MEMORANDUM

TO: Regional Directors

FROM: John M. Daniel, Jr., P.E., DEE
Director, Technical Support

SUBJECT: Memo Number 97-1004. EPA's White Papers on Streamlining of Title V Operating Permit Applications and Improved Implementation of Title V Operating Permits Program

Copies: Robert L. Beasley
Manager, Office of Permit Support

Regional Permit Managers

Air Permit Managers

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Background and Purpose

From time to time, the U.S. Environmental Protection Agency (EPA) issues guidance intended to aid in understanding of federal Clean Air Act issues and to facilitate effective compliance with Clean Air Act mandates. This guidance is customarily distributed to state air agencies by the Regional Offices and, through the EPA's computer bulletin board system (the Technology Transfer Network), to anyone able and willing to retrieve it. In July 1995 and again in March 1996, after discussions with state and local air agencies and other interested parties in each case, EPA issued what it called "White Papers" which were intended to explain and clarify the requirements of Title V of the Clean Air Act and its implementing regulations.[1]

[1] 40 CFR Part 70 (requirements for all state Title V programs) and 40 CFR

Part 71 (how EPA will administer Title V programs in states whose programs are disapproved). Part 70 was promulgated on July 21, 1992; a revision has been through two proposals (August 1994 and June 1995) and is expected to be promulgated in early 1998 (according to the April 23, 1997 EPA downlink). Part 71 was promulgated on July 1, 1996. Thanks to an imminent program approval, Virginia will be under Part 70 and not Part 71.

The thrust of the first White Paper, issued on July 10, 1995, is the simplification of the application process. By July 1995, a number of states had reported that Title V permit applications were much more voluminous than had been anticipated. In response, this White Paper explains a number of ways in which the burden of providing information in the application can be lightened. These include the submission of checklists, rather than emission descrip-tions, for insignificant activities based on size/production rate; provision of descriptions, rather than estimates, for emissions not regulated at the source (unless such estimates are needed for other purposes such as calculating fees); and citing, rather than de-tailed describing, of applicable requirements with qualitative emission unit descriptions. This White Paper also provides a list of "trivial activities" that can be treated the same way as our named insignificant activities list.[2] It allows reconsideration of environmentally insignificant terms in previous new source review permits, and group treatment for activities subject to certain generally-applicable requirements.

The thrust of the second White Paper, issued on March 5, 1996, is along similar lines. It allows sources to reduce regulatory duplication by combining multiple applicable requirements, stipulating to major source status or to the applicability of requirements, and referencing existing information. It allows states to tailor the treatment of insignificant emission units to their environmental significance and to address outdated SIP requirements in more efficient ways.

The purpose of this Guidance Memo is to describe the major features of these White Papers and to indicate the Department's approach to them. This elaboration is intended to show where the White Papers diverge from our Regulations and to indicate the limitations of the White Papers where these are now apparent. It should be noted that we will gain a more complete understanding of the use of the White Papers once we have some practical experience coaching Title V sources with their applications, reviewing the applications, and developing permit conditions. This Memo may be amended in the future, based on such experience.

Basic Approach of the Department

As I have stated a number of times informally since the publication of the first White Paper, we subscribe to it to

[2] See the Regulations, 9 VAC 5-80-720.A., sub-sections 1 through 57.

the best of our ability. The same is true of the second White Paper. Air Division staff have worked to take both White Papers into account in developing and re-working the Title V permit application form, Form 805,[3] and in making revisions to Rule 8-5 since the first White Paper was published. The Air Division has also provided guidance on selected features of the White Papers in its December 1996 and March 1997 training sessions. References to these documents will indicate "White Paper I" for the first and "White Paper II" for the second in the rest of this Guidance Memo.

Discussion of Selected Features

I. White Paper I (July 10, 1995).

A. Current requirements. Applications are used by the state to determine permit fees in a number of states, but not in Virginia. However, applications are important here as elsewhere for determining the applicability of requirements to the source. EPA pointed out that information for applicability purposes needs only to be detailed enough to resolve questions about which requirements apply. And information for fee purposes needs to meet the state's requirements to allow the fee schedule to be implemented.

B. Content. Application information requirements are to be kept to the minimum to identify applicable requirements. This will result in different expectations for different units, depending on whether and how an applicable requirement applies. It explains why, among other things, we cannot develop a simple checklist approach that would cover every Title V application.

