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Folder Title:
Clean Air Act - Implementations Permitting

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CAA / Implementation / Permits

POINTS OF INTEREST

1. Coverage. Exercise of EPA discretion to exempt categories of sources under "impractical, infeasible, or unnecessarily burdensome" language.

2. EPA regulations for minimum elements:

   o Monitoring and reporting requirements.

   o Fees: development of sufficient to cover costs of program concept.

   o Public access.

   o Process changes without permit review.*

3. Permit requirements.

   o General permits program authority.

   o Temporary sources authority.

   o Permit shield.*

4. EPA review of permits.

   o Exercise of waiver and exemption authority.*

5. Small business stationary source program.*

   o Implementation of authority to allow modifications of "compliance method" based on "techical or financial capability."

CAA (IMPLEMENTATION) Permits

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF AIR AND RADIATION

CLEAN AIR ACT AMENDMENTS OF 1990
TITLE V: OPERATING PERMITS
IMPLEMENTATION ISSUES ROUNDTABLE DISCUSSION

December 3, 1990
10:00 AM - 1:00 PM

AGENDA

I. **Introduction - Bill Rosenberg (15 minutes)**

- o **EPA's General Clean Air Act Implementation Principles**
- o **Operating Permits Regulation Development Timetable**
- o **EPA's Operating Permits Regulations Goals**

II. **Goals of Today's Meeting and Initial List of Key Issues - Kate Fay (10 minutes)**

- o **Present EPA's Initial List of Key Issues**
- o **Ascertain General Responses To EPA's List and Other Implementation Ideas From Industry, Environmentalists and States**
- o **Present EPA's Initial Views on how to Address First 5 Key Issues in the Regulations With General Discussion of the Merits and Deficiencies of Each Approach**
- o **Establish Next Meeting Date to Discuss Additional Issues**
- o **Initial List of Key Issues:**
  - **Program Scope**
  - **Appropriate Uses of Permit Fees**
  - **More Inclusive State Permit Programs**
  - **Criteria for Complete Permit Applications**
  - **Relationship Between SIPs and Permits**
  - **Operating Flexibility**
  - **Permit Reopening and Shield**
  - **Existing State Program Transition Issues**
  - **EPA Policy on Reviewing State Permit Decisions**
  - **EPA Policy on use of General Permits**
  - **EPA Policy on Compliance**

III. **State, Industry and Environmental Community Comments (45 minutes total; 15 minutes for each group)**

IV. **Discussion of Key Issues - Moderator: Mike Trutna (1 hr, 40 min; 20 minutes for each of the 5 issues to be discussed today)**

V. **Summary and Next Meeting Date & Agenda - Mike Trutna (10 minutes)**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR AND RADIATION

IMPLEMENTATION PRINCIPLES FOR THE CLEAN AIR ACT OF 1990

PROMISE OF THE CLEAN AIR ACT

- "Every American expects and deserves to breathe clean air..."
  President Bush

- These principles will guide us as we turn the promise of the Act into a legacy of clean air.

POLICY

- E^3: Achieve and maintain a healthy environment, while supporting strong and sustainable economic growth and sound energy policy.

- **Market-based**: Use market-based approaches and other innovative strategies to creatively solve environmental problems.

BUILD CONSENSUS

- **Joint Venture**: Recognize the essential role played by state and local governments.

- **Negotiate**: Use negotiation techniques to resolve critical issues with other interested parties, including other government organizations, industry, environmental groups, and academics.

- **Federal Coordination**: Work closely with other EPA offices, other Federal agencies, and Congress to ensure a coordinated approach that will achieve environmental objectives in the most efficient manner possible.

MANAGEMENT

- **Deadlines**: Establish and meet commitments to effectively implement key provisions of the Act.

- **Team Effort**: Work together; attract and retain a diverse and talented workforce.

DETAILED SUMMARY OF TITLE V

PERMIT PROVISIONS

Five Key Issues

1.

Table of Contents

TITLE V: OPERATING PERMITS

The goal of Title V is to have states issue federally enforceable operating permits to the significant stationary sources of air pollution subject to federal regulation under the Clean Air Act ("Act"). These operating permits will be designed to enhance the ability of EPA, the states, and citizens to enforce the requirements of the Act. Permits should also clarify for these stationary sourceS exactly what requirements are applicable to them under the Act, and what the source must do to comply with those requirements. The permitting programs will also aid states in implementing the Act by providing the state permit fees to support the program.

