibility to Apply). TMOGA and TCC suggested that the subsection be clarified. The staff agrees with the commenters that the proposed language could be misinterpreted; consequently, §122.133(a) has been rewritten to clarify the original intent of the section.

TMOGA and TCC were concerned that §122.133(b) could be interpreted to require applications for significant permit modifications prior to issuance of the permit. Both requested clarification of this section. The staff understands the concerns raised by the commenters, however, an application for a significant permit modification is not required for a permit that does not yet exist.

AEA, an individual, and TI requested that "complete application" be defined in §122.134. The staff does not recommend attempting to define a complete application in §122.134. The staff believes that the final rule should outline the broad requirements of an application, and that the application forms and guidance document should be the arena to address specific detailed elements.

Enron and TMOGA commented that §122.134(a) should be revised to allow an application to be complete if all reasonable and reasonably available information has been provided. Enron also suggested that the additional information that may be requested by the staff under §122.134(b) and §122. 138 be limited to the information required under §122.132(a). Marathon suggested that the final rule limit the information required for the application to be deemed complete by the exclusion of the following language, "...information deemed necessary to determine the applicability of, or to impose, any applicable requirement." TMOGA recommended alternate language to define the information requirements of this section. The purpose of the operating permit program is to provide codification of all applicable requirements. Staff believes that requiring the submission of any information necessary to determine the applicability of or to codify any applicable requirement is reasonable. In addition, the elements included in §122.13 reflect the requirements of 40 CFR §70.5(c), relating to standard application forms and required information. 40 CFR §70.5(a)(2) specifies that to be deemed complete, an application must provide all information required pursuant to §70.5(c). Therefore, the staff's proposal is consistent with the requirements of 40 CFR 70. Staff

does not believe that TMOGA's suggested language provides any additional clarification, except for changing the word "impose" in §122.132(a) to "codify."

An individual opposed §122.134(b) which allows, unless the agency notifies the applicant otherwise, automatic completeness 60 days after receipt by the agency. 40 CFR 70 specifies that the states' program will provide an automatic completeness determination 60 days after the application is received by the state, unless the state otherwise notifies the applicant that the application submittal was incomplete.

Exxon Chem requested §122.136(a) be modified to allow applicants, who failed to submit information or submitted incorrect information, more than 60 days to correct the application. The staff believes that 60 days is sufficient time for an applicant to correct an application.

DuPont commented that §122.136(c) should allow the staff to request additional information from an applicant only after consultation with the applicant.

The determination of what information is required to continue or complete the permit review should be made by the reviewing engineer. This will provide greater flexibility and can potentially reduce review time.

Enron and TMOGA commented that §122.138 should include language which states that the applicant is not required to comply with the conditions of the permit until after the permit is issued, and for permit modification application, the permit holder need only comply with the terms and conditions of the existing permit until a modified permit is issued. The staff believes that the initial permits are not enforceable until issued by the board or its designee. However, it was not clear in the proposed rule which terms and conditions, the proposed or existing, the permittee shall comply with during the time period between commencing operation and the issuance or denial of the permit revision. In order to comply with the intent of 40 CFR 70, which allows changes to be made and operation of those changes to commence prior to issuance of a permit revision, §122.217 (Permit Addition Procedures) and §122.219 (Significant Permit Modifications) have been reviewed to allow the permittee to comply with the terms and conditions of the proposed permit, rather than those of the existing permit during this interim period.

EPA commented that the reference to permit modification in §122.138 should be deleted. 40 CFR 70 requires significant permit modifications to meet all the procedural requirements of permit issuance. As a result, the applications for a significant permit modification must meet the timely and complete criteria in the federal rule. The staff interprets 40 CFR 70 as allowing the application shield for those sources which are subject to the procedural requirements and meet the timely and complete criteria in the federal rule. This section has been retained intact with regard to this comment and does allow the application shield for significant permit modifications.

TCC requested revising §122.138 to allow the application shield for sources that submitted only a timely application, rather than, as proposed, a timely and complete application. 40 CFR 70 specifies that the application shield may be extended only to those applications which are both timely and complete, as described by the federal rule.

TMOGA recommended clarifying §122.138 to eliminate confusion on who sets the deadline for the submittal of additional information. The staff agrees with the commenter and §122.138 has been clarified to clearly allow the executive director the necessary authority to set deadlines for the submittal of additional information.

An individual opposed §122.139(4) and suggested that the nine month time frame be revised to 12 months. The requirement in §122.139(4) to take action within nine months of receiving the application is a federal requirement of 40 CFR 70.

AOGC commented that the annual compliance certifications required under §122.143 should be required to be submitted at the same time the annual emission inventories are required to be submitted so to avoid a duplication of effort on the part of the regulated community. The staff agrees with the goal of minimizing duplicative effort where 40 CFR 70 allows. However, it is unclear to staff at this time how much latitude is available in the submission of compliance certifications. Therefore, the phrase "at least" has been added before the phrase "every 12 months" in §122.143(4) to allow for maximum flexibility in submission of compliance certifications.

3M suggested language to be added to §122.141 regarding alternative operating scenarios as addressed in 40 CFR §70.6(a)(9) and emission caps as addressed in 40 CFR §70.4(b)(12)(iii). Chevron commented that TACB should include language in §122.143 that addresses alternative operating scenarios and emissions trading. There will be no revisions to §122.141 or §122.143 regarding these issues. The staff designed the proposed operating permit program (permit content and scope) to allow such changes provided that such changes do not affect an applicable requirement, and provided that Regulation VI and the SIP allow such emission trading and alternate operating scenarios. However, insofar as the requirements of 40 CFR 70 conflict with any underlying requirement of the Texas SIP, the SIP requirement governs. Regulation VI does not allow for a facility to "trade emissions" without BACT and impacts review. Nor does Regulation VI allow a source to vary its operating scenario, unless expressly allowed under an existing preconstruction authorization. The staff believes that both emissions trading and alternate operating scenarios are appropriately addressed under the current Regulation VI NSR program. In addition, the federal operating permit will not prohibit an emission cap on a facility that meets the requirements of all TACB regulations. As appropriate, any necessary conditions will be included in a federal operating permit addressing an emissions cap.

An individual requested that all of §122.143 be deleted and opposed the concept of general permits. Section 122.143 refers to general permit conditions, i.e., the general conditions that will be contained in each permit. This is totally unrelated to the concept of general permits. General permits are addressed in §122.202. Therefore, §122.143 has been retained. With regard to general permits, this concept will be retained also. The federal operating permit is, by and large, a document in which all of the applicable requirements for a source are codified. In many instances, for similar source types with similar applicable requirements, general permits will allow the staff to avoid redundant effort, saving staff resources for other important air quality initiatives.

EPA commented that §122.143 needed additional language to ensure that the permits do include the provisions required under 40 CFR 70, including those provisions concerning emission limitations and standards. Section 122.143 (Permit Conditions) lists only the general conditions with which each permit issued under the final rule must comply. Emission limitations and standards will be specific to the individual sites and as such will be appropriately attached as special conditions to the individual permit. Section 122.145 (Other Requirements) has been revised to clarify this intent.

TCC commented that §122.143(1)(B) should be changed to read, "Permit shall expire five years from the date that TACB takes final action on the proposed permit." Issuing the proposed permit is the final action that TACB will take on the vast majority of permits. Staff agrees with the commenter on when the "five-year clock" begins, that is on issuance of the proposed permit. However, the staff believes that the proposed language states that position more clearly than the suggested revision.

HL&P commented that §122.143(1)(B) appears to conflict with §122.201(b) and §122.241(a). HL&P argued that the former sets the term at five years while the latter two seem to allow permit terms less than five years. HL&P supported a fixed five-year term. Section 122.143(1)(B) states that a permit "shall expire five years from the issuance of the proposed permit." The staff believes that this does not automatically "set the term" at five years, but means that a permit term of over five years will not be allowed. The staff believes that the TACB should retain the flexibility to have permit terms of less than five years as provided by the latter two sections. With this flexibility, it will be possible to coordinate the timing of operating permit renewal with NSR permit renewal.

An individual commented that the phrase "at any time" should be added to §122.143(1)(C)(i). This issue was discussed at the roundtables. The draft rule presented at the roundtables provided for inspection of the emission units at any time. However, the staff does not believe it is always reasonable to expect access to records at any time, because not all records are maintained on-site. In addition, all the permittee's staff are not authorized generally to have access to those records and those authorized personnel may not always be available. In addition, the language contained in §122.143(1) (C)(i) mirrors the language contained in §70.6(c)(2)(i).

TMOGA, DuPont, Enron, Chevron, TCC, and Pennzoil requested that the phrase "inspect,

at any time..." in §122.143(1)(C)(iii) be changed to read "inspect, at reasonable times," which reflects the language of §70.6(c)(2)(iii). The basis for this comment is that in certain situations, such as an emergency, it may not be appropriate for representatives of the TACB to be allowed onsite. This issue was addressed during the draft Regulation XII round-tables. Since many sources operate continuously, the staff believes that it is important to have access to a source at any time. The TACB regional staff believes that the wording should be "inspect, at any time." The basis for this is that representatives of the TACB would not voluntarily endanger themselves during an emergency or knowingly hinder efforts to control an emergency. Consequently, in order to address both the concerns of the regional staff and the commenters, the staff has added language to §122.143 which provides for inspection at any time other than when the presence of the TACB personnel would interfere with the ability of the permittee to respond to an emergency situation.

An individual asked that "reasonable period of time" as used in §122. 143(1)(D) be defined. This paragraph addresses the amount of time that a permittee has to present records required by a permit to representatives of the TACB or the local air pollution program with jurisdiction. The staff has retained this section as proposed with regard to this comment. This wording was discussed in the draft Regulation XII roundtables at some length. It was determined that inspectors from the TACB or local program could best determine what constitutes a reasonable amount of time on a case-by-case basis.

Pennzoil commented that §122.143(1)(E) did not include the affirmative defense of emergency contained in §70.6(g)(3), and that such defense should be included. The staff believes that §101.6 and §101.11 of the TACB General Rules fulfill the requirements of 40 CFR §70.6(g). Section 101.11 contains language that constitutes a defense from enforcement under upset conditions as long as the procedures of §101.6 are followed.

TCC commented that the language of §122.143(1)(F) is confusing. TCC argued that a permittee is not going to request revocation or termination, and actual termination "stays" all permit conditions. The staff believes that the language in §122.143(1)(F) is required by §70.6(a)(6)(iii).

TCC commented that §122.143(1)(G) should be revised to allow for extensions to be granted by the Executive Director. TCC also requested that this paragraph be rewritten to note that records sent directly to EPA may be sent with a claim of confidentiality. The staff agrees with these comments and has added language to §122.143(1)(G) accordingly.

An individual commented that "reasonable period of time" as used in §122. 143(2) regarding the submittal of monitoring data should be defined. This issue was a point of discussion at the draft Regulation XII roundtables. It was determined that "reasonable period of time" varies widely depending on the type of monitoring required. Therefore, the staff believes that it is more appropriate that "reasonable period of time" be defined on a source type or case-by-case basis during permit review and may be defined in the special conditions of the permit.

Exxon Chem, TI, AEA, and GPA commented that the reporting conditions contained in §122.143(3)(B) and (C) are redundant. TCC recommended deleting subparagraph (B). TI and AEA recommended deleting subparagraphs (B) and (C) altogether. GPA and Chevron commented that language be added to subparagraph (B) or (C) that reporting is required under one but not both of these subparagraphs. The staff agrees that the reporting requirements of §122. 143(3)(B) and (C) seem redundant. However, the staff does not recommend deletion of those subparagraphs altogether. Subparagraph (B) fulfills the requirements of §70.6(a)(3)(iii)(B) and (C) fulfills the requirements of §70.6(g). The staff does agree with the approach taken by Exxon Chem and GPA. Therefore, language has been incorporated into §122.143(3)(B) which requires reporting except in such cases that reporting is required in subparagraph (C).

TMOGA and Enron commented that §122.143(3) regarding reporting and §122. 143(4) regarding compliance certifications should contain wording to change the reporting date to coincide with other reporting requirements and that reports not be required until 45 days following the data collection period so that report compilation can be accomplished. The staff agrees, in principle, with the goal of matching submission dates for reports and compliance certifications where 40 CFR 70 allows. However, EPA has not provided guidance on how much latitude is allowed in the submission of compliance certifications or other required reports. Therefore, the phrase "at least" has been added before the phrase "every six months" in §122.143(3)(A) to allow for maximum flexibility in submission of required reports. In addition, the phrase "at least" has been added before the phrase "every 12 months" in §122.143(4) to allow for maximum flexibility in submission of compliance certifications.

DuPont requested that the wording of §122.143(3)(C) be changed to reflect the wording contained in §70.6(g)(3). The rationale is that the subparagraph, as currently worded, and specifically the reference to Chapter 101 (TACB General Rules), is too vague to be used as an affirmative defense of emergency. The staff believes that §101.6 and §101.11 of the TACB General Rules fulfill the requirements of 40 CFR §70.6(g), and that an affirmative defense of emergency can be built by using those sections.

An individual commented that the word "preventative" in §122.143(3)(B) should be "preventive." Staff agrees and this suggestion has been incorporated.

Exxon Chemical asked that §122.143(4) be changed to incorporate the idea that the compliance certification should contain a blanket statement of compliance and should detail only noncompliance through the requirements of subparagraphs (A)-(D). Compliance certification requirements are stated in §70.6(c)(5). The staff understands that these requirements are mandated and can not be changed.

Exxon Baytown and Marathon supported all of TMOGA's comments on §122.143 (Permit Conditions). In addition, Exxon Baytown supported the comments of Exxon Chem on §122.143. TMOGA, Marathon, TCC, DuPont, AEA, TI, and Exxon Houston commented that the language of §122.145(a) requiring certification by a responsible official for any document required by a permit is overly burdensome. AEA commented that the requirement to certify reports in §122. 145(a) should not be extended to supporting documentation such as calibration data, strip charts, etc. The commenters suggested changing the language in §122.145(a) to require certification by a responsible official only for those documents that will be submitted to the TACB.

The staff agrees that the language contained in §122.145(a) could be overly burdensome and has incorporated language as suggested.

TCC recommended deleting the first sentence of §122.145(a). The commenter's rationale was that the items discussed in this subsection were already discussed in §122.143, and that restatement is confusing. The conditions included in §122.143 are general permit conditions that will be included by reference in every operating permit, much as Texas NSR Permits contain General Provisions. Section 122.145(a) provides authority to include conditions in each operating permit, including those that go beyond the general conditions.

Enron, TMOGA, and Marathon commented that language should be added to §122.145(a) such that the subsection would not be construed to require compliance certification, testing, monitoring, recordkeeping, and reporting for all emission units. The rationale was that the rule, in and of itself, should not require testing and monitoring until enhanced monitoring rules are promulgated. The staff believes that §70.6(a)(3)(i)(B) of the federal rule requires monitoring that is sufficient to demonstrate permit compliance. This is known by the EPA as "gap filler" monitoring requirements, where there may not be monitoring requirements in any applicable requirement. The staff points outs, however, that monitoring does not necessarily mean continuous emissions monitoring. In some cases, such things as recordkeeping may be sufficient to demonstrate permit compliance.

Exxon Chemical commented, regarding §122.145(b)(1), that language should be added to allow the use of equivalent test methods without listing in the permit. The staff agrees that it is possible, in certain instances, to use equivalent test methods. However, the staff also believes that the use of these would need to be approved on a case-by-case or source-type basis. Therefore, equivalent test methods will not be added.

TMOGA, Marathon, and Enron suggested adding a new paragraph, §122.145(b) (4), to allow for a phase-in time after a permit is received to develop and implement monitoring or recordkeeping. The staff agrees that a phase-in time for monitoring and recordkeeping will be needed by most sources upon receipt of a permit. As with NSR permits, the phase-in schedule will be stated in the permit,

on a case-by-case basis, rather than in the rules.

TMOGA, Marathon, TCC, and DuPont expressed concern that the use of the phrase "operating conditions" in §122.145(c)(6) is too broad and needs to be defined. The phrase "which are deemed necessary to characterize emissions" has been added after the phrase "operating conditions."

TMOGA and Marathon commented with regard to §122.145(d), relating to sites with emission units not in compliance at the time of permit issuance, that the TACB should publish a guidance document within six months of "issuance" of the final rule on compliance plans pursuant to §122.132(b). The commenters further stated, that enforcement policies should be developed which give consideration to those companies which make "good faith efforts" to comply with applicable requirements. The staff intends to develop guidance documents, not only relating to compliance issues, but for a wide variety of issues concerning implementation of the federal operating permit program. However, an exact time-frame on issuance of these documents will not be established, but guidance will be developed as soon as possible after the effective date of the final rule. The staff believes that the comments on enforcement policy are outside the scope of this rule package.

DuPont commented that §122.145(d)(2)(A) requires permittees to provide an explanation of why any dates in the schedule of compliance (for sites not in compliance) "were not or will not be met." The commenter argued that most "conscientious permittees" will not intentionally miss a compliance date and that there is no need to predict "non-compliance of a non-compliance schedule." They recommend deleting the phrase "or will not be." This specific site refers to submission of progress reports for sites with units not in compliance. It is conceivable that at the time of progress report submittal, a permittee may be aware of a compliance schedule date that will be missed for whatever reason. The language which is identical to §70.6(c)(4)(ii), has been maintained.

EPA Region VI commented that §122.150(b), General Permits, seemed to indicate that General Permits would not be promulgated through rulemaking procedures required by the Administrative Procedure and Texas Register Act (APTRA), Texas Civil Statutes, Article 6252-13a. EPA requested that §122.150(b) be clarified with regard to the public notice requirements for general permits. Section 122.202 sets out the procedures to obtain a General Permit. It is the intention of the TACB to develop a list of General Permits, much like the Standard Exemption List promulgated under TACB Regulation VI. The initial General Permit list will be subject to the APTRA rulemaking procedures which include requirements for public notice and comment, as well as public hearings. EPA and affected states are free to comment during the public comment period or during any hearing. 40 CFR 70, §70.6(d)(2), provides that without repeating the public participation procedures required under §70.7(h) , the TACB may grant a source's request to operate pursuant to a general permit. The intent of §122.150(b) is to merely state that individual General Permits are not subject to the public notice and comment procedures in Subchapter B of the proposed rules. Section 122.150(b) has been included as a reference to the procedural requirements listed under §122.202.

EPA commented that §122.152(b) appears to allow for the general availability of the permit file to cease after the permit is issued. The TCAA, §382.040 provides that all board records are public records that are open to inspection by any person during regular office hours, except as subject to §382.041 regarding confidential information. Section 122.152(b) has been clarified to address EPA's concern.

TCC commented that §122.152(c), as written, could be interpreted as requiring the TACB to provide a copy of an actual application and other documents as specified in §122.153 to any person who requests it. 40 CFR Part 70, §70.7(h) provides in part that notice of an application for an operating permit shall be provided to any mailing list of persons that is maintained by the TACB and to those persons who request in writing to be included on any such list. The intent of §122.152(c) is to comply with §70. 7(h) by merely providing notice to those interested persons of the submission of an application for an operating permit or any revision. It is not the intent of the TACB to freely provide a copy of the draft permit and documents required in §122.153 to those who request them. Copies of these documents may be obtained from the TACB central office as well as the TACB regional office file rooms that are open to the public during normal business hours. Section 122.152(c) has been revised to clarify the original intention.

TU commented that the requirements in §122.153 of the proposed rules for public notice of intent to obtain a federal operating permit allows for publication in two sections of two successive issues of a newspaper in general circulation. TU requested that the publication requirement be reduced to the minimum required under 40 CFR 70. 40 CFR 70 requires "...adequate procedures for public notice including offering an opportunity for public comment...." The staff finds it reasonable and adequate to require the same procedures for public notice under this rule as is required under Regulation VI.

EPA commented that §122.153(a) does not require, as does 40 CFR 70, the "emission change involved in any permit modification" to be included in the public notice. The TACB believes that §122.153(a)(3) adequately addresses EPA's concern. By merely limiting the description to "emissions changes" the public notice could presumably not mention changes in monitoring, recordkeep- ing, new applicable requirements that do not involve emissions, etc. The reference to "activity" is more inclusive of all possible changes. The staff believes that the proposed section satisfies the requirements of 40 CFR 70.

The TCC commented that the phrase "with newspaper of general circulation" ought to be added to §122.153(a) to modify the requirement to publish notice in a municipality nearest the location of the site. This would be the case when the municipality where the site will actually be located does not have a newspaper of general circulation. Section 122.153(a) was intended to track the language of the Texas Health and Safety Code, §382.056(a) as well as TACB Regulation VI, regarding notice of intent to obtain a permit.

The TCC commented that §122.153(a)(2) requires a public notice to provide the name of the "company" seeking an operating permit and suggested that an applicant can be an entity other than Company. The staff agrees that applicants may be other entities or persons and the suggested change has been made to §122.153(a)(2).

EPA commented that the word "significant" in §122.153(a)(5) should be deleted. 40 CFR 70 requires that the public notice include "...the emissions change involved in any permit modification...." By referencing any significant permit modification rather than any permit modification, the staff merely acknowledges, for the sake of clarity, that the only type of modification required to undergo public notice is the significant modification.

One individual requested that a 30-day comment period be specified in §122.153(a)(7). The staff has specified a 30-day comment period in §122. 155 (Public Comment Period) which describes the time periods for the comment period as well as procedures for submitting comments and requesting a hearing.

One individual requested that the term "affected person" be defined in §122.153(a)(6). The appropriate methodology in these matters is to review the facts of each request on a case-by-case basis in order to determine whether the person is affected by emissions or if the request is a reasonable request as allowed by the Texas Health and Safety Code, §382.0561(c). Any further definition of "affected person" would still have to allow for case-by-case determination of the relevant factors. Therefore, the staff will not be defining "affected person" in the final rule.