1. Emissions information and source description. The purpose of emissions information is to allow the source, with review by the Department, to determine major source status, to verify applicability of Rule 8-5 or other applicable requirements, and to compute permit fees. Thus in three instances there is no need for emissions estimates:

* where no useful purpose is served by them;

* where the quantifiable rate of emissions does not apply, as in information pertaining to accidental releases (section 112(r) of the Clean Air Act) or to

[3] The Form is named after our Title V rule, which is Rule 8-5.

work practices;

* where the emission unit is subject to a generic requirement.

However, more emissions information would likely be needed to verify emissions levels and monitoring approaches in cases where a plant-wide applicability limit is involved. Additional information may also be required to support a determination that a requirement is not applicable -- for example, where the application shield is based on the applicant's claim that emissions are below a cutoff in a standard that otherwise applies to the type of emission unit in question.[4]

Questions have also arisen about the quality of emissions estimates. The key here is to use the available information to support a reasonable belief as to compliance or applicability. A tons-per-year estimate, for example, does not become a permit term unless the applicable requirement demands it or the source requests it to avoid an otherwise applicable requirement. There is no need for multiple forms of emission estimates (i.e., actual, allowable, potential): fees are based on actual emissions from the Emissions Inventory Statements, and the application should indicate the form required by the applicable requirement or the desired allowable emissions. Emission estimates may also be indicated by cross-referencing other permits. In any case, all emission units should be listed; general descriptions will suffice.[5]

Form 805 has an emissions page which needs to be considered in light of this approach. The "**Annual Air Pollutant Emissions**" page (page 12) asks for emissions information and asks the applicant to cite the most recent emissions inventory if that is definitive as to the actual emissions involved. The page asks for actual emissions in tons per year; but its purposes are to indicate the pollutants and to verify fees, which are determined by actual emissions measured in tons per year.

2. Insignificant activities. White Paper I allows the State to tailor the level of information required to be commensurate with the need to determine applicable requirements. The White Paper includes an appendix listing "trivial activities" which may be omitted even if they are not

[4] See White Paper I, page 6 for greater detail on this point.

[5] White Paper I, pages 6-7.

on the state's list. These consist of emissions units and activities without specific applicable requirements and with extremely small emissions. In our case, this means that such activities, and additional ones which may suit the description, may be ignored in the application.[6]

3. Generic grouping of emission units or activities. The White Paper allows generic grouping of units or activities where they are subject to broadly applicable requirements. Examples include:

* source-wide opacity limits;

* general housekeeping requirements;

* requirements applying identical emission limits to small units (process weight rate requirements, for example).

Grouping means that it is unnecessary to list the units specifically and singly in the application. The principle works irrespective of whether the units in question are insignificant, where the applicable requirement is amenable to the approach. It is also usable in connection with short-term activities subject to applicable requirements, because these would not normally be identifiable at the time of the application or the permit.[7] The applicable requirement is amenable to grouping of units or activities in two cases:

* where the class of activities subject to the requirement can be unambiguously defined generically; and

* where effective enforceability of the requirement does not require a specific listing.[8]

However, because Virginia's Regulations provide different standards for opacity for existing sources (Rule 4-1) and for new and modified sources (Rule 5-1), sources covered by both must distinguish which units are covered by which general provisions. While in some cases this may necessitate listing each unit, in other cases descriptions tied to identifiable portions of a facility may be used. Even when listing is

[6] See 9 VAC 5-80-710.A.1. for this authority, and 9 VAC 5-80-720.A. for our list of 57 types of named activities.

[7] See White Paper I, page 10, э 5.

[8] See White Paper I, pages 9-10.

required to distinguish applicability, considerable savings in application effort may be gained, since monitoring and compliance certification may be combined.

4. Incorporation of prior new source review terms and conditions. The first White Paper gives guidance on revising terms from new source review permits as part of their incorporation into Title V permits. A number of factors assist in deciding whether a new source review term goes into a Title V permit; guidance on these follows:

* Permit writers should include all NSR terms that are mandatory under governing regulations, e.g., requirements such as BACT, LAER, NSPS, SIP emission limits, and reporting and record-keeping requirements.[9]

* Permit writers should include terms voluntarily taken by the source to avoid otherwise applicable requirements, e.g., emission limits taken to create a synthetic minor, to net out of PSD, to create tradable offsets or other emission reduction credits.