I. State Permit Programs with EPA Oversight

Title V is structured to allow states to develop the permitting program in the first instance, with EPA overseeing development of the program and enforcing the obligation to implement a program in each state. State and local pollution control agencies or interstate compacts may implement the provisions of Title V, depending on how the state chooses to develop its program. See secs. 501(4), 502(d)(1) and 302(b).

A. EPA Permit Program Regulations

Within one year of enactment of the Clean Air Act Amendments of 1990 ("CAAA"), EPA must promulgate regulations establishing the minimum elements of a permit program. Sec. 502(b). These regulations must include certain elements specified in Title V, and described in section II of this summary, below.

B. State Program Development

Within three years of enactment of the CAAA (two years after EPA is obligated to issue its permit program regulations) the Governor of each state shall submit to EPA a permit program meeting the requirements of Title V. The Governor must also submit a legal opinion from the attorney general, attorney for those state air pollution control agencies with independent legal counsel, or the chief legal officer of an interstate agency stating that the laws of the state, locality, or interstate compact provide adequate authority to carry out the program. Sec. 502(d)(1).

C. EPA Review of Program Submittals

Within one year after receiving the state's program, EPA shall approve or disapprove it, in whole or in part. EPA must provide notice and opportunity for public comment within the 1 year timeframe. EPA may approve the program to the extent it meets the requirements of the Act and EPA's permit program regulations. If EPA disapproves the program, or any part of it, EPA must notify the Governor of any revisions necessary for EPA approval. The state then has 180 days from this notice to revise and resubmit the program. Sec. 502(d)(1). When EPA approves a program, EPA must suspend issuance of federal permits, but may retain jurisdiction over permits still under administrative or judicial review. Sec. 502(e).

D. Partial Permit Programs

EPA may not approve a partial permit program unless, at a minimum, it assures compliance with the following provisions in the Act:

1. Acid deposition requirements of Title IV applicable to "affected sources;"

2. The air toxics requirements of section 112 applicable to "major sources," "area sources," and "new sources;" and

3. The state implementation plan requirements and new source performance standards of Title I applicable to sources required to have a permit under Title V.

Even if EPA does approve a partial program, the state is still obligated to submit a fully approvable program, and is still subject to sanctions for failure to do so. Sec. 502(f).

E. Interim Approval

EPA may grant interim approval to a program or partial program that is not fully approvable, but that "substantially meets" the requirements of Title V. EPA must specify in the notice of final rulemaking granting interim approval the changes the state must make to receive full approval. EPA may grant interim approval for a period of up to two years, which may not be renewed. During the interim approval period, the state is protected from sanctions for failure to have a program and EPA is not obligated to promulgate a federal permit program in the state. Sec. 502(g) and (d)(2)-(3).

F. EPA Sanctions and Federal Programs

1. Failure to Submit an Approvable Program

EPA must apply sanctions to a state where the Governor has not submitted a program within eighteen months after the deadline for submittal, or where eighteen months have passed since EPA disapproved the program in whole or in part. Sec. 502(d)(2)(B). The sanctions are the same as those in Title I: a highway funding cutoff; and a two to one offset ratio for new or modified sources. See Sec. 179(b). EPA may apply the offset ratio sanction only in areas where the failure to submit or disapproval relates to an air pollutant for which the area is designated nonattainment. Sec.

502(d)(2)(C). EPA must apply the sanctions in the same manner as provided in Title I: one first, then both after six months, and both in any case of a lack of good faith. See Sec. 179(a). EPA has the option of imposing any of the Title I sanctions before the expiration of the eighteen month period for mandatory sanctions where the Governor fails to submit a program or where EPA disapproves a program, in whole or in part. Sec. 502(d)(2)(A). If the state has no approved program two years after the date required for submission of the program, EPA must promulgate, administer, and enforce a federal permit program. Sec. 502(d)(3).

