

September 20, 1994

MEMORANDUM

SUBJECT: The Radionuclide National Emission Standard for Hazardous Air Pollutants (NESHAP) and the Title V Operating Permits Program

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TO: Director, Air, Pesticides and Toxics
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Region II
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Title V of the Act, and implementing regulations at 40 CFR part 70, require that States develop operating permits programs meeting various criteria. One important aspect of State program adequacy is the ability to issue permits that assure compliance with all requirements of the Act applicable to the permitted sources. These applicable requirements include the radionuclide NESHAP, promulgated at 40 CFR part 61.

The EPA and certain other Federal agencies have traditionally played the primary role in implementing requirements applying to sources of radiation. As a result, very few States have yet developed the technical expertise to independently implement these requirements. This situation has prompted concern regarding the approvability of submitted State

part 70 programs. The purpose of this guidance memorandum, and

its attachments, is to describe the relevant criteria for an approvable part 70 program with respect to the radionuclide NESHAP. Under this policy, a part 70 program submittal would be judged as meeting the requirements of part 70 if the State has demonstrated that it has adequate statutory authority to issue title V permits that assure compliance with these NESHAP, and the State implements this authority through the timely issuance of adequate permits.

The EPA recommends that States, in conjunction with the appropriate EPA Regional Office, develop State-EPA implementation agreements outlining the types of program development support they may need to be able to issue permits that assure compliance with the radionuclide program if they are not able to do so at the present time.

This guidance focuses on the radionuclide NESHAP because of special considerations regarding the traditional role of the Federal government in implementing these programs, the need for enhancing State technical expertise, and the potential for EPA support. The basic regulatory precepts discussed in this guidance are, however, consistent with the principles set forth in the April 13, 1993 memorandum from John Seitz, entitled "Title V Program Approval Criteria for Section 112 Activities." Please refer to that guidance for background information on the interface between the NESHAP and title V.

States are authorized under section 112(1) of the Act to submit programs to EPA for the implementation and enforcement of hazardous air pollutant requirements, including radionuclides. For guidance regarding approval of State programs for implementing the radionuclide NESHAP under section 112(1), refer to the enabling guidance document for the implementation of 40 CFR part 63, subpart E. The EPA strongly encourages States to obtain delegation of all NESHAP, including the radionuclide NESHAP.

On a related but separate matter, EPA has received questions from States regarding whether EPA expects that all State radionuclide program activities are to be carried out by the air program. The EPA wishes to clarify that States would be free to use whichever combination of their personnel they feel is appropriate for performing these duties. Such joint efforts would have to be sufficiently described so that EPA and the public can understand how the job will be done. Some States have suggested that an intragovernmental agreement would be a useful mechanism for managing this activity. Attachment II is included

as an example of the type of agreement which could be drafted by State agencies to outline their respective obligations. Use of this document by a State would be optional.

The policies set out in this guidance document are intended solely as guidance and do not represent final Agency action and are not ripe for judicial review. They are not intended, nor can they be relied upon, to create any rights enforceable by any party in litigation with the United States. The EPA officials may decide to follow the guidance provided in this guidance document, or to act at variance with the guidance, based on an analysis of specific circumstances. The EPA also may change this guidance at any time without public notice.

For further information, please contact Joanna Swanson at (919) 541-5282 or Kirt Cox at (919) 541-5399 regarding State permit program approval issues, Jackie Dziuban at (202) 233-9474 regarding radiation program issues, and JoAnn Heiman at (913) 551-7323 regarding State/EPA Regional Office implementation agreements.

Attachments

cc: Air Branch Chief, Regions I-X
Radiation Program Manager, Regions I-X
Operating Permits Contacts, Regions I-X and Headquarters

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ATTACHMENT I

THE RADIONUCLIDE NATIONAL EMISSION STANDARD FOR HAZARDOUS AIR POLLUTANTS (NESHAP) AND APPROVAL OF TITLE V PROGRAMS

I. BACKGROUND

The operating permits program under title V of the Clean Air Act (Act) and the Environmental Protection Agency's (EPA's) implementing regulations promulgated at 40 CFR part 70 provide that the permit constitutes a comprehensive statement of all of the source's obligations under the Act. This comprehensive approach to addressing all of a source's air quality obligations in one document is an important benefit provided by the title V permitting program to industry, the public, and regulatory agencies.

In order to have a fully-approvable part 70 program, the permitting authority must be able to incorporate all applicable requirements into the title V permit at the time of issuance. Part 70 requires that the permitting authority have the statutory authority to issue permits that assure compliance with the NESHAP through permits, and that it take the necessary steps to assure timely implementation of the permit program. As described below, these efforts will likely include working with EPA in the implementation of these part 70 permits and the development of independent program expertise.