The TCC commented that §122.154(a) and (c) should be changed to allow the Executive Director to have the discretion to approve alternative placement of signs in the event that the current requirements prove to be "inadequate or awkward." The staff has added §122.154(d) to allow for alternate sign placement where it is impractical to comply with the stated requirements, and where the alternate placement will provide equivalent notice.

Exxon Chem and Exxon Baytown recommended changing §122.155(c) to include the permittee when notifying interested parties of the board's proposed final action. This section has been revised.

EPA commented that §122.163(a) should reflect the 40 CFR 70 requirement that the final rule shall be effective upon EPA approval of the federal operating permit program submittal, and not 30 days after publication of the approval date, as written in the proposed rule. The TCC suggested adding language to §122.163(a) to clarify that the effective date of the final rule is the date that the approval of the operating permit program is published in the *Federal Register*. The TCC also sug-

gested that the caveat in §122. 163(c) regarding the failure of the TACB to publish notice of the date of approval of the operating permit program be deleted.

40 CFR Part 70.4(g) provides that the effective date of an operating permit program, including any partial or interim program shall be the effective date of approval by the Administrator. The staff agrees with the TCC comment that the date of approval should be tied to publication of the approval in the *Federal Register*. EPA will publish notice of its approval of the Texas program in the *Federal Register*. The *Federal Register* will indicate the actual date of approval, which should be 30 days after the date of publication in the *Federal Register*. EPA correctly noted that §70. 4(b)(3) requires that state statutes and regulations shall be fully effective by the time the program is approved. The Texas Health and Safety Code, Chapter 382 was amended during the 1993 Legislative Session by House Bill 2049. Section 28 of House Bill 2049 provides that the sections of Chapter 382 pertaining to federal operating permits shall take effect on the effective date of the bill, which was signed and became effective (with the exception of §25) on June 9, 1993. However, the Texas Health and Safety Code, §382.064, provides that applications for federal operating permits are not required to be submitted to the board before the approval of the Title V permitting program by the Administrator. In order to address the concerns of the regulated community, the staff initially proposed that the final rule becomes effective 30 days after the date of approval of the operating permit program by EPA. APTRA, §10(a)(3) provides that if a federal regulation requires that an agency implement a rule by a certain date, then the rule is effective on the prescribed date. In this instance, since §70.4(b)(3) requires that the regulation be effective upon date of program approval, the TACB cannot delay the effective date of the final rule. As such, the final rule will be effective 20 days after it is filed with the *Texas Register*, pursuant to APTRA, §10(a). Section 122.163(a) has been changed so that compliance with the requirements of the regulation will be required upon program approval by EPA.

As for the TCC's concerns regarding the possible failure of the TACB to publish notice of the effective date, it is not the intention of the staff to fail to publish such notice in the *Texas Register*. The purpose of this disclaimer is to put all potential applicants on notice that the effective date is the effective date, and the action or inaction of the TACB is of no consequence, especially since the approval date will be published in the *Federal Register*.

The TCC commented that the word "already" in §122.164 makes no sense, and would potentially create unlawful restrictions on protection accorded by State law. The staff agrees that the proposed language in this section could arguably be interpreted to mean that any later laws regarding confidentiality would not apply to documents applicants believe to be confidential, consequently, the word "already" has been deleted from the final rule.

One individual requested that the agency determine whether or not documents submitted as confidential are indeed entitled to confidential treatment. The Texas Health and Safety Code, §382.041 provides that members, employees, or agents of the board may not disclose information submitted to the board relating to secret processes or methods of manufacture or production that are identified as confidential when submitted. The agency maintains documents marked as confidential in closed files and notes in the public file that certain information is held confidential. In the event a request is received to view the documents, the agency is authorized by the Texas Open Records Act, Article 6252-17a, to request an opinion from the Texas Attorney General as to whether or not the documents meet any of the exceptions from disclosure provided for in that act. The Open Records Act, §7(c), states that in cases where a third party's privacy or property interests are implicated by a request for information, the governmental body may, but is not required, to submit its reasons as to why the information should or should not be withheld. The agency has not made it a practice to submit such reasons as the agency is not in the best position to provide such reasons. Section 382.040 provides that all information, documents, and data collected by the board in performing its duties are state property and subject to the limitations in §382.041 (and those of the Open Records Act), and that all records are open to the public during regular agency hours.

The TCC and TMOGA commented that the last sentence of §122.165 should be deleted because §122.211 already requires that the TACB be notified of any change regarding the responsible official. This section has been revised to reference §122.211 rather than repeat those requirements.

HL&P recommended revising §122.201(b) and §122.241(a) to mandate fixed terms for the federal operating permits. For two reasons, the staff believes that the final rules should retain the flexibility to renew the permits prior to the end of the five-year term. First, this allows a permittee the option of scheduling simultaneous NSR and federal operating permits reviews. Secondly, if in the future, the agency moves to a one permit system, then the permits would almost certainly be combined at a renewal. Again, flexibility in scheduling the renewal review would be an advantage.

Chevron Production, TMOGA, and Marathon commented that §122.202 should require the TACB to notify all holders of a general permit if that permit is repealed or revised. The staff understands the commenters' concerns; however, the staff believes that the procedural requirements of rulemaking, including public notice will serve as adequate notice of the general permit's proposed revision or revocation and insures efficient use of resources.

EPA commented that §122.202 should be changed to require renewal of the general permits every five years. Pursuant to 40 CFR 70, the proposed rule provides for general permits to be promulgated through future rulemaking. Since state rules are not required to go through a renewal process, general permits are not required to go through renewal review.

HL&P noted that the term "general permit" in §122.202 may also be used, with a different meaning, under other rules. HL&P recommended using a different term, such as "standard permit" or "general federal operating permit" to avoid any potential confusion. The staff shares the commenter's concerns over potential confusion in terminology. Statutory authority allows for the issuance of both standard permits and general permits. Since "general permits" is a federal term under Title V of the Act, the general permits will be issued only under this rule. If other permits by rule are issued pursuant to the NSR program, those permits will be identified as standard permits.

DuPont and Marathon recommended that §122.202 be rewritten to allow sources which qualify, to operate under a general permit without actually applying for the general permit. The federal rule, 40 CFR 70, requires that each source which qualifies for a general permit must apply for that general permit.

TCC recommended that §122.202(b) be revised to require that the terms of each general permit be set out as an appendix to the final rule, so that individuals from out-of-state can obtain a copy of the general permits by obtaining a copy of the published rule. The *Texas Register*, which publishes proposed and adopted rules issued by Texas state agencies, does not allow for publication of appendices or attachments to rules. The only acceptable method is to include the list of general permits within the rule itself. This is an option which may be considered in future rulemaking. The general permits have been incorporated by reference, similar to the way standard exemptions are incorporated into Regulation VI.

Marathon and TMOGA recommended that §122.202(d) specifically allow the use of general permits to incorporate, at a site, new applicable requirements which were not promulgated prior to issuance of the original permit. As was discussed at the round- tables, the staff does envision the general permits serving this function and the proposed version of the rule did allow for such use. However, since the staff cannot envision every possible use of these permits, narrowly defining their use in the final rule will not be done.

TCC and TMOGA requested modifying §122.202(d) and (e) to remove the requirement that the general permit must be granted to each individual applicant. TCC commented that although under 40 CFR 70 the sources must apply for a general permit, it is not required that the state respond to each individual application. 40 CFR 70 clearly states that "To sources that qualify, the permitting authority shall grant the conditions and terms of the general permit." The proposed rule allows each general permit to specify whether such grant will be made for each individual general permit application or whether the general permit may specify a reasonable time period after which a source that has submitted an application will be deemed to be authorized to operate under the general permit.

TCC requested that §122.202(f) be revised to allow the general permit to remain in effect until its expiration date at the end of the five-year renewal cycle, regardless of any action

on the part of the agency revising or repealing the general permit. Since each general permit remains perpetually in effect until revision or repeal of the permit, this section will not be revised.

Exxon Chem and Exxon Baytown recommended, under §122.202(g), where the general permit has been revised or revoked, limiting enforcement action for operation without a permit to those periods of operation subsequent to the last possible application date or the date the permit is issued. The staff understands the commenters' concerns regarding enforcement during an interim period between revocation of an existing permit and the granting of a new general permit. Section 122.202(i) has been revised to address such interim periods and §122.2029(e) has been revised to clarify that the application shield will be in place for those applicants who make a timely and complete application.

EPA commented that §122.204 should clearly state that temporary sources which are in and of themselves major, must obtain a federal operating permit. The staff has revised the section to comply with EPA's comment.

IADC requested clarification in §122.204(c) as to which permit will not require revision: that of the temporary source or the site. The staff agrees that §122.204(c) should be clarified with regard to this comment. This section has been clarified to indicate that neither the status of the temporary source or the site is affected by a temporary source which remains at the site for six months or less.

IADC commented that the staff did not specify what effect a temporary source will have on the site's permit status if the temporary source remains longer than six months.

IADC cited potential costly delays in operations and suggested removing the implied requirement in §122.204(c) for a site permit revision for temporary sources which remain on-site longer than six months. The staff believes that a temporary source should be allowed to remain on site for a reasonably short period of time without affecting the permit status of the site. The staff defined a six-month period and believes that this is a more than reasonable length of time. Section 122.204(c) has been revised to clarify the requirement for a site permit revision for temporary sources which remain on site longer than six months. IADC commented that the staff's proposal in §122.204(d) to require the same application information from both permanent and temporary sources is unworkable because much of the information required under Subchapter B of the proposed rules is site- specific. The staff believes that the same applicability determinations required under §122.132 (Application and Required Information) apply to both types of sources. However, the staff understands the commmenter's concerns and believes that the application forms and the guidance document will more appropriately address the type of information the reviewing engineer might require.

IADC commented that the requirement in §122.204(f) to provide ten day's notice prior to moving a temporary source is, in some cases, impractical if not dangerous. IADC cited emergency situations, for example, moving a rig on-site to drill a relief well at the site of a blowout. The staff agrees with the commenter and this section has been revised to allow a shorter notification in the event of an emergency.

EPA suggested that §§122.211-122.221 be rewritten in order to clarify the requirements. TCC suggested that due to the numerous varieties of permit revisions, the staff should provide examples of the types of changes contemplated by each. The staff has revised these sections to generally clarify the intent of the requirements. The staff intends to provide examples of the different types of permit revisions in the guidance documents.

TCC and Exxon Chem commented that the proposed Regulation XII does not adequately address procedures to incorporate MACT determinations, made under the FCAAA, §112(g), into the proposed federal operating permits. TCC commented that case-by-case MACT determinations could be handled through the state's preconstruction permitting program and the resulting determination(s) incorporated into the operating permit by administrative amendment procedures. TCC stated that some changes to Regulation VI would be necessary to make the requirements of the §112(g) MACT determinations federally enforceable as well as revision of §122.221 of the proposed rules. The staff agrees that the most appropriate method to administer §112(g) MACT determinations is through the state's existing preconstruction permitting program. However, the staff also believes the appropriate time to resolve this issue is after the §112(g) and §112(l) (Approval of State Programs and Delegation of Federal Authorities) rules are promulgated. TCC's recommendation to add language allowing administrative incorporation of case-by-case MACT determinations into Regulation XII (and, by reference, rulemaking to modify Regulation VI) is premature. The comment is outside the scope of this rule package. Appropriate rulemaking will be implemented to allow adoption of the §112(g) program after promulgation of the federal rules.

EPA commented that §122.211 must specify the types of changes which the staff will allow under administrative amendments. Section 122.211(a)(5) is identical to the language used in 40 CFR 70 for the same purpose. Since the staff cannot envision every possible change that might qualify under §112. 221(5), the staff does not recommend narrowly defining its use in the final rule.

An individual requested that §122.211(c) be rewritten to allow public input. The commenter further requested that §122.211(f) be rewritten to allow input from local air pollution control agencies. The staff cannot address these comments since §122.211 does not contain either subsection (c) or (f). However, the staff believes that the proposed rules provide substantial opportunities for comment and input from both the general public and local air pollution control agencies, as appropriate.

EPA commented that §122.215(5) would allow, under permit additions, changes which involved reasonably available control technology, PSD, BACT, lowest achievable emission rate, §111, or any case-by-case determinations, with the exception of §112(g) or §112(j) determinations. The staff believes that the proposed rule is consistent with the intent of Congress, 40 CFR 70, the staff's understanding throughout the Title V federal roundtable discussions prior to the promulgation of 40 CFR 70, and EPA staff comments at Air and Waste Management Association workshops.

EPA commented that §122.215(7) should specifically prohibit those changes which qualify as significant modifications from the permit addition procedures. The section, now identified as §122.215(c)(3), has been revised to comply with EPA's comment.

An individual requested that §122.217 (Permit Addition Procedures), §122.220 (Significant Permit Modification Application and Procedures), §122.221 (Operational Flexibility), and §122.223 (Permit Reopening Procedures) be rewritten to allow both local air pollution control agency input and a 30-day public comment period. The proposed rules do not prohibit the review of the applications by the local air pollution control agencies. To determine the breadth and depth of the local programs' participation in the federal operating permit, the staff intends to hold discussions with the local programs to develop an agreement much like the implementation agreement with EPA. The staff believes that such involvement should be addressed through agency policy and guidance documents rather than in the final rule. In order to meet the provisions of 40 CFR 70, which require adequate, streamlined, and reasonable procedures for expeditiously processing permit revisions, the staff did not propose that changes qualifying as permit additions, similar to minor modifications in the federal rule, go through a public comment period. The staff believes that the changes which qualify as permit additions are either minor changes at the site, and as such should not require public comment, or involve operational changes which will require review under Regulation VI and a subsequent determination under that chapter as to whether public notice is appropriate for the change at the site. Therefore, the proposed changes to §122.217 will not be made. Section 122.220 and §122.233 already required a 30-day public comment period. 40 CFR 70 requires that the states' program allow for operational flexibility with only the procedural requirements listed in §122.221. Adding public notice for the changes which qualify under this section is prohibited by the federal rule.

An individual requested that §122.217(b) be rewritten to allow 180 days rather than 90 days to complete action on a permit addition application. In order to meet the provisions of 40 CFR 70, which require adequate, streamlined, and reasonable procedures for expeditiously processing permit revisions, the 90-day review requirement has been retained.

EPA commented that §122.219 does not require a permittee with a change qualifying as a significant permit modification to revise the permit prior to commencing operation of the equipment subject to the modification. The staff finds no such requirement in 40 CFR 70. The staff believes that the only prohibition on

operation in the federal rule is in the case where a change is a Title I modification and the change is also prohibited by the existing permit terms and conditions. That prohibition was listed in §122.219 of the proposed rules.

An individual opposed allowing changes qualifying under §122.219 (Significant Permit Modifications) to be made prior to a 30-day public comment period and input from local air pollution control agencies. The staff believes that the federal operating permit program serves a significantly different, yet complimentary, function to that of the existing NSR program. The NSR program is designed to review applications to build or modify a facility. The purpose of that review is to insure that appropriate control technology will be used at the facility and that the proposed emissions will not adversely affect the health or safety of any citizen. The appropriate time for this review, and when required, the accompanying public comment period, is prior to construction or operation of the new or modified facility. The federal operating permits, on the other hand, are designed to codify all the applicable requirements at the site. The best time for such a regulatory review is after the facility has been constructed and is in operation. This is why, in both 40 CFR 70 and the proposed rule, the permit application review and the accompanying public comment period usually takes place after the operation commences.

DuPont, Marathon, Pennzoil, TCC, TMOGA and Natural recommended that the length of time required for prior notification under operational flexibility in §122.221 be changed from 30 days to seven days. In supporting this position, Natural and TCC cited, as unacceptable, the additional delay involved in lengthening the minimum seven-day notification period required under 40 CFR 70. Marathon and TMOGA pointed out that the agency should react in a prompt manner to these notifications. This issue was discussed in great detail at the roundtables, and the staff understands the concerns of the commenters and the roundtable participants regarding their companies' ability to make changes. To at least partially address those concerns, the staff has revised §122.221(b) to allow the proposed operational changes at the expiration of the notification period, rather than allowing the permittee to make the proposed change, i.e., begin construction, at that time. The staff will have sufficient time to review the written notification for applicability under this section, and the permittee will have the additional latitude to make physical changes at the site as necessary while waiting for the expiration of the notification period.

EPA requested that the staff add language, in §122.221, incorporating the federal terms "emissions allowable" and "502(b)(10) changes" to define those changes which qualify under operational flexibility. In order to promote a general understanding of the rule, the staff has attempted to present the requirements of the federal operating permit program as clearly as possible in the proposed rule. For this reason, the staff chose in the proposed rule to clearly define the changes allowed under §502(b)(10) rather than reference the federal section or terminology.

An individual opposed limiting cause for reopening a permit to those defined in §122.231(a). The staff believes that it is in the best interest of both the general public and the regulated community to clearly state the conditions under which the permit must be reopened.

Pennzoil commented that the requirement in §122.231(a) to reopen a permit when new requirements are adopted should base the three-year limit from the effective date of the new requirement, rather than the publication date. 40 CFR 70 directs that a reopening is triggered when additional applicable requirements become applicable to a Part 70 source. In the context of reopening, the staff believes that applicable requirements become applicable at the promulgation date. The staff believes that the use of effective date in the final rule would result in much confusion over its meaning. Effective date could mean the proposal date, the promulgation date, or the compliance date of the new requirement. Section 122.231(a) has been revised to clarify that the trigger date for reopenings is the promulgation date.

Pennzoil commented that revision of the permit in §122.231(a)(1) should be limited to the addition of the new requirement. The staff believes that the commenter's concern is addressed in §122.233(a).

EPA commented that §122.231(b) should clearly state that the board is required to terminate, modify, or revoke and reissue a permit for cause, as defined in that section. The staff agrees that the federal rule requires the board to act on a permit when cause exists; therefore, §122.231(b) has been revised to comply with EPA's comment.

EPA commented that §122.233 does not require the TACB to notify a permittee of its intent to reopen a permit as required in 40 CFR 70. The staff agrees that the final rule must notify the permittee of intent to reopen. Section 122.233(b) has been added to comply with EPA's comment.

HL&P requested clarification on the intent of §122.241(f), regarding the combination of multiple federal operating permits at a site into a single permit. Under §122.201(d), the proposed rule allows the issuance of more than one federal operating permit at a site. The staff envisions that large chemical and refinery sites may have several operating permits as well as a number of general permits at a single site. Section 122.241(f) simply allows any or all of those permits, particularly the general permits, to be combined at the renewal of the operating permits.

EPA commented that §122.310 failed to require the TACB to provide EPA with a copy of the application. It is the intention of the staff to require applicants to provide copies of any applications to the EPA. The proposed rules require this under §122.132(d).

TCC recommended, in §122.311(c), deleting the reference to "public or affected state" review and simply mentioning the affected state review period. The staff agrees that this is an appropriate change and "public or" in §122.311(c) has been deleted. Section 122.311 addresses affected state reviews and not the general public review. Section 122.316(2)(F) and (G) detail the procedures the Board must follow regarding public comments received during the public comment period as well as during any hearing.

EPA commented that the reference to "significant" permit modification should be deleted from §122.311(a). It is the staff's understanding that EPA's intent is to ensure that every draft permit is submitted to the affected state. To accomplish this end, the staff has revised §122.311(a) to refer to permit revisions rather than significant permit modifications.

TCC suggested clarifying language be added to §122.312(a) that makes it clear that, in the absence of an objection by EPA, and after EPA's 45 day review period, the TACB shall issue the proposed permit as the final permit. The staff agrees with the intent of the clarifying comments made by the TCC. The proposed rule requires the board or its designee to take final action on applications for operating permits within 18 months of receipt of a complete permit application. In the proposed rule this requirement shall be met by the issuance or denial of the permit which follows the expiration of the EPA 45 day review period. After issuance, unless EPA objects to the issuance of the permit, the permit is final for the purpose of meeting the 18-month deadline as well as for triggering the time period to seek a judicial appeal pursuant the Texas Health and Safety Code, §382.032. Section 122.201(c) has been revised to clarify final action by the Board.

The TCC proposed clarifying language to §122.314(a) similar to that suggested in §122.312 regarding the expiration of the EPA 45-day review period and the finality of the permit. TCC also recommended changes to §122. 314(b) regarding the effect of a citizen petition on the effectiveness or finality of a permit issued by the TACB after the expiration of the EPA 45-day review period. The staff agrees with TCC's suggested language and §122.314(c) has been added to address this concern. After the expiration of the EPA 45-day review period, the proposed permit shall be issued and considered final for state purposes. Not only is the permit then final for purposes of judicial appeals brought pursuant to the Texas Health and Safety Code, §382.032, but also final with regard to final action by the state. This determination provides a bright line that serves to indicate when the permit is final, when the state has taken final action, and when the citizen petition period begins.

An individual stated that the 45-day EPA review period specified in §122. 312(a) is not enough time to review a proposed permit. 40 CFR 70 requires EPA to object to the issuance of any proposed permit within 45 days of the receipt of the proposed permit. Section 122.312(a) tracks the requirements of the federal rule.

An individual stated that "any person affected by a decision" of the Board or its designee in §122.314(a) needs to be defined. This same individual commented that the phrase "with reasonable specificity" be deleted from §122. 314(c) and that "impracticable" as used in that same subsection, be defined. The staff believes that the phrase "any person affected

by a decision" is not in need of a special definition as the words are intended to mean just what they say: that any person who is affected by a decision of the Board or its designee may file a citizen review petition with the EPA. Likewise, the staff does not see a need to define "impracticable" nor is it necessary to delete the phrase "with reasonable specificity." Section 122.314(c) is intended to provide petitioners with the ability to petition EPA if the EPA fails to object to the issuance of an operating permit.

An individual stated that a facility should not be allowed to operate if EPA files an objection with the TACB as a result of a citizen petition. 40 CFR §70.8(d) provides that if the EPA objects and the permit has been issued, the permit is effective. There is no requirement that calls for a cessation of operation in the event that an EPA objection is received. However, the procedural requirements to revoke a permit, i.e., the site authority to operate, are clearly laid out in the proposed rule.