2. Failure to Implement a Program

Whenever EPA determines that a permitting authority is not adequately administering and enforcing a program, EPA must notify the state. Sec. 502(i)(1). If EPA determines that the failure to administer and enforce the program persists eighteen months after EPA's notice to the state, EPA must apply the same sanctions in the same manner as required for a failure to submit an approvable program. Sec. 502(i)(2). EPA has the option of imposing any of the sanctions before the eighteen month period has passed. Sec. 502(i)(1). If the state has not cured the failure to administer and enforce the program within eighteen months after EPA's notice, EPA must promulgate, administer, and enforce a federal permit program within two years after the notice to the state. Sec. 502(i)(4).

II. Permit Program Content

EPA's permit program regulations must require at least the following minimum elements in the state permitting programs.

A. Program Coverage

Under section 502(a), permitting programs must cover the following sources:

1. Affected sources under the acid deposition provisions of Title IV;

2. Major sources, defined as follows (see sec. 501(2)):

   a. For air toxics sources under sec. 112, sources with the potential to emit 10 tons per year ("TPY") of any hazardous air pollutant or 25 TPY of any combination of hazardous air pollutants (see sec. 112(a)(1));

   b. For all sources of air pollutants as defined in section 302 of the Act, sources with the potential to emit 100 TPY of any pollutant (see sec. 302(j)); and

c. For sources subject to the nonattainment area provisions of Title I, part D, sources in the following type of nonattainment area with the potential to emit the following amount of pollutants:

Ozone (see secs. 182(c)-(e) and 184(b)(2))	TPY
Serious and transport	50
Severe	25
Extreme	10
Carbon Monoxide (see sec. 187(c)(1))	
Serious (due to stationary sources)	50
PM-10 (see sec. 189(b)(3))	
Serious	70

3. Any other source, including an area source, subject to an hazardous air pollutant standard under sec. 112;

4. Any source subject to new source performance standards under sec. 111;

5. Any source required to have a preconstruction review permit pursuant to the requirements of the prevention of significant deterioration program under Title I, part C or the nonattainment area new source review program under Title I, part D; and

6. Any other stationary source in a category EPA designates in whole or in part by regulation, after notice and comment.

B. Exemptions from Program Coverage

Section 502(a) also authorizes EPA, consistent with the applicable provisions of the Act, to exempt one or more source categories (in whole or in part) from the requirement to have a permit. EPA must determine that permitting the source category is impracticable, infeasible, or unnecessarily burdensome. EPA may not, however, exempt any major source from the permitting requirements. See paragraph II. A. 2., above.

C. Permit Program Requirements

To be approvable, each permit program must contain the following elements:

1. Requirements for permit applications, including standard applications forms and criteria for determining the completeness of applications (sec. 502(b)(1));

2. Monitoring and reporting requirements (sec. 502(b)(2));

3. A permit fee system (sec. 502(b)(3); see below for more detail);

4. Provisions for adequate personnel and funding to administer the program (sec. 502(b)(4));

5. Authority to issue permits and assure that each permitted source complies with applicable requirements under the Act (sec. 502(b)(5)(A));

6. Authority to terminate, modify, or revoke and reissue permits "for cause," which is not further defined (sec. 502(b)(5)(D)), and a requirement to reopen permits in certain circumstances (see paragraph IV. B., below);

7. Authority to enforce permits, permit fees, and the requirement to obtain a permit, including civil penalty authority in a maximum amount of not less than $10,000 per day, and "appropriate criminal penalties" (sec. 502(b)(5)(E));

8. Authority to assure that no permit will issue if EPA timely objects to its issuance (sec. 502(b)(5)(F));

9. Procedures for expeditiously determining when applications are complete and for processing applications and public notice, including offering an opportunity for public comment and, a hearing on applications, for expeditious review of permit actions, and state court review of the final permit action (see paragraph III. F. 1., below) (sec. 502(b)(6));

10. Authority and procedures to provide that the permitting authority's failure to act on a permit

or renewal application within the deadlines specified in the Act (see sec. 503 and the deadlines for permitting under acid deposition provisions in Title IV) shall be treated as a final permit action solely to allow judicial review by the applicant or anyone also who participated in the public comment process to compel action on the application (sec. 502(b)(7)).

