

Memorandum

To: Air Permit Managers

Cc: Tamera Thompson

From: John Reinhardt, Title V Coordinator

Subject: T5 NSR Conflicts

Date: September 30, 2004

Introduction

This memo addresses the scenario of Title V and NSR conflicts. When a NSR permit is issued that is less stringent than the requirements contained in a previously issued Title V permit, conflicts occur. These conflicts could result in a Title V source violating conditions of their Title V permit by operating under the conditions of the new NSR permit.

Proposed Procedure Withdrawal

This memo withdraws the proposed procedure presented on September 15, 2004. This procedure would have allowed implementation of NSR changes that conflict with previously issued Title V permits at their own risk. This is being withdrawn after discussions with EPA Region III and a review of regulations and proposed regulations.

Regulations

The regulations require that the Title V permit be updated prior to implementing or operating under the change when the NSR implementation would result in a violation of the Title V permit. This is stated in the federal regulations under 40 CFR 70.5 (a) (ii), which is as follows:

Where an existing part 70 permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

This is also stated in State Regulations under 9 VAC 5-80-80 C2

The owner of a source subject to the requirements of the new source review program shall file a complete application to obtain the permit or permit revision within 12 months after commencing operation. Where an existing permit issued under this article would prohibit such construction or change in operation, the owner shall obtain a permit revision before commencing operation. The owner of a source may file a complete application to obtain the permit or permit revision under this article on the same date the permit application is submitted under the requirements of the new source review program.

Options

When a source is concerned about NSR/Title V conflicts, DEQ suggests that simultaneous applications be submitted. The regulations contain a citation that allows simultaneous processing of NSR/Title V applications by the Title V administrative amendment process. This is stated in 9 VAC 5-80-200 A5.

Incorporation into the permit of the requirements of permits issued under the new source review program when the new source review program meets (i) procedural requirements substantially equivalent to the requirements of 9 VAC 5-80-270 and 9 VAC 5-80-290 that would be applicable to the change if it were subject to review as a permit modification, and (ii) compliance requirements substantially equivalent to those contained in 9 VAC 5-80-110.

These citations do require that all-public participation requirements be met which includes public notice, affected states, and an EPA review period. EPA region III has asked the Department to inform them when an application is received requesting simultaneous NSR/Title V processing.

The Title V program is an operating permit program. If the Title V permit conflicts with a NSR permit, the source can construct but not implement the proposed changes. This allows more time to process the Title V application.

Typical Requirements

A Title V source will only have to wait to implement the change if the NSR permit contains applicable requirements that conflict with a previously issued Title V permit. For instance an entirely new emission unit would not require the permit to be updated prior to construction or operation because the Title V permit would not contain any requirements addressing the new emission unit and no conflict would exist. The regulations typically allow sources 12 months from the date of Title V applicability to submit an application. Once an application has been submitted the Department has 9 months to process the permit.

Preamble Language

The preamble of the June 1996 Federal Register Title V notice states that EPA plans to make changes to section 70.3 (d) to allow minor NSR changes to be made by minor modifications. EPA has not acted on these changes. In discussion with EPA Region III it was stated that the preamble changes are not likely to be proposed or finalized. Until a change is formally promulgated, the current regulation on modifications remains in effect.