

August 8, 1997

4APT-ARB

Ms. Chun-chi S. Liu
Mecklenburg County Department
of Environmental Protection
700 N. Tryon Street, Suite 205
Charlotte, North Carolina 28202-2236

SUBJ: Applicability Determination Request;
Definition of a "Major Source" under 40 CFR 70.2

Dear Ms. Liu,

We received your letter of May 12, 1997, (enclosed for reference) in which you requested a written applicability determination regarding the 40 CFR 70.2 definition of a "major source". Specifically, you asked if fugitive emissions should be considered in determining whether or not a source is "major" if the source is a solvent reclamation facility. As described in your letter, 40 CFR 70.2 requires certain categories of sources to consider fugitive emissions in determining if the source is "major". One of these categories pointed out in your letter is chemical process plants. Thus, as you noted, the question becomes, is a solvent reclamation facility considered a chemical process plant?

From the March 8, 1994, EPA guidance on "Consideration of Fugitive Emissions in Major Source Determinations" (Guidance):

The definition of "major source" in section 70.2 of the permit rule divides into three parts, corresponding to the section 112 [of the Clean Air Act] definition, the section 302(j) definition, and the lower tons per year (tpy) thresholds in the title I nonattainment provisions, respectively. The second definition, corresponding to 302(j), requires the counting of fugitive emissions only for certain listed source categories. The other two part 70 definitions are silent on the issue of when fugitive emissions must be considered.

Though the Guidance elaborates on section 112 as noted later, initially one can look at the "major source" definition from Section 302(j) which states:

...Except as otherwise expressly provided, the terms 'major stationary source' and 'major emitting facility' mean any stationary facility or source of air pollution which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). [*italics added*]

The last phrase in parentheses implies, as the Guidance acknowledges, that for fugitive emissions to be considered in determining if a source is "major", the Administrator should expressly identify the source by rule. This is clarified per your letter, in 40 CFR 70.2 which states that for a "major source" of air pollution:

...The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source:

... (xx) Chemical process plants...

As you suggested a solvent reclamation facility appears to fall best under "chemical process plants". In the absence of elaboration in the preamble to the Operating Permit Program Rule Final Rule, dated July 21, 1992, The Standard Industrial Classification Manual (SIC Manual), 1987, Executive Office Of The President Office Of Management And Budget offers some guidance. Chemical process plants are best categorized as Major Group 28.- Chemicals And Allied Products Establishments. The SIC Manual states:

This major group includes establishments producing basic chemicals, and establishments manufacturing products by predominantly chemical processes. Establishments in this major group manufacture three general classes of products: basic chemicals, such as acids, alkalies, salts, and organic chemicals; (2) chemical products to be used in further manufacture, such as synthetic fibers, plastics materials, dry colors, and pigments; and (3) finished chemical products to be used for ultimate consumption, such as drugs, cosmetics, and explosives.

Based on this, however, solvent recovery does not appear to fall under this SIC major group category primarily since it is not manufacturing. Considering this, it does not appear that the particular source category has been expressly identified by the Administrator.

However, note that the Guidance elaborates further on HAPs by stating that:

...EPA continues to believe the Act requires that fugitive emissions, to the extent quantifiable, must be considered in determining major source status for all section 112 purposes...this suggests that the section 302(j) rulemaking requirement does not apply in the context of section 112, and that fugitive emissions must therefore be included for purposes of determining whether a source is major under section 112.

Thus, under the 302(j) definition, fugitive emissions need not be generally considered in determining if the source is a "major source" since it does not appear that the particular

source category, solvent reclamation, has been expressly identified by the Administrator under 40 CFR 70.2 (xx). However, under the section 112 definition, fugitive emissions must be considered in determining major source status for all section 112 purposes.

If you have any further questions feel free to call Scott Gardner of my staff at (404) 562-9118.

Sincerely yours,

/s/

Carla E. Pierce
Chief
Operating Source Section
Air & Radiation
Technology Branch