11. Authority and procedures to make available to the public any permit application, compliance plan, permit, emissions or monitoring report, and compliance report or certification, subject to the confidentiality provisions of sec. 114(c) of the Act (sec. 502(b)(8)); the contents of the permit itself are not entitled to confidentiality protection (sec. 503(e)); and

12. Provisions to allow operational flexibility at the permitted facility (see paragraph IV. C., below) (sec. 502(b)(10)).

D. Required Permit Provisions

Within each program, each permit must contain certain provisions, as follows:

1. A fixed term, not to exceed five years (sec. 502(b)(5)(B));

2. Limits and conditions to assure compliance with all applicable requirements under the Act, including requirements of the applicable state implementation plan (sec. 504(a));

3. A schedule of compliance, which is defined as a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with applicable requirements under the Act (sec. 504(a) and 501(3)); and

4. Inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions, consistent with any monitoring regulations EPA is authorized to promulgate under section 504(b) (sec. 504(c)).

E. Permit Fees

An approvable permit program must require permittee to pay an annual fee (or equivalent over some other period) sufficient to cover all "reasonable (direct and indirect) costs" required to develop and administer the permit program. Sec. 502(b)(3)(A). All fees collected by a permitting authority must be used solely to support the permit program. Sec. 502(b)(3)(C)(iii). These fees must cover the costs of the following:

1. Reviewing and acting upon any application;

2. Implementing and enforcing the permit, including any permit issued before enactment of the CAAA, but not any court costs or other costs associated with an enforcement action;

3. Emissions and ambient monitoring;

4. Preparing generally applicable regulations or guidance;

5. Modeling, analyses, and demonstrations, and

6. Preparing inventories and tracking emissions.

Sec. 502(b)(3)(A)(i)-(vi).

Fee Amount - The program must collect an amount from all sources equal to at least $25 per ton of each regulated pollutant (not including carbon monoxide). Sec. 502(b)(3)(B)(i) and (ii). The state is not required to count emissions of any pollutant from any one source in excess of 4,000 tons per year. Sec. 502(b)(3)(B)(iii). This amount is to be increased each year according the Consumer Price Index. Sec. 502(b)(3)(B)(v). The program need not collect this amount if it can demonstrate that a lesser amount will support the direct and indirect costs of the program. Sec. 502(b)(3)(B)(iv).

If EPA determines that a state's fee program is not approvable, or that a state is not adequately administering or enforcing an approved fee program, EPA may collect reasonable fees from permittee. Such fees shall be designed solely to cover EPA's costs of administering the federal permit program. Sec. 502(b)(3)(C)(i). Sources failing to pay a fee EPA assesses must pay a penalty of 50 percent of the fee amount, plus interest. Sec. 502(b)(3)(C)(ii). EPA must deposit federally collected fees, penalties, and interest in a special Treasury fund, subject to appropriation, to carry out EPA's permitting activities.

F. Multi-Source Facility, Temporary Facility, and General Permits

A permitting authority may issue one permit for a facility with multiple sources. Sec 502(c). The authority may also issue one permit authorizing emissions from similar operations at multiple temporary locations. The permit must assure that the emissions from each location will comply with the Act, and require notice from the source owner or operator before each change in location. Sec. 504(e). Finally, the authority may, after notice and opportunity for a public hearing, issue a general permit covering numerous similar sources. Sources covered by a general permit must still file applications. Sec. 504(d).

III. The Permitting Process

A. Permit Applications and State Action on Applications

1. Permit Obligation

A source covered by section 502(a) must have a permit and comply with it. All sources required to be permitted under section 502(a) become subject to a permit program and are required to have a permit when EPA approves or promulgates a program applicable to that source, or when the source becomes subject to section 502(a) (by modification or construction), whichever is later. Sec. 503(a) and 502(h). Title V provides, however, that no source shall violate section 502(a) for failure to have a permit before the date on which the source is required to submit an application. Sec. 503(d). Therefore, it is the application date, not the program effectiveness date, which triggers a source's obligation to have a permit.

2. Application Submission and Due Date

Covered sources must submit an application within twelve months after the date EPA approves or promulgates a program applicable to that source. The permitting authority may designate an earlier date. The application must include a compliance plan and be signed by a responsible official, who must certify the accuracy of the information submitted. Sec. 503(c).