EPA commented that §122.316(1)(A) references "federal source," and requested that this phrase be defined. Rather than adding another definition to the final rule, the references to federal source have been deleted and a description of such sources substituted.

TCC and HL&P commented that a reference was needed to link §122.316 back to §122.155(b) regarding the 30-day time period during which a hearing may be requested. The staff agrees with the comments of the TCC and HL&P and a sentence has been added to the first paragraph of §122.316 to incorporate this suggestion.

TCC suggested that language be added to §122.316(1)(A) that would require persons who request a hearing on an operating permit to provide, at the time of the hearing request, a written statement of interest and a basis for challenging the operating permit application. The staff believes it is not appropriate to require persons requesting a hearing to submit the information suggested by the TCC in the actual hearing request. This change would go beyond the scope of the proposed rule because it would require a new procedure to be added to how a hearing is requested and it is inconsistent, with regard to timing, with TACB Procedural Rule §103.33(b).

TCC commented that the provisions of §122.316(2)(C) have the potential to allow for hearing requests to be made after the period during which one may be requested. Exxon Chem noted that the hearings examiner's ability to extend the comment period should be limited and HL&P suggested that the comment period not be allowed to extend beyond the initial 30 days provided for in the public notice. The staff opposes making the change suggested by Exxon Chem and HL&P. The staff disagrees that allowing public comment to be submitted until the close of any public hearing will unnecessarily delay the permit process. If a hearing is requested, the staff is required to provide 30 day's advance notice of such hearing. Allowing public comment to be submitted during this 30-day period or at the public hearing will not unduly interfere with the process. The staff does not believe that it is necessary to limit a hearing examiner's discretion to extend the public comment period during any hearing. If this were to become an issue during a hearing, the parties would be able to present arguments regarding an appropriate deadline. The TCC's suggested changes make it clear that even though the public comment period is automatically extended to the close of any public hearing, the opportunity to request a public hearing is limited to that time specified in the publication of the notice of the permit application as required by §122.155. A reference in §122.155(b) has been added to reflect the change.

An individual commented that "may be affected" in §122.316(1)(A), "unreasonable" and "reasonable" in paragraph (1)(B), "reasonable" in paragraph (2)(C), and "reasonably ascertainable" and "reasonably available" in paragraph (2)(E) should be defined. The commenter also noted that subparagraph (F) should require the TACB to provide copies of the response to comments to the public or individuals who request to be notified of such information. The staff has not defined what an "affected person" is for the purposes of hearing requests, for either Regulation VI hearings or for operating permits. The preference in these matters is to review the facts of each request on a case-by-case basis in order to determine whether the person is affected by emissions or if the request is a reasonable request as allowed by the Texas Health and Safety Code, §382.0561(c). The staff does not believe that there is a need to specifically define the terms cited by the commenter. These terms are intended to provide for flexibility in the hearing process. In response to the comment to place a two-week response limit on the board to respond to a hearing request, the staff does not believe that it is necessary to place a time limit on the actions of the Board or its designee regarding notification of persons who have requested a hearing. Operating permits are required to be issued by the Board within 18 months of the receipt of a complete permit application. Due to the procedures required by the hearing process for answering comments and notifying affected states and EPA, the staff does not believe that there is any potential for a significant delay in responding to those persons who request a hearing. In response to the comment regarding subparagraph (F), the staff points out that §122.155(c) provides that the TACB will provide notice of its proposed final action to any person who commented during the public comment period or during any hearing and to the applicant. For clarification purposes, the staff proposes to add language to subparagraph (F) to make it clear that the staff will respond to comments and will provide copies of the response to individuals who participate in a particular hearing.

EPA stated that Regulation XII does not include the exemption provisions allowed for by 40 CFR §72.7 and 40 CFR §72.8. EPA also stated that the proposed rule do not clearly state the type of units subject to the Acid Rain Program. The intent of the rules was to incorporate by reference all provisions of 40 CFR 72. Language has been added to §122.411(b) to specifically incorporate 40 CFR 72 by reference.

EPA commented that §122.410 addresses Standard Acid Rain Requirements, but it does not clearly state that both the Acid Rain Permit and the Acid Rain permit application need to include the standard requirements. The intent of the proposed rule was to incorporate all of the requirements of the Acid Rain Rules, including the requirements expressed in EPA's comment. The rule incorporates by reference all provisions of 40 CFR 72; however, the staff recommends that additional language be added to §122.411 to clarify the incorporation by reference of the Acid Rain Rules.

EPA commented that §122.411(b) states that if the Acid Rain Rules are in conflict "with other requirements of this chapter" then the Acid Rain Rules shall take precedence. This could be interpreted as incorporating by reference any provisions of the federal rule that are not specifically included in the proposed rule. The staff intended that, under the language in the rule, the Acid Rain Rules shall take precedence over the requirements of the rule. In order to clarify this intent, language has been added to §122.411 to incorporate by reference all provisions of 40 CFR 72.

EPA commented that §122.421 requires the designated representative whose units become subject to the Acid Rain rules to file an application no later than 12 months after the affected unit becomes subject to the federal operating permit program. EPA stated that this appears to contradict 40 CFR §72.30(b), which requires a source with an affected unit to submit a complete application at least 24 months before the later of January 1, 2000, or the date on which the unit commences operation. Section 122.421(b) has been reworded to clarify the language.

EPA stated that §122.425 did not include many of the compliance plan provisions required under 40 CFR §72.40. The staff intended to incorporate by reference all provisions of 40 CFR 72 and language has been added to §122. 411 to address this comment.

SPSC suggested that the availability of an annual 30-day true-up period for allowances should be clarified in §122.411. Section 122.411 has been revised to eliminate any uncertainty regarding this matter.

TCC suggested changes to §122.430 with regard to adding the term "sulfur dioxide" when addressing allowances. The definition of allowance under §122. 12 makes it clear that an allowance is specifically related to sulfur dioxide emissions at the rate of one allowance per one ton of sulfur dioxide emissions.

EPA commented that §122.432 does not clearly state that a permit will not be issued unless the designated representative submits a certificate of representation. EPA further stated that each submission by a designated representative must also meet certification requirements. The incorporation of 40 CFR 72 by reference in §122.411 has been added and should eliminate any confusion with this comment.

HL&P suggested a minor revision in §122.435(b). Section 122.435(b) has been revised to replace "duration" with "term."

EPA commented that §122.435 does not clearly state that §122.215, §122.217, and §122.221 (concerning permit additions and operational flexibility) do not apply to Acid Rain permits. Section 122.435(a) has been clarified to comply with this request.

EPA commented that 40 CFR §72.82 allows for fast-track modification, which is another permit revision option the designated representative is allowed under 40 CFR 72. Section 122.437(b) has been added to allow for the fast-track modification procedure as contained in 40 CFR 72.

An individual commented that §122.437 does not provide for a 30-day public comment period. Section 122.411(a) of the proposed rules specifies that, unless specifically noted otherwise, all affected sources shall comply with the requirements of the final rule for permit issuance, revision, reopening, and renewal including any such requirements for application, public participation, review by affected states, and review by EPA. The public notice requirements of the proposed rule requires a 30-day public comment period. Any exceptions noted in the acid rain section are required by 40 CFR 72.

TCC recommended that §122.440(c) regarding judicial appeal be deleted from the final rule. TCC commented that this section is redundant with the Health and Safety Code, §382.032. The staff agrees with the commenter and §122.440(c) has been removed from the final rule.

EPA commented that §122.440 addresses the limitation on time for filing a judicial appeal, but further states that the Federal Acid Rain Rules limit the administrative appeal period to 90 days or less after issuance of the Acid Rain portion of the permit. The commenter suggested that the language of this section be clarified. The proposed rule did not provide for an administrative appeal to the Board regarding actions taken concerning operating permits. This restriction in no way impacts on the federal appeals process for acid rain permits.

Subchapter A. Definitions

• 31 TAC §§122.10-122.12

The new rules are adopted under the Texas Health and Safety Code (Vernon 1990), Texas Clean Air Act (TCAA), §7382.017, which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§122.10. General Definitions. Unless specifically defined in the Texas Clean Air Act (TCAA or the Act) or in the rules of the Texas Air Control Board (TACB), the terms used by the TACB have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, and in §101.1 of this title, (relating to the General Rules), the following terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Act-The Federal Clean Air Act, as amended, 42 United States Code 7401, et seq.

Affected states-May be New Mexico, Oklahoma, Kansas, Colorado, Arkansas, or Louisiana if either of the following criteria are met:

(A) that State's air quali may be affected by the issuance of a federa operating permit, permit revision, or permit renewal; or

(B) that State is within 50 miles of the site or proposed site.

Air Pollutant-For purposes of this chapter, any of the following regulated air pollutants:

(A) nitrogen oxides;

(B) volatile organic compounds;

(C) any pollutant for which a National Ambient Air Quality Standard has been promulgated;

(D) any pollutant that is subject to any standard promulgated under the Act, §111;

(E) unless otherwise specified by the Administrator by rule, any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act; or

(F) any pollutant listed in the Act, §112(b) or §112(r) and subject to a standard promulgated under the Act, §112.

Applicable requirement-All of the following as they apply to the emission units at a site (including requirements that have been promulgated or approved by the United States Environmental Protection Agency (EPA) through rulemaking at the time of issuance of the permit but have future-effective compliance dates):

(A) any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 Code of Federal Regulations (CFR) 52. For purposes of the Federal Operating Permit Program, Chapters 111-115, and 117-119 of this title (relating to Control of Air Pollution From Visible Emissions and Particulate Matter; Control of Air Pollution From Sulfur Compounds, Control of Air Pollution From Toxic Materials; Control of Air Pollution From Motor Vehicles; Control of Air Pollution From Volatile Organic Compounds; Control of Air Pollution From Nitrogen Compounds; and Control of Air Pollution from Carbon Monoxide) are the only state standards that implement relevant requirements of Title I of the Act;

(B) any term or condition of any preconstruction permits issued pursuant to the undesignated headings of Chapter 116 of this title (relating to Prevention of Significant Deterioration or Nonattainment Review) as necessary to implement the requirements of regulations approved or promulgated through rulemaking under Part C (Prevention of Significant Deterioration) or Part D (Nonattainment) of Title I of the Act;

(C) any standard or other requirement under the Act, §111, relating to New Source Performance Standards (NSPS), including §111(d);

(D) any standard or other requirement under the Act, §112, relating to Hazardous Air Pollutants (HAPS), including any requirement concerning accident prevention under the Act, §112(r)(7);

(E) any standard or other requirement of the acid rain provisions of the Act or the acid rain rules;

(F) any requirements established pursuant to the Act, §504(b) or §114(a)(3), regarding Monitoring, Enhanced Monitoring, and Compliance Certification;

(G) any standard or other requirement governing solid waste incineration, under the Act, §129 (NSPS);

(H) any standard or other requirement for consumer and commercial products, under the Act, §183(e) (Federal Ozone Measures);

(I) any standard or other requirement for tank vessels, under the Act, §183(f), (Tank Vessel Standards);

(J) any standard or other requirement of the program to control air pollution from outer continental shelf sources, under the Act, §328;

(K) any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless EPA has determined that such requirements need not be contained in a federal operating permit; and

(L) any National Ambient Air Quality Standard or increment or visibility requirement under Part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to the Act, §504(e). Except as noted in this subparagraph, ambient air quality standards, net ground level concentration limits, or ambient atmospheric concentration limits, either state or federal, are not applicable requirements under this chapter.

Deviation-Any condition that indicates that an emissions unit has failed to meet an emission limitation or standard imposed by an applicable requirement. If parameter monitoring is used, a period of indeterminate compliance that may occur shall not necessarily be considered a deviation.

Draft permit-The version of a federal operating permit available for purposes of public notice and affected state review under Subchapter B of this chapter (relating to Public Notification and Comment Procedures).

Emission allowable under the permit-A federally enforceable permit term or condition determined at issuance to be required by an applicable requirement, that establishes an emissions limit (including a work practice standard) in the form of the applicable requirement or a federally enforceable emissions cap that the owner or operator of a site has assumed to avoid an applicable requirement to which the site would otherwise be subject.

Emission unit-The smallest discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a point of origin of air pollutants as defined in this Section. A point of origin of fugitive emissions from individual pieces of equipment, e.g., valves, flanges, pumps, and compressors, shall not be considered an individual emission unit. Such fugitive emissions shall be collectively considered as an emission unit based on their relationship to the associated process and those emissions shall be included in the permit application. This term is not meant to alter or affect the definition of the term "unit" for purposes of the acid rain provisions of the Act.

United States Environmental Protection Agency (EPA) or Administrator-The Administrator of the EPA or his designee.

Final action-Issuance or denial of the proposed permit by the board or its designee after the EPA review period as provided in Subchapter D of this chapter (relating to Affected State Review, U.S. Environmental Protection Agency Review, and Citizen Petition).

Fugitive emissions-Those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

General permit-A federal operating permit that meets the requirements of §122.202 of this title (relating to General Permits).

Major source-Any site which emits or has the potential to emit air pollutants as described in subparagraphs (A), (B), or (C) of this definition.

(A) Any site which, in whole or part, is a major source under the Act, §112, which is defined as:

(i) for pollutants other than radionuclides, any site that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any single hazardous air pollutant which has been listed pursuant to the Act, §112(b), 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule; or

(ii) for radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

(B) Any site which directly emits or has the potential to emit, 100 tpy or more of any air pollutant (including any major source of fugitive emissions of any such pollutant, as determined by rule by the United States Environmental Protection Agency). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major source, unless the stationary source belongs to one of the following categories of stationary sources:

(i) coal cleaning plants (with thermal dryers);

(ii) kraft pulp mills;

(iii) portland cement plants;

(iv) primary zinc smelters;

(v) iron and steel mills;

(vi) primary aluminum ore reduction plants;

(vii) primary copper smelters;

(viii) municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) hydrofluoric, sulfuric, or nitric acid plants;

(x) petroleum refineries;

(xi) lime plants;

(xii) phosphate rock processing plants;

(xiii) coke oven batteries;

(xiv) sulfur recovery plants;

(xv) carbon black plants (furnace process);

(xvi) primary lead smelters;

(xvii) fuel conversion plant;

(xviii) sintering plants;

(xix) secondary metal production plants;

(xx) chemical process plants;

(xxi) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units (BTU) per hour heat input;

(xxii) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) taconite ore processing plants;

(xxiv) glass fiber processing plants;

(xxv) charcoal production plants;

(xxvi) fossil-fuel-fired steam electric plants of more than 250 million Btu per hour heat input; or

(xxvii) any other stationary source category which as of August 7, 1980, is being regulated under the Act, §111 or §112.

(C) Any site which, in whole or in part, is a major source under Part D of Title I of the Act, including:

(i) any site with the potential to emit volatile organic compounds (VOC) or oxides of nitrogen in a quantity of 100 tpy or more in Collin, Dallas, Denton, or Tarrant Counties, or in any other ozone nonattainment area classified as "marginal or moderate;" 50 tpy or more in El Paso, Hardin, Jefferson, or Orange Counties, or in any other ozone nonattainment area classified as "serious;" 25 tpy or more in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, or Waller Counties, or in any other ozone nonattainment area classified as "severe;" and 10 tpy or more in any ozone nonattainment area classified as "extreme;"

(ii) for Victoria County, sites with the potential to emit 100 tpy or more of VOC;

(iii) for the carbon monoxide nonattainment area in El Paso County, sites with the potential to emit 100 tpy or more of carbon monoxide;

(iv) for the City of El Paso, sites with the potential to emit 100 tpy or more of inhalable particulate matter (PM-10);

(v) for the lead nonattainment area in Collin County, sites with the potential to emit 100 tpy or more of lead.

(D) The fugitive exclusions which apply to subparagraph (B) of this definition shall also apply under subparagraph (C).

(E) Notwithstanding the preceding source categories, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources under subparagraph (A) of this definition and, in the case of any oil or gas exploration or production well (with its associated equipment), such emissions shall not be aggregated for any purpose under subparagraph (A).

Permit or federal operating permit–Any federal operating permit or group of federal operating permits covering a site that is issued, renewed, amended, or revised pursuant to this chapter, or general permit or group of general permits promulgated or granted pursuant to this chapter.

Permit Application–An application for a federal operating permit, permit revision, permit renewal, permit reopening, and any other such application as may be required.

Permit revision–Any permit addition, significant modification, or administrative permit amendment that meets the related requirements of Subchapter C of this chapter (relating to Permit Issuances, Revisions, Reopenings, and Renewals).

Potential to emit–The maximum capacity of a stationary source to emit any air pollutant under its physical and operational design or configuration. Any certified registration or preconstruction authorization restricting emissions or any physical or operational limitation on the capacity of a stationary source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in acid rain provisions of the Act or the acid rain rules.

Preconstruction authorization–Any authorization to construct or modify an existing facility or facilities under Chapter 116 of this title (relating to Control of Air Pollution by Permits For New Construction or Modification). In this chapter, references to preconstruction authorization under Chapter 116 of this title also include, where appropriate, preconstruction authorization under Chapter 120 of this title (relating to Control of Air Pollution from Hazardous Waste or Solid Waste Management Facilities) or Chapter 121 of this title (relating to Control of Air Pollution from Municipal Solid Waste Management Facilities).

Proposed permit–The version of a federal operating permit that the Texas Air Control Board (TACB) forwards to United States Environmental Protection Agency for a 45-day review period in compliance with Subchapter D of this chapter (relating to Affected State Review, United States Environmental Protection Agency Review, and Citizen Petition).

Relevant emission unit–Those emission units having one or more applicable requirements as defined in this chapter.

Renewal–The process by which a federal operating permit is reissued at the end of its term.

Responsible official–One of the following:

(A) for a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a federal operating permit and either:

(i) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) the delegation of authority to such representative is approved in advance by the TACB;

(B) for a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(C) for a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this chapter, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the United States Environmental Protection Agency); or

(D) for affected sources:

(i) the designated representative insofar as actions, standards, requirements, or prohibitions under the acid rain provisions of the Act or the acid rain rules are concerned; and

(ii) the designated representative for any other purposes under this chapter.

Significant permit modification–A revision to a federal operating permit that meets the requirements of §122.219 of this title (relating to Significant Permit Modifications).

Site–The total of all stationary sources located on one or more contiguous or adjacent properties, which are under common control of the same person (or persons under common control). Research and development operations shall be treated as a separate site from any manufacturing facility with which they are co-located. A site may contain multiple relevant emission units and grandfathered emission units.

State only requirement–A requirement which is not federally enforceable under this chapter or is not an applicable requirement under this chapter.

Stationary source–Any building, structure, facility, or installation that emits or may emit any air pollutant.

Title I modification–Changes at a site that qualify as a modification under Title I of the Act, §111 (New Source Performance Standards) or Title I of the Act, §112(g), or as a major modification under Part C (Prevention of Significant Deterioration) or Part D (Nonattainment Review) of Title I of the Act.

§122.11. Grandfather Definitions for State Only Requirements. The following words and terms, when used in this section shall have the following meanings, unless the context clearly indicates otherwise.

Actual grandfather emission unit (definition used for state only requirement)–An emission unit for which construction or operation started prior to September 1, 1971, and at which either: no modification has occurred since September 1, 1971 and, therefore, for which no authorization has been required under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification); or modifications have been authorized only pursuant to a standard exemption under Chapter 116 of this title. Those emission units which started construction between September 1, 1971 and March 1, 1972, and which registered in accordance with Texas Health and Safety Code, §382.060, as that section existed prior to September 1, 1991, are also considered grandfathered units.

Actual grandfather rate (definition used for state only requirement)–The maximum annual emission rate at which the emission unit actually operated and emitted prior to September 1, 1971, for 12 consecutive months, including any increases authorized by standard exemption under Chapter 116 of this title. A grandfather rate shall not be established which violates any emission

limitation or standard required under any chapter of this title.

Presumptive grandfather emission unit (definition for state only requirement)–An emission unit or method of operation for which construction or operation started prior to March 1, 1972, unless the total annual maximum emission rate or operational limits that are related to the annual emissions (e.g., production, fuel firing, throughput, sulfur content, operating hours, etc., as appropriate) for the emission unit are established in a permit, special permit, or special or standard exemption issued pursuant to Chapter 116 of this title.

Presumptive grandfather rate (definition used for state only requirement)–The maximum annual emission rate or data that are related to emissions (e.g., production, fuel firing, throughput, sulfur content, etc., as appropriate) which are selected to reasonably approximate the actual grandfather rate based upon a review of actual historical operations using the procedure outlined in §122.132(a)(5) of this title (relating to Application and Required Information). A grandfather rate shall not be established which violates any emission limitation or standard required under any chapter of this title.

§122.12. Acid Rain Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

Acid rain compliance option–One of the methods of compliance used by an affected unit as described in a compliance plan submitted and approved in accordance with the acid rain rules or the Act, §407.

Acid rain permit–The legally binding portion of the federal operating permit issued by the Texas Air Control Board (TACB) under this chapter including any permit revisions, specifying the acid rain requirements applicable to an affected source, to each affected unit at an affected source, and to the owners and operators and the designated representative of the affected source or the affected unit.

Acid rain rules–The regulations promulgated pursuant to the acid rain provisions of the Act contained in 40 CFR Part 72, et al.

Actual grandfather rate (definition used for state only requirement)–For affected units, auxiliary support systems for affected units, simple combustion turbines, and units which serve a generator with a nameplate capacity of 25 megawatt or less, the actual grandfather rate for actual grandfather emission units shall be the maximum annual emission rate or data related to emissions (e.g., fuel firing, sulfur content, etc., as appropriate) at the documented Maximum Continuous Rating, on a continuous operating basis, of generating units used to meet or to prepare to meet requirements of the electric power grid. Each actual grandfather emission unit that is an affected unit shall be operated in compliance with applicable provisions of the Acid Rain Rules, as defined in this section, including any emission allowance limitations.