* Permit writers may exclude terms that are environmentally insignificant, extraneous, or outdated and therefore not appropriate for inclusion in a federally enforceable permit. Evaluated on a case-by-case basis, these terms include such things as --

  -- information incorporated by reference from an application for a new source pre-construction permit (although to the extent this information is needed to enforce new source review permit terms, it should be converted to terms in the Title V permit).

  -- original terms of a pre-construction permit superseded by other terms relating to operation.

  -- prior permit terms enforceable only by the state and not by the EPA as well.

We are allowed by the White Paper to look at proposed deletions or revisions of prior permit terms and allow the source to certify only to those it wishes to retain. Should

[9] Some of these terms may qualify for generic treatment as described in the preceding discussion, paragraph 3.

we disagree with the source on this matter in reviewing the application, we can later ask the source to certify as to the permit terms, rejected by the source, that we decide to roll into the Title V permit. In order to get through the potential workload involved in extensive review of prior permit terms, we are also allowed to stipulate, in the Title V permit, the new source review terms we propose to review and decide on, and set a date during the permit term by which the determination will be made.[10]

We may have to add new terms to a Title V permit in order to make incorporated new source review terms practically enforceable, to reflect operation instead of construction, or to meet other Title V content requirements.[11] In addition, a fair amount of re-writing of old permit terms may be required in the interests of clarity.

5. Section 112(r) requirements (accidental releases). Sources need only acknowledge that their on-site storage and processing of chemicals on the ɔ 112(r) list may require them to submit a Risk Management Plan when that requirement becomes applicable. This acknowledgment is insufficient if the same chemicals are emitted as hazardous air pollutants; in that case, they get treated as such in the application. The ɔ 112(r) list is found in an old Federal Register notice.[12] The acknowledgment is provided for on Form 805, page 21, "**Compliance Certification and Plan, page 3 of 3**."

6. Research and development activities. Rule 8-5 defines stationary sources as excluding co-located research and development facilities if the source so requests,[13] and White Paper I sanctions this approach but states that a research and development facility "making significant contributions to the product of a co-located major manufacturing facility" is major and subject to Title V if there are applicable SIP requirements. Otherwise, the White Paper agrees that research and development activities should be regarded as insignificant. If the applicable requirements

[10] See White Paper I, pages 12-15. For more discussion of stipulation, see **Part D** of the White Paper II material below.

[11] See page 15, White Paper I.

[12] See the January 14, 1994 Federal Register at page 4478. This information is on page 15 of White Paper I.

[13] See 9 VAC 5-80-60.C., definitions of "research and development facility" and "stationary source."

consist of work practices, the application need only acknowledge their applicability and certify to compliance with them.[14] (Form 805 allows for these matters on two of the "**Applicable Requirements**" pages (pages 14-15).[15])

7. Applications from non-major sources. Some requirements of ə 111 (new source performance standards) and ə 112 (hazardous air pollutants) of the Clean Air Act are applicable to non-major sources and make them subject to Title V. Where this is the case, applications need only address the requirements applicable to units that make the source subject to Title V and need not address other non-major units. The White Paper acknowledges that many states (including Virginia) have chosen to defer non-major source permitting otherwise.[16]

8. Supporting information. Sources need not include all supporting information with applications. Example calculations may be used to show how emissions information was developed, saving the source the cost of recording all the calculations relied upon. Additional supporting information may be necessary in some instances, and may be asked of the applicant, but application completeness may be had with minimal supporting information.[17]

C. Quality of required information. The quality of emissions estimates, where needed, depends on the reasonable availability of necessary information and the extent to which the permit engineer relies on it to resolve disputed questions of any or all of the following:

* major source status;

* applicability of requirements;

* compliance with applicable requirements.

AP-42 emission factors, and factors found in other EPA publications, are acceptable. Other emission factors, such as those generated by industry associations or those derived

[14] See White Paper I, pages 15-16.

[15] Certifications of compliance, as to the entire application, may be made on page 21, "**Compliance Certification and Plan, page 3 of 3**" of Form 805.