3. State Action on Initial Applications

For the initial round of permit applications, the permitting authority must establish a phased schedule for acting on permit applications submitted within the first full year after program approval. This schedule must assure that the permitting authority will act on at least one-third of the permits each year over a period not to exceed three years after approval or promulgation of the program. Sec. 503(c).

4. State Action on Subsequent Applications

After acting on the initial applications, the permitting authority must act on a completed application and issue or deny a permit within 18 months after receiving the complete application.

Sec. 503(c).

B. Application Protection

Except for sources subject to preconstruction new source review permitting requirements, a source which files a timely and complete application for a permit or a renewal will not be liable for failure to have a permit if the permitting authority delays in issuing or reissuing the permit, provided the delay in issuing the permit was not due to the applicant's failure to submit required or requested information. Sources requiring new source review permits must have operating permits before operating the new source or major modification. Sec. 503(d).

C. Priority for New Construction Permits

The permitting authority is required to have reasonable procedures to grant priority to acting on permits for new construction or modifications. Sec. 503(c).

D. Neighboring State Review of Permits

The permitting authority is required to notify all states whose air quality may be affected and that are contiguous to the state permitting the facility of each permit application or proposed permit submitted to EPA for review. See next paragraph for EPA review. The authority must also notify each state within 50 miles of the applicant source. The permitting authority must give all such states an opportunity to submit written recommendations for the permit. If the authority refuses to accept those recommendations, it must provide written notice of its reasons to the state that submitted the recommendation and to EPA. Sec. 505(a)(2).

E. EPA Review and State Response

The permitting authority must submit to EPA a copy of the following:

1. The application for any permit, renewal, or modification, including the compliance plan, or any portion EPA determines it needs to review the application and permit effectively; and

2. Each permit proposed to be issued and issued as a final permit.

Sec. 505(a)(1).

EPA must object to any permit that is not in compliance with the applicable requirements of the Act, including the applicable implementation plan. If EPA objects within 45 days after receiving either the proposed permit or the notice that the permitting authority has refused to adopt a neighboring state's recommendations for the permit, the permitting authority must respond to EPA in writing. EPA must provide the permitting authority and permit applicant a statement of reasons for the objection.
Sec. 505(b)(1).

The permitting authority may not issue the permit if EPA objects, unless it revises the permit to meet EPA's objections. If the authority has already issued the permit, EPA must modify, terminate, or revoke the permit, and the permitting authority must reissue it to meet EPA's objection. Sec. 505(b)(3). The permitting authority has 90 days after EPA's objection to revise the permit. If the permitting authority fails to do so, EPA must issue or deny the permit. Sec. 505(c).

EPA may waive its own and neighboring states' review of permits for any category of sources, except major sources, either when approving an individual program, or in a regulation applicable to all programs. EPA may also waive its own review, but maintain the requirement to notify neighboring states. Sec. 505(d).

F. Judicial Review

1. State Court Review

An approvable program must provide for judicial review in state court of the permit action by the applicant, anyone who participated in the public comment process, and any other person who could obtain judicial review of the action under applicable law. Sec. 502(b)(6).

2. Federal Court Review

a. EPA's Failure to Veto

Within 60 days after the expiration of the 45 day EPA review period any person may petition the Administrator to veto a permit if EPA fails to object. The objections in the petition must have been raised during the comment period on the permit provided by the state issuance process, unless the petitioner shows that it was impracticable to raise the objections at that time. The petition shall not postpone the effectiveness of a permit that has issued. The Administrator shall grant or deny the petition within 60 days after the petition is filed. EPA must issue an objection if the petitioner demonstrates that the permit is not in compliance with the Act, including the applicable SIP requirements. If the Administrator denies the petition, the denial is subject to review in the Federal Court of Appeals under section 307. Sec. 505(b)(2).

b. EPA's Issuance of a Permit

Where EPA objects to a permit and the state fails to meet EPA's objection, EPA must then issue or deny the permit. The Federal Court of Appeals may review EPA's final action in issuing or denying the permit under section 307. Title V provides that EPA's objection to a permit is not subject to judicial review until EPA takes final action on the permit. Sec. 505(c).

IV. Effect of Valid Permit

A. Permit Shield

If a source complies with its permit, the permit may provide that the source is deemed to comply with other applicable provisions of the Act if: 1. the permit includes the applicable requirements of the Act; or 2. the permitting authority made an explicit determination referred to in the permit that other provisions are not applicable to the source. EPA may limit the scope of this permit compliance protection by rule. Sec. 504(f).

