

May 20, 1998

MEMORANDUM

SUBJECT: Title V Program Costs under the Federal Operating Permits Program

FROM: Steven J. Hitte, Chief /s/  
Operating Permits Group (MD-12)

TO: Air Program Manager, Regions I-X

On July 1, 1996, EPA published the final regulation for the Federal Operating Permits Program (61 FR 34202). That regulation, codified at 40 CFR part 71, requires that owners or operators of part 71 sources pay fees sufficient to cover the Agency's "permit program costs." Such costs should include, at a minimum, the costs of the activities listed at 40 CFR 71.9(b). The purpose of this memorandum is to provide guidance on the principles that Regions should follow in determining what expenses should be considered program costs for purposes of the part 71 program. In addition to covering the costs of administering a full part 71 program for a State, local District, U.S. Territory, or a portion of Indian Country, program costs would also include the costs of issuing individual part 71 permits to Outer Continental Shelf sources and sources which the State has failed to permit, or where the State has failed to respond appropriately to an EPA objection to a part 70 permit or to EPA's notice to reopen a part 70 permit. The discussion that follows focuses mainly on the tracking of costs associated with implementing a full part 71 program, since a full program will have a number of different types of activities associated with it. For those cases where part 71 is being implemented through issuance of single permits, it is assumed that the Region will track the subset of part 71 program activities that are relevant to single permits.

The tracking of the costs of administering the part 71 program is an essential aspect of part 71 implementation. Section 71.9(n)(2) states that "part 71 permit program costs and fees will be reviewed by the Administrator at least every 2 years, and changes will be made to the fee schedule as necessary to reflect permit program costs." In order for the Agency to review part 71 administration costs, and make any necessary adjustments to the fees charged to sources, it will be critical to have an accurate record of the time and resources used by each Region. This information will be needed for adjusting fees, and it will also be important information should any party challenge the amount of the part 71 fee, or it may be needed to reply to any

Congressional inquiries. Finally, the Agency needs records of expenses incurred should the part 71 program be audited at some future date.

On August 4, 1993, OAQPS issued a memorandum entitled “Reissuance of Guidance on Agency Review of State Fee Schedules for Operating Permits Programs Under Title V” under the signature of John Seitz that addressed the Agency’s approach to reviewing State fee schedules for operating permits programs under 40 CFR part 70. The vast majority of activities identified in that guidance as activities EPA expects States to fund using part 70 permit fees are also to be considered by Regional Offices as activities that should be covered by part 71 fees. The bulk of the part 71 program costs will be personnel costs for those staff who are administering or supporting the program. Activities and expenses to be covered with part 71 fees include the following items grouped into eight subjects.<sup>1</sup>

### **1. Part 70↔part 71 program transition**

- a. Permit and/or program transition from part 70 to part 71 and vice versa (e.g., FR notices, general information transfer from State governments to EPA and vice versa)

### **2. Source universe**

- a. Identifying the source populations
  - i. Making title V applicability determinations
  - ii. Identifying sources on the Outer Continental Shelf, sources in U.S. Territories, and sources within Indian Country or areas for which EPA believes the Indian country status is in question, as applicable
- b. Notifying the public and sources of the effective date and requirements of part 71 programs
- c. Notifying sources of requirements to submit applications

### **3. Review of permit applications**

- a. Making completeness determinations
- b. Reviewing technical content

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<sup>1</sup>This list, while describing the types of activities considered to be part 71 permitting activities, is not meant to suggest that each separate activity needs to be reported to Headquarters. See attached spreadsheet for an example of how activities can be aggregated for reporting purposes.

4. **Permit writing**

- a. Developing and preparing general and source-specific permits

5. **Permit review**

- a. Providing draft permits for review by the public, sources, Tribes and affected States
- b. Notifying the public of each permit
- c. Responding to comments
- d. Responding to legal challenges to issued permits
- e. Reopening permits

6. **Permit fees/funding**

- a. Administering permit fee program

7. **Delegation of part 71 programs**

- a. Reviewing requests for delegation in light of delegation criteria
- b. Coordinating and communicating with State, local, or Tribal government
- c. Preparing delegation agreements, including descriptions of responsibilities for all parties
- d. Overseeing delegation implementation
- e. Publishing notices of delegation
- f. Overseeing and managing contractor assistance, as needed, including contract oversight

8. **Other activities**

- a. Implementing RACT and BACT determinations if they are referenced in part 71 permits
- b. Implementing and enforcing PSD and nonattainment NSR permits referenced in part 71 permits

- c. Implementing sections 111, 112, 129, and other applicable requirements through part 71 permits
- d. Making determinations pursuant to sections 112(g) and 112(j) of the Act through part 71 permits
- e. Conducting compliance and enforcement related activities at part 71 sources to the extent that these activities occur prior to the filing of an administrative or judicial complaint or order
- f. Carrying out Small Business Assistance Program activities