[16] Page 16, White Paper I. See 9 VAC 5-80-50.A., sub-sections 2 and 3, for Title V applicability to NSPS and HAP sources; and 9 VAC 5-80-50.D.1. for the deferral.

[17] Pages 16-17 of White Paper I.

from testing at similar facilities, may be justified on a case-by-case basis. For certification purposes, the applicant should put emission estimates in terms consistent with applicable requirements. In this regard, acceptable data uses the same units and averaging times as in the test method; it is not limited to test method data. New testing is not required; alternative ways to estimate are permissible if they provide acceptable data.

D. Completeness determinations and the phase-in of data. An application may be complete enough to begin processing, with further data added later to support permit drafting. Part 70 anticipated this idea in requiring not only the provision of information incorrectly left out, but also supplying information necessary to address requirements becoming applicable to the source after it submits the application.[18] The White Paper recognizes the possibility that the one-year initial application schedule, in combination with the three-year permit issuance requirement, might result in changing applicable requirements before the permit is drafted, and it indicates that a two-step process is acceptable within Part 70. Specifically, an application may be administratively complete if it conforms with instructions on the latest version of Form 805, even though the reviewer may anticipate needing additional information in the course of permit drafting.

E. Updating initially complete applications. This section is closely related to the preceding section. White Paper I gives a number of tips on later submission of information and how a source may keep its application complete (and retain its application shield) following the administrative completeness described above. First, where the Department asks for additional information to determine or evaluate compliance with applicable requirements and sets a reasonable deadline for submission of the information, the source must meet the deadline. Where more information is needed to continue processing, the Department may add the information and have the source review and certify it, or the source may add and certify. This is likely to occur with some frequency with regard to changing emissions information.[19]

1. Changing emissions information. Emissions information may change after the application is submitted for a variety of reasons, and the duty of the source and the

[18] See 40 CFR Part 70, э 70.5(b).

[19] White Paper I, pages 19-20.

Department in regard to updating the information varies with whether the change affects compliance status or applicability of a requirement, and when the change was discovered.

If the change affects applicability of a requirement (for example, causes the source to become newly subject to applicable requirements or affects its ability to comply with a current NSR permit condition), then the source must:

* submit the new information,

* identify any new requirements that apply, and

* certify the change in compliance status, if any.

This guidance is fully supported in Rule 8-5, where there is a requirement that the source provide additional information addressing requirements that become applicable after the application is submitted but before the draft permit is released.[20]

The effect on the permitting process varies with when the new information is discovered and submitted, as follows:

* If the information is submitted before the draft permit is prepared, it should be treated as an addendum to the initial application, and the draft permit should reflect the new information.

* If the information is submitted after the draft permit is prepared and before the public review is completed, the White Paper provides no additional guidance. If the information affects the applicability of requirements or the ability to comply, however, it may require revising the draft permit. This revision should be given public participation if at all possible, i.e., it should be published in the public notice if circumstances permit.

* If the information is submitted after the draft permit has completed public review but before the proposed permit has been issued, the Department must revise the permit accordingly.

* If new information is discovered and submitted after the final permit is issued, the Department must decide whether to revise or re-open the permit. If the information would not allow compliance with the

[20] See 9 VAC 5-80-80.E.2.

issued permit, the source should ask for a permit revision.

* If the new information does not affect compliance or the applicability of requirements (that is, if it merely alters tons-per-year emissions estimates of regulated pollutants within the permit limits), then it need not be submitted until permit renewal time unless, as the White Paper says, the Department requires earlier submission. In our case, Rule 8-5 talks only of changes that pertain to applicable requirements,[21] so it is fair to state that the Department would not require submission of new information not affecting compliance or applicability of requirements after permit issuance.

* None of the foregoing guidance is meant to relieve sources of their responsibility to update emissions for fee purposes or to provide any required periodic emissions or monitoring reports.

2. Other changes. Other changes after the application is submitted might require the source to propose an update to a complete application. One example is where a new requirement becomes applicable before permit issuance (but was not applicable at the time of the application).

F. Content streamlining. The first White Paper allows some application content streamlining which accords, in the main, with DEQ rules and approaches.[22] Discrepancies between the two are described in the discussion below. Additional content streamlining is encouraged in the second White Paper, which is described later in this Memo.