B. Permit Reopening

1. Automatic Reopening

Any approvable program must require that the permitting authority will revise all permits with terms of three or more years to incorporate applicable requirements under the Act that are promulgated after issuance of the permit. Such revisions must be made using the notice and comment procedures for permit issuance, and must be made within 18 months after the promulgation of the new requirement. No revision is required if the effective date of the requirement is after the expiration of the permit term. Sec. 502(b)(9).

2. Reopening for Cause

Any approvable program must require that the permitting authority may terminate, modify, or revoke permits for cause. Sec. 502(b)(5)(D). If EPA finds that cause exists to reopen a permit, EPA must notify the permitting authority and the source. The permitting authority has 90 days after receipt of the notification to forward to EPA a proposed determination of termination, modification, or revocation and reissuance of the permit. EPA may extend the 90 day period for an additional 90 days if a new application or additional information is necessary. EPA then may review the proposed determination under the review procedures for permit issuance. If the permitting authority fails to submit a determination or if EPA objects to the determination, EPA may terminate, modify, or revoke and reissue the permit. EPA must provide notice and "fair and reasonable procedures" when it terminates, modifies, or revokes and reissues a permit. Sec. 505(e).

C. Operational Flexibility

An approvable program must provide for changes within a permitted facility without requiring a permit revision. The changes may not be modifications under Title I of the Act and they may not exceed the total emissions or emission rates allowable under the permit. The facility must provide EPA and the permitting authority with written notification at least 7 days before the change, or a shorter time for emergencies. Sec. 502(b)(10).

V. Miscellaneous

A. Saving Clause

Permitting authorities are specifically authorized to establish "additional permitting requirements not inconsistent with the Act." Sec. 506(a). There is a statement of the managers attempting to clarify this provision, explaining that a

state may establish more stringent permitting requirements as long as they are not inconsistent with the national permitting requirements of the Act.

B. Acid Rain Permits

The permitting provisions of Title V shall apply to permits implementing the acid deposition provisions of Title IV, except as modified by Title IV. Sec. 506(b).

C. Small Business Provisions

1. State Program

Section 507 requires states to establish a small business stationary source technical and environmental compliance assistance program. The program must be adopted as part of the state implementation plan under sections 110 and 112. The states must submit the proposed program with two years after enactment of the CAAA. Sec. 507(a).

EPA must approve the program if it contains the following provisions for small business stationary sources:

a. Mechanisms for developing information concerning compliance methods and programs to

encourage lawful cooperation among such sources;

b. Mechanisms to assist such sources with pollution prevention and accidental release detection and prevention;

c. A state ombudsman for such sources to aid in implementation of the Act;

d. A compliance assistance program to help such sources determine applicable requirements and receive permits;

e. Mechanisms to assure that such sources receive notice of their rights under the Act;

f. Mechanisms to assure that such sources are informed of their obligations under the Act, including referrals to qualified auditors; and

g. Procedures to consider requests from such sources to modify:

   a. work practice or technological compliance methods; or

   b. the milestones for implementing such methods.

Such requests would be based on the source's technological and financial capability. All such modifications must comply with the Act's requirements, and federal regulations may only be modified if the regulation provides for the modification.

Sec. 507(a)(1)-(7). The state must also establish a Compliance Advisory Panel to monitor implementation of the program. Sec. 507(e).

2. EPA Program

EPA must establish a program within nine months after enactment of the CAAA for small business stationary sources which must: a. assist the states in developing their programs; b. issue guidance about alternative control technologies and pollution prevention methods; and c. in states that fail to adopt a program, implement the requirement to assist such sources in determining applicable requirements and receiving permits. Sec. 507(b). EPA must also have a Small Business Ombudsman to monitor implementation of the program. Sec. 507(d).

3. Small Business Stationary Source Definition

To qualify for assistance by these programs a source must meet all the following conditions:

a. Be owned or operated by a person employing 100 or fewer individuals;

b. Be a small business under the Small Business Act;

c. Not be a major stationary source;

d. Not emit 50 tons per year or more of any regulated pollutant; and

e. Emit less than 75 tons per year of all regulated pollutants.

