TITLE V IMPLEMENTATION Q & A; Region IX
December 1995

Applicability

1. Are districts responsible for applicability determinations of delegated standards (e.g., what changes qualify as reconstruction)?

> Yes. Part of the district's implementation of any delegated standard is making applicability determinations. Given that applicability issues may be difficult, EPA is available to assist districts in such determinations.
>
> Please note that EPA can take enforcement action for noncompliance as a result of an incorrect applicability determination. If the incorrect applicability determination is inadvertently included in a permit shield, the permit will have to be reopened and revised.

2. What should a permitting authority do if the actual number of title V sources in the district is different than the number initially estimated in the program submittal?

> EPA considers the subject sources listed in the program description to be an estimate and expects that this number may increase or decrease as districts and sources more closely evaluate title V applicability, especially given that sources may be more closely evaluating emissions and taking synthetic minor permit restrictions during this period.

3. Do sources ever have to quantify fugitive dust from roads?

> Yes. Fugitive dust from roads, and other non-HAP fugitive emissions, must be counted in major source determinations if the fugitive emissions are part of a stationary source that is listed as one of the 27 source categories under the definition of "major source." (HAP fugitives must always be counted in applicability determinations.) However, once a source is determined to be a major source, all emissions, both fugitive and non-fugitive, must be quantified to the extent required by permit application requirements in section 70.5(c) and by section II.B.2 of the Implementation White Paper.

4. Are all area (i.e., non-major) sources subject to NSPS deferred from title V?

No. Non-major sources subject to pre-1992 NSPS are deferred from title V permitting (section 70.3(b)), with the exception of solid waste incinerators subject to permitting under section 129(e), which may not be deferred or exempted. All NSPS promulgated after July 21, 1992 will specify whether or not non-major sources must obtain title V permits (section 70.3(b)(2)).

5. If a source is subject to and violating a NSPS, can the source still use the NSPS requirements to limit PTE and get out of title V?

If a source is in violation of a NSPS, the source cannot claim that the NSPS is limiting its PTE. The source must look at both its actual and potential emissions, absent the NSPS limits, to determine applicability. However, once the source comes into compliance with the NSPS, the standard could be used to limit the source's PTE. Therefore, compliance with a NSPS can exempt a source from title V if such compliance makes the source a minor source.

Application

1. How should modifications at a source be incorporated into permits if the changes are made soon before permit issuance?

After an application has been submitted and deemed complete, the source continues to have an affirmative obligation to supplement or correct its application (section 70.5(b)). If the source makes changes at its facility that would impact the permit, the source must provide sufficient information to the permitting authority to revise the draft permit accordingly. The permitting authority has discretion to provide an additional 30-day public review period in accordance with the district's administrative procedures. The permitting authority must, however, provide EPA with an additional 45-day review period when the proposed permit is revised.

2. Do sources ever have to quantify in a permit application emissions from insignificant activities?

Sometimes. A source might have to quantify emissions from insignificant activities if the information is

needed to determine the applicability of requirements or fees. Also, emissions from insignificant activities must always be considered in determining a source's potential to emit for major source determinations.

3. If all units at a facility are subject to general requirements, such as limitations on visible emissions, does each individual unit have to be listed in the permit?

No. The July 10, 1995 White Paper states in section II.B.4. that "Provided the applicant documents the applicability of these [generic] requirements and describes the compliance status as required by 70.5(c), the individual emissions units or activities may be excluded from the application, provided no other requirement applies which would mandate a different result." Specifically, insignificant and trivial activities do not have to be listed. Units that are subject to the general requirements but are otherwise unregulated may be described as a group. Units that are subject to unit-specific applicable requirements as well as the general requirements should be listed individually.

Public Participation

1. If the permitting authority revises a draft permit as a result of public comment or EPA objection, is the revised permit subject to a second public comment period?

If a permit is significantly revised during or after the public comment period, part 70 would require a second comment period. The rationale is that a significantly revised permit would be considered a draft permit, and draft permits are required to go through public review. See section 70.7(h)(4). In addition, EPA expects permitting authorities to follow their existing local administrative procedures on this issue.