In the initial years of the permit program, EPA would supplement State technical expertise, within available resources, in order to support drafting and implementation of these permits. The specific terms and duration of this support in drafting and implementing the permits are subject to negotiation between the individual States and EPA Regional Offices. Furthermore, EPA would, within available resources, provide training to States to support their development of technical expertise. The EPA suggests that States and EPA Regional Offices discuss the terms of this ongoing working relationship and embody their agreements into EPA-State implementation agreements.

Some individuals have inquired whether this effort is necessary because, with few exceptions, part 70 provides States with initial discretion to defer permitting of part 70 sources that are not major. Because there is not yet a definition of "major" for radionuclide sources, no source would be a major section 112 source solely due to its radionuclide emissions. It should be noted, however, that some of the units subject to a radionuclide NESHAP are part of a source that is major for other reasons, such as for sulfur dioxide emissions from an industrial

boiler. In such a case, the entire source would need to obtain a permit, and that permit would be required to address all applicable requirements of the Act to which the source is subject, including the radionuclide NESHAP (see 40 CFR part 61,

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subparts B, H, I, K, Q, R, T and W). Thus, although more sources could be subject to permitting for radionuclides if there were currently a major source definition with respect to radionuclides, some radionuclide sources will fall within the bounds of title V applicability even without such a definition.

II. TITLE V PROGRAM APPROVAL

Section 112 authorizes EPA to delegate section 112 authorities to States. Only States seeking to implement and enforce some provisions of their own air toxics programs, in lieu of rules resulting from the Federal program under section 112, are required to obtain standard-specific approval for such substitution under 40 CFR part 63. In order to receive title V permit program approval, State programs would have to provide that State-issued title V permits would incorporate the radionuclide NESHAP without any changes unless EPA has approved a different but equivalent State rule under section 112(1). If a State's radionuclide NESHAP program has been approved under section 112(1), the State permit need only assure compliance with the approved State NESHAP program, and not the Federal standards. For guidance regarding approval of State programs for the implementation of the radionuclide NESHAP under section 112(1), refer to the enabling guidance document for the implementation of 40 CFR part 63, subpart E.

The Act requires permitting authorities to obtain the legal authority to issue permits that assure compliance with the radionuclide NESHAP for title V program approval. There must be no limitations in State statutory authority that would prevent adequate implementation of the part 70 program with respect to radionuclide NESHAP applicable requirements. It can generally be assumed that State enabling legislation is adequate for this purpose unless there is some express limitation on this authority.

For the purposes of the radionuclide NESHAP, a submitted State part 70 program would be considered adequate if it provides for the permitting authority to issue and implement comprehensive title V permits in a timely fashion. Timely permit issuance requires that within 3 years from the effective date of the title V program, the permitting authority must have taken final action on all initial part 70 permit applications, including

those from sources subject to the radionuclide NESHAP. This period provides States with some flexibility in the scheduling of these program efforts. During this period, States should be able to hire and train radiation personnel and to obtain the needed radionuclide expertise by way of cooperative efforts with EPA, or a State agency, or through assistance of an independent contractor. Furthermore, the permitting authority could also request approval of a State radionuclide NESHAP program under section 112(1) during the first 2 years after the effective

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date of a part 70 program and be ready to take final action on any permit requiring radionuclide NESHAP conditions by the final year of the transition period.

Because of the technical challenges posed by the radionuclide NESHAP, EPA would provide support within available resources to those State and local agencies who need assistance during the initial years of program implementation. To more clearly identify the scope of the technical support needs, EPA recommends that an EPA-State implementation agreement between the permitting authority and EPA Regional Office be developed which outlines the timing and level of assistance necessary for meeting this goal. The agreement would facilitate the appropriate allocation of EPA Regional Office resources available for assisting States in addressing the radionuclide NESHAP.

Developing and implementing a title V program that permits radionuclide sources will undoubtedly require some level of funding. Title V fee provisions were designed to ensure that States receive adequate funding to carry out their new permitting responsibilities. The Act requires permitted sources to pay fees sufficient to cover all reasonable costs required to develop and administer the permit program requirements of title V. Consequently, the Act requires that States must establish fee schedules that address the radionuclide NESHAP-related costs of the permit programs.

III. TYPES OF POSSIBLE EPA ASSISTANCE TO STATES

The EPA recognizes that assuring compliance with the radionuclide NESHAP is a complicated aspect of the activities which States must address under title V. Within available resources, EPA can provide varying levels of assistance to State radionuclide NESHAP phase-in activities. Examples of possible support efforts include: assisting the permitting authority in determining which facilities are subject to the NESHAP regulations, and providing a qualified EPA inspector to accompany a State employee on a radionuclide NESHAP inspection. Should the

inspection result in the initiation of enforcement action, EPA may also provide assistance in this area. The EPA may also provide guidance to States in determining radionuclide emissions and assessing doses to persons residing in the vicinity of facilities. Providing technical assistance and training for implementation of the radionuclide NESHAP and assisting in State program negotiations between air and radiation personnel are other examples of support that EPA may be able to provide.