Sec. 507(c)(1). States may also include a source that is a major stationary source, emits over 50 tons per year of any pollutant, or 75 tons per year of all pollutants, provided the source does not emit more than 100 tons per year of all regulated pollutants. Sec. 507(c)(2). EPA or the state may exclude from the program any category of sources that has sufficient technical and financial capabilities to meet the requirements of the Act without the program. EPA and the state must consult with the Small Business Administration and provide notice and opportunity for comment on such exclusions. Sec. 507(c)(3).

4. Regulatory Flexibility: Fees, CEMs, and CTGs

The state or EPA may reduce any fee required under the Act for small business stationary sources. Sec. 507(f). When developing regulations or control technique guidelines ("CTGs") which require continuous emissions monitors ("CEMs"), EPA must consider the appropriateness of requiring CEMs at such sources. This provision does not apply to CEMs under the acid deposition provisions of Title IV. Sec. 507(g). EPA must also consider the size, type, and technical capabilities of such sources when developing CTGs. Sec. 507(h).

CMA LIST

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1. If a source goes through a public comment/hearing for a construction permit, this process should not have to be repeated to obtain the operating permit under title V.

2. Regulations should be written in such a way so as to minimize or avoid dual permits eg if a state program is not fully approved within 5 years of enactment or if a state has interim approval which expires, the existing permits should remain in force so the source is not subject to dual permits.

3. Fees for "regulated Pollutants" should not double count air toxics and particulate or VOC.

4. Compliance plan requirements should be specific enough to allow the source to know what is covered. The legislative language requires that the plan must describe how the source will comply with all applicable requirements under the Act. The regualtions should clarify what is meant by applicable requirements eg NSPS, MACT etc.

5. The length of time for the contiguous states to provide comment on a permit should be limited, and should not extend beyond the public comment time period.

6. The law requires a compliance plan be submitted with an application, and 6 month progress reports. If the source does not need a compliance schedule to meet regulations, how will this be handled? When will a compliance plan not be needed?

7. A process is needed that will avoid continual reopening of the permit with full blown permit revisions. For example, if a source triggers new source performance standards through modification or reconstruction of an already permitted source, when does the permit have to be revised? Can the notification serve as the revised application? When MACT is issued subsequent to permitting, eg for a major source in a nonattainment area, does a revised permit have to be issued before expiration of the existing permit?

8. The permit should be written in such a way that regulations are referenced, as of a certain date, not repeated verbatim in the permit.

9.If the application addresses operations and the agency chooses not to apply permit conditions for all aspects of these operations, the source should have a shield by virtue of having addressed them in the application.

10. How will current SIP permits be integrated with the title V permit? Will the SIP have to be revised to specifically delete the existing permit? Will both the SIP and the title V permit be enforceable until EPA acts on the SIP revision?

11. What is the procedure for obtaining a permit if the state's interim approval is not finalized within 2 years ie the time between 2 years and when the state program is approved or when EPA promulgates a federal program?

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NATIONAL ENVIRONMENTAL DEVELOPMENT ASSOCIATION'S
CLEAN AIR REGULATORY PROJECT
KEY PERMIT ISSUES
(Not Prioritized)

- EPA permit regulation - the minimum state elements;
- Operational flexibility;
- Permit fees;
- Permit shield;
- Finality of review;
- EPA model rules (Standard permit application forms);
- Self-reporting and internal company auditing programs;
- Default options - what happens if EPA or the state fails to take some action?;
- Civil penalty policy formulation;
- Priority for new sources - preconstructions vs. operating permits;
- Completeness regulations for permit applications;
- Procedures for contiguous state comment on permit procedures;
- Counting tons of increase for new source definition or "modification" -- actual vs. allowable;
- Permit procedure for citizen challenges;
- Procedures for EPA veto of state permits;
- "Deviation from the permit," self reporting requirements;
- Clean product mandates vs. stationery source controls;
- Procedural mechanism for CTG's and need for prior EPA approval before permitting authority can accept alternative compliance methods;
- Consolidated permit rule/major facility with multiple sources;
- Applications for permit modifications;
- Applications for new sources (PSD/NSR review);
- Consistency with Title I, III and IV; and
- Emission trading (netting/bubbles/offsets).