Affected source–A site that includes one or more affected units.

Affected unit–A unit that is subject to emission reduction requirements or limitations under the acid rain rules.

Allowance–An authorization, under the acid rain rules, by the United States Environmental Protection Agency to emit up to one ton of sulfur dioxide during or after a specified calendar year.

CEM and COM–Abbreviations for continuous emission monitor(s) and a continuous opacity monitor(s), respectively.

Certificate of representation–The completed and signed submission required by the acid rain rules, for certifying the appointment of a designated representative for an affected source or a group of identified affected sources authorized to represent the owners and operators of such source(s) and of the affected units at such source(s) with regard to matters of the acid rain requirements.

Designated representative–The responsible individual authorized by the owners and operators of an affected source and of all affected units at the site, as evidenced by a certificate of representation submitted in accordance with the acid rain rules, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain requirements. Such matters include, but are not limited to: the holdings, transfers, or dispositions of allowances allocated to a unit; and the submission of or compliance with acid rain permits, permit applications, compliance plans, emission monitoring plans, continuous emissions monitor (CEM), and continuous opacity monitor (COM) certification notifications, CEM and COM certification and applications, quarterly monitoring and emission reports, and annual compliance certifications. Whenever the term "responsible official" is used in this chapter, it shall refer to the "designated representative" with regard to all matters under the acid rain requirements.

Maximum continuous rating–The heat input required to attain the maximum documented steam conditions or to achieve the maximum documented electrical output.

Unit–For the purposes of the acid rain provisions of the Act, a fossil-fuel fired combustion device.

Upgraded units–An affected unit that did not serve a generator with a nameplate capacity greater than 25 megawatts on November 15, 1990, but serves such a generator after November 15, 1990.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 30, 1993.

TRD-9327949 Cyndi Zurrenberger
Acting Deputy Director, Air Quality Planning
Texas Air Control Board

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For further information, please call: (512) 908-1451

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Subchapter B. Permit Requirements

Applicability

• 31 TAC §§122.120, §122.122

The new rules are adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§122.120. Applicability. The owner or operator of a site shall submit an application(s) to the Texas Air Control Board (TACB) for a federal operating permit under the requirements of this chapter if the site has one or more of the following:

(1) any major source as defined in §122.10 of this title (relating to General Definitions);

(2) any affected source as defined in §122.12 of this title (relating to Acid Rain Definitions);

(3) any solid waste incineration unit required to obtain a federal operating permit pursuant to the Act, §129(e) of Title I;

(4) any non-major source which the U.S. Environmental Protection Agency, through further rulemaking, has designated as no longer exempt from the obligation to obtain a federal operating permit. For the purposes of this section, non-major source shall be defined as:

(A) any source, including an area source, subject to a standard, limitation, or other requirement under the Act, §111 (NSPS);

(B) any source, including an area source, subject to a standard or other requirement under the Act, §112 (Hazardous Air Pollutants), except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under the Act, §112(r) (Prevention of Accidental Releases); or

(C) any source in a source category designated by the Administrator pursuant to Title III of the Act.

§122.122. Potential to Emit.

(a) For purposes of determining applicability of the Federal Operating Permit program under this chapter, the owner or operator of stationary sources without any other federally enforceable emission rate may limit their sources' potential to emit by maintaining a certified registration of emissions, which shall be federally enforceable. Emission rates in permits, standard exemptions, other preconstruction authorizations, and registrations of emissions provided for under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construciton or Modification) are also federally enforceable emission rates.

(b) All representations in any registration of emissions under this section with regard to emissions shall become conditions upon which the stationary source shall operate. It shall be unlawful for any person to vary from such representation unless the registration is first revised.

(c) The registration of emissions shall include documentation of the basis of emission rates and a certification, in accordance with §122.165 of this title (relating to Certification by a Responsible Official), that the maximum emission rates listed on the registration reflect the reasonably anticipated maximums for operation of the stationary source.

(d) In order to qualify for registrations of emissions under this section, the maximum emission rates listed in the registration must be less than those rates defined for a major source in §122.10 of this title (relating to General Definitions).

(e) The certified registrations of emissions and records demonstrating compliance with such registration shall be maintained on-site, or at an accessible designated location, and shall be provided, upon request, during regular business hours to representatives of the Texas Air Control Board or any air pollution control agency having jurisdiction.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9327950 Cyril Durrenberger
Acting Deputy Director, Air Quality Planning
Texas Air Control Board

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For further information, please call: (512) 908-1451

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Permit Application

- **31 TAC §§122.130, 122.132-122.134, 122.136, 122.138, 122. 139**

The new rules are adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§122.130. Responsibility to Apply.

(a) General requirement. After the effective date of this chapter, the owner or operator shall submit to the Texas Air Control Board (TACB) a timely and complete permit application for each site subject to the requirements of this chapter and in accordance with this section.

(b) Interim program. The following sites are subject to the interim federal operating permit program and as such, the owners or operators of these sites shall submit initial permit applications according to the application submittal schedule for the Interim Program.

(1) any site with an affected source as defined in §122.12 of this title (relating to Acid Rain Definitions);

(2) any site whose primary Standard Industrial Classification (SIC) code (as described in the Standard Industrial Classification Manual, 1987) is one of the following (for purposes of this subsection, each site shall have only one primary SIC code):

(A) Petroleum and Natural Gas, 1311;

(B) Natural Gas Liquids, 1321;

(C) Electric Services, 4911;

(D) Natural Gas Transmission, 4922;

(E) Natural Gas Transmission and Distribution, 4923; or

(F) Petroleum Bulk Stations and Terminals, 5171.

(c) Application submittal schedule for the interim program.

(1) No later than six months after the effective date of the interim federal operating permit program, the designated representative of each affected source shall submit a permit application for at least the affected units at the site. Regardless of the effective date of the program and the requirement to file a permit application defined in this section, applications for initial Phase II acid rain permits shall be submitted to the TACB no later than January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides pursuant to the Act, §407. This subsection shall not apply to affected sources that elect to become affected pursuant to the Act, §410.

(2) No later than six months after the effective date of the interim federal operating permit program, the owner or operator of any site listed in subsection (b)(2) of this section shall submit a permit application, except that if any owner or operator has more than one site listed in subsection (b) (2) of this section, then the owner or operator shall submit permit applications for no less than 10% of such sites.

(3) No later than 12 months after the effective date of the interim federal operating permit program, the owner or operator shall submit an initial permit application for those remaining site(s) listed in subsection (b)(2) of this section which did not submit an application pursuant to subsection (c)(2) of this section.

(d) Application submittal schedule after full program approval. All sites, other than those identified in subsection (b) of this section, which satisfy the criteria of §122.120 of this title (relating to Applicability), shall be subject to the fully approved federal operating permit program and shall submit initial permit applications no later than 12 months after the effective date of the fully approved federal operating permit program.

(e) Owners or operators of sites that become subject to this chapter after the effective date of either the interim or full program shall submit permit applications no later than 12 months after the issuance or approval date of the preconstruction authorization required under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

§122.132. Application and Required Information.

(a) A permit application shall include any information, including confidential information, deemed necessary by the Texas Air Control Board (TACB) to determine the applicability of, or to codify any applicable requirement, except that applications for a general permit shall only be required to provide the information necessary to determine qualification for, and to assure compliance with, the general permit. The federal operating permit application shall include, but is not limited to, a General Application Form for Federal Operating Permit, all information requested by that form, and the information described as follows:

(1) for each emission unit, or group of similar emission units:

(A) information identifying each applicable requirement, any corresponding emission limitation, and any corresponding monitoring, reporting, and recordkeeping requirements;

(B) information identifying potentially applicable requirements for that particular type of emission unit and the basis for the determination that those applicable requirements do not apply;

(2) a proposed monitoring, testing, recordkeeping, and reporting protocol for each relevant emission unit at the site;

(3) information as requested by the nationally standardized forms for acid rain portions of permit applications and compliance plans, as required by the acid rain rules;

(4) a statement certifying that a risk management plan, if applicable, or a schedule to submit such plan has been submitted in accordance with the Act, §112(r)(7);

(5) (state-only requirement) the following identifications on the application:

(A) Each grandfather unit at the site shall be identified as a presumptive grandfather unit or an actual grandfather unit, regardless of whether or not that unit is a relevant emission unit.

(B) Each emission unit that would be a presumptive grandfather except for the fact that the total annual maximum emission rate or operational limits that are related to the annual emissions (e.g., production, fuel firing, throughput, sulfur content, operating hours, etc., as appropriate) for the emission unit are established in a permit, special permit, or special or standard exemption issued pursuant to Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

(i) For each emission unit, the application shall identify the total annual maximum emission rate or operational limits that were previously defined and documented, and the permit, special permit, or special or standard exemption number in which this information was established and any documentation or basis for that determination.

(ii) If, during the permit application review, the TACB determines that such emission rates or operational limits that were defined or documented do not reflect actual grandfather rates, then the applicant must supply the information required in subparagraphs (C) or (D) of this paragraph to establish the presumptive grandfather rate.

(C) The application shall provide information to define and document the presumptive grandfather rate for each unit defined in subparagraph (A) of this paragraph at the site. Information provided in this section to define and document the presumptive grandfather rate shall include available data related to emissions prior to January 1, 1994 as follows.

(i) The documentation of the presumptive grandfather emission rate shall be based on the best available of data on the emission rate, equipment configuration, and other emissions-related data during the seven-year period prior to January 1, 1994 which best reflect the presumptive grandfather rate.

(ii) The best available data would be the average of 24 consecutive months of emissions data or data that can be related to emissions (such as production rate, fuel firing, throughput, sulfur content, etc.) during the seven-year period referenced in clause (i) of this subparagraph. Less than 24 consecutive months of data may be used, upon approval by the TACB during the permit application review, if it is more representative of the range of operations which could be reasonably expected from the existing equipment configuration.

(iii) Any other method proposed by the applicant during the permit application review and that the Executive Director approves as representative of the operations and resulting emissions which may reasonably have occurred prior to 1971 may be used to define the presumptive grandfather rate.

(D) In any event, the actual grandfather rate for the emission unit shall be established if the applicant provides 12 consecutive months of emissions or emissions-related data from prior to September 1, 1971 documenting the operations prior to September 1, 1971. Less than 12 consecutive months of data prior to September 1, 1971 may be used, upon approval by the TACB, if it is determined by the TACB during the permit application review that there is sufficient data to demonstrate that it reflects operations prior to September 1, 1971.

(E) Upon issuance of the permit, the presumptive or actual grandfather rate established by the data submitted shall be the grandfather rate in subparagraph (D) of this paragraph which the unit may not operate without first obtaining or qualifying for preconstruction authorization in accordance with the requirements of Chapter 116 of this title. This grandfather rate does not remove the responsibility of the applicant to obtain or qualify for any necessary preconstruction authorization in accordance with the requirements of Chapter 116 of this title prior to making any physical changes or constructing a new facility source at the emission unit regardless of whether this grandfather rate is exceeded as a result of that physical change or construction. A grandfather rate shall not be established which violates any emission limitation or standard required under any chapter of this title. The establishment of this grandfather rate does not remove any liabilities or potential enforcement action for past or future exceedances of the actual grandfather rate in violation of Chapter 116 of this title.

(b) Each federal operating permit application shall include a compliance plan. Such plan shall contain the following:

(1) a description of the compliance status of each relevant emission unit at the site with respect to all applicable requirements;

(2) a statement that all relevant emission units at the site will:

(A) except as provided in paragraph (3) of this subsection, continue to comply with the applicable requirements; and

(B) comply, as required, with any applicable requirements that become effective during the permit term;

(3) for those relevant emissions units not in compliance with applicable requirements:

(A) a narrative description of how the emission unit will come into compliance with the applicable requirements;

(B) a compliance schedule containing a schedule of remedial measures, including, but not limited, to an enforceable sequence of actions; and

(C) a schedule for submission of certified progress reports. After issuance of the permit, the certified progress reports shall be submitted no less frequently than every six months.

(c) A compliance certification shall be included with the federal operating permit application consistent with the requirements of §122.143 of this title (relating to Permit Conditions).

(d) The applicant shall provide to the U.S. Environmental Protection Agency a copy of the permit application.

(e) A responsible official shall certify, consistent with §122.165 of this title (relating to Certification by a Responsible Official), all information submitted under this section.

§122.133. Timely Application.

(a) A timely application for a site applying for a federal operating permit for the first time is one that is submitted in accordance with §122.130 of this title (relating to Responsibility to Apply).

(b) A timely application for a significant permit modification to a federal operating permit is one filed no later than 12 months after the owner or operator has obtained or qualified for any preconstruction authorization required by TACB Chapter 116 of this title (relating to Control of Air Pollution by Permits For New Construction or Modification).

(c) A timely application for a permit renewal is one that is submitted at least six months, but no earlier than 18 months, prior to the date of permit expiration.

§122.134. Complete Application.

(a) To be complete, an application shall provide all information required in §122.132 of this title (relating to Application and Required Information) except that:

(1) applications for revision to a federal operating permit shall only be required to provide information related to the proposed change; and

(2) applications for a general permit shall only be required to provide the information necessary to determine qualification for, and to assure compliance with, the general permit.

(b) The application shall be deemed complete, unless the Texas Air Control Board requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt.

§122.136. Application Deficiencies.

(a) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a federal operating permit application shall, upon becoming aware of such failure or incorrect submittal, submit such supplementary facts or corrected information no later than 60 days after such discovery.

(b) An applicant shall provide additional information as necessary to address any applicable requirements, as defined in this chapter, that this site becomes subject to after the date the owner or operator filed a complete application.

(c) If while processing an application that has been deemed to be complete, the Texas Air Control Board determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response.

§122.138. Application Shield. If the owner or operator of a site submits a timely and complete application(s) for permit issuance, significant permit modification to a permit, or renewal, the site's failure to have a federal operating permit is not a violation of this chapter until the Executive Director takes final action on the permit application. This protection shall cease to apply if, subsequent to the application being deemed complete, the applicant fails to submit in writing to the Executive Director, by the deadline specified, any additional information identified as necessary to process the application.

§122.139. Application Review Schedule. The Board shall:

(1) under an interim program, for those sites required to file initial applications within the first year of the effective date of the interim program, take final action on at least one-third of those applications annually over a period not to exceed three years after such effective date;

(2) under the fully approved program, for those sites required to file initial applications prior to or within one year of the effective date of the fully approved program, take final action on at least one-third of those applications annually over a period not to exceed three years after such effective date;

(3) except as noted in paragraph (1) or (2) of this section, take final action on an application for a permit, significant permit modification, or permit renewal within 18 months of the date on which the Texas Air Control Board (TACB) deemed an application complete; and

(4) take final action on any complete permit application containing an early reduction demonstration under the Act, §112(i)(5), within nine months of receipt of the complete application.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9327951 Cyril Durrenberger
Acting Deputy Director, Air Quality Planning
Texas Air Control Board

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For further information, please call: (512) 908-1451

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Permit Content

- 31 TAC §§122.141, 122.143, 122.145

The new rules are adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§122.141. Authority.

(a) Federal operating permits may contain general and special terms and conditions. The permittee shall comply with any and all such terms and conditions.

(b) The board shall not grant a variance, pursuant to the Texas Health and Safety Code, §382.028, from the requirements of this chapter to apply for or operate under a permit.

§122.143. Permit Conditions. Unless otherwise specified in the permit, the permittee shall comply with each of the following conditions.

(1) General permit conditions.

(A) Compliance with the federal operating permit does not relieve the permittee's obligation to comply with any other applicable Texas Air Control Board (TACB) rules, regulations, or orders.

(B) The federal operating permit shall expire five years from the issuance of the proposed permit.

(C) The permittee shall allow representatives from the TACB or the local air pollution control program having jurisdiction to perform the following:

(i) enter upon the permittee's premises where an emission unit is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(ii) have access to and copy any records that must be kept under the conditions of the permit;

(iii) inspect, at any time other than when the presence of the TACB personnel would interfere with the ability of the permittee to respond to an emergency situation, any emission unit, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(iv) sample or monitor substances or parameters for the purpose of assuring compliance with the permit or applicable requirements at any time.

(D) Records required under this permit shall be provided, upon request, to representatives from the TACB or the local air pollution control program having jurisdiction within a reasonable period of time.

(E) The permittee shall comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or revision; or for denial of a permit renewal application. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(F) The permit may be revised, revoked, reopened and reissued, or terminated for cause as defined in §122.231 of this title (relating to Permit Reopenings). The filing of a request by the permittee or notice of intent by the TACB for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(G) Unless the time is extended by the Board or its designee, the permittee shall furnish within 60 days any information that the Executive Director may request in writing to determine whether cause exists for revising, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Executive Director, copies of records required to be kept by the permit, including any confidential information. It may be required that such records be sent directly to the U.S. Environmental Protection Agency (EPA) along with any claim of confidentiality. Any such claim should be made in accordance with federal law, including 40 Code of Federal Regulations 2.

(H) If at the time of promulgation of a new applicable requirement, the permit has three or more years remaining in its term, the permittee shall request a reopening and revision of the permit within 12 months of promulgation of a new applicable requirement not already incorporated into a permit. No such reopening is required if the compliance date of the requirement is later than the permit expiration date, or if the new requirement is incorporated in any federal operating permit held by the site which addresses the emission unit(s) subject to the new requirement.

(I) The permittee shall pay fees to the TACB consistent with the fee schedule in §101.27 of this title (relating to Emission Fees).

(J) Each portion of the permit is severable. Permit requirements in unchallenged portions of the permit shall remain valid in the event of a challenge to other portions of the permit.

(K) The permit does not convey any property rights of any sort, or any exclusive privilege.

(2) Recordkeeping conditions. The permittee shall maintain records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information may include, but shall not be limited to, the data from all calibration and maintenance records and all stripchart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit. The data may be stored electronically. However, it shall be made available, within a reasonable period of time, in a readable electronic or hard copy form upon request by an authorized representative of the TACB or any local air pollution control program having jurisdiction.

(3) Reporting conditions. The permit shall incorporate all applicable monitoring data reporting requirements as follows.

(A) After issuance of the permit, reports of any required monitoring shall be submitted to the TACB at least every six months or more frequently if required by an applicable requirement. All instances of deviations shall be clearly identified in such reports. All required reports shall be certified by a responsible official.

(B) Within two weeks after occurrence, the permittee shall report, in writing, to the TACB any deviations, the probable cause of such deviations, and any corrective actions or preventative measures taken, except in such cases that all information required under this subsection is submitted, in writing, under subparagraph (C) of this paragraph.

(C) Emissions from any upset, start-up, shutdown, or maintenance activities shall be reported as required under Chapter 101 of this title (relating to Notification of Upset and Maintenance Requirements).

(4) Compliance certification conditions. After issuance of the permit, compliance certifications shall be submitted to the TACB and EPA at least every 12 months, or more frequently if required by an applicable requirement. The compliance certification shall include at a minimum:

(A) the identification of each term, condition, or applicable requirement of the permit for which the permittee shall certify compliance;

(B) the compliance status of the relevant emission units listed in the permit relative to any applicable term, condition, or applicable requirement over the entire 12-month certification period;

(C) a statement of whether compliance was continuous or intermittent;

(D) the method(s) used for determining the compliance status of each relevant emission unit; and

(E) a certification by a responsible official, consistent with §122.165 of this title (relating to Certification by a Responsible Official), of all the information submitted under this section.

§122.145. Permit Content Requirements.

(a) Each federal operating permit shall contain terms and conditions regarding emission limitations and standards, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the applicable requirements. Any document (including reports) submitted to the Texas Air Control Board (TACB) that is specifically required by a permit shall contain a certification by a responsible official.

(b) Each permit shall contain the following terms and conditions with respect to monitoring:

(1) all emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any enhanced monitoring procedures and methods promulgated pursuant to the Act, §504(b) and §114(a) (3);

(2) where the applicable requirements do not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), terms and conditions which require periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the site's compliance with the permit. Such monitoring conditions shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping may be sufficient to meet the requirements of this paragraph; and

(3) conditions, as necessary, concerning the use, maintenance, and where appropriate, installation of monitoring equipment or methods.

(c) Each permit shall contain terms and conditions that would require recordkeeping of monitoring information including, but not limited to:

(1) the date, place as defined in the permit, and time of sampling or measurements;

(2) the date(s) analyses were performed;

(3) the company or entity that performed the analyses;

(4) the analytical techniques or methods used;

(5) the results of such analyses; and

(6) the relevant operating conditions which are deemed necessary to characterize emission rates at the time of sampling or measurement.

(d) For sites with emission units not in compliance with the applicable requirements at the time of issuance, the permit shall:

(1) contain a compliance schedule consistent with §122.132(b)(3)(B) of this title (relating to Application and Required Information); and

(2) require progress reports consistent with §122. 132(b)(3)(C) of this title. The progress reports shall include:

(A) dates for achieving the activities, mile-stones, or compliance required in the schedule of compliance, and dates when such activities, milestones, or compliance were achieved; and

(B) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(e) At the discretion of the TACB and based upon a request and sufficient demonstration by the applicant, a federal operating permit may establish certain interpretations of specific language and definition of specific terms in an applicable requirement. These interpretations by the TACB, for the purpose of determining compliance with the specific applicable requirement, shall not be modified by the TACB until notification is provided to the permittee. Within 90 days of notification of a change in interpretation by the TACB, the permittee shall apply for the appropriate permit revision to reflect the new interpretation of the applicable requirement.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 30, 1993.

TRD-9327952

Cyril Durrenberger
Acting Deputy Director, Air Quality Planning
Texas Air Control Board

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For further information, please call: (512) 908-1451

Public Notification and Comment Procedures

- **31 TAC §§122.150, 122.152-122.155**

The new rules are adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§122.150. Applicability.

(a) Permit, significant permit modification, or renewals. Any person who applies for a permit, a significant permit modification, or a permit renewal shall be required to provide for public notification under the procedures in this subchapter.