2. Do districts have to provide copies of permit applications and related materials upon request by an interested party? Can districts charge for providing these documents?

In keeping with public notice requirements under section 70.7(h)(2), districts must provide copies upon request. Districts may charge for copies in accordance with State/district rules.

3. Must districts provide public notice when incorporating MACT standards into title V permits since the MACT standards have already undergone public review during their development?

Currently, part 70 requires permits to be "reopened" and revised to incorporate new applicable requirements such as MACT standards (section 70.7(f)(1)(i)). The procedures for reopening follow the same procedures as apply to initial permit issuance, including public notice and comment (section 70.7(f)(2)). However, the part 70 supplemental proposal would change this requirement by allowing states and districts to match public review to the complexity of the applicability determination. See August 31, 1995 Federal Register (60 FR 45549).

Compliance/Enforcement

1. Can both the district and EPA seek penalties for the same violation?

Yes. However, as a policy matter, EPA generally will not overfile (take enforcement action after a state/district has already obtained penalties) if the district or state has assessed penalties to reflect the seriousness of the violation. EPA's policy on overfiling states that EPA will consider overfiling where state or local penalties meet certain criteria. (See "Timely and Appropriate Enforcement Response to Significant Air Pollution Violators," John Seitz, Director, OAQPS, and Robert Van Henvion, Acting Director, Civil Enforcement, February 2, 1992.)

2. If a source submits a compliance schedule for non-delegated applicable requirements (e.g., PSD, NSPS), does the district have authority to incorporate the compliance schedule into the permit and enforce it?

All districts with approved title V programs have authority to incorporate all applicable requirements into title V permits and have authority to enforce title V permits. Applicable requirements (even non-delegated requirements) incorporated into the permit via a compliance schedule may be enforced by the district, even if the compliance schedule was not approved by the district's hearing board.

3. If a district's regulation requires sources to use a specific compliance certification form, does the permit need to restate the requirement?

No. A source would be obligated by the district's regulation to use the specific compliance certification form. The permit need only contain the requirement to submit a compliance certification.

4. How will EPA handle enforcement before/after an application is submitted?

EPA encourages sources to identify and correct noncompliance as soon as possible. At the time of permit application, sources must submit compliance certifications. EPA guidance on such certifications is contained in a memorandum dated July 3, 1995. The White Paper (Section H) also addresses compliance certification issues. In any case, companies will remain subject to enforcement actions for any past noncompliance.

Monitoring

1. What is the status of the enhanced monitoring rule? Are the draft enhanced monitoring protocols on the OAQPS TTN still under consideration?

EPA is working on a new approach to enhanced monitoring, known as "Compliance Assurance Monitoring" (CAM). EPA made public a draft CAM rule on September 13, 1995 and plans to officially propose a rule in December 1995. Promulgation is expected July 1996. The draft protocols that had been placed on the OAQPS TTN are no longer under consideration for inclusion in the enhanced monitoring program. For more information, contact Martha Larson at (415) 744-1238 or Steven Frey at (415) 744-1140.

2. Does EPA recommend that periodic monitoring require annual source testing for all sources or other options such as a) require no annual testing; b) require no emissions testing, but require annual and periodic parameter testing; or c) require testing less frequently than annual testing (every 3 years)?

Appropriate monitoring will depend on the units size and applicable requirements. In title V permits that have been issued to date, one approach has been to require annual testing and periodic parameter monitoring for certain sources, and recordkeeping in combination with less frequent testing for other smaller sources.

Alternative Operating Scenarios

1. What is a reasonable number of alternative operating scenarios? Can a "bookend" (i.e., normal and extreme scenario) approach be used?

It is not necessary or practical to contemplate every possible scenario in the application, and not every scenario will require alternative permit terms and conditions. Permitting in the worst case avoids listing many scenarios that would be allowed under the worst scenario. As long as all applicable requirements are met, the permit may rely on the worst case scenario and need not also reflect normal operations. Moreover, alternative operating scenarios are not needed at all if alternative operations do not violate permit terms or conditions or create new applicable requirements. For instance, a source subject to an emission rate limit may operate at varying capacities as long as the rate is not exceeded.

