

MEMORANDUM

SUBJECT: Update to Sanctions Policy for State Title V Operating Permits Programs

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

TO: See Addressees

The EPA has received inquiries regarding the extent to which the views discussed in my March 15, 1994 memorandum entitled "Sanctions Policy for State Title V Operating Permits Programs" continue to reflect EPA's current policy for applying sanctions under title V of the Clean Air Act. This memorandum updates that memorandum and clarifies EPA's policy.

The EPA expects to publish a notice of proposed rulemaking in the very near future selecting the order of sanctions to be applied under title V. While the rulemaking will establish definitively how title V sanctions will apply, EPA believes it is necessary in the interim to update the positions discussed in my March 15, 1994 memorandum, so that EPA Regions are informed as to the Agency's most recent thinking with respect to how the sanctions process should work under title V. Under today's clarified policy, the sanctions policy under title V would largely follow the approach under title I of the Act (see 59 FR 39832 (August 4, 1994), to be codified at 40 CFR 52.31), except where title V would require a different result. This memorandum describes four policy clarifications: (1) the sanctions clock for failure to submit a title V program does not stop until EPA finds a submittal complete; (2) following program disapprovals, the application of sanctions would be deferred if EPA proposed approval and issued an interim final determination that the State had corrected the deficiency before the 18-month clock expired; (3) for areas that fail to submit partial programs, EPA will apply sanctions in areas that had failed to submit "complete" programs, rather than "approvable" programs; and (4) the application of the highway sanction is limited to designated nonattainment areas.

### Sanctions for Failure to Submit

In finalizing the title I sanctions rule, EPA provided that in order to avoid the duty to apply sanctions following a finding of a State's failure to submit a SIP, EPA must affirmatively determine that the State had corrected the deficiency and find the SIP submission complete before the sanctions clock expires. Under title V, EPA would follow this same approach, and today's memorandum clarifies this by providing that in order to avoid application of sanctions for failure to submit a complete operating permit program, EPA would have to find the State's title V submission complete before expiration of the 18-month clock.

### Sanctions for Program Disapproval

In finalizing the title I sanctions rule, EPA provided that while final SIP approval is required to permanently stop a sanctions clock or permanently lift already applied sanctions, the application of sanctions could be deferred or stayed upon EPA proposed approval of a State's SIP and EPA issuance of an interim final determination that the State has corrected the deficiency. Any deferral or stay would elapse upon either a proposed or final reversal of EPA's proposed SIP approval. Under title V, EPA would follow this same approach, and today's memorandum clarifies this by providing that following EPA disapprovals under title V, the application of sanctions would be deferred if EPA proposed approval of the State's program and issued an interim final determination that the State had corrected the deficiency before the 18-month clock expired, and already applied sanctions would be stayed upon such action. Also, the deferral or stay would elapse if EPA's proposed approval is subsequently reversed by a proposed or final disapproval. This approach would apply both in situations following disapprovals of initial State programs and in situations following disapprovals of corrective programs, such as a corrective program submitted to cure deficiencies in a program that had received interim approval. Consistent with the final title I sanctions rule, this approach would also be used following EPA determinations that a State was not adequately administering and enforcing its approved program.

### Partial Approvals

The March 15, 1994 memorandum contained a discussion of the application of sanctions in situations where EPA had granted geographically limited partial approval to programs within a State. That discussion included an unintended mistaken statement that where a State program consists of an aggregate of partial programs and one or more of the partial programs fails to be

submitted, EPA would apply sanctions only in the areas that had failed to submit an "approvable" program. However, to be consistent with the rest of the Agency's policy regarding the starting and stopping of sanctions clocks following a State's failure to submit, the memorandum should have provided that EPA would apply sanctions only in the areas that had failed to submit complete programs, rather than "approvable" ones.

The EPA did not intend for the March 15, 1994 memorandum to appear to set a higher threshold for avoiding sanctions when an area within a State fails to submit its partial program. Today's memorandum clarifies that in order to avoid application of sanctions for an area's failure to submit a partial program, EPA would only have to find the area's subsequent submission complete. If EPA disapproved an area's partial program, however, in order to avoid application of sanctions, EPA would have to propose approval of the area's submission and issue an interim final determination that the area had corrected the deficiency, as discussed above.

#### Scope of Application of Sanctions

The March 15, 1994 memorandum indicated that in States without designated nonattainment areas, the Federal highway fund sanction of CAA section 179(b)(1) would apply. However, as explained in the final title I sanctions rule, EPA believes that the applicability of the highway sanction under section 179(a) is limited to nonattainment areas, since section 179(b)(1) defines the highway sanction as being "applicable to a nonattainment area." The EPA believes that under title V, the highway sanction could also be applied only in nonattainment areas. This is because title V provides that section 179(b) sanctions applied for title V failures shall be applied in the same manner and subject to the same conditions as sanctions applied under section 179(a). States without designated nonattainment areas would thus not be at risk of becoming subject to section 179(b) sanctions under title V. This approach may appear at odds with the provisions in title V requiring EPA to apply sanctions following title V failures. Nevertheless, EPA believes a straightforward reading of the language of the Act compels this result. Moreover, title V failures in States without nonattainment areas would not go unaddressed as a result of this approach, as EPA would be required to administer and enforce a Federal title V program in any State that did not receive program approval or that failed to implement its approved program.

I hope that this updated and clarified guidance will be useful in assessing how sanctions would be applied under title V. If you have any questions, please contact Scott Voorhees,

Operating Permits Group, at (919) 541-5348, or Mike Thrift,  
Office of General Counsel, at (202) 260-7709.

Addressees:

Director, Air Management Division, Region I

Director, Air and Waste Management Division, Region II

Director, Air, Radiation, and Toxics Division, Region III

Director, Air, Pesticides, and Toxics Management Division,  
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Director, Air and Radiation Division, Region V

Director, Air, Pesticides, and Toxics Division, Region VI

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