1. Cross-referencing. It is permissible, in the application, to cross-reference to the following items, provided they are in the docket or otherwise available to the public:

* Specific permit terms from previous permits, provided the provisions are summarized in the application, and matched with appropriate compliance demonstrations

[21] See 9 VAC 5-80-190.A., which serves as the introductory provision for the rules covering permit revisions and renewal, 9 VAC 5-80-200 through 5-80-240.

[22] White Paper I, pages 20-22.

* laws and regulations

* other documents affecting applicable requirements

* one part of the application in another, to avoid listing the same information multiple times.

In addition, there is no need, under the White Paper, to restate the cited provisions of a regulation in detail. For example, it is acceptable to mention "NSPS Sub-part Kb" rather than spelling it out. However, this may not work for all requirements; some MACT requirements, for example, are highly prescriptive and may require a more detailed approach in applications than others.[23]

2. Incorporation of Title V applications by reference into permits. According to the White Paper, this practice is discouraged. It is potentially confusing and limits operational flexibility. It should not be used as a means of delineating applicable requirements, nor for the purpose of listing specific emissions units.

3. Changing application forms. EPA invited Title V permitting authorities (states and some local governments) to look again at their application forms in light of the White Paper. If a form revision affected a portion of the program submission that EPA relied upon in granting program approval, it would be necessary to submit the revised form to EPA for a program revision; otherwise, a change of letters would suffice.

The DEQ has worked since the first White Paper to include the benefit of its guidance into the Form 805. EPA has been kept up to date on our changes to the Form, and none of these changes have affected program elements relied upon in granting interim approval to our Title V program.

G. Interpretation of "Responsible Official." The function of responsible officials under Title V is to certify the truth or accuracy of the information submitted, and to certify that the source is in compliance with all applicable requirements, to the extent indicated in the application. The stress in the EPA definition[24] is on the authority of a

[23] The wood furniture MACT may be a special case in point. Recent DEQ staff efforts with the furniture industry may result in a highly detailed boilerplate wood furniture permit, which in turn would require a highly detailed application, or at least one accompanied by extensive citations of the rule.

[24] See Part 70, э 70.2, the section on definitions. The Rule 8-5

responsible official to control the matters to which he or she certifies. Thus the emphasis, for businesses or partnerships, is on the person who makes policy or decisions; in the public sector, it is on the person who has responsibility for overall management of a principal unit of the agency. Some flexibility is appropriate in designating the responsible official in partnerships of corporations as in corporations themselves.[25]

H. Compliance certification issues. The DEQ is in agreement with the White Paper in compliance issues discussed therein. There is no need for a source to reconsider previous applicability determinations in applying for a Title V permit. However, instances of past non-compliance should be remedied as they are discovered by the source, since enforcement action is possible. The permit shield that, in Virginia, will be part of every Title V permit, is not available for non-compliance with applicable requirements that occurred before, or continues after, submission of the application.[26] (Virginia's rule states that the permit shield is not available for "violations of applicable requirements prior to or at the time of permit issuance."[27])

White Paper II (March 5, 1996).

In publishing the second White Paper, EPA pointed out that the two White Papers are to be used together in simplifying and streamlining Title V program requirements. White Paper II, like White Paper I, is focused on the application process, but it includes some emphasis on permit writing as well. The five major issues addressed by White Paper II are described in the following sections of this Memo.

A. Streamlining multiple applicable requirements on the same emissions unit(s). Given the multitude of requirements that may or do apply to a given source, some may be redundant or unnecessary as a practical matter, even though they legally

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definitions in 9 VAC 5-80-60.C. follow the Part 70 definitions closely.

[25] White Paper I, pages 22-24.

[26] White Paper I, page 24.

[27] See 9 VAC 5-80-140.C.2. Theoretically, therefore, a source could be in violation of an applicable requirement at the time of application, address it in the application with a compliance plan, receive a permit which includes the compliance plan, and be subject to enforcement action for violation before permit issuance. However, the Department, following the White Paper to the best of its ability, will not use this authority.

apply. White Paper II allows a source or the Department to propose "streamlining" such requirements where compliance with a single set of requirements ensures compliance with all. The White Paper addresses the following questions in this regard:

(1) Can multiple redundant (or conflicting) requirements on the same emissions unit(s) be streamlined into a single set of enforceable permit conditions?