2. How should start-up operations be incorporated into part 70 operating permits? For example, if a source uses diesel fuel during start-up operations only, and the source expects to go through start-up a few times a year, how should the permit address the diesel fuel use?

The permit may provide terms and conditions, including emission and time limits, for start-up operations as an alternative operating scenario as long as the alternative operating scenario will not violate any applicable requirements (70.6(a)(9)(iii)). Alternatively, if start-up operations are infrequent and short in duration, the permit could contain a generic requirement that the source meet all applicable requirements during start-up (White Paper, section II.B.5.). If the use of diesel fuel during start-up is neither addressed nor prohibited by the permit and it does not violate any applicable requirement, then a third option would be to keep start-up operations off-permit.

3. Can new units, not yet located at the source, be incorporated into the permit as alternative operating scenarios?

Yes. Alternative operating scenarios may be used to provide advanced approval of construction or modification subject to new source review. The permitting authority would essentially be approving a construction permit in advance and placing its terms within the operating permit. "Advance NSR" must be consistent with the District's existing NSR

regulations. For further discussion, see the August 29, 1994 (59 FR 44472) and August 31, 1995 (60 FR 45544) proposed revisions to part 70.

4. What level of detail is needed for alternative operating scenarios?

The terms and conditions of each alternative operating scenario must be sufficient to ensure compliance with all applicable requirements and part 70. Alternative operating scenarios are subject to the same information requirements as the primary operating scenario. See section 70.5(c) for permit application requirements.

SIP

1. How should permit conditions be written where the SIP differs from current district rules?

The California title V task force is currently developing a solution to this problem. One option would be to list the SIP requirements in the federally enforceable portion of the permit and the District version of the requirements in the district-only portion of the permit. The permit would then need to contain a sunset provision stating that the district requirements will supersede the outdated SIP requirements once the District's new rules are approved into the SIP. This issue is discussed in more detail in Section II.B.6. of the July 10, 1995 White Paper.

NSR/PSD

1. If an ATC is issued under a district NSR rule that has not been SIP-approved (but earlier version(s) of the rule have been approved into the SIP), are the conditions of the ATC federally enforceable?

If a district has an NSR rule approved into the SIP, ATCs issued under more recent versions of the NSR rule are federally enforceable even if the more recent versions have not been approved into the SIP. However this federal enforceability is not equivalent to EPA approval of NSR determinations made under the more recent version of the rule. EPA may find these determinations to be deficient, especially if the more recent version of the NSR rule is significantly different from the SIP version.

2. Are permits issued pursuant to a deficient, but SIP-approved, NSR program, federally enforceable? Must the terms and conditions of those permits be incorporated into title V permits?

Yes. A few districts may have NSR programs approved into their SIPs that do not fully meet EPA's current NSR requirements. Although an NSR program may not be fully consistent with EPA's requirements, permit conditions issued under the SIP-approved NSR program would still establish federally enforceable requirements. Additionally, if a district has a SIP-approved NSR rule and has adopted revisions to the NSR rule that have not yet been approved into the SIP, permits issued under the revised rule would also establish federally enforceable requirements. Again, while these permits are federally enforceable, if they do not meet the requirements of EPA's NSR guidance, these permits may not be considered to be adequate to establish federally enforceable limits on potential to emit for the purposes of creating synthetic minors.

3. Can a permitting authority combine the processes for new source review and operating permit modifications?

There are two options under the current part 70 to streamline NSR and title V permit revision processes. First, the permitting authority may enhance its new source review process so that it meets the title V requirements. This can be done in either the new source review regulation or the operating permit regulation. Changes subject to the enhanced new source review procedures would satisfy both the requirements of new source review and the part 70 requirements for permit modifications. A second option is to provide for parallel processing. That means that if a source submits its new source review application and application for a title V permit modification at the same time, the permitting authority can process the two actions simultaneously and may even issue a single public notice for both actions. Please note that the revisions to part 70 proposed on August 31, 1995 will greatly streamline the two processes.