(b) General permits. General permits are not subject to the public notification and comment procedures of this subchapter. Procedural requirements for general permits are listed under §122.202 of this title (relating to General Permits).

(c) Reopenings. Any permittee whose federal operating permit is reopened under §122.231 of this title (relating to Permit Reopenings) shall be required to provide for public notification of such reopening and revision of the permit under the procedures in this subchapter.

§122.152. Public Notification Requirements.

(a) Notification by applicant. For those federal operating permits or permit applications meeting the criteria in §122.150 of this title (relating to Applicability), the Texas Air Control Board (TACB) shall direct the applicant to conduct public notice of the draft operating permit. The public notice shall be conducted in accordance with §122.153 of this title (relating to Public Notice Format).

(b) Availability of application for review. The TACB shall make available for public inspection the following information related to the application: the completed application (except sections relating to confidential information), the draft federal operating permit, the compliance plan, the compliance certification, and monitoring reports, if required. All such information shall be available for inspection throughout the comment period, and thereafter, during normal business hours, at the TACB Austin office and at the appropriate TACB regional office in the region where the site is located.

(c) The TACB shall provide a copy of the notice of the draft permit, specified in §122.153 of this title, to any person upon written request.

(d) Notification of TACB and others. When newspaper notices are published consistent with §122.153 of this title, the applicant shall furnish a copy of such notices and date of publication to the TACB in Austin; the U.S. Environmental Protection Agency's Regional Administrator in Dallas; all local air pollution control agencies with jurisdiction in the county in which the site is located; and the air pollution control agency of any affected state. Along with such notices furnished to the TACB, the applicant shall certify in accordance with §122.165 of this title (relating to Certification by a Responsible Official), that the signs required by §122. 154 of this title (relating to Sign Posting Requirements) have been posted consistent with the provisions of that section.

§122.153. Public Notice Format.

(a) Publication in public notices section of newspaper. At the applicant's expense, notice of intent to obtain a federal operating permit, a significant permit modification, a reopening in a permit, or a permit renewal, shall be published in the public notice section of two successive issues of a newspaper of general circulation in the municipality in which the site is located, or in the municipality nearest to the location of the site. The notice shall contain the following information:

(1) permit application number;

(2) applicant name and address;

(3) activity or activities involved in the federal operating permit application or reopening;

(4) description of the location of the site or proposed location of the site;

(5) the air pollutants involved in any significant permit modification;

(6) location and availability of copies of the completed permit application, the draft permit, and all other relevant supporting materials;

(7) description of the comment procedures, including the duration of the comment period and a statement of procedures to request a hearing;

(8) notification that a person who may be affected by the emission of air pollutants from the site is entitled to request a hearing pursuant to §122. 316 of this title (relating to Hearing and Comment Procedures); and

(9) name, address, and phone number of the TACB regional office to be contacted for further information.

(b) Publication elsewhere in the newspaper. Another notice with a size of at least 96.8 square centimeters (15 square inches), and whose shortest dimension is at least 7.6 centimeters (three inches), shall be published in a prominent location elsewhere in the same issue of the newspaper and shall contain the information specified in subsection (a)(1)-(4) of this section and note that additional information is contained in the notice published pursuant to subsection (a) of this section in the public notice section of the same issue.

§122.154. Sign Posting Requirements.

(a) At the applicant's expense, a sign or signs shall be placed at the site declaring the filing of an application for a permit and stating the manner in which the Texas Air Control Board (TACB) may be contacted for further information. Such signs shall be provided by the applicant and shall meet the following requirements:

(1) signs shall consist of dark lettering on a white background and shall be no smaller than 18 inches by 28 inches;

(2) signs shall be headed by the words "APPLICATION FOR FEDERAL OPERATING PERMIT" in no less than two-inch, bold-face, block-printed capital lettering;

(3) signs shall include the words "APPLICATION NO." and the number of the permit application in no less than one-inch boldface, block-printed capital lettering (more than one number may be included on the signs if the respective public comment periods coincide);

(4) signs shall include the words "for further information contact" in no less than 1/2-inch lettering;

(5) signs shall include the words "Texas Air Control Board," and the address of the appropriate TACB regional office in no less than one-inch, boldface, capital lettering and 3/4-inch, boldface, lower-case lettering; and

(6) signs shall include the phone number of the appropriate TACB regional office in no less than two-inch, boldface numbers.

(b) The sign or signs shall be in place by the date of publication of the newspaper notice required by §122.153 of this title (relating to Public Notice Format) and shall remain in place and legible throughout the period of public comment provided for in §122.155 of this title (relating to Public Comment Period).

(c) Each sign placed at the site shall be located within ten feet of each (every) property line paralleling a street or other public thoroughfare. Signs shall be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs shall be required along any property line paralleling a public thoroughfare.

(d) The TACB may approve variations from the requirements of subsection (c) of this section if the applicant has demonstrated that it is not practical to comply with the specific requirements of subsection (c) of this section and alternative sign posting plans proposed by the applicant are at least as effective in providing notice to the public. The approval from the TACB under this subsection must be received before posting signs for purposes of satisfying the requirements of this section.

(e) These sign requirements do not apply to properties under the same ownership which are noncontiguous and/or separated by intervening public thoroughfares, unless directly involved by the permit application.

§122.155. Public Comment Period.

(a) A 30-day public comment period shall be held by the Board or its designee on a federal operating permit or renewal application, or on a reopening of a federal operating permit.

(b) The Board or its designee shall receive public comment for 30 days after the last day on which notice of the public comment period is published. During the 30-day public comment period, any person may submit written comments on the draft permit or may, in writing, request a notice and comment hearing pursuant to §122.316 of this title (relating to Hearing and Comment Procedures for Operating Permits).

(c) After the public comment period and the conclusion of any notice and comment hearing convened pursuant to Subchapter D of this chapter (relating to Affected State Review, U.S. Environmental Protection Agency Review, and Citizen Petition), the Board or its designee shall send notice of its proposed final action on the permit application, or renewal application or on the reopening of a federal operating permit, to any person who commented during the public comment period, and to the applicant. The notice shall include:

(1) the response to any comments submitted during the public comment period;

(2) identification of any change in the conditions in the draft permit and the reasons for the change; and

(3) a description of the process for citizen petitions to the U.S. Environmental Protection Agency (EPA) pursuant to §122.312 of this title (relating to U.S. Environmental Protection Agency Review).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 30, 1993.

TRD-9327953 Cyril Durrenberger
Acting Deputy Director, Air Quality Planning
Texas Air Control Board

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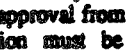

Miscellaneous

• 31 TAC §§122.161, 122.163-122.165

The new rules are adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§122.161. Miscellaneous.

(a) Unless specifically noted otherwise, requirements under this chapter do not supersede, substitute for, or replace any requirement under any other rule, regulation, or order of the Texas Air Control Board.

(b) None of the requirements in this chapter shall be construed as prohibiting the construction of new or modified facilities, provided that the owner or operator has obtained any necessary preconstruction authorization, as defined in §122.10 of this title (relating to Definitions).

(c) The Act, §112(g), concerning modifications of sources of hazardous air pollutants, shall apply only to those sites satisfying the criteria of §122.130 of this title (relating to Responsibility to Apply). The Act, §112(g), shall apply at the earliest time at which those sites are required to apply in accordance §122.130 of this title.

§122.163. Effective Date.

(a) Compliance with the requirements of this chapter will be required on the date of approval, as published in the *Federal Register*, of the Texas Air Control Board's (TACB) federal operating permit program by the U.S. Environmental Protection Agency.

(b) Sites satisfying the criteria of §122.120 of this title (relating to Applicability) become subject to this chapter either on the effective date of this chapter or upon issuance or approval of a preconstruction authorization required by Chapter 116 of this title (relating to Control of Air Pollution by Permits For New Construction or Modification), whichever is later.

(c) Notice shall be published by the TACB in the *Texas Register* of the effective date of the interim federal operating permit program and the fully approved program. Failure of the TACB to publish shall not affect the effective program dates.

§122.164. Confidential Information. Any information provided to the Texas Air Control Board pursuant to this chapter that relates to secret processes or methods of manufacture or production may be identified as confidential when submitted. Any information so identified is entitled to protection from disclosure to the extent provided by law. If confidential information is submitted, an unclassified synopsis of confidential information shall be provided to ensure a complete public record file. Any information required to be submitted to the U.S. Environmental Protection Agency (EPA) may be submitted pursuant to EPA's procedures governing confidential information.

§122.165. Certification by a Responsible Official. Any certification submitted pursuant to this chapter shall contain a certification of truth, accuracy, and completeness by a responsible official. Unless specified otherwise, any certification required under this chapter shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. The Texas Air Control Board shall be notified, pursuant to §122.211 of this title (relating to Administrative Permit Amendments), of any appointment of a new responsible official.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Acting Deputy Director, Air Quality Planning
Texas Air Control Board

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For further information, please call: (512) 908-1451

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Subchapter C. Permits Issuances, Revisions, Reopenings, and Renewals

Permit Issuance

• 31 TAC §§122.201, 122.202, 122.204

The new rules are adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§122.201. Permits.

(a) A federal operating permit may be issued by the Board or its designee only if all of the following conditions have been met:

(1) the Texas Air Control Board has received a complete permit application;

(2) the applicant has complied with the requirements for public participation under Subchapter B of this chapter (relating to Permit Requirements);

(3) the requirements for notifying and responding to affected states under Subchapter D of this chapter (relating to Affected State Review, U.S. Environmental Protection Agency Review and Citizen Petition) have been satisfied;

(4) the conditions of the permit provide for compliance with all applicable requirements and the requirements of this chapter; and

(5) the U.S. Environmental Protection Agency (EPA) has received a copy of the proposed permit, any notices required, and has not objected to issuance of the proposed federal operating permit within the time period specified for the EPA review in Subchapter D of this chapter.

(b) All initial federal operating permits, and all subsequently issued or renewed permits, shall be issued by the Board or its designee with terms not to exceed five years from the issuance of the proposed permit.

(c) Final action by the Board or its designee on an application for a federal operating permit shall be the issuance or denial of the proposed permit as provided in Subchapter D of this chapter.

(d) The Board or its designee may issue more than one federal operating permit at a site.

(e) General permits shall not be required to meet the requirements of this section.

(f) Except as otherwise provided in §122.138 of this title (relating to Application Shield), the owner or operator of a site which satisfies the criteria of §122.120 of this title (relating to Applicability) shall not operate such site unless the owner or operator has obtained the authority to do so under this chapter.

§122.202. General Permits.

(a) The Texas Air Control Board (TACB) may adopt a general permit covering numerous similar stationary sources if the following conditions are satisfied:

(1) the conditions of the general permit provide for compliance with all applicable requirements and the requirements of this chapter;

(2) the U.S. Environmental Protection Agency is provided the opportunity to object and affected state(s) are provided the opportunity to comment on the general permit prior to its final adoption pursuant to paragraph (3) of this subsection; and

(3) adoption of the general permit complies with the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a).

(b) After adoption of a general permit, such permit shall be listed in the General Permit List. Pursuant to the Texas Health and Safety Code, §382. 051(b), the permit listed in the General Permit List as filed in the Secretary of State's Office and herein adopted by reference, satisfies the permit requirements of the Texas Health and Safety Code, §382.054.

(c) Each general permit shall identify the terms and conditions with which stationary sources shall comply.

(d) Owners or operators of stationary sources that would qualify for a general permit may apply to the Board or its designee for approval under the terms and conditions of the general permit. Those owners or operators of stationary sources that apply for a general permit in accordance with this section shall satisfy the requirements of Subchapter B of this chapter (relating to Permit Requirements). An application for a general permit shall include all information necessary to determine qualification for, and to assure compliance with, the general permit.

(e) If the applicant satisfies the requirements of a timely and complete application, the applicant may operate under the application shield until such time as the Board or its designee grants or denies the application for the general permit.

(f) The Board or its designee shall grant a request for authorization to operate under a general permit to owners or operators of stationary sources that qualify. Such a grant shall not be a final action by the TACB, and therefore, is not subject to judicial review.

(g) The owner or operator of a stationary source shall be subject to enforcement action for operation without a permit if the stationary source, having been granted a general permit, is later determined not to qualify for the conditions and terms of the general permit.

(h) General permits shall not be authorized for affected units under the acid rain program.

(i) The Board may revise or repeal any general permit on the General Permit List pursuant to the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a). Subsequent to such action, and if the grantee's authority to operate under a general permit is affected by such action, the grantee of the revised or repealed permit shall apply for a federal operating permit. If the grantee's authority to operate under a general permit is affected by such action and the grantee wishes to retain authority to operate under a general permit, the grantee shall:

(1) apply by the date specified by the new or revised general permit, but no later than 12 months after the effective date of the new general permit;

(2) prior to applying for the new or revised general permit, continue to comply with the terms and conditions of its existing general permit; and

(3) subsequent to applying for the new or revised general permit, comply with the terms and conditions of the new general permit, rather than the terms and conditions of the existing permit.

§122.204. Temporary Sources.

(a) A temporary source is a stationary source which changes location to another site at least once during any five-year period.

(b) Any temporary source which satisfies the criteria of §122.120 of this title (relating to Applicability) shall apply to the Texas Air Control Board (TACB) for a federal operating permit consistent with this chapter.

(c) Each temporary source which is located at a site for less than six months shall not affect the determination of major for other stationary sources at a site under this chapter, nor does this addition of a temporary source trigger the requirement to revise the existing permit at the site. Each temporary source shall maintain records of duration of its stay at a site.

(d) Applications by temporary sources shall include all information required under Subchapter B of this chapter (relating to Permit Requirements).

(e) The Board or its designee may issue a single permit authorizing emissions from similar operations by the same temporary source at multiple temporary locations. Any permit issued to a temporary source shall meet all requirements under this chapter for issuance of a federal operating permit.

(f) The owner or operator of a temporary source, permitted under this chapter, shall notify the TACB at least 10 days in advance of each change in location, unless the Board or its designee allows for a shorter notice due to an emergency.

(g) No affected units under the acid rain program shall be permitted as a temporary source.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9327995 Cyril Durrenberger
Acting Deputy Director, Air Quality Planning
Texas Air Control Board

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Permit Revisions

• 31 TAC §§122.210-122.213, 122.215-122.217, 122.219-122.221

The new rules are adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§122.210. Applicability.

(a) Except as provided in §122. 221 of this title (relating to Operational Flexibility), the permittee shall submit an application to the Texas Air Control Board for a revision to a federal operating permit under the requirements of this subchapter for those changes or activities which affect or add one or more applicable requirements on any relevant emission unit.

(b) Changes which qualify under §122. 211 of this title (relating to Administrative Permit Amendments) shall follow the procedural requirements in §122.212 of this title (relating to Administrative Permit Amendment Application) and §122.213 of this title (relating to Administrative Permit Amendment Procedures).

(c) All other changes or activities at the site are not subject to the requirements of this chapter.

§122.211. Administrative Permit Amendments. A change at a site may qualify as an administrative permit amendment if the change:

(1) corrects typographical errors;

(2) identifies a change in the name, address, or phone number of any person identified in the permit, e.g., responsible official, or provides a similar minor administrative change at the site;

(3) requires more frequent monitoring or reporting by the permittee;

(4) allows for a change in ownership or operational control of a site where the Texas Air Control Board (TACB) determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the TACB; and

(5) is similar to those in paragraphs (1)-(4) of this section.

§122.212. Administrative Permit Amendment Application. Applications for changes that qualify under this section shall be submitted by the permittee no later than 90 days after the owner or operator has obtained or qualified for any preconstruction authorization required by Chapter 116 of this title (relating to Control of Air Pollution by Permits For New Construction or Modification) or 90 days after the change prompting the administrative amendment request.

§122.213. Administrative Permit Amendment Procedures.

(a) The Board or its designee may make an administrative permit amendment for those changes at a site that qualify as an amendment under §122.211 of this title (relating to Administrative Permit Amendments).

(b) An administrative permit amendment shall be made by the Board or designee consistent with the following conditions:

(1) the owner or operator of the site has submitted an application for the amendment which includes a description of the proposed change and also includes a statement that the proposed change meets the criteria for the use of the permit amendment procedures;

(2) the owner or operator has obtained or qualified for any preconstruction authorization required by the Texas Air Control Board (TACB) Chapter 116 of this title (relating to Control of Air Pollution by Permits For New Construction or Modification).

(c) The TACB shall take no more than 60 days from receipt of an application for an administrative permit amendment to take final action on such application.

(d) The owner or operator may implement the changes addressed in the application for an administrative permit amendment immediately upon receipt by the TACB of the application, if the owner or operator has obtained or qualified for any preconstruction authorization required by TACB Chapter 116 of this title. If no preconstruction authorization is required for the change, then the change may be implemented upon filing the application for an administrative permit amendment.

(e) The site shall be subject to enforcement action if the change at the site is later determined not to qualify for an administrative permit amendment.

(f) The TACB shall submit a copy of the revised permit to the U.S. Environmental Protection Agency.

§122.215. Permit Additions.

(a) A change at a site may qualify as a permit addition if the change satisfies all of the requirements of either subsection (b) or subsection (c) of this section.

(b) The change at the site:

(1) is not addressed or prohibited by the federal operating permit;

(2) does not violate any existing term or condition of the federal operating permit;

(3) does not violate any applicable requirement; and

(4) is not a Title I modification, or otherwise required by the Texas Air Control Board (TACB) to be processed as a significant modification.

(c) The change at the site:

(1) does not violate any applicable requirement;

(2) does not involve removal of monitoring, recordkeeping, or reporting terms and conditions, or a substitution in those terms and conditions promulgated pursuant to federal New Source Performance Standards or National Emissions Standards for Hazardous Air Pollutants;

(3) does not require or change a determination of an emission limitation under the Act, §112(g) or §112(j) of Title I, or a source-specific determination for temporary sources of ambient impacts, visibility analysis, or increment analysis; and

(4) does not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement, and that the site has assumed to avoid an applicable requirement to which the site would otherwise be subject. Such terms and conditions include:

(A) a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I, and.

(B) an alternative emissions limit approved pursuant to regulations promulgated under the Act, §112(i)(5); and

(5) is not a Title I modification, or otherwise required by the TACB to be processed as a significant modification.

§122.216. Application for Permit Addition.

(a) The permittee shall submit to the Texas Air Control Board (TACB) an application requesting a permit addition that meets the requirements of §122.215 of this title (relating to Permit Additions) and shall include the following:

(1) a description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(2) the permittee's suggested draft permit conditions; and

(3) certification by a responsible official, consistent with §122.165 of this title (relating to Certification by a Responsible Official), that the proposed change meets the criteria for the use of the permit addition procedures and a request that such procedures be used.

(b) Applications for changes that qualify under this section shall be submitted to the TACB by the permittee no later than 90 days after the owner or operator has obtained or qualified for any preconstruction authorization required by Chapter 116 of this title (relating to Control of Air Pollution by Permits For New Construction or Modification).

§122.217. Permit Addition Procedures.

(a) The Texas Air Control Board (TACB) shall notify the U.S. Environmental Protection Agency (EPA) and any affected state(s) of the requested permit addition.

(b) Within 90 days of the TACB's receipt of a complete application under §122.216 of this title (relating to Application for Permit Addition), or subsequent to the permittee obtaining or qualifying for any preconstruction authorization required by Chapter 116 of this title (relating to Control of Air Pollution by Permits For New Construction or Modification), whichever is later, the TACB shall:

(1) determine that the requested change does not meet the permit addition criteria in §122.215 of this title (relating to Permit Additions) and whether the requested change should be reviewed under the significant permit modification procedures; or

(2) revise the draft permit addition and transmit to EPA the proposed permit addition as required by Subchapter D of this chapter (relating to Affected State Review, U. S. Environmental Protection Agency Review, and Citizen Petition).

(c) The Board or its designee may issue a permit addition for those changes at a site that qualify as an addition under §122.215 of this title. The owner or operator may make the requested change prior to approval of the permit addition provided that the owner or operator has obtained or qualified for any preconstruction authorization required by Chapter 116 of this title (relating to Permits) for the requested changes.

(d) The permit addition shall not become final until after EPA's 45-day review period at renewal of the permit or until EPA has notified the TACB that EPA will not object to issuance of the permit addition, whichever is first.

(e) Until final, the permit addition shall be a state only requirement of the federal operating permit.

(f) Prior to the issuance or denial of a permit addition by the board or its designee, the owner or operator of the relevant emission units affected by the change shall comply with the proposed permit terms and conditions. During this time period, the owner or operator need not comply with the existing permit terms and conditions that the application seeks to modify. However, if the owner or operator of the relevant emission units affected by the change fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions that the application seeks to modify shall be the enforceable terms and conditions.

§122.219. Significant Permit Modifications.

(a) A change at a site may qualify as a significant permit modification only if the change satisfies one or more of the following:

(1) is a Title I modification;

(2) does not qualify as a permit addition, as an administrative amendment, or for operational flexibility;

(3) is a removal of existing monitoring terms and conditions, or a substitution in those terms and conditions promulgated pursuant to federal New Source Performance Standards (NSPS), or National

Emissions Standards for Hazardous Air Pollutants (NESHAP); or

(4) is a removal of recordkeeping or reporting terms and conditions, or a substitution in a recordkeeping or reporting requirement promulgated pursuant to NSPS or NESHAP.

(b) Applications for changes that qualify under this section shall be submitted by the permittee no later than 12 months after the owner or operator has obtained or qualified for any preconstruction authorization required by Chapter 116 of this title (relating to Control of Air Pollution by Permits For New Construction or Modification) for the change.

(c) For changes that qualify as Title I modifications and where the existing federal operating permit prohibits such change, the permittee shall obtain the significant permit modification before commencing any operation.

(d) Except as required in subsection (c) of this section, those changes that qualify as significant permit modifications may commence operation of any corresponding change immediately after obtaining or qualifying for any preconstruction authorization required under Chapter 116 of this title.