Summary

In summary, there are two aspects of the radionuclide NESHAP and title V programs that need to be in place for the approval of a part 70 permit program submitted by a State or local agency.

The first requires the permitting authority to demonstrate to EPA that no legal impediment exists to issuing part 70 permits that assure compliance with radionuclide NESHAP. A demonstration that adequately addresses this issue may have already been provided with the submitted title V program and consequently need not be revisited. Second, as required by the Act and the part 70 rule, final action must be taken on all initial part 70 permit applications, including sources subject to the radionuclide NESHAP, within 3 years from the effective date of the program.

Because of the traditional role that the Federal government has played in implementing radionuclide programs, EPA would provide technical assistance within available resources to State and local permitting authorities to develop independent State and local radionuclide NESHAP programs. The EPA recommends that the permitting authority develop an EPA-State implementation agreement in cooperation with the EPA Regional Office, which memorializes the sequence of events needed for the permitting authority to develop a self-sufficient radionuclide NESHAP program.

ATTACHMENT II

State officials have asked whether the Environmental Protection Agency (EPA) expects that all State radionuclide program activities must be carried out by the air program. The EPA wishes to clarify this issue by reporting that the States would be free to use whichever combination of their personnel they feel is appropriate for performing these duties. Efforts involving more than one State agency would have to be sufficiently described so that EPA and the public can understand how the job will be done.

Some States have suggested that an intragovernmental agreement (IGA) would be a useful mechanism for managing this activity and demonstrating its efficacy to the public. Thus, the following model, which describes one State's plan for IGA coordination, is included as an example of the type of agreement which could be drafted by State agencies to outline the respective obligations of the various State agencies. Use of this model agreement by a State is optional.

EXAMPLE ONLY

INTRAGOVERNMENTAL (IGA) AGREEMENT

Between the State Air Pollution Agency
and the
State Department of Health

PURPOSE

This IGA is made and entered into between the State Air Pollution Control Agency (APCA) and the State Department of Health (DH) pursuant to authorities granted within the revised code of the State. The effect of this IGA is to recognize the DH as the lead agency for regulation of radioactive air emissions and the APCA as the lead agency for issuing air quality permits under State law.

BACKGROUND

The DH has the responsibility to regulate sources of radioactive air emissions per State regulation, and APCA has the authority to issue both notice of construction and operating permits for sources of air contaminant emissions under State regulation. All federally-applicable requirements must be included in the operating permits, including all national emission standards for hazardous air pollutants.

RESPECTIVE ROLES AND RESPONSIBILITIES

State Air Pollution Control Agency

1. The APCA will regulate nonradioactive airborne pollutants, issue air operating permits under State regulation, and issue notice of construction permits for nonradioactive airborne pollutants under State regulation for all sources subject to operating permits requirements.
2. The APCA will include all applicable Federal requirements in the operating permit. The APCA will consult with DH to determine the contents of the permit pertaining to radioactive air emissions.
3. The APCA will reimburse DH for all title V costs which are incurred by DH at sources required to obtain a construction or operating permit.

State Department of Health

1. The DH will act as lead agency for issues and questions pertaining to the regulation of site radioactive air emissions. If a facility does not need an operating permit under State regulation but is a potential source of radioactive airborne pollutants, DH will regulate the facility under State regulations.

2. The DH shall submit to APCA for approval a plan for evaluating all Federal facilities not regulated by the Nuclear Regulatory Commission.

3. The DH shall have the principal responsibility for evaluating airborne radionuclide emissions during new and modified source review, providing input for the applicable construction permit.

4. The DH will identify to APCA radionuclide emissions limitations and control technologies it deems appropriate for adoption and incorporation into air operating permits issued by APCA under State and Federal Clean Air Act authorities. When pollutant control technology requirements may effect the safety or effectiveness of both radioactive and nonradioactive emissions, DH and APCA agree to work together to resolve the conflicting requirements.

5. The DH will perform at least one inspection annually for any site that is required to obtain an operating permit. The DH will provide APCA a detailed report summarizing the inspection and any compliance issues that are pertinent to the requirements listed in the operating or construction permit within "X" days of completing inspection.

6. The DH shall evaluate radionuclide air emissions reports submitted by the facilities and provide an evaluation by June 30 of each year.

7. If DH needs assistance in enforcing any requirements DH may request assistance from the U.S. Environmental Protection Agency.

EXAMPLE ONLY