NSPS

1. To whom at EPA Region IX should districts direct questions concerning NSPS?

NSPS Delegations -- Cynthia Allen, (415) 744-1189

NSPS Applicability -- Steve Frey, (415) 744-1140
Mark Sims, (415) 744-1136

2. Can NSPS be delegated on a standard-by-standard basis?

Yes.

3. If a NSPS sets a limit for natural gas, does the limit take pipeline quality into account when setting limits and sampling requirements for SO2?

Depending on the subpart, EPA has tried to accommodate this issue in different ways. For Subpart GG, pipeline quality is not taken into account, however, in this case EPA allows delegated agencies to develop alternative schedules for gaseous fuel sampling. Subparts affecting boilers avoid this problem by not setting SO2 standards for units burning gaseous fuels.

4. When determining whether a source is reconstructed for purposes of NSPS applicability, does the source look at total costs (including cost of construction) or equipment costs only; are costs historical or replacement; and must the source include the cost of new control equipment required by any applicable regulations?

In Region IX's experience with NSPS, whenever a source reconstructs, there is an increase in emissions, thus triggering NSPS applicability based on the term "modification." If districts have specific questions regarding reconstruction, they should direct those questions to Steven Frey at (415) 744-1140. In any case, see section 60.15 for a definition of "reconstruction" under NSPS. The cost calculation for reconstruction is limited to the affected facility; costs are in present day dollars; and the calculation should include capital costs (including labor) but not the cost of any required control equipment.

5. Is NSPS applicability similar to MACT standard applicability in that it can apply on an emissions unit, rather than a facility-wide, basis?

Yes. Under the general provisions for NSPS, any stationary source that contains an "affected facility" is subject to NSPS. "Affected facility" is defined as "any apparatus to which a standard is applicable."

6. What is the definition of "modification" under NSPS? Who makes the determination whether a source is modifying or reconstructing?

NSPS terms "modification" and "construction" are defined in 40 CFR section 60.2. 40 CFR section 60.5 states that EPA will make determinations as to whether actions constitute construction, reconstruction, or modification. Sections 60.14 and 60.15 provide additional information on the terms "modification" and "reconstruction." If a district has NSPS delegation for a particular standard, then the district has the authority to determine what constitutes a modification or reconstruction. If the NSPS has not been delegated, districts should consult with Region IX on these determinations. Please note that delegation of a NSPS does not confer authority on a district to make determinations on alternative emission limits or test methods.

Section 112/MACT

1. Is there any document that describes EPA's analysis in developing the section 112 source category list or describes which sources/activities are included in each source category?

EPA has published two documents that may assist districts identify sources covered by individual MACT standards. The first is a July 1992 document entitled, "Documentation for Developing the Initial Source Category List" (EPA-450/3-91-030). This background information document contains a list of the pollutants expected to be emitted from a source category and a general description (one paragraph) of each source category. A second source of information is: "SCC Code Memoranda to Accompany the Guidance Document for Source Classification Codes for MACT Source Categories" (EPA Emission Standards Division, December 30, 1994), a series of memos developed to assign source category codes for use in the MACT database. Each memo describes a MACT source category and any relevant processes covered by that category. Both of these documents are available on the TTN.

2. Is EPA planning to require non-major lead smelters to apply for and obtain title V permits?

Yes. The promulgated lead smelter MACT standard was silent on the permitting issue which means that all sources, non-major and major, must obtain a title V permit. EPA is not planning to defer or exempt non-major lead smelters from title V.

3. If a source is subject to a MACT standard based on its solvent usage, can the source get out of MACT by changing to a solvent that is not regulated by the standard?

Yes. If a source switches to a different solvent not regulated by the standard, then the source would no longer be subject to the MACT standard. However, a source that temporarily switches solvents to delay compliance with the standard could be determined to be circumventing the standard (See Section 112 General Provisions, 40 CFR 63.4(b)), and could be subject to enforcement action.