(e) Except as provided in subsection (c) of this section, prior to the issuance or denial of a significant permit modification by the Board or its designee, the owner or operator of the relevant emission units affected by the change shall comply with the proposed permit terms and conditions. During this time period, the owner or operator need not comply with the existing permit terms and conditions that the application seeks to modify. However, if the owner or operator of the relevant emission units affected by the change fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions that the application seeks to modify shall be the enforceable terms and conditions.

§122.220. Significant Permit Modification Application and Procedures. The Board or its designee may issue a significant permit modification only for those changes at a site that qualify as a significant modification and meet the following conditions:

(1) the Texas Air Control Board (TACB) has received a complete application;

(2) the applicant has complied with the requirements for public participation under Subchapter B of this chapter (relating to Permit Requirements);

(3) the requirements for notifying and responding to affected States under Subchapter D of this chapter (relating to Affected State Review, U.S. Environmental Protection Agency Review, and Citizen Petition);

(4) the conditions of the permit provide for compliance with all applicable requirements and the requirements of this chapter; and

(5) the U.S. Environmental Protection Agency has received a copy of the proposed permit, any notices required, and has not objected to issuance of the significant permit modification within the time period specified in Subchapter D of this chapter.

§122.221. Operational Flexibility.

(a) A permittee may make changes within a permitted site without applying for or obtaining a permit revision provided that the following conditions are met:

(1) the changes are not Title I modifications;

(2) the changes do not exceed the emissions limitation under the permit; and

(3) the owner or operator has obtained or qualified for any preconstruction authorization required by the Texas Air Control Board (TACB) Chapter 116 of this title (relating to Control of Air Pollution by Permits For New Construction or Modification).

(b) For changes to the federal operating permit which qualify under this section, the permittee shall provide the U.S. Environmental Protection Agency (EPA) and the TACB with written notification. The written notification shall be received by the TACB at least 30 days in advance of operation of the proposed changes unless the Board or its designee approves a shorter period, but in no case shall that period be less than seven days prior to the proposed change.

(c) Written notification shall include the following information:

(1) a description of the change, the date on which the operation resulting from the change is proposed to occur, the emissions resulting from the change, any new applicable requirements that will apply if the change occurs, and any permit term or condition that is no longer applicable as a result of the change; and

(2) certification by a responsible official, consistent with §122.165 of this title (relating to Certification by a Responsible Official), that the proposed change meets the criteria for the use of operational flexibility under this section and a request that such procedures be used.

(d) The permittee, TACB, and EPA shall attach each such notice to their copy of the relevant permit.

(e) Changes that qualify under this section are not subject to the procedural requirements for permit revisions.

(f) Upon satisfying the requirements of this section, the permittee may begin operations which result from the proposed change at the expiration of the time period provided for in subsection (b) of this section.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9327956 Cyril Durrenberger
Acting Deputy Director, Air Quality Planning
Texas Air Control Board

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For further information, please call: (512) 908-1451

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Permit Reopenings

• 31 TAC §122.231, §122.233

The new rules are adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§122.231. Permit Reopenings.

(a) A permit shall be opened and revised for cause only under one or more of the following circumstances:

(1) additional applicable requirements become applicable to a permitted site which, at the date of promulgation of the additional requirement, has three or more years remaining prior to expiration, except that no such reopening is required if the new requirement is incorporated in any federal operating permit which addresses the emission unit(s) subject to the new requirement;

(2) additional requirements become applicable to an affected unit under the acid rain program;

(3) the federal operating permit contains a material mistake or if inaccurate statements were made in establishing the emissions standards or other terms and conditions of the federal operating permit; or

(4) a determination is made by the Texas Air Control Board that the permit shall be revised or revoked to assure compliance with the applicable requirements.

(b) The Board or its designee shall terminate, revise, or revoke and reissue a federal operating permit for cause.

(c) After receipt of a petition for reopening for cause, as defined in this section, the board or its designee may terminate, revise, or revoke and reissue the permit.

(d) No later than 180 days of receipt of written notification by the U.S. Environmental Protection Agency (EPA) that cause, as defined in this section, exists to terminate, revise, or revoke and reissue a permit pursuant to this section, the Board or its designee shall terminate, revise, or revoke and reissue the permit in accordance with EPA's direction.

(e) No reopening is required under subsection (a) of this section, if the effective date of the requirement is later than the permit expiration date.

§122.233. Permit Reopening Procedures.

(a) Reopenings and revisions under §122.231 of this title (relating to Permit Reopenings) shall comply with the requirements of this chapter for permit issuance, including such requirements for application, public participation, review by affected states, and review by the U.S. Environmental Protection Agency. These procedures shall affect only those parts of the permit for which cause, as defined in §122.231 of this title, to reopen exists.

(b) For reopenings and revisions under §122.231 of this title, the Texas Air Control Board (TACB) shall provide 30 days' notice of intent to reopen, unless the board or its designee allows for a shorter notice due to an emergency.

(c) Reopenings and revisions under §122.231(a)(1) and (2) of this title shall be completed by the TACB not later than 18 months after promulgation of the applicable requirement.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Permit Renewals

• 31 TAC §122.241, §122.243

The new rules are adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§122.241. Permit Renewals.

(a) Each federal operating permit issued or renewed by the Texas Air Control Board (TACB) shall be subject to review at least every five years after the date of issuance of the proposed permit to determine whether the authority to operate should be renewed.

(b) The TACB shall provide written notice to the permittee that the permit is scheduled for review. Such notice will be provided by certified or registered U.S. mail no less than 12 months prior to the expiration of the permit. The notice shall specify the procedure for filing an application. In order to qualify as a timely application, the application shall be filed by the permittee with the TACB at least six months, but no earlier than 18 months, prior to the date of permit expiration. The application shield is not available to sites that do not submit a timely and complete application. Failure to receive notice as described in this subsection does not affect the applicability of the application shield or the lack thereof, as determined pursuant to Subchapter B of this chapter (relating to Permit Requirements).

(c) A federal operating permit may be renewed by the Board or its designee only if all of the following conditions have been met:

(1) the TACB has received a complete application;

(2) the applicant has complied with the requirements for public participation under Subchapter B of this chapter;

(3) the requirements for notifying and responding to affected states under Subchapter D of this chapter (relating to Affected State Review, U.S. Environmental Protection Agency Review, and Citizen Petition);

(4) the conditions of the permit provide for compliance with all applicable requirements and the requirements of this chapter; and

(5) The U.S. Environmental Protection Agency has received a copy of the proposed permit, any notices required, and has not objected to issuance of the proposed federal operating permit within the time period specified in Subchapter D of this chapter.

(d) In determining whether and under what conditions a permit should be renewed, the Board shall consider:

(1) all applicable requirements as defined in Subchapter A of this chapter (relating to Definitions); and

(2) the site's compliance status with this chapter and the terms and conditions of the existing permit.

(e) The Board may not impose requirements less stringent than those of the existing permit unless the Board determines that the proposed changes will meet the requirements of this chapter.

(f) At the time of renewal, the Board or its designee may combine into a single permit, any federal operating permits, including general permits, at the same site which have satisfied the requirements of this section.

§122.243. Permit Expiration. Permit expiration terminates the site's right to operate unless a timely and complete renewal application has been submitted consistent with §122.133 of this title (relating to Timely Application) and §122.134 of this title (relating to Complete Application). Subsequent to a timely and complete application submittal, the site may continue to operate under the terms and conditions of the permit until the Board or its designee has taken final action on the permit renewal application.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter D. Affected State Review U.S. Environmental Protection Agency Review, and Citizen Petition

• 31 TAC §§122.310-122.312, 122.314, 122.316

The new rules are adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§122.310. Transmission of Information to the U.S. Environmental Protection Agency (EPA). The Texas Air Control Board shall provide the EPA with a copy of each proposed permit and each final federal operating permit.

§122.311. Affected State Review.

(a) The Texas Air Control Board (TACB) shall provide notice of the draft permit for permit issuance, renewal, permit

revision, and permit reopening to any affected state on or before the time notice is provided to the public under Subchapter B of this chapter (relating to Permit Requirements).

(b) Affected state(s) shall have 30 days from date of notification of the draft permit to comment on the draft permit.

(c) The TACB shall notify the U.S. Environmental Protection Agency and any affected state, in writing, of its refusal to incorporate any or all recommendations into the proposed permit that the affected state submitted during the affected state review period. The notice shall include the TACB's reasons for not accepting any such recommendations that are not based on applicable requirements.

§122.312. U.S. Environmental Protection Agency (EPA) Review.

(a) After the end of the public comment period provided for by §122. 155 of this title (relating to Public Comment Period), the Board or its designee shall submit the proposed permit to the EPA. Upon receipt of a proposed permit, the EPA shall have 45 days to object, in writing, to the issuance of the proposed permit by the Board or its designee pursuant to Subchapter B of this chapter (relating to Permit Requirements) if EPA determines the proposed permit is not in compliance with applicable requirements of the federal operating permit program or the rules promulgated thereunder. If EPA submits such an objection, the proposed permit shall not be issued by the Board or its designee.

(b) If the Board or its designee fails, within 90 days after the date of an objection under subsection (a) of this section, to revise the proposed permit and submit a revised permit in response to the objection, the EPA will issue or deny the permit in accordance with the requirements of the federal program promulgated under Title V of the Act.

§>122.314. Public Petitions to U.S. Environmental Protection Agency (EPA).

(a) If the EPA does not file an objection with the Board or its designee, pursuant to Subchapter D of this chapter (relating to Affected State Review, U.S. Environmental Protection Agency Review and Citizen Petition) , any person, including the applicant, affected by a decision of the Board or its designee under this chapter may petition the EPA to make such an objection within 60 days of the expiration of the EPA's 45-day review period.

(b) A copy of the petition shall be provided to the Texas Air Control Board (TACB) and to the applicant by the petitioner.

(c) The petition for review to EPA under this section does not limit the effectiveness of a permit issued by the board or its designee or the finality of the board's or its designee's action for purposes of an appeal under the Texas Health and Safety Code, §382.032.

(d) Petitions shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in Subchapter B of this chapter (relating to Permit Requirements), unless the petitioner demonstrates in the petition to the EPA that it was impracticable to raise such objections within the public comment period, or that the grounds for such objection arose after the public comment period. The petition shall identify all objections.

(e) Prior to issuance of the permit, if the EPA objects to the permit as a result of a petition filed under this section, the Board or its designee shall not issue the permit until EPA's objection has been resolved.

(f) If the Board or its designee has issued a permit prior to receipt of an EPA objection based on a citizen petition, the permit remains effective and the board or its designee shall have 90 days from the receipt of the EPA's objection to resolve the objection and to terminate, revise, or revoke and reissue the permit. In the event additional information is needed from the permittee, the TACB may request from EPA a 90-day extension to resolve the EPA objection. If the TACB fails to resolve the objection, EPA will revise, terminate, or revoke such permit, and the Board or its designee may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the owner or operator of the site will not be in violation of the requirement to have submitted a timely and complete application.

§122.316. Hearing and Comment Procedures for Operating Permits. Any hearing regarding a federal operating permit will be conducted according to the following procedures and not under the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a). Such hearing shall be convened pursuant to a request in accordance with Subchapter B of this chapter (relating to Permit Requirements).

(1) Requests for notice and comment hearing.

(A) Any person who may be affected by emissions from a site regulated under this chapter may request the Board or its designee to hold a hearing on that owner or operator's application for a federal operating permit or renewal application or the reopening of a federal operating permit.

(B) After reviewing a request for a hearing, the Board or its designee shall decide whether to call the hearing and shall provide written notice to each person who requested a hearing and to the applicant within a reasonable time after receipt of the hearing request. The Board or its designee is not required to hold a hearing if the basis of the request by a person who may be affected is determined to be unreasonable.

(2) Procedures for notice and comment hearing.

(A) The Texas Air Control Board (TACB) shall provide 30 day's advance notice of any hearing regarding a federal operating permit. In addition to publication in the *Texas Register*, notice will be sent to all persons who have made timely written requests for a hearing and to the applicant. The notice shall include:

(i) a statement of the time, place, and nature of the hearing;

(ii) a reference to the particular sections of the statutes and regulations involved; and

(iii) a brief description of the purpose of the hearing.

(B) Whenever a hearing will be held, the Board or its designee shall designate a presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(C) Any person, including the applicant, may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The period for submitting written comments shall be automatically extended to the close of any public hearing. The hearing officer may also extend the period for submitting written comments by so stating at the hearing.

(D) A tape recording or written transcript of the hearing shall be made available to the public.

(E) Any person, including the applicant, who believes that the conditions of the draft permit do not provide for compliance with all applicable requirements as defined in Subchapter A of this chapter (relating to Definitions) or that any condition of a draft permit is inappropriate or that the Board or its designee's preliminary decision to issue or deny the draft permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably

available arguments supporting his or her position by the close of the public comment period, including any public hearing. Any supporting materials shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of state or federal statutes and regulations, U.S. Environmental Protection Agency documents of general applicability, or other generally available reference materials.

(F) All comments received either during the public comment period or during any hearing shall be considered by and responded to by the Board or its designee. The response to comments shall be available to the public and shall be sent to the applicant and any person participating in the public hearing. This response shall:

(i) specify which provisions, if any, of the draft permit have been changed in the proposed permit and the reasons for the change; and

(ii) identify the party making the comments, and briefly describe and respond to all comments on the draft permit raised during the public comment period or during any hearing.

(G) The TACB shall keep a record of all comments and also of the issues raised in the public hearing. This record shall be available to the public.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Acting Deputy Director, Air Quality Planning
Texas Air Control Board

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For further information, please call: (512) 908-1451

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Subchapter E. Acid Rain General Acid Rain Permit Requirements

• 31 TAC §122.410, §122.411

The new rules are adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§122.411. Operating Permit Interface.

(a) Unless specifically noted in this subchapter, all affected sources shall comply with the requirements of this chapter for permit issuance, revision, reopening, and renewal; including any such requirements for application, public participation, review by affected states, and review by the U.S. Environmental Protection Agency.

(b) The Texas Air Control Board (TACB) hereby adopts and incorporates by reference the provisions of 40 Code of Federal Regulations (CFR) 72 as in effect on the date of this action for purposes of implementing an acid rain program that meets the requirements of Title IV of the Act. If the provisions or requirements of 40 CFR 72 conflict with or are not included in this chapter, the 40 CFR 72 provisions and requirements shall apply and take precedence.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Acid Rain Application

• 31 TAC §§122.420-122.422; 122.425, 122.427

The new rules are adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§122.420. Enforceability of Acid Rain Permit Application. A complete acid rain permit application shall be binding on the owners and operators and the designated representative of the affected source and all affected units at the affected source governed by the acid rain permit application. The application shall be enforceable as an acid rain permit from the date of submission of the permit application until the issuance or denial of the acid rain permit.

§122.421. Timely Application.

(a) Applications for initial Phase II acid rain permits shall be submitted to the Texas Air Control Board no later than six months after the effective date of the interim federal operating permit program, but no later than by January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides pursuant to the Act, §407.

(b) The designated representative of affected units that become subject to the acid rain rules after these filing dates shall file applications no later than 12 months after the affected units become subject to those rules, unless otherwise specified in the acid rain rules.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Acid Rain Permit Issurance, Revocations, and Reopenings

• 31 TAC §§122.430, 122.432, 122.434, 122.435, 122.437, 122.438

The new rules are adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§122.430. Acid Rain Permit Conditions.

(a) Emissions from the affected units which are subject to the requirements of the acid rain rules shall not exceed any allowances that the affected unit lawfully holds under the acid rain provisions of the Act or the acid rain rules.

(1) No revision to the federal operating permit shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

(2) There is no limit placed on the number of allowances held by the affected unit. The affected unit may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(3) Any such allowance shall be accounted for according to the procedures established in the acid rain rules.

§122.432. Acid Rain Permit Issuance.

(a) In addition to the permit issuance requirements under Subchapter C of this chapter (relating to Permit Issuances, Revisions, Reopenings, and Renewals), for acid rain permits, the applicant shall submit to the U.S. Environmental Protection Agency a certificate of representation for

the designated representative of the affected source in accordance with the acid rain rules.

(b) Each acid rain permit shall have a fixed term of five years commencing on its effective date. Each acid rain permit issued on or before December 31, 1997 in accordance with subsection (c) of this section shall take effect by the later of January 1, 2000, or, where the permit governs a new unit or upgraded unit, the deadline for monitor certification under 40 Code of Federal Regulations 75.

(c) The Board or its designee shall issue or deny an acid rain permit on or before December 31, 1997, (if the operating permit program has received full or interim approval by July 1, 1996) to each affected source provided that the designated representative of the affected source submitted a timely and complete acid rain permit application and meets the requirements of the acid rain rules and of this chapter. Otherwise, the Board or its designee shall issue or deny an acid rain permit within 18 months of receiving a complete acid rain permit application.

§122.434. Acid Rain Permit Shield. Each affected unit operated in accordance with the acid rain permit that governs the affected unit, and that was issued in compliance with the acid rain provisions of the Act and the acid rain rules shall be deemed to be operating in compliance with the acid rain requirements, except as provided in 40 Code of Federal Regulations 72.9(g)(6).

§122.435. Acid Rain Permit Revisions.

(a) The provisions of this subchapter supplement Subchapter C of this chapter (relating to Permit Issuances, Revisions, Reopenings, and Renewals). Where the provisions of this subchapter conflict with Subchapter C of this chapter, the provisions of 40 Code of Federal Regulations 72 shall supersede the operating permit revision procedures with regard to revision of any acid rain permit provision.

(b) No acid rain permit revision shall affect the term of the acid rain permit to be revised. No acid rain permit revision shall excuse any violation of an acid rain requirement that occurred prior to the effective date of the revision.

(c) The existing terms and conditions of the acid rain permit shall apply while any acid rain permit revision is pending.

(d) The standard requirements contained in the acid rain rules shall not be modified or voided by an acid rain permit revision.

(e) Changes that are prohibited by the acid rain permit or changes which are not addressed by the acid rain permit shall not be made by the permittee without first revising the acid rain permit, if such changes are subject to any requirements under the acid rain rules.

§122.437. Acid Rain Permit Revision Procedures.

(a) Permit modifications. The following acid rain permit revisions are permit modifications and shall follow the permit issuance procedures of this chapter and Subpart G of 40 Code of Federal Regulations (CFR) 72:

(1) relaxation of an excess emission offset requirement after approval of the offset plan by the U.S. Environmental Protection Agency (EPA);

(2) incorporation of a final nitrogen oxides alternative emission limitation following a demonstration period; and

(3) determinations concerning failed repowering projects.

(b) Fast track modifications. Notwithstanding subsection (a) of this section, at the option of the designated representative, permit revisions which meet the criteria in 40 CFR 72 for fast track modifications may follow the procedural requirements for fast track modifications listed in 40 CFR 72.

(c) Administrative permit amendments. The following acid rain permit revisions are administrative permit amendments and shall follow the administrative permit amendment procedures of this regulation, except that the Texas Air Control Board (TACB) shall submit the revised portion of the permit to the EPA within ten working days after the date of final action on the request for an administrative amendment:

(1) activation of a compliance option conditionally approved by the TACB; provided that all requirements for activation under the acid rain rules are met;

(2) changes in the designated representative or alternative designated representative; provided that a new certificate of representation is submitted;

(3) changes in the owners or operators; provided that a new certificate of representation is submitted within 30 days of the change;

(4) termination of a compliance option in the permit; provided that all requirements for termination under the acid rain rules shall be met and this procedure shall not be used to terminate a repowering plan after December 31, 1999;

(5) changes in the date, specified in a new unit's acid rain permit, of commencement of operation or the deadline for, monitor certification, provided that they are in accordance with the acid rain rules;

(6) the addition of or change in a nitrogen oxides alternative emissions limitation demonstration period; provided that the requirements of the Act, §407 are met; and

(7) incorporation of changes that the EPA has determined to be similar to those in paragraphs (1)-(6) of this subsection.

(d) The following permit revisions shall be deemed to amend automatically and become a part of the affected unit's acid rain permit by operation of law without any further review:

(1) upon recordation by the EPA, all allowance allocations to, transfers to, and deductions from an affected unit's Allowance Tracking System account; and

(2) incorporation of an offset plan that has been approved by the EPA.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Acid Rain Appeals

• 31 TAC §122.440

The new rules are adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to adopt rules consistnent with the policy and purposes of the TCAA.

§122.440. Acid Rain Appeals Procedure.

(a) Appeals of the acid rain portion of an operating permit issued by the Texas Air Control Board (TACB) or its designee that do not challenge or involve decisions or actions of the U.S. Environmental Protection Agency (EPA) under the acid rain provisions of the Act and the acid rain rules shall be conducted according to procedures of the Texas Health and Safety Code, §382.032.

(b) Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the EPA shall follow the procedures specified 40 Code of Federal Regulations (CFR) 78 and the Act, §307. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of

whether a technology is a qualifying repowering technology.

(c) The TACB shall serve written notice on the EPA of any judicial appeal concerning an acid rain provision of any operating permit or denial of an acid rain portion of any operating permit within 30 days of the filing of the appeal.

(d) The Administrator may intervene as a matter of right in any permit appeal involving an acid rain permit provision or denial of an acid rain permit.

(e) The TACB shall serve written notice on the EPA of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an acid rain permit. Following any such determination or order, the Administrator will have an opportunity to review and veto the acid rain permit or revoke the permit for cause.

(f) A failure of the board or its designee to issue an acid rain permit in accordance with the acid rain rules shall be grounds for filing an appeal.

(g) No appeal concerning an acid rain requirement shall result in a stay of any provision of the acid rain permit for which a stay is barred under 40 CFR 78.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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This following information has been developed by Environmental Protection Agency (EPA) staff for the sole purpose of facilitating discussion on the concept of implementing voluntary plantwide applicability limits for new source review (NSR) applicability purposes. It does not, nor it is intended to, represent Agency position on any of the topics discussed.

