

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK NC 27711

November 7, 1995

Mr. William Becker
Executive Director
STAPPA/ALAPCO
444 North Capitol Street, NW
Suite 307
Washington, D.C. 20001

Dear Bill:

This letter is to recognize the achievements to date of State and local agencies in their efforts to implement the Clean Air Act's (Act) title V operating permits program and to encourage further progress toward achieving the goals of the Act for this program in a streamlined and efficient manner. I solicit your help by asking that you distribute this letter to State and local air directors through your customary mechanism of communicating with your member agencies.

As of October 30, we have received submittals from all of the expected 116 State and local part 70 programs. Ninety of these programs have been approved or proposed for approval. We regard this as significant progress considering the complexity of the task and appreciate the extensive efforts these agencies have made. We strongly encourage agencies to take any further steps needed for program approval as soon as possible.

The Environmental Protection Agency (EPA) shares with you and your member agencies the belief that title V should be implemented by State and local agencies rather than EPA and that effective implementation of the permits program will result in substantial benefits. We believe the consolidation of air pollution control requirements in one permit will aid industry, regulators, and the public in understanding each source's control obligations. That understanding should help each source ensure compliance with those obligations. In addition, by affording certainty to sources as to the requirements that apply to them and their compliance status, permits will aid in avoiding subsequent confusion and unnecessary litigation. Permits also create the opportunity for development of flexible plantwide caps and securing advance approval for construction of new units and modifications, thereby providing operational flexibility and avoiding delays.

The EPA expects that two items recently developed in close partnership with State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials (STAPPA/ALAPCO) will significantly streamline the implementation of title V and promote efficiency for both implementing agencies and the regulated community. These two items are the July 10, 1995 policy paper (referred to as the "White Paper") on streamlining the content of part 70 operating permits applications and the August 31, 1995 supplemental proposal to revise part 70 (primarily with respect to permit revision procedures). Before discussing each, I would like to recognize the many helpful contributions to these important efforts that came from State and local agencies led by Jon Trout of Louisville, Kentucky, and Bob Hodanbosi of Ohio, chairs of the ALAPCO and STAPPA Permit Committees, respectively.

White Paper

Many in the regulated community, concerned with certification requirements, application completeness, and the perceived possibility of second-guessing by EPA, have interpreted part 70 requirements in an overly stringent manner and have initiated resource intensive information collection activities as part of their permit application preparation. The July 10, 1995 White Paper is intended to eliminate unintended application costs by clarifying the minimum information permit applications must contain under part 70.

The potentially large cost savings from proper interpretation of part 70 requirements will only be realized to the extent the White Paper is implemented. Unfortunately, several industry representatives have recently claimed that some States have chosen not to implement the principles in the paper. In addition, some permitting authorities indicate that while the White Paper principles are reasonable, implementation is not possible either because its issuance was too late (i.e., most applications are already prepared and/or submitted) or because the principles are prohibited by their approved part 70 program.

As a general matter, EPA expects permitting authorities to utilize the principles of the White Paper to the maximum extent possible and to make policy interpretations consistent with the White Paper if allowed by the approved part 70 program. Where the permitting authority is or will be actively implementing the White Paper, a statement issued by the permitting authority would be useful to affirm that sources need not submit additional and costly information unless the permitting authority specifically requests it to resolve an issue or to implement a fee schedule. Even where applications have already been submitted, certain

aspects of the White Paper (e.g., those related to streamlining new source review (NSR) requirements and writing generic permit conditions to address generally applicable requirements) can be carried out as permits are drafted and issued. The EPA believes that there are very few, if any, instances where approved part 70 programs would prohibit implementation of the key elements of the White Paper.

High program costs, particularly those which can be avoided, jeopardize implementation of the part 70 program. The program is currently being characterized by some as unreasonably burdensome and costly. The EPA believes that implementation of the White Paper can reduce unnecessary cost burdens perceived to be associated with the program and allow the program benefits to be realized. Consequently, EPA strongly encourages immediate implementation of the principles in the White Paper by all agencies.

Supplemental Part 70 Revisions Proposal

On August 31, the EPA published in the Federal Register a supplemental proposal notice which builds on existing State and local programs to provide a more streamlined system for revising operating permits. The new approach would provide considerable flexibility to State and local agencies in processing the majority of permit revisions. As explained in the August 1995 notice, the proposed permit revision system would build upon existing State permit programs such that most changes at part 70 sources would undergo only one round of permitting review at the end of which the part 70 permit would be revised.

Many State and local agencies have expressed interest in implementing such a system as soon as possible in light of its anticipated benefits. The EPA believes that the current part 70 rule allows States to take advantage of the streamlining effects of the proposed permit revision procedures to the extent changes would be covered by an existing NSR program. Specifically, States may enhance their current review of new and modified sources to meet the procedural requirements of part 70. Under current part 70, changes which undergo such a merged process can be administratively incorporated into a part 70 permit.

With respect to major NSR, merging the procedures of the two reviews should be easily accomplished, since the regulations governing major NSR programs already provide for the public notice and comment opportunities required for significant permit modifications under Part 70. States would have to supplement their major NSR procedures with notification of affected States where applicable and with an EPA objection opportunity. The Agency intends to follow the approach set forth in the August 1995 proposal of raising objections to reasonably apparent defects only during the State preconstruction review process so

that the permitting authority can address any EPA concerns before it issues the permit revision.

With respect to minor NSR, the August 1995 proposal would grant States broad discretion to fashion permit revision procedures that match the amount and timing of public participation to the environmental significance of the change. The Agency's interpretation of title I modifications set forth in the August 1995 proposal provides that title I modifications do not include requirements that apply to minor new or modified units under a State preconstruction program. The EPA's view is that this interpretation applies to the current part 70 rule as well as to the supplemental proposal. In implementing the current rule, therefore, States may incorporate requirements from minor NSR actions into the title V permit using the minor permit modification process of the current rule; Or, if a State merges its minor NSR and title V permit processes, it may administratively incorporate the minor NSR requirements into the title V permit. The merged process would provide at least the same level of review as required under the minor permit modification process (i.e., no review by the public or neighboring States).

The current rule's minor permit modification procedures do include an opportunity for EPA objection. However, as a general matter, EPA does not intend to review changes that are processed pursuant to the minor permit modification track unless petitioned to do so by a citizen. The EPA intends to focus its efforts on working with States to resolve the many implementation issues that are certain to arise in the early years of the program rather than on direct review of permit revisions. The Agency will generally rely on audits of State programs to provide any necessary oversight.

Many of the part 70 programs that EPA has approved or proposed to approve do not specifically provide for enhanced NSR. The Agency does not believe, however, that a part 70 program must uniformly require enhanced NSR before changes that undergo a merged process can be administratively incorporated into a part 70 permit. Rather, NSR can be enhanced for an individual permitting action at the option of the permitting authority, unless this result would be expressly precluded by the State's part 70 regulation.

The EPA appreciates the huge investment and initial progress State and local agencies have made in implementing title V. We believe that additional issues and opportunities to streamline the program will continue to arise and welcome the opportunity to work with you and your member agencies to define the appropriate response.

Questions or comments should be submitted to the following individuals:

The White Paper

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Jeff Herring (919) 541-3195

The Supplemental Proposal

Raymond Vogel (919) 541-3153

Roger Powell (919) 541-5331

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I hope this explanation of the White Paper and supplemental proposal is useful to your members.

Sincerely,

Lydia N. Wegman
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and Standards