Note that EPA has a once-in-always-in policy for sources that change their potential emissions but continue to use a solvent regulated by a MACT standard. The source would remain subject to the MACT standard unless the source changes its applicability to the standard prior to the first major compliance date for a promulgated standard. (See May 16, 1995 guidance memorandum entitled, "Potential to Emit for MACT Standards -- Guidance on Timing Issues.")

4. Will EPA develop standard notification forms for MACT standards? How can districts ensure that they receive notifications prior to receiving delegation of the MACT standard?

EPA has developed model notification forms for three MACT standards: chromium electroplating, degreasing, and dry cleaning. The notification forms are based on the requirements of the section 112 general provisions. EPA developed forms for the above three MACT standards because they apply to numerous small businesses. The forms are intended to assist such businesses interpret the notification requirements of the general provisions. EPA does not believe that it is necessary to provide forms for each MACT standard. Districts may modify existing notification forms for future MACT standards, including adding a requirement to send such forms to the district.

5. What is the status of litigation regarding the inclusion of HAP fugitives in applicability determinations?

On July 21, 1995, the D.C. Circuit Court of Appeals issued a decision in EPA's favor which maintains the status quo in the section 112 general provisions and requires that sources

count HAP fugitives in applicability determinations. EPA will not have to do a separate section 302(j) rulemaking.

Temporary/Portable Sources

1. If a portable source operates in multiple districts/states, how should it be permitted?

Portable unit is major -- Portable sources that are of themselves major sources are required to obtain title V operating permits. A portable source could rely on a single title V permit issued by its "home" district or state. That permit could be used in any other area as long as the permit assures compliance with all applicable requirements in the "host" district and the host district agrees to accept and can enforce the outside permit. Another way to permit portable sources is with general permits. If the district has issued a general permit that covers the portable unit, then the portable unit would not need to obtain a separate operating permit in that district.

Major source visited by portable unit -- Portable sources that are not by themselves major but operate at major facilities should be incorporated into the host facility's title V permit. Depending on the applicability of requirements, duration of operation, and content of the host facility's permit, the portable source may be considered to be a temporary source and be able to operate off-permit if it would not violate any applicable requirements. (See Implementation White Paper, II.B.5, "Short Term Activities.")

Miscellaneous

1. How are the terms start-up and shut-down defined? Are the terms ever defined in terms of time? Should the definitions of start-up and shut-down be included in the permit?

The terms "start-up" and "shut-down" are defined in various regulations where the terms are applicable. While time is usually a factor, definitions do vary. Permits should contain or reference the definitions of "start-up" and "shut-down" if the underlying applicable requirement regulates or exempts start-up or shut-down activities.

2. Are mobile sources that are permanently located at stationary sources subject to title V?

Mobile source emissions, such as tailpipe emissions from automobiles, are regulated under title II of the Clean Air Act and are therefore not subject to title V. However, emissions from vessels that are servicing or associated with an outer continental shelf facility are treated as part of the stationary source. Portable stationary sources are also subject to title V.

3. Are there any special circumstances that would allow the permitting authority to extend the time frame for permit issuance (e.g., the source makes a modification at the tail end of the 3-year transition period for permit issuance)?

Part 70 does not allow the permitting authority to extend the permit processing time beyond 18 months, except in the initial 3-year transition period. During the initial transition period, final action must be taken on all permit applications within the 3-year period and one third each year (section 70.4(b)(11)(ii)). If a source's modification cannot be incorporated into the final permit within the given time frames, the permitting authority has discretion to address the change as a permit revision or as a reopening. If the modification is neither addressed nor prohibited by the permit, it can remain off-permit until permit renewal.

4. How are districts' upset/breakdown rules viewed in terms of the title V program?

If a district's upset/breakdown rule has been approved into the SIP, it is an applicable requirement under title V and may continue to apply to SIP requirements as it would in the absence of a title V permit. The rule would not apply to other applicable requirements contained in title V permits.

5. Does the 5-year record retention requirement for districts come from the Clean Air Act or part 70? Does EPA have any intention to reduce this time?

The 5-year record retention requirement comes from part 70, section 70.8(a)(3), which in turn is based upon the 5-year statute of limitations for civil actions under federal law. EPA has no plans to reduce this time period.