

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

OCT8 1993

Mr. Charles Fryxell
President, California Air Pollution Control
Officers' Association
Mojave Desert Air Quality Management District
15428 Civic Drive, Suite 200
Victorville, California 92392

Dear Mr. Fryxell:

The purpose of this letter is to respond to the issues raised by the California Air Pollution Control officers' Association (CAPCOA) and others concerning the requirements for implementing an operating permits program under the Clean Air Act. These issues were discussed in a September 22, 1993, meeting between EPA Deputy Administrator Robert Sussman and Congressmen Dooley, Thomas, Lehman and Condit and several of their constituents. The issues include: 1) fugitive emissions; 2) permit content and conflicting requirements; 3) limiting potential to emit; 4) permit fees; and 5) the meaning of equivalence under title V of the Clean Air Act.

Fugitive Emissions

CAPCOA has expressed its desire to avoid an approach that may draw farming operations into the permit program as a result of fugitive PM10 emissions. EPA has reached a decision on the treatment of fugitive emissions that is consistent with CAPCOA's recommendation. In brief, fugitive emissions of criteria pollutants need not be counted for applicability purposes for all sources in non-attainment areas. Rather, fugitive emissions of criteria pollutants must be counted in determining applicability only for those source categories set forth in paragraph 2 of the definition of "major source" in EPA's title V regulations at 40 CFR part 70.2. In addition, fugitive emissions of hazardous air pollutants must be counted for all sources in determining whether the source is major under section 112 of the Act.

Permit content and conflicting requirements

CAPCOA questions what applicable requirements a permit must contain when a source is subject to more than one standard for the same pollutant at the same emissions unit. CAPCOA proposes

that the most stringent applicable requirement be included in the permit and other requirements be referenced.

I have enclosed the answer to that question, developed by EPA's operating permits task force, which uses the CAPCOA approach under certain circumstances. In general, permits must contain all emission limits and compliance measures that are set forth in all applicable requirements. However, for cases in which different applicable requirements are expressed in the same form and units of measure, differing only, for example, in the number of the emissions limit, only the most stringent provision must be included in the permit.

Thus, in an example cited in your briefing document for Mary Nichols dated July 28, 1993, the emission limit contained in the new source performance standard (NSPS) could be dropped if and only if the limit resulting from the local agency's determination of best available control technology were expressed in the same units as the NSPS limit. If the NSPS limit were dropped, the permit would still need to reference the NSPS, as you suggest, in order to make the applicability determination clear. We believe this result is a fair compromise between the need to simplify and clarify permits and the need to avoid complex determinations of equivalency during EPA's 45-day review period. With respect to compliance provisions, the same policy applies. If the two compliance provisions differ only in the frequency of monitoring, for example, then the less stringent one may be dropped. In reaching this decision, the EPA is following the policy set forth in the section 112(l) proposed rulemaking, which is available in the May 19, 1993 Federal Register.

In addition to raising the issue of more stringent requirements, you also raise the issue of conflicting requirements. Conflicting requirements would be those that could not both or all be met by the source. For example, a limit expressed in mass of emissions per unit of heat input would not conflict with a limit expressed in rate of emissions. The EPA believes that conflicting requirements occur infrequently. If they do exist, they do so independently of the title V permit program. I suggest that truly conflicting requirements be addressed on a case-by-case basis.

Limiting potential to emit

CAPCOA has indicated that its primary concern with the title V program is the large number of sources that are required to obtain permits based on their potential emissions. Although many of these sources' actual emissions are below the major source

thresholds, they would be required to apply for title V permits because their potential emissions exceed the major source thresholds. CAPCOA has proposed that a prohibitory rule be adopted and approved into each air district's State implementation plan that would provide for the creation of federally-enforceable emission limits, thereby enabling sources to be excluded from the title V program.