STAPPA CONCERNS

Title V

Implementation Issues

① To what extent will EPA encourage state/local programs to develop and submit partial permit programs for interim approval (to allow S/L to get programs in place quickly)? What are the elements that must be in a permit program to receive interim approval?

② What can be done to quickly identify legislative elements of permit programs (ie. enabling legislation) so that state legislatures and city Councils can begin consideration of those changes? (For example, what type of criminal enforcement authority is needed)

③ What can be done to enable State and local agencies to get fees quickly to allow them to hire staff needed to implement the Act?

④ If EPA objects to a permit, may the State or local issue a state/local permit only (ie a permit which is not Federally enforcable), or must it issue no permit?

⑤ What can be done to minimize the paperwork burden in notifications to adjacent (affected) States and to EPA?

STAPPA
p. 2 of 2

(6) May States and Locals collect permit fees from phase 1 Acid Rain sources? What is the basis for permit fees (allowed vs. Actual emissions) ~~Are~~ ~~at~~ Is the 4000 ton/year exemption applied per plant or per emission unit?

(7) What measures can be taken to minimize disruption to existing permit programs (ie how flexible will the ~~...~~ program regulations be?

(8) What will constitute an acceptable State/local permit program in the sense of allowing emission shifts within a plant?

(9) What can be done to minimize EPA objection/veto of State/Local permits (ie make agencies aware of what permit should contain)? What can be done to make EPA's oversight role easier?

(10) What can be done to avoid (or minimize) "turf wars" between state and local agencies over permit fee revenue?

SOCMA

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CLEAN AIR ACT AMENDMENTS OF 1990
TITLE V -- PERMITS

Provisions of Major Concern To Small Batch Processors
Synthetic Organic Chemical Manufacturers Association

Sec. 501. Definitions

no major concerns

Sec. 502. Permit Programs

(b)(3)(B)(i): re establishment of a permit fee "of an amount not less than $25 per ton of each regulated pollutant

(b)(3)(B)(iii): re applicability of fee to the first 4,000 tons per year of each regulated pollutant

Major Concern: potential for extremely high permit fees for small batch processors

(b)(9): re requirement that a permit with a term of 3 or more years for major sources shall be revised to incorporate applicable standards and regulations promulgated after the issuance of the permit

Major Concern: potential disruption of the business operation given the short (five-year maximum) term of the permit itself; in practice, a facility would never really have a permit but would be in a continual state of permit modification

(b)(10): re provisions to allow changes within a permitted facility without requiring a permit revision if the changes are not modifications and if the changes do not exceed the emissions allowable under the permit, provided a minimum of 7 days written advance notification is made to EPA and the permitting authority

Major Concern: strongly support this provision as providing the minimum flexibility needed by batch processors to respond to market demands while ensuring compliance with permit perameters

(c): providing that a single permit may be issued for a facility with multiple sources

Major Concern: strongly support this provision

SOCMA

Sec. 503. Permit Applications

(c): providing the permitting authority a period of 18 months in which to accept or deny a permit

Major Concern: **the 18-month time period is too long and will hamper the ability of the batch processor to respond to market demands**

Sec. 504. Permit Requirements and Conditions

(f): re applicability of the so-called "permit shield" if the permit includes the applicable requirements of other applicable provisions of the Act or if the permitting authority determines, in the course of acting on the permit application, that the other provisions are not applicable to the source and includes that determination in the permit

Major Concern: **limited resources of small batch processors (i.e., lack of staff counsel or highly sophisticated environmental compliance staff) may preclude the effective use of the permit shield and place the facility in potential jeopardy**

Sec. 505. Notification to Administrator and Contiguous States

no major concerns

Sec. 506. Other Authorities

no major concerns

Sec. 507. Small Business Stationary Source Technical and Environmental Compliance Assistance Program

(c): re eligibility requirements

Major Concern: **eligibility requirements are narrowly drawn and may preclude inclusion of many small batch processors**

Other Concerns Related to Permits

* definition of Modification: what is "de minimis"?
* hierarchy of hazardous air pollutants: on what basis will it be established: TLV, cancer potency factor, other?
* hazardous air pollutant offsets: this could be very helpful to batch processors

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STAPPA CONCERNS

p. 1 of 2

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SOCMA

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