

December 20, 1999

MEMORANDUM

SUBJECT: Third Extension of January 25, 1995 Potential to Emit Transition Policy

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

Eric V. Schaeffer, Director /s/
Office of Regulatory Enforcement (2241A)

TO: See Addresses

This memorandum further extends the U.S. Environmental Protection Agency's (EPA) January 25, 1995 transition policy for temporarily establishing potential to emit (PTE) limits to avoid major source status under Section 112 and Title V of the Clean Air Act. This extension will continue until December 31, 2000, for all state and local air permitting agencies; it may be extended further until June 30, 2001, for those air permitting agencies that demonstrate by June 30, 2000, that an additional six months is necessary to issue limits for sources relying on the policy.

Background

In a January 25, 1995 policy memorandum entitled "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)," EPA announced a transitional policy that provided sources a mechanism to temporarily establish synthetic minor or area source status under Title V and Section 112, respectively. (This memo is available on the Internet at <http://www.epa.gov/region4/air/permits/guidance/ptememo.txt>) This PTE transitional policy was originally designed to remain in effect until January 1997; however, we subsequently issued two extensions of this policy on August 27, 1996, and again on July 10, 1998. (These memos are available on the Internet at <http://www.epa.gov/ttncaaa1/t5/meta/m1470.html> and <http://www.epa.gov/ttncaaa1/t5/meta/m5177.html>, respectively).

The transition policy provides that, for sources lacking federally enforceable limitations, state and local air regulators have the option of treating the following types of sources as non-major in their Title V programs and under section 112:

(1) sources that maintain adequate records to demonstrate that their actual emissions are less than 50 percent of the applicable major source threshold, and have continued to operate at less than 50 percent of the threshold since January 1994, [referred to as the “50 percent provision”] and

(2) sources with actual emissions between 50-100 percent of the threshold, but which hold state-enforceable limits that are enforceable as a practical matter [referred to as the “state-enforceable provision”].

Transition Policy Extension

The PTE transition policy is currently set to expire on December 31, 1999. The state-enforceable provision of the transition policy, which allows a source to rely on a practically enforceable, state-enforceable limit to restrict its PTE, will remain in effect until EPA has completed its rulemaking on the term “potential to emit.”

The 50 percent provision of the transition policy, which allows a source whose actual emissions have been less than 50 percent of applicable major source thresholds since January 1994 to avoid obtaining any enforceable PTE limit, is extended until December 31, 2000. EPA does not see a good reason to tie the 50 percent provision to the promulgation of the PTE rule which deals primarily with whether enforceable limits must be enforceable by the federal government. Nonetheless, because many sources continue to rely on this portion of the transition policy, EPA is extending it one final time to allow these sources time to obtain practically enforceable federal or state limits to avoid major source status. (For specific information on the mechanisms to limit a source’s PTE, please refer to the discussions in the memos referenced above).

EPA will consider extending the 50 percent provision on a case-by-case basis until June 30, 2001, for those air permitting authorities that can demonstrate to EPA why an additional six months is necessary. Information that would help in this decision making process include the number and types of sources in the state that rely on the 50 percent provision, as well as the regulatory process that would be required to provide practically enforceable limits for those sources (e.g., case-by-case permits, prohibitory rules). Permitting authorities that wish to apply for the additional six months of the extension must submit their request to EPA no later than June 30, 2000.

Importantly, sources relying on the 50 percent provision must have been maintaining, and continue to maintain, records adequately demonstrating that for every consecutive 12-month period since January 1994 and until the source has a practically enforceable limit in place, its actual emissions have not exceeded 50 percent of any and all applicable major source thresholds. Extensions of the transition policy beyond January 1997 have not relieved sources of the requirement to keep adequate records of actual emissions from January 1994 forward. Moreover, failure to comply with the requirements of the transition policy will be considered a violation of the underlying major source program.

Distribution/Further Information

We are asking Regional Offices to send this memorandum to state and local air permitting agencies within their jurisdiction. Questions concerning specific issues and cases should be directed to

the appropriate Regional Office. The Regional Office staff may contact Lynn Hutchinson of the Office of Air Quality, Planning and Standards at (919) 541-5795, Carol Holmes of the Office of Regulatory Enforcement at (202) 564-8709, or John Walke of the Office of General Counsel at (202) 564-5699. The document is also available on the Internet, at <http://www.epa.gov/ttn/oarpg>, under “OAR Policy and Guidance Information.”

Addressees:

Director, Office of Ecosystem Protection, Region I
Director, Division of Environmental Planning and Protection,
Region II
Director, Division of Air Quality, Region III
Director, Air, Pesticides, and Toxics Management Division, Region IV
Director, Air and Radiation Division, Region V
Director, Multimedia Planning and Permitting Division, Region VI
Director, Air, RCRA, and TSCA Division, Region VII
Assistant Regional Administrator, Office of Pollution Prevention,
State, and Tribal Assistance, Region VIII
Director, Air and Toxics Division, Region IX
Director, Office of Air, Region X
Regional Counsels, Regions I-X
Director, Office of Environmental Stewardship, Region I
Director, Division of Enforcement and Compliance Assurance,
Region II
Director, Enforcement Coordination Office, Region III
Director, Compliance Assurance and Enforcement Division, Region VI
Director, Enforcement Coordination Office, Region VII
Assistant Regional Administrator, Office of Enforcement, Compliance
and Environmental Justice, Region VIII
Enforcement Coordinator, Office of Regional Enforcement
Coordination, Region IX

cc. C. Holmes (2242C)
J. Ketcham-Colwill (6103)
J. Walke (2344)
L. Hutchinson (MD12)
D. Svendsgaard (MD 12)