We are developing two documents that I hope will provide useful new guidance on limiting potential to emit. The first document will address two new methods of limiting sources' potential to emit outside of the title V permit program. One of these is the extension to hazardous air pollutants (HAPs) of federally-enforceable emission limits created through State operating permit programs that are approved pursuant to the June 28, 1989 Federal Register. Previously, only criteria pollutant emissions were considered eligible for direct limitation through such permits.

The second approach is the one you propose, namely the use of rules to establish emission limits through standardized protocols. The rules would need to require sources to register and report in order to be enforceable, but the application of rules to individual sources would not need to be subject to EPA and public review. That review would, as you suggest, focus on the rules themselves. As you may know from your discussions with Region IX, the most difficult aspect of developing these rules is ensuring that the emission limits they create are enforceable as a practical matter. The document will cite the currently available guidance on enforceability, and look to future, more specific guidance as to how such rules can be made enforceable as a practical matter.

The second document will provide what I believe to be the key piece of specific guidance for California. Entitled "Criteria for a draft model rule for VOC and HAP sources," it will present EPA's current thinking as to what such a rule must contain, including specific recordkeeping and reporting requirements, in order for emissions to be limited through limits on quantities and/or VOC content of materials used. I anticipate that both of these documents will be available for distribution by the end of next week and we will send them to you immediately.

Permit fees

CAPCOA's issue, as expressed in your briefing document, is that a detailed fee demonstration is burdensome, especially for

small agencies, and your recommendation is that EPA provide more flexibility in demonstrating fee adequacy.

As you probably know, I recently reissued guidance on fee schedules (memorandum of August 4, 1993 entitled "Reissuance of Guidance on Agency Review of State Fee Schedules for operating Permits Programs Under Title V," enclosed). That guidance is intended to clarify the requirement in section 502(b)(3) of the Act that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V permits program. The Act also sets forth the presumptive minimum fee, as well as the requirement that fee adequacy be demonstrated if a lesser amount than the presumptive minimum is to be collected.

The EPA recognizes that demonstrating the adequacy of a fee schedule places a burden on permitting authorities. EPA Region IX staff will be happy to assist California agencies in developing these fee demonstrations and my office will be available to help review draft demonstrations. I would also point out that there is considerable flexibility in how fees may be assessed. Finally, I would like to clarify the answer to a question raised at the September 22, 1993 meeting. Fees currently charged to sources that will be title V sources may be included in any demonstration of fee program adequacy, whether this is a detailed demonstration or a demonstration that addresses the presumptive minimum. This assumes that those fees remain in the fee schedule of the title V program and are used to support title V activities.

Equivalence of programs

As I understand it, the subject of overall equivalence of existing California programs with the requirements of title V was discussed at the September 22 meeting. I wish to make clear today the Agency's policy in this regard.

Permit programs must meet the minimum requirements of the Act, as set forth in the implementing regulations at 40 CFR part 70. While section 70.1(c) of these regulations states, "[t]he EPA will approve State program submittals to the extent that they are not inconsistent with the Act and these regulations," the preamble clarifies that "[t]he EPA has no leeway to accept current programs other than to judge them against the criteria for program content specified in section 502(b)." See 57 Federal Register 32265. Thus a weakness in one element compared with the part 70 minimum may not be offset by stringency in another element. For this reason, overall equivalence will not be

granted. Rather, each program, whether new or existing, will be reviewed for its adequacy with respect to 40 CFR part 70.

In conclusion, I am sure you know that interim approval is an option provided by the Act. Interim approval may be granted if a program "substantially meets" the minimum requirements but falls short in some areas. The EPA's policy on interim approval is set forth in my August 2, 1993 memorandum entitled "Interim Title V Program Approvals."

I trust that this letter is responsive to CAPCOA's concerns. My staff and I look forward to working with you during the coming months on approaches to limiting potential to emit. Please contact Kirt Cox of my staff at 919/541-5399 or Debbie Jordan of Region IX at 415/744-1253 should you have further questions.

Sincerely,

John S. Seitz
Director
Office of Air Quality Planning
and Standards

Enclosure

cc: James Boyd, California Air Resources Board
David Crow, San Joaquin Valley Unified AQMD
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