UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

SEP 18 1992

MEMORANDUM

SUBJECT: Limitation of Potential to Emit withRespect to Title V Applicability Thresholds

FROM: John Calcagni, Director
Air Quality Management Division (MD-15)

TO: William A. Spratlin, Director
Air and Toxics Division, Region VII

This is to acknowledge receipt of your August 6,1992 memorandum to John Seitz requesting guidance with respect to a State's ability to utilize a Title V permit, or other federally-enforceable means, to limit the potential to emit for various purposes.

Before addressing your specific questions, some background review will be helpful. We recognize that sources may wish to limit their potential to emit by accepting voluntary limits to avoid being subject to more stringent requirements. The voluntary limit must be federally enforceable. This is indicated in the definition of "potential to emit" contained in 40 CFR 70.2. There are several mechanisms that will allow sources to adopt federally-enforceable restrictions on their potential to emit. The preamble discussion on voluntary limits in the Part 70 rule for operating permits programs is a useful summary of these approaches (see 57 FR 32250, 32279, July 21, 1992).

A source that emits criteria pollutants may be subject to a federally-enforceable restriction on its potential to emit either under an existing State preconstruction review or a non-Title V State operating permits program that has been approved into a State implementation plan (SIP). These options were discussed in the

preamble to the final rule: Requirements for the Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans, 54 FR 27274, June 28, 1989. Although we do not have extensive experience with implementing this rule, we believe the preamble and rule adequately describe the process States and sources would use to limit potential to emit. A source using this approach to take federally-enforceable conditions so as to not be "major" for Title V purposes would not have to obtain a Title V permit

(assuming, of course, that the State Title V program does not otherwise apply to the source). It, therefore, would not have to meet Title V permit requirements.

For sources emitting hazardous air pollutants listed in section 112(b), the Agency is also considering allowing States to use programs approved under section 112(1) as a means of developing federally-enforceable limits on the potential to emit, if such an approach is legally permissible. Implementation of this concept will require the resolution of many issues and will be addressed in forthcoming guidance issued pursuant to section 112.

It is also possible to limit a source's potential to emit through the Title V permitting process. Indeed, Wayne Leidwanger and Josh Tapp of your staff indicated that Nebraska wishes to use Title V permits to create various, federally-enforceable emissions limitations. This can be done in a number of ways.

Some sources may be issued a general permit under the Part 70 operating permits program for the purpose of avoiding classification as a major source. If a source above a certain emissions level is subject to more stringent requirements, in some situations a general permit may be developed to contain a principal requirement that would limit a source's potential to emit to below that level of emissions (see 57 FR at 32278). This approach can be used for either criteria or hazardous air pollutants. The primary advantage of a general permit is that it involves streamlined procedures for processing.

If a general permit is not used, a source could obtain the standard Title V permit. However, we believe this approach would involve additional effort for the source and for the permitting authority. Because the source would be subject to the full

source-specified permit issuance process, it would be required to individually develop the periodic monitoring, reporting, and compliance certification aspects required of all Title V permitted sources. Although more burdensome for the source, the State may wish to take advantage of these procedural requirements to assure that the federally-enforceable conditions are being adhered to.

Because Title V permitting is likely to be more procedurally rigorous than the other approaches, Title V is probably not the preferred option for the State to use. In other words, we believe it would be more complicated for a State or source to use a Title V permit to avoid being considered a major source for Title V purposes. We believe the other options mentioned above (e.g., construction permits or operating permits programs that have been approved into a SIP) accomplish the goal in a more straightforward manner. We are, however, continually investigating approaches to developing federally-enforceable

limits on potential to emit, and we will inform you of any additional options.

Concerning the permit fee issue you raised, it is important to realize that States have considerable flexibility in determining which sources must pay permit fees as long as they maintain fee programs that result in the collection, in the aggregate, of sufficient funds to pay for all permit program costs. It is not necessary for all permitted sources to be charged a permit fee. Similarly, it is also not necessary for States to charge a permit fee based on potential to emit, but they may.

If you have any further questions, please contact Gwen Holfield of my staff at (919) 541-2343.

cc: J. Seitz
L. Wegman
B. Jordan
T. Williamson
M. Winer
Division Director, Regions I-VI and VIII-X

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