(2) May an applicant propose to minimize or consolidate applicable requirements?

(3) May the Department make such a proposal?

(4) How would an application with a streamlining proposal satisfy compliance certification requirements?[28]

1. Guidance on the matter. The first three of these questions are answered in the affirmative, and White Paper II gives guidance on the fourth.

Sources may propose "streamlining" of requirements in order to ensure compliance with all applicable requirements for an emissions unit or group of units, as a means of eliminating redundancy. The resulting terms would ensure that all applicable requirements are covered in the permit and receive the permit shield. Sources would have to demonstrate that the applicable requirements chosen in the streamlining process were adequate to cover the needs of the requirements discarded as redundant. EPA enunciated several principles in this regard.

a. Determine the most stringent of multiple applicable emission limitations for a specific regulated pollutant on a particular emissions unit, by taking into account --

* emissions limit units of measure

* effective dates of compliance (where different)

* transfer or collection efficiencies (where relevant)

* averaging times[29] (measures of compliance)

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[28] White Paper II, page 6.

[29] The White Paper indicates that while requirements with varying averaging times may be streamlined, in no event may a requirement specifically designed to address a particular health concern (including those with short

* test methods (measures of compliance)

Where a streamlined VOC limit subsumes multiple HAP limits, the permit must be written to ensure that each of the subsumed limits will not be exceeded. A limit for a single or limited number of compounds cannot be used to subsume a limit for a broader class, because this would effectively de-regulate any of the class not covered by the more limited group.[30]

Note also that streamlining of multiple applicable requirements is permissible with respect to all applicable requirements except for acid rain requirements of 40 CFR Parts 72 and 78.[31] These may be the subsuming, but not the subsumed requirements.

b. Treat work practice requirements as follows.

* If a work practice requirement directly supports an emission limit (applies to the same unit(s)), then the proposed streamlining requirement must include its directly supporting work practices but need not support those associated with the subsumed limit.

* Work practice requirements which do not directly support an emissions limit may be subsumed, and composite work practice standards developed, provided that the resulting requirement has the same base elements and provisions as the subsumed requirements.[32]

c. Monitoring, reporting, and record-keeping requirements should not be used to determine the relative stringency of the requirements to which they apply.[33] However, stringency of monitoring needs to be considered in its own right.

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averaging times) be subsumed into any requirement which is less protective.

[30] White Paper II, pages 7-9.

[31] This is because any inconsistency between Part 72 or Part 78 and Part 70 is to be resolved in favor of Part 72 or Part 78. Thus the Part 72 requirement or Part 78 requirement can become the streamlined (subsuming) requirement (i.e., the most stringent) in a streamlining exercise. See footnote 1 on page 6 of White Paper II.

[32] White Paper II, pages 9-10.

[33] White Paper II, page 10.

d. Dealing with difficulties not addressed above. Where comparisons are difficult or the foregoing guidance does not allow enough streamlining, sources may resort to any or all of the following activities to justify additional or different streamlining:

* Construct hybrid or alternative emission limits which are at least as stringent as any applicable requirement -- see below;

* Use a previously "state-only" requirement if it is at least as stringent as any federal requirement it would subsume;

* Use a more accurate test method, provided the method selected does not substitute a method not approved by EPA for an approved method, unless EPA provides case-by-case approval or delegates such approval responsibility to the State.

Another method is a detailed correlation which proves the relative stringency of each applicable requirement.[34]

Hybrid requirements may be constructed to reflect different parts of two (or more) requirements applicable to the unit in question. For example, one previous permit term might have the stricter of two emission limits applicable to the unit, while another might have a less stringent emission limit but a better monitoring scheme. A hybrid requirement would partake of the stricter emissions limit and the better monitoring scheme, thereby making effective use of both applicable requirements. Form 805, in its latest rendition, provides for streamlining of multiple applicable requirements.[35]

e. Monitoring, record-keeping, and reporting requirements associated with the most stringent applicable requirement are assumed appropriate for use with the streamlined emissions limit unless they would diminish the ability to ensure compliance with the streamlined limits. This may not be the case, however, if there is a difference in the extent to which the subsuming monitoring ensures compliance with the streamlined limit as compared with the subsumed monitoring and the subsumed limits. Relevance and technical feasibility also play roles in buttressing or

[34] White Paper II, pages 10-11.

[35] See Form 805, page 17, "**Streamlining Applicable Requirements**."

defeating this assumption. Similarly, record-keeping and reporting requirements associated with the selected monitoring approach are presumed appropriate for use with the streamlined limit. White Paper II lists several precautions that may apply here.[36]

f. Include citations to any subsumed requirements in the permit's specification of the origin and authority of permit conditions. Also, the Title V permit must include any additional terms needed to ensure compliance with the streamlined require-ments; and the terms must be practically enforceable.[37]

2. Process. The White Paper describes an eight-step process by which an applicant and the Department could accomplish streamlining of multiple applicable requirements. It envisions three basic approaches:

* Applicant/source proposing the streamlining effort;

* Department developing streamlining options for sources or source categories that the applicant would accept;

* Department and source working together after the initial complete application is filed.

It should be mentioned here that whether to streamline multiple applicable requirements is an option with the source.

Form 805 contemplates the streamlining of multiple applicable requirements on its "**Applicable Requirements**" pages (pages 14-16) and "**Compliance Certification and Plan, page 1 of 3**" (page 19) as well as page 17, "**Streamlining Applicable Requirements**."[38]

The eight-step process, presented at length in the White Paper, is summarized here. The first six steps are taken by the applicant; the other two are taken by the Department.

* ***Step 1*** - The applicant compares the applicable

[36] White Paper II, pages 11-12. See footnotes 9 through 15 on these pages.

[37] White Paper II, page 12.

[38] See footnote 35.

requirements; the applicant must distinguish between emissions, work practices, monitoring, and compliance demonstration provisions.

* *Step 2* - The applicant determines the most stringent emissions or performance standard (or hybrid standard as appropriate) and provides documentation, for each emissions unit proposed for streamlining.

* *Step 3* - The applicant proposes the streamlined requirements, including any conditions needed to ensure compliance.

* *Step 4* - The applicant certifies compliance, indicating that it is with a streamlined limit, based on appropriate compliance data.

* *Step 5* - The applicant develops a compliance schedule to implement any new approach, if it cannot be done at the time of application.[39]

* *Step 6* - The applicant indicates that streamlining is being proposed, and proposes a permit shield that covers it.

* *Step 7* - The Department evaluates the adequacy of the proposal and its supporting documentation. The Department gives the applicant reasonable opportunity to accept the findings or propose resolution of differences.

* *Step 8* - The Department points out the use of this process as part of any required submission to EPA on the subject of the application in question.[40]

3. Enforcement. EPA makes a distinction between streamlined emissions limitations and streamlined monitoring, record-keeping, and reporting requirements in discussing enforcement. The subsumed emission limits in a permit may be cause for enforcement action by EPA or DEQ if the violation is documented, whereas there would be no EPA enforcement for failure to meet the other requirements provided the source tried in good faith to meet the streamlined requirements.

B. Development of applications and permits for outdated SIP requirements. DEQ regulations are binding on our permit

[39] This is no different from what is required for any other compliance deficiency; see Form 805, pages 19-21, "**Compliance Certification and Plan**."

[40] White Paper II, pages 13-15.

writers and sources when they take effect (after Board approval and appearance in the Virginia Register), rather than when they get SIP-approved, which may be much later. We may find ourselves including in a Title V permit a requirement that is not yet SIP-approved (and thus not federally enforceable). Both White Papers address what we should do in this circumstance.

1. Guidance on the matter. White Paper I advises that the source may describe the new rule awaiting SIP approval as a state-only requirement, voluntarily applied for,[41] and note that it will become federally enforceable upon SIP approval. This would require the advice of the Department, since we are in a better position to know the SIP status of any requirements than are permit applicants. To accomplish this, DEQ has had developed a compilation of the SIP that may be used by both applicants and staff. If the requirement receives SIP approval during permit processing, we would incorporate it as a federally enforceable permit requirement; otherwise, we would put it as a state requirement, making the same proviso (i.e., that it will become federally enforceable upon SIP approval). In addition, we would put the existing SIP requirement in the federally enforceable provisions of the permit, and condition it to expire upon SIP approval of the new provision.[42]

For most purposes, this approach would suffice. However, where there are many rule revisions awaiting SIP approval, White Paper II indicates that we may let a completeness determination depend on the new rules in the application (since sources and the Department have to follow those anyway), including new rules that relax currently effective requirements. We may do this under two conditions:

* that we have submitted the new rules for SIP review; and

* that we "reasonably believe" that the permit will be based on the new rules (i.e., that we believe SIP approval is imminent or at least will precede permit issuance).[43]

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[41] State-only requirements need not be included in Title V permits unless the applicant requests them; see 9 VAC 5-80-300.

[42] See White Paper I, page 11. Treatment of state-only requirements is prescribed in the permit content provisions of Rule 8-5. See 9 VAC 5-80-110.N.

[43] White Paper II, page 19. The White Paper does not give guidance on what it means by "reasonably believes," so the parenthetical interpretation is

Where the new rule is more stringent than the current SIP rule, the situation is easier. If the Department has proven to EPA's satisfaction that the new rule submitted for SIP review is more stringent than the current rule, it may not only accept the application as complete on this score, but may issue the permit with the new rule, because the new rule ensures compliance with the older version of the rule.[44] However, there is some residual possibility in this case that enforcement of the old (SIP-approved) rule would take place.[45]

Where, on the other hand, the new rule submitted for SIP review is less stringent than the current rule, the applicant may submit the new rule in the application, and the Department may determine that the application is complete, but the permit based on the new rule may not be issued until the SIP review is completed and the new rule has SIP approval. It is possible, of course, that there will be a "mixing and matching" of more stringent and less stringent new rules in a permit; in this instance, the source may demonstrate, in a given instance, that the new rule ensures compliance with the old one; if the Department agrees, the permit may be issued before SIP approval of the requirements in question.[46]

2. Process. White Paper II provides extensive guidance on this matter, in light of a perceived need for it in California, where a number of local air programs with new rules have created significant SIP backlogs.[47]

Virginia has no local air programs but may have cases in which SIP review is not completed as fast as we would like. The approach to dealing with outdated SIP requirements is fairly clear, as indicated above, where the new rule is more

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ours.

[44] This comports with ə 504(a) of the Clean Air Act, which requires permit terms and conditions needed to ensure compliance with the applicable requirement.

[45] White Paper II discusses the possibility that EPA could give indications of which submitted rules ensure compliance with the existing SIP rules, but points out that such indications do not amount to rule-making or constitute SIP revisions in themselves; nor do they "pre-determine" the outcome of EPA review of the permit in question. See White Paper II, page 20.

[46] White Paper II, page 21.

[47] White Paper II, page 1. See pages 24-27 for the guidance. The White Paper warns that the guidance is not to be used for anticipating the outcome of pending attainment status redesignations.

stringent than the present one. Where we think, or EPA thinks, that the new rule in question is less stringent than the current SIP rule, and we do not want to wait for the completion of SIP review before issuing the permit, then the applicant must revise its application (according to reasonable time frames to keep its application shield) to rely on the SIP rule.[48]

C. Treatment of insignificant emission units. The question addressed in this section is how intensively to treat an insignificant emission unit with at least one applicable requirement. Rule 8-5 commands inclusion of and attention to insignificant emission units and levels where their omission would interfere with the determination and imposition of applicable requirements; White Paper I essentially supports this view.[49] White Paper II indicates that an application must support the drafting of a permit, including information on insignificant units subject to generally applicable requirements.[50]

1. Guidance. White Paper II provides guidance on the treatment of insignificant emission units subject to applicable requirements insofar as application information (sub-sections a and b below) and permit content (subs-sections c, d, and e below) are concerned.

a. Application information. The source may group emission units and activities generically for broadly applicable requirements, as White Paper I described.[51] It may suggest standard or generic conditions for generally applicable requirements, and skip emission estimates where the emissions are not relevant to applicability of or compliance with requirements.[52]

b. Application information - initial compliance certification. Federal and state rules require a certification of compliance with all applicable requirements,[53]

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[48] White Paper II, page 26.

[49] See 9 VAC 5-80-90.D.1.a.(2) and White Paper I, page 6.

[50] White Paper II, page 28.

[51] White Paper I, page 9; see sub-section 3, pages 4-5 above, and footnotes 7 and 8.

[52] White Paper II, pages 28-29.

[53] Part 70, э 70.5(c)(9)(i) and Rule 8-5, 9