Along with the staff salaries (using GS equivalents for staff who are not in the GS pay system), include some apportioned estimate of fringe benefits such as health insurance, pension funds, and annual and sick leave as program activities. Regions should also compute the direct costs of administration and technical support for the program including, for example, managerial costs, travel costs secretarial/clerical costs, labor costs, copying costs, contracted services, and accounting and billing. Such administrative and technical support cost accounting need not be done for each staff person separately, but instead could be calculated on an overall basis using an accepted apportionment formula. The Regions should also track indirect overhead costs such as heating and cooling, electricity, phone, supplies, and computer usage when it is devoted to part 71 implementation, portions of secretarial and managerial overhead, rent, and janitorial services, and indirect overhead costs related to the part 71 program infrastructure such as staff training, data and tracking system. Given the wide variation in the cost of utilities, rent, and other overhead, each Region should calculate this figure separately, rather than relying on one nationwide estimate. If available, the Regions are free to use standardized overhead percentage rates for each Region's particular circumstances as defined by the General Services Administration or EPA, or to use rates already available in the Region for other media programs, such as Superfund. The choice of method to calculate indirect overhead does not need to be justified to Headquarters, but documentation of that method should be kept on file in the Regional Office.

It is worth highlighting that Regional Offices need not include any program costs incurred prior to the effective date<sup>2</sup> of the program in computing part 71 program costs. As stated in the preamble to the final rule, guidance issued prior to the program effective date is not covered by

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<sup>2</sup>The program effective date for Outer Continental Shelf sources and sources in U.S. Territories that are subject to part 71 is July 31, 1996. The program effective date for part 71 programs in Indian Country is 30 days following publication of the Indian Country part 71 rulemaking. The effective date for part 71 programs in States where the interim approval has expired is the date of the expiration of that interim approval [§71.4(a)(2)]. See § 71.4(c) for an explanation of the effective date of part 71 programs imposed due to inadequate implementation of part 70. For single part 71 permits issued because the part 70 permitting authority has failed to revise and submit a proposed permit in response to EPA's objection, the Regional office should begin calculating costs as of 91 days after the date of EPA's objection.

fees. Section 71.9 was finalized to delete the part 70 corollary language -- “preparing generally applicable guidance regarding the program or its implementation and enforcement.” Part of the rationale for this deletion was that these activities are similar to rule development costs that EPA traditionally does not pass on to States. The costs of developing generally applicable guidance are considered to be inherently governmental functions. The EPA also believes that costs incurred by the Regions prior to the rule’s effective date are relatively small and would not significantly affect the fee amount.

To the extent that there are revisions made to part 71 permits, the Regional Offices should track the expenses incurred in revising part 71 permits in their computation of program costs, but identify them separately from other program costs. The EPA adopted a two-phased approach to part 71 fee requirements, consistent with the Agency’s two-phased approach to part 71 promulgation. Part 71 program costs associated with permit revisions were excluded from the Phase I rulemaking because the Phase II rulemaking will include streamlined revision procedures that will differ substantially from those contained in the current rule (and will presumably be less costly to implement). Although the current part 71 fee does not cover permit revisions, EPA needs to track permit revision costs under the current rule because that information will be relevant for estimating the costs of the streamlined permit revision procedures. The Phase II rulemaking will be completed after EPA finalizes its proposed revisions to part 70 and EPA will add costs for the new permit revision procedures to the part 71 fee as part of the Phase II rulemaking.

Attached to this memo is a Lotus® spreadsheet which lays out the data elements and format that should be used in reporting Regional data to Headquarters on a semi-annual basis. Reporting data every six months means that there will be several reports available when reviewing the presumptive fee for its adequacy<sup>3</sup>. Scott Voorhees of my staff will be the contact person for receipt of the semi-annual reports. If financial management personnel in your Region are involved in the part 71 implementation process, please forward a copy of this memorandum to them. If you have questions about this guidance or would like further information on the tracking of title V program costs, please contact Scott at (919) 541-5348 or me at (919) 541-0886.

Attachment

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<sup>3</sup>In order to prevent confusion, the six month reporting cycle and the two year fee adequacy review period in all cases begin on the program effective date for part 71 programs in Indian Country (defined in footnote 2). If your Region incurred part 71 costs prior to this date [i.e., permits for Outer Continental Shelf and Territorial sources, denied part 70 permits/reissued part 71 permits, uncorrected part 70 permit objections, and the other scenarios described in section 71.4(e)], please report those costs separately from costs incurred during the first six month reporting cycle.

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