Voluntary Source Specific Plantwide Applicability Limit (PAL) Issues

(Background paper, October 28, 1993)

In August 1992, the EPA invited representatives from industry, State/local air pollution control agencies, environmental organizations, EPA Regional offices, and other Federal agencies to participate in a workshop. The workshop was designed to provide EPA with input on possible revisions that would streamline and simplify the new source review process in a manner consistent with the statutory requirements. The participants identified issues regarding the NSR process and discussed conceptual and specific ideas for simplifying the NSR process. The Agency also shared its own preliminary ideas and concepts with the participants.

New source review applicability was a major issue identified and discussed by the participants at the workshop. At a previous workshop, EPA presented several alternative applicability approaches. One of the alternatives was the concept of a source-wide cap under which a source could make various physical and operational changes without triggering major NSR applicability. In a subsequent March 1993 workshop, EPA presented a detailed description of a PAL option as an area-wide change to a State's NSR program.

Since that time various industries have talked to EPA regarding the possibility of developing source specific NSR caps. To date, one facility has been issued a PAL type permit and several others are considering the possibility. In an effort to build on this, EPA is now considering a cap approach which would allow sources the option of taking an emissions cap as a basis of determining NSR applicability.

The following pages provide an overview of some of the larger questions that have been identified and discussed by prospective PAL candidates, State/local authorities, public interest groups, and EPA relating to implementation of source specific PALs.

1. Establishing an Emissions Cap[1]

Description:

A "cap" limits the amount of actual emissions from a source. The cap becomes a permanent allowable level of emissions for a source. From the source's perspective, the "margin" between the cap and the day-to-day and year-to-year operating emissions levels below the cap affect the flexibility provided by the cap. An actual emissions cap assures that "actual emissions" do not increase as the result of any physical or operational changes at the source and thereby avoiding NSR review.

The EPA may define, within reason, an "actual emissions baseline" for determining the cap limit. Because the cap limits any increase in actual emissions, including changes which would not otherwise be subject to current NSR, it maybe reasonable to encourage greater flexibility in setting the baseline than the current rules allow. Therefore, for the purpose of any future rulemaking on cap type permits, an objective may be to consider a methodology for determining an actual emissions baseline, where physical or operational changes may not increase actual emissions above the cap, while reasonable flexibility is provided for production changes under the cap.

Possible Strategies for Establishing the Cap:

A. Use current definition of actual emissions to determine baseline (See e.g., 40 CFR 52.21(b)(21)(ii):

> "the average rate, in tons per year, at which the unit actually emitted the pollutant during a two year period which precedes the particular date and which is representative of normal source operation. The Administrator shall allow the use of a different time period upon a determination that it is more representative of normal source operation."

B. Use the current definition of actual emissions in the NSR rules, but allow an "operating margin" (e.g., 2, 5, 10, or 20 percent) be added to the actual emissions baseline in establishing the cap.

C. Define actual emissions baseline as the highest two years of operation in the five years immediately prior to the application to establish the cap, or

[1] "cap" permits issued or being evaluated under the existing regulatory structure contain an actual emissions baseline consistent with the current NSR regulations.

another two years within the ten previous years if determined by the permitting authority or Administrator to be more representative of source operation and does not represent an unreasonable impact on air quality.

D. Set an actual emissions baseline at some reference date (e.g., November 15, 1990) or some interval after a new source has commenced operation, and then deduct a fixed percentage per year (e.g., 1, 3, or 5 percent) for every year between that date and the date the cap is to be set. In nonattainment areas, the cap would have to be reconciled with levels used in area's attainment demonstration.

E. Allow the cap to be established, but not implemented until a physical or operational change which would trigger NSR. The change could go through NSR or the cap could be implemented and the baseline established at that point. The actual emissions baseline would then be set based on the two years of operation immediately prior to the implementation of the cap (not the application date).

Questions:

1. What are the legal limitations on each approach? For example, current EPA regulations may limit the duration of a PAL to 5 years.

2. What are the practical limitations of each?

3. What data would be necessary and how useful and accurate would the data be (e.g., changes in emission factors and operating data).

4. What are the flexibility and air quality consequences of each?

5. Which is the best approach?

6. What are the best "stringency/flexibility levels" to apply? (For example, under options B, C and D, respectively, the levels might be a 5 percent margin, a highest 2-in-5 baseline, or a 3 percent per year depreciation rate.)

2. Changes Under the Cap Approach

a. Changes which Increase Emissions Above the Cap

Some sources with an emissions cap will eventually request to increase their caps. The request may occur as a result of two basic scenarios. First, an increase in emissions resulting from a physical change or change in the method of operation at the source (e.g., the addition of a new unit at the source or a modification to an existing unit). In applying for a major NSR permit for the emissions increase it is clear that the requirement for control technology review, best available control technology/lowest achievable emissions rate (BACT/LAER), and modeling/offsets would apply to the emissions units and emissions increases associated with the physical or operational change.

The second scenario involves an increase in emissions resulting from an increase in the hours of operation or production rate at the source without any other physical or operational change occurring. (It is important to note that any emissions increase above a cap would be considered a physical or operational change requiring review). This scenario becomes problematic in that it is unclear which emissions units would be required to apply BACT/LAER when a NSR permit is obtained for the increased emissions. For example, a request to increase a cap because of a need to increase the source's production or hours of operation may result in the emissions increase being spread evenly across all emissions units at the plant. Modeling/offsets for the increase could be accomplished without pinpointing an individual unit or process to be subject to BACT/LAER.

At issue is at what emissions units BACT/LAER would apply in the case of such a increase to a cap?

Question:

* When multiple emission units are involved in the emissions increase, should the source be allowed to control only some portion of the units involved or should controls be installed on all units involved in the increase? Does the control technology have to be BACT/LAER?

b. Changes Within the Cap

In principal, sources should be able to make any changes desired without triggering NSR so long as the cap is not exceeded. However, this will mean that new emissions units may be added and other changes can take place without undergoing technology review or other limitations. Some have suggested that this is a concern.

Questions:

* Should a source be allowed to install a new unit(s) without going through major NSR if it can remain below the cap, regardless of the area's attainment status?

* Should the source be required to install control technology on a new or reconstructed unit even though it can remain below the cap? Does the control technology have to be BACT or LAER depending on the area's attainment status? Should such a requirement be applied only if the PAL extends beyond 5 years?

c. Reductions in the Emissions Cap

Currently, permitting authorities may reduce permitted emissions levels for a number of reasons. For example, a reasonable available control technology (RACT) or state implementation plan (SIP) requirement may be applied in a nonattainment area to reduce emissions from an existing source. Maximum available control technology (MACT) and national emission standard for hazardous air pollutant (NESHAP) standards have similar effects on existing sources of air toxics. Under NSR, emission limits for BACT and LAER can be revisited under certain circumstances resulting in lower emissions limits. An emissions cap requires direct consideration of these and other changes to insure that the air quality improvements sought by these unit specific requirements are "seen" through the cap. In addition, caps developed under the current NSR program (e.g., Oregon) recognize that technical adjustments are needed in the cap when emission factors are updated (e.g., uncontrolled fugitive emission factors, changes in storage tank emissions equations, etc.). Industry, State/local, and the public will need to understand and know what adjustments to a cap may be necessary, both immediately and during some periodic (e.g, 5 year) review cycle.

Questions:

1. Under what circumstances and how should caps be lowered?

2. When should adjustments be made? What type of adjustments should be immediate and which can be deferred until end of the permit cycle?

3. How should adjustments be made when a reduction may be available for netting but not for offsets (e.g., early reductions program under CAA §112)?

3. Air quality impacts

A goal of the prevention of significant deterioration (PSD) regulations is to protect the public health and welfare from any adverse effect which might occur even at air pollution levels below the relevant national ambient air quality standard. An additional goal is to preserve, protect, and enhance the air quality and air quality related values (AQRV) in areas of special natural recreational, scenic, or historic value, such as national parks and wilderness areas.

An applicant for a PSD permit is required to conduct an air quality analysis of the ambient impacts associated with the construction and operation of a proposed new source or modification. The main purpose of the air quality analysis is to demonstrate that new emissions will not cause or contribute to a violation of any applicable national ambient air quality standard or PSD increment or adversely impact an AQRV. The PSD permitting process specifically provides the Federal Land Managers with a formal role in reviewing impacts on AQRV in Class I areas.

Air quality demonstrations may be required for some changes under a PAL which change the source's impact area, such as significant changes in effective source stack parameters. Requirements for when demonstrations should be required may be similar to emissions trading policy statement requirements for stack parameter changes.

Questions:

* When should a source be required to model changes at a facility?
  - increases in emissions limit,
  - increases in emissions rate but with no increase in emissions limit,
  - changes in modelling parameters (stack height/diameter).

* Is the "Emissions Trading Policy Statement" (ETPS) useful for addressing air quality concerns for a PAL? Are specific elements of the ETPS more useful than others? Are specific elements inappropriate?

* How can the Federal Land Manager Class I area interests be preserved under a PAL?

4. Enforceability

For the PAL to be enforceable, compliance methods and related monitoring requirements are regarded to be included in the permit. In addition to the cap itself, short-term limit compliance methodology is needed to assure practical enforceability. All compliance terms, including any unit specific emission limits or conditions and the total PAL needs to be specified in the permit to be both federally and practically enforceable.

Generally, demonstrations of compliance are possible through use of traditional measures such as monitoring of unit specific limits. Minor NSR or other procedural requirements could be used to change unit specific limits. Alternative operating scenarios could also be permitted in advance for additional flexibility while assuring enforceability of the PAL under each of the operating scenarios without requiring minor NSR permits for each change. To obtain maximum flexibility under a PAL and ensure enforceability, continuous emissions monitors (CEMs) and\or other continuous process monitoring may be necessary. In any event, enforcement for PALs must be consistent with general EPA requirements of practical enforceability.

Usual Conditions to be included in the PAL permit

- Methods to be used to quantify all emissions of all pollutants subject to the PAL

- Methods to determine compliance including:
  - monitoring requirements
  - recordkeeping requirements
  - reporting requirements
  - test methods

- Practically enforceable averaging time for all limits (allow for determination of compliance readily)
  - short term limits, generally not to exceed 1 month
  - rolling limits not be exceed 12 months or 365 days

- A reasonable description of all emissions units (54 FR 27283)

- Emission limits must be verifiable:
  - Louisiana Pacific: plantwide emissions limits are not federally enforceable because they are not generally verifiable
  - use of continuous emissions monitoring to verify total emissions at a source may allow for plantwide emissions limits

- otherwise, verifiable emissions limits assigned to all units or groups of units
- an emission limit expressed only in tons per year is not practically enforceable (54 FR 27283 and LP)
- where monitoring cannot be used to verify emissions directly, limits on the parameters established for the units or source and monitoring verify compliance with those limits

- Monitoring sufficient to yield data from the relevant time periods that are representative of the source's compliance with the permit

- "Monitoring" refers to many different types of data collection, including periodic stack sampling, continuous emission or opacity monitoring, measurements of various parameters of process or control devices (e.g., temperature, pressure drops, fuel usage)

- The Title V applicability requirements include the emissions limits established, the limits on parameters (operating hours, production, temperature, fuel specifications, etc.), the monitoring requirements, the averaging time period, and the methods for determining compliance

- The permit may contain approved alternative scenarios that incorporate alternative compliance requirements.

Issue:

* How much monitoring is required for enforceable PAL?

Questions

* What conditions are placed on the source to show compliance with the limit? (methods of compliance, methods of quantification, plantwide annual emission limits, unit specific emission limits, short term limits or averaging time)

* Are all of these conditions to be considered Title V applicable requirements?

* How are emissions to be quantified?

* Should emission limits be placed on individual units or groups of units? To what extent are unit specific limits or limits on groups of units required?

* What type of averaging times are adequate for purposes of the PAL?

* How do alternative operating scenarios affect or assist compliance?

* What are the consequences of exceeding the cap and when are they set forth?

5. Public Review/Participation

Federal NSR permits are subject to public review requirements. Minor NSR permits also generally must undergo public review. Therefore, public participation of some form could be required at several steps in the PAL process.

Questions:

* When should a PAL permit undergo public review?
  - initial establishment of a PAL,
  - adjustment of cap based on technical revision of emission factors and other assumptions in baseline,
  - "ratcheting down" of cap because of more stringent State or Federal requirements,
  - other modification of cap limits,
  - BACT/LAER process, if any, for new or reconstructed units under a PAL,
  - changes in emission limits within a PAL, i.e., shifting emissions from one emission limit to another within the PAL,
  - renewal of PAL.

* How can Title V public participation requirements be satisfied in a PAL.

* What monitoring data and other compliance information should be available to the public, and what process should be used for making such information available.

WILDERNESS ENVIRONMENTAL MONITORING AND ASSESSMENT

A summary report of one of five scientific panels associated with the National Wilderness Research Committee assembled for the Society of American Foresters by the US Forest Service to conduct an evaluation of wilderness research: state of knowledge and research needs for the 1990's.

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INTRODUCTION

Objectives of the Science Panel

The Wilderness Management Working Group of the Society of American Foresters has established a National Wilderness Research Committee to evaluate the status and adequacy of wilderness research in the United States, and to make recommendations to address identified needs. This committee established select panels of scientists to assist by identifying and prioritizing wilderness research needs.

Research issues and questions pertinent to wilderness were judged by the following criteria: 1) Managerial Relevance: studies important to support management of the National Wilderness Preservation System (NWPS); 2) Wilderness Dependency: potential contributions to science through basic studies that depend on natural, wilderness conditions; and 3) Baseline Monitoring and Assessment: baseline measures of wilderness environmental conditions and natural processes, and systems for monitoring and assessing change of wilderness conditions for comparison with managed conditions (Cordell 1992).

Managerial relevance. The concept that wilderness areas require active management is a relatively new perspective. Research has provided documentation of the risks to resources of many units of the NWPS (Peine et al. 1988). Baseline information on natural resources and research to define risk to those resources provides a foundation for the development of an effective resources management program..

Wilderness dependency. Wilderness designation implies an area remaining in a "natural state" which is relatively free of perturbations associated with humans. Research focused on how natural systems function becomes more and more dependent on protected areas as the ever escalating rate of land use conversion continues on the continent. The environmental impact assessment process requires that protected areas to be used as laboratories to define relatively undisturbed ecosystems as points of comparison.

Baseline monitoring and assessment. With the 1980's came an institutional awareness among federal land managers of the need for resource inventorying and monitoring on undisturbed ecosystems and the resolve to begin building programs to address the need. In the 1990's, the theory and procedures for natural resource inventorying, monitoring and assessment are being

developed via appropriate research and will ultimately be widely implemented and routinely maintained.

The Sustainability Question

The Wilderness Act of 1964 specifically mentions "science" as one of the purposes of wilderness: "Wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation and historic use." (PL 88-577, Sec.4b). Research should focus on the development of a theoretical basis for the monitoring of resources in order to build models to describe ecosystem productivity, structure and function, and ultimately predict how these processes might be altered by perturbations, thus defining elements critical to the conduct of risk assessment of resources. Natural resource sustainability can be described in terms of ecosystem productivity, structure and function. The protection of biological diversity is an inherent goal of the Wilderness Act. The bottom line for research is to become able to predict with a reasonable degree of certainty the sustainability of the resource base over the long term for every unit of the NWPS.

Definition of Terms

Monitoring is based on a set of measurements, made in such a manner that they are repeatable in time and space, have an identifiable representation associated with the system being monitored, can be made by anyone with appropriate training and can be quality assured and quality controlled. Information based on such monitoring can then be assembled into an assessment of the health of wilderness ecosystems. Environmental health may be defined to be comprised of a set of measures of the productivity, structure and function of the ecosystem. Assessment is a process that compares these measures against some appropriately defined normal range of measures.

Control of the Potential Adverse Impacts from research

Field research can be quite destructive, becoming a risk itself to wilderness values. Examples include the placement of instrumentation that is highly visible, indiscriminate flagging, manipulative research wherein a treatment is applied creating disturbance to an ecosystem, the creation of "people" ways in the vacinity of intensive research activity, and the movement or taking of specimens of rare species. The provision of access to remote research sites can create problems as well. Caution should be exercised as to the potential adverse impact of research activity on the resources of these protected areas.

STATE OF KNOWLEDGE AND CURRENT RESEARCH

The Paucity of Understanding

The ongoing process of research on natural ecosystems has barely begun. Natural resource related research has traditionally been focused on ecosystems and species that are of direct interest to humans. We tend to study what we consume. Icons of wildlife, fisheries and forest ecology research in the Southeastern U.S., for instance, include black bear, wood ducks, brook trout, and species of oak and southern pine trees. Vertebrates and woody plants tend to be best understood. For the vast majority of plant species, information on phenology and definition of thresholds of nutrients, temperature, moisture and other parameters that influence population density and range are rarely understood. Modeling the interdependency of species populations is in the formative

stages for most ecosystems as well. Risk assessment of the sustainability of biodiversity on these protected landscapes is seriously restricted do to this lack of basic knowledge.

A Lack of Emphasis

Federal land managing agencies have historically not placed emphasis on ecological research in designated wilderness areas. Pridrities for research into more intensely managed landscapes have taken precedence. The awareness of the need for emphasis on research in natural protected landscapes is growing as evidenced by the emergence of the following research and monitoring programs.

Environmental Protection Agency (EPA)

Environmental Monitoring and Assessment Program (EMAP). This innovative research, monitoring and assessment program is designed to determine the condition of the Nation's ecological resources. The principle goal is to provide decision makers with sound data on which to base environmental risk management decisions. The program is designed to provide "America's Ecological Report Card." It has four strategic objectives:
1. estimate the current status, trends and changes in selected indicators of the condition of the Nation's ecological resources on a regional basis with known confidence;
2. estimate the geographic coverage and extent of the Nation's ecological resources with known confidence;
3. seek associations among selected indicators of natural and anthropogenic stresses and indicators of the condition of ecological resources; and
4. provide annual statistical summaries and periodic assessments of the Nation's ecological resources.

EMAP has three functional components: resource monitoring and research, integration and assessment, and program coordination. Using a probabilistic sampling design and ecological indicators, EMAP is assessing the condition of seven ecological resources (defined within EMAP as: agroecosystems, arid ecosystems, estuaries, forests, Great Lakes, surface waters and wetlands). In addition to these resource groups, EMAP also has an integrated landscape ecology component.

An ambitious task such as EMAP requires the participation of the Nation's best scientists. More than 12 Federal agencies, 20 States and 40 universities are currently active in various program components (EPA 1993).

National Park Service (NPS)

Resources inventory and monitoring. The NPS has launched a resource inventory and monitoring program in 1990 in 4 demonstration parks. A hierarchical guideline for phasing in a system for biological, physical and chemical elements of the program is included in NPS-75, the Resources Management Handbook (NPS 1991). The strategy is particularly helpful in defining a well balanced program that can be phased in without major expense at the initial stages. Standard protocols are being developed for a variety of monitoring initiatives in the demonstration parks. These guidelines are applicable to other units of the NWPS with similar biogeophysical resources. In fiscal year 1994, the research aspects of this initiative are being transferred to the DOI National Biological Survey.

Climate change. The NPS global climate change program includes a network of 20 biogeographic areas (including 74 NPS units) representing all of the major biomes of the United States, and three thematic initiatives (involving 18 additional NPS units). The NPS global change research program combines paleostudies, ongoing monitoring, field and laboratory research, and monitoring. The program will help determine the influence of global change on populations, the structure and functions of ecosystems and their adaptability.

The NPS program embraces integrated, interdisciplinary studies of park ecosystems, as well as three thematic initiatives that transcend geographic boundaries and study the dynamics of coastal barriers, glaciers and coral reef systems. All of these programs not only increase the understanding of park systems for improved resources management decision-making, but also support the development and testing of regional global-change models (NPS 1992).

Air quality monitoring and effects. The NPS Air Quality Program includes initiatives in monitoring, effects research and regulation (primarily new source permit reviews), in support of the responsibility of the federal land manager to protect air quality related values of Class I areas. The NPS program has provided leadership in defining the role of the federal land manager and the development of instrumentation to monitor visibility. EPA protocols are followed in the operation of air quality monitoring stations for pollutants in particulate. gaseous and liquid form in 20+ park units. Effects research has focused on visibility degradation, acid deposition and ozone. Fumigation chambers have been used to develop protocols for field identification of foliar injury from ozone on native species of vascular plants.

US Forest Service (USFS)

Forest health monitoring. The USFS and EPA have launched a joint program to monitor the health of forests in the United States. The program is still in the initial stages of implementation, but several indicators of forest health are undergoing development and permanent plots have been established in 12 states. The primary function of the program is to gather and maintain an objective data base capable of supporting appraisals of forest health at the regional and national scales. Some of the intended program outputs include the evaluation of potential problems associated with anthropogenic stressors, the interaction of these stressors with natural pathogens, the recognition of developing problems before they reach crisis proportions, and the ability to judge the effectiveness of regulatory programs (Bechtold 1991).

Protocols for resource monitoring in wilderness areas. In response to the mandate of the 1977 Amendments to the Clean Air Act, the USFS established a research program in air pollution and it's implications for those USFS wilderness areas designated as Class I by the Act. A number of products resulted from this activity. Among the most lasting was the development of a set of protocols for the measurement of effects on "air quality related values" of the Class I areas (Fox et al. 1987). This document has been used widely throughout the USFS and other management agencies to provide guidance on what should be measured and how it should be measured to maintain air quality related values in an acceptable state. Air Quality Related Values (AQRV's) are attributes of a wilderness Class I area that can be effected by air pollution or atmospheric deposition. They include such things as visibility, water quality, snow quality, soil quality, flora and fauna abundance and health, species diversity, preservation of threatened and endangered species, and similar "values" of the area.

AQRV Screening. The Clean Air Act provides protection to the AQRV's of a wilderness through the Prevention of Significant Degradation (PSD) Section of the Act. The operative mechanism of the protection is a permit that must be issued prior to construction of any major emitting facility. Development of this permit requires projection of the impact potential from the proposed facility on the wilderness. This projection, obviously, cannot be based on measurement but must be estimated through the use of an air quality model. USFS air resource research has developed a number of models for use in this process and has been instrumental, along with the EPA, in establishing modeling standards (Fox 1981, 1984). However, a major concern has remained estimation of impacts on AQRV's, and moreover, what constitutes an "adverse" impact. To make some progress in this difficult determination, USFS air resources research proposed the adaptation of a screening technique (Fox et al. 1989). This screening technique proposed red, green and yellow lines on a multiparameteric relationship between nitrogen and sulfur deposition, acid neutralizing capacity and watershed ratio of precipitation to runoff for aquatic systems, levels of deposition of sulfur and nitrogen and ozone concentration for terrestrial ecosystems and just noticeable difference for visibility impacts. It was further recognized that these screening techniques were of limited utility because of the real diversity in actual wilderness areas. The Forest Service therefore proceeded to establish screening values for each region and for specific wilderness areas. These procedures are available from the air resource management officials in each USFS Regional Office.

Climate change. The Forest USFS Global change research program is a broad national program aimed at developing an understanding of the exchange processes between atmosphere and biosphere, the role of disturbance in ecosystems, the dynamics of ecosystems and the role of humans in natural resource management. Much of this process is germane to the understanding of wilderness ecosystems because of the influence of climate and climate change as well as other stresses on the natural system will be studied (USFS 1993).

TERRA Laboratory. In partnership with the Agricultural Research Service, Soil Conservation Service, US Geological Survey, CIESIN, IBM and ESA's Sustainable Biosphere Initiative, the Terrestrial Ecosystems Regional Research and Analysis (TERRA) Laboratory in Fort Collins has recently been formed to develop a structured analysis of regional effects of global change. TERRA is developing a "structured analysis methodology" to involve scientists, stakeholders, policy makers, land managers and regulators in the conceptualization of overall frameworks to integrate their needs and design conceptual models for problem resolution (DeCoursey et al. 1993).

US Fish and Wildlife Service (USFWS)

Gap analysis. This program provides a quick overview of the distribution and conservation status of several components of biodiversity. It seeks to identify gaps that may be filled through establishment of new reserves or changes in land management practices. Gap analysis uses the distribution of vegetation types and vertebrate and butterfly species as indicators of, or surrogates for, biodiversity. Digital map overlays in a geographic information system (GIS) are used to identify individual species, species rich areas, and vegetation types that are unrepresented or underrepresented in existing areas managed for biodiversity (Scott 1993). The significance of the role of designated wilderness areas to protect biological diversity in the greater scheme of land use patterns may be evaluated. Such analysis is particularly important for smaller units of the NWPS.

Bureau of Land Management (BLM)

Monitoring. The BLM has developed an extensive monitoring program based on the USFS protocols. This monitoring program features dry deposition measurements using a network of measurements all over the world (Riebau 1992). An additional feature of the BLM program is the development of paired ecosystems where similar measurements are made in US ecosystems and similar systems around the world, especially in Russia and the former Soviet Union and China.

KNOWLEDGE GAPS AND RESEARCH NEEDS

A System-wide Approach

Since several federal agencies manage areas designated as wilderness by the U.S. Congress, there has been little attention to treating the designated units as a system. There is no unifying advocacy in the federal government for treating the designated wilderness area as a system. Therefore, it may be entirely unrealistic to expect that a system-wide approach to monitoring and assessment could be accomplished. There would be considerable value to designing a conceptual framework for a system-wide program perspective that could be used as guidance by the various participatory land managers. Many such strategies have been proposed but none adopted. There is a need to seek greater consensus among the scientific community concerning the theoretical rational and predictive power of such a framework to describe ecosystem dynamics and predict response to perturbations.

Description of Biogeographic Regions and Ecosystems

There is a need to better describe the natural resource base at a landscape scale for units of the NWPS. Technology has improved in the utilization of remote sensing data to develop detailed resource maps. Remote sensing data can be used to more precisely define major biogeographic regions and related ecosystems. Geographic information systems have become commonplace but the level of sophistication at the applied resources management level lags behind this rapidly evolving technology. There would be great advantage to combining the resources of the federal land managing agencies with EPA, NASA, NOAA, USGS and DOD to develop a common GIS and remotely sensed inventory of resources for the entire NWPS. Such an effort would go a long way toward promoting the cultural recognition of the designated wilderness areas as a system.

Continent-wide/Landscape Level Assessment of Risks

Design of a resource monitoring program must reflect mechanisms to track the potential adverse impacts from threats. This principle was recognized by those who organized the scientific panel reported here. Air pollution was singled out as of particular concern to the entire NWPS. Surveys of managers of wilderness areas have revealed a wide variety of perceived threats (Peine et al. 1988, Machlis and Tichnell 1985). In addition to airborne pollutants, other common threats include both ground and surface water pollution from nearby mining, industrial and residential areas, the invasion of exotic species, aircraft overflights, border effects from urban encroachment such as the occurrence of domestic animals ranging into the protected areas, the illegal taking of plants and animals, vandalism to natural and cultural resources, infestations of pests and pathogens, and the severing of migration and movement corridors linking designated wilderness areas to other natural areas. Then there is the mother of all threats, global climate change. Combinations of threats frequently have synergistic effects on sensitive organisms in the biosphere.

Panels of experts can be assembled to provide a cost effective means to define system-wide and unit specific threats.

Theoretical Framework for a Comprehensive Monitoring Strategy

As alluded to above, there is a need for scientific debate to build a consensus concerning a unifying conceptual framework for resource monitoring and assessment programs conducted within the NWPS in order to facilitate landscape scale and system-wide assessment. An underlying premise that is more frequently ignored than not is to design monitoring programs so as to build models to describe ecosystem processes and population dynamics and to predict how those dynamics are influenced by known perturbations. The linkage among scales of inventory, monitoring and assessment must be addressed in the debate as well. Almost invariably, intensive monitoring activity at specific sites are difficult to interpret at the landscape scale. By carefully choosing parameters to describe at the landscape scale that can provide key linkage to intensive study sites (such as temperature and moisture gradients), the extrapolation of research findings from intensive study sites to the landscape scale can be much more robust.

Application of Continent-wide Ecosystem Monitoring Programs to Wilderness Areas

Once a theoretical framework is defined, the various research and monitoring programs mentioned previously can be evaluated as to their relevance to the needs of the NWPS. A safe assumption is that no one program will be considered adequate to meet the needs of the NWPS. There is also the important matter of a reality check; i.e., what can be practically initiated in the short term. A key principle is to encourage the various agencies to focus their emerging inventory and monitoring initiates in designated wilderness areas to the extent practical.

Adoption of Standardized Protocols for Priority Monitoring

The institutions engaged in large scale resources monitoring programs are actively developing standardized protocols for resource monitoring. As theory and technology evolves, there will invariably be changing perspectives on methodology. There is something to be said for constancy however. In a review by faculty at Cornell University,of successful long term ecological studies, the one universal commonalty found among programs was a tenacious dedication by one or two people to keep the project focused and operational (Strayer 1986). This element of long term personal commitment tends to be missing from the culture of government and scientific institutions which tends to reward new ideas and short term payoff.

A PROPOSED WILDERNESS RESEARCH AGENDA

Research Mission

The primary mission of a research program for federally designated wilderness areas should be to support management of the NWPS by providing methodology for the conduct of baseline environmental inventory and monitoring to describe ecosystem processes and community dynamics and study the response to perturbations, such as air pollution, fire suppression, exotic species, pests and pathogens, recreational activity, and potential adverse effects from adjacent land uses.

Landscape Characterization

Resource characterization at the landscape scale utilizing remotely sensed data is the most cost-effective means to devise a coarse scale resources inventory and document large scale change in land cover categories over time. Remote sensing can be applied to characterize vegetation types, stress and mortality in forest stands, and sedimentation in water.

Biological. Remote sensing should be used to define vegetation types in wilderness areas. Such a characterization would provide a foundation for evaluating the representativeness of specific research sites. Biological diversity associated with these broad scale vegetation types can be estimated as well as some forest health parameters.

Two national programs to characterize biological diversity at a landscape scale include the EPA EMAP program and the USFWS Gap Analysis. Placing priority on the implementation of these programs in wilderness areas should be encouraged. Defining the relevance of the EMAP program to a regional landscape assessment should be a priority research initiative.

Geophysical. Digital elevation models are indispensable to characterize landscape topographic features. Landscape position is a key factor in defining temperature and moisture gradients that are determents of vegetation patterns and ecosystem processes. This same data base can be used to characterize streams and rivers by order, snow fields and glaciers, and reservoirs and lakes. The USGS Environmental Data Center (EDC) can provide the needed digital elevation maps.

Chemical. In wilderness areas where air pollution is a problem, an air quality monitoring station should be established at a site where pollutant deposition is maximized to determine pollution loading in the liquid, gaseous and particulate form.

Research priorities. The following priorities are suggested:
1. combine efforts of the federal land managing agencies and NASA, USGS, NOAA and EPA to create a system-wide GIS and resource inventory using remote sensing technology for the NWPS. This could be accomplished using the structured analysis methodology developed at TERRA in cooperation with the wilderness research community; and
2. conduct research into the relevance of the EMAP protocols to landscape level assessment appropriate to the NWPS.

Ecosystem Productivity, Structure and Function at the Watershed Level

The designation of paired research watersheds provides a key mechanism to encourage interdisciplinary research into ecosystem processes and functions. Watershed scale research lends itself well to building models to describe ecosystem processes and how they relate to the biological systems in place.

Biological. A system of nested plots and line transects in the research watersheds can be used to characterize species composition of vascular plants, small and large mammals, birds, insects, etc. A similar system can be applied to characterize aquatic resources as well.

Geophysical and chemical. Flumes and stream gauges can be installed in the research watersheds to record stream flow, temperature, pH, and nutrient flow from the system. Sample soil pits are sometimes appropriate to characterize soils and monitor nutrient cycling.

Research priorities. The following priorities are suggested:
1. recruit research institutions to establish research watersheds in wilderness areas following a framework protocol designed for the NWPS; and
2. use existing research watersheds in wilderness areas to test the representativeness of the EMAP protocol.

Community and Species Level Characterization

Circumstances on individual units of the NWPS will dictate priorities for conducting research at the community and species level. Studies might describe or monitor phenology, structure, reproduction and productivity.

Research priorities. A typical hierarchy ranging from high risk to dominant communities and species is as follows:
1. rare and endangered species;
2. exotic species and the level of threat they pose;
3. sensitive communities and/or species to perturbations such as ozone, acid rain, pests and pathogens, fire or fire suppression, and disturbance from adjacent land use;
4. wide ranging species that utilize habitat outside of the boundaries of the protected areas; and
5. dominant communities and species that best represent the biome of the reserve.

Viability of Units of the System to Sustain Biological Diversity

Given the above mentioned levels of research activity, one must not lose site of the big picture of the relevance of the research activity to management of resources within individual units of the NWPS. A risk assessment and predictive models must be an overriding objective that remains constant as the research and monitoring activity evolves.

Institutional Framework

Building an integrated strategy among federal land management agencies. If there is ever to be a systematic and somewhat uniform approach to management of the NWPS, there needs to be a conceptual framework for management, research and monitoring whose specificity goes beyond the tenants of the federal legislation authorizing the system. This could be accomplished through a memorandum of understanding among federal land managers responsible for units of the NWPS. An additional unifying factor would be the establishment and maintenance of a system-wide GIS and resource inventory generated by remote sensing reflectance data. The model of the TERRA Laboratory designed for a similar purpose within the global change research community could be utilized.

Leveraging university involvement. The research needs in units of the NWPS are far greater than are the capabilities of the federal land managers. Universities and independent research institutions should be encouraged to use designated wilderness areas to conduct nondestructive research deemed priority in the conceptual research plan. Mechanisms to encourage such involvement include the establishment of designated research watersheds and provisions for

curation of specimens from reference and environmental collections. Documentation of research site locations and appropriate documentation and storage of data is of critical importance as well.

Mechanisms to facilitate research activity. The federal land manager should arrange for access to a nearby field research station to facilitate staging of research and monitoring activity. Providing transportation to field study sites can be most helpful as well.

Setting Priorities

Priorities tend to reflect a combination of pressing resource crises, short term agency-wide program emphasis, and individual scientific interest. An effective approach to system-wide research and monitoring in the NWPS should reflect the needs for orderly implementation of a conceptual framework for the program. Suggested overriding priorities are as follows:

1. develop a conceptual framework for system-wide research and monitoring strategies;
2. establish a landscape level initiative to cost effectively inventory resources and detect indicators of environmental stress using a system-wide application of remote sensing and the establishment of a GIS for the NWPS which would provide a foundation and continuity for all other research and monitoring activities;
3. strengthen interest by the research community in units of the NWPS;
4. focus on those ecosystems, communities and species at greatest risk; and
5. contribute to the basic understanding of ecosystem processes and function.

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A Screening Procedure to Evaluate Air Pollution Effects on Class I Wilderness Areas

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Wilderness area[1]	Nitrogen deposition[2]		Sulfur deposition		Ozone concentration[3]	
	Green Ln	Red Line	Green Ln	Red Line	Green Ln	Red Ln
	kg N/ha-y		*kg S/ha-y*		*ppb*	
Alpine Lakes, WA	5-7	15	3-5	20	35/75	55/110
Hoover, CA	3-5	10	3-5	20	35/75	55/110
San Gorgonio, CA	5	15	3-5	20	35/75	55/110
Bob Marshall, MT	3-5	10-15	5	20	35/75	55/110
Bridger, WY	3-5	10	5	20	35/75	55/110
Superstition, AZ	3-5	15	5-7	20	35/75	55/110
Joyce Kilmer, NC/Slick Rock, TN	7-10	15	5-7	20	35/75	55/110
Otter Creek, WV	7	10-15	5	20	35/75	55/110
Boundary Waters Canoe Area, MN	3-5	10	5	20	35/75	55/110

[1]See appendix B for description of wildernesses.

[2]Nitrogen and sulfur deposition are total values including all forms, wet, dry, NH_4-N and NO_x-N, SO_4-S, SO_2-S, etc.

[3]Growing season average/second highest 1 hour average value in a year.

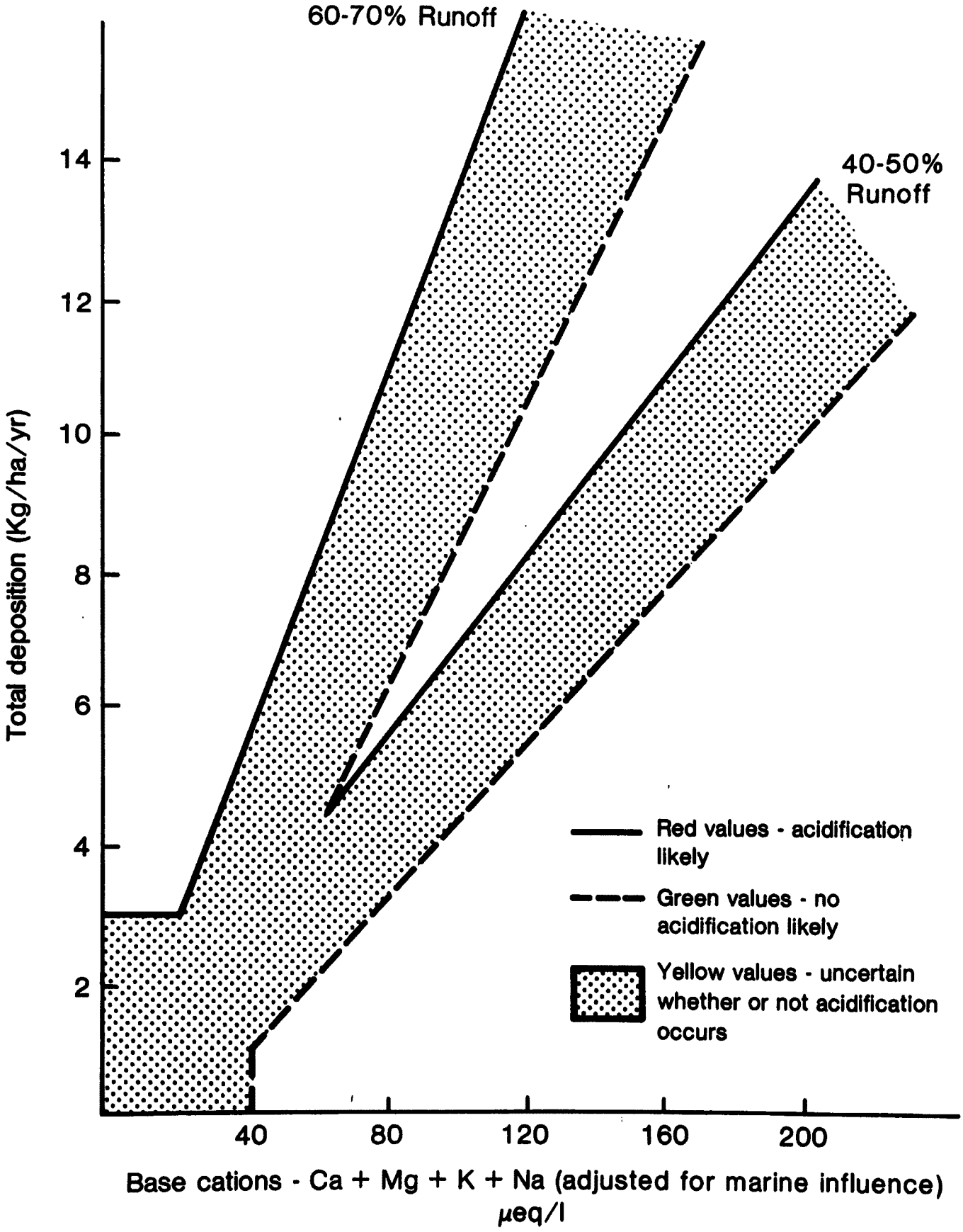
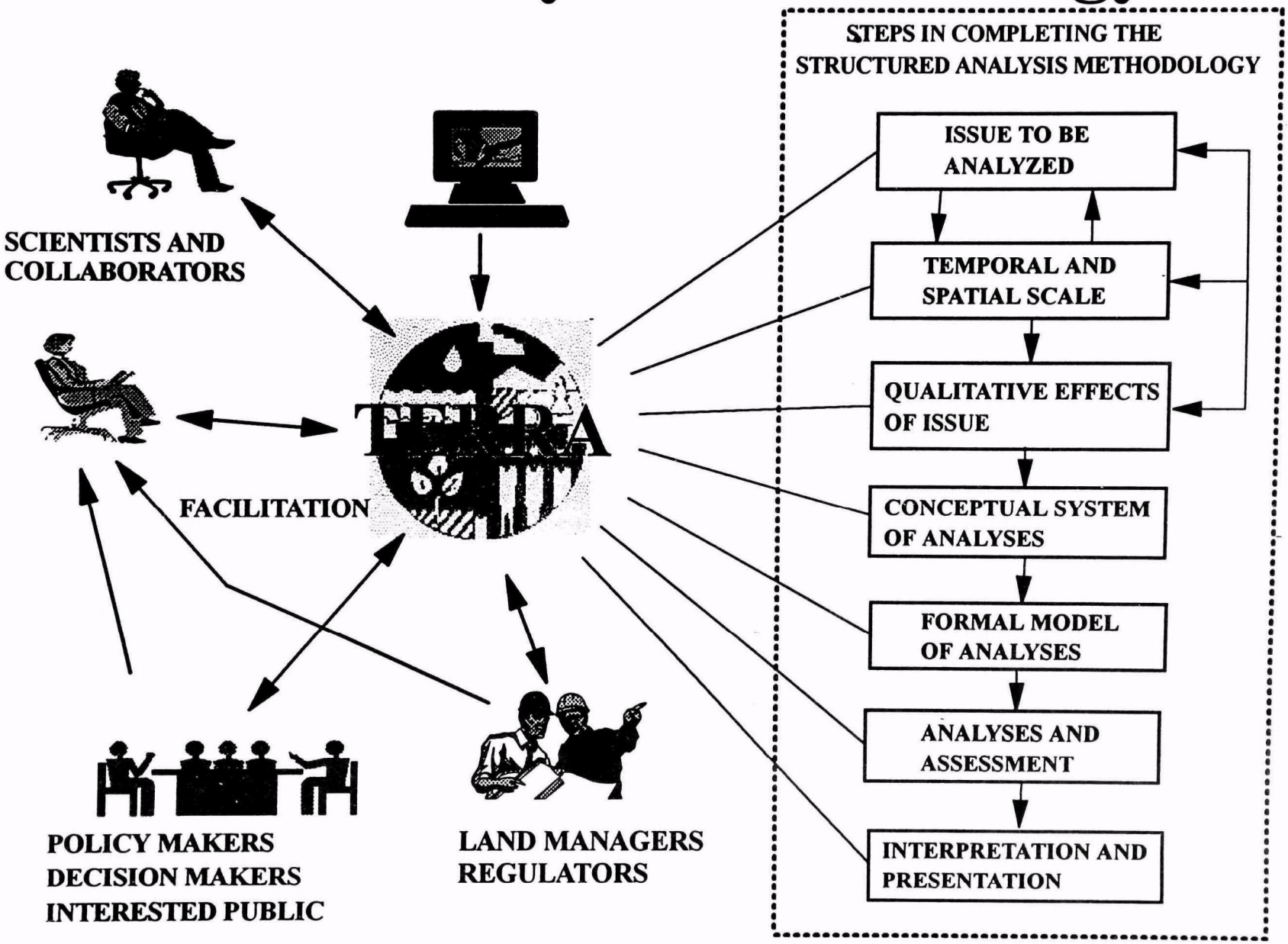


Figure 1.--Green and Red Line values for effects of deposition on freshwater systems. Total deposition is total sulfur deposition except for selected locations as noted in the text where 25% of total Nitrogen deposition should be included.

Structured Analysis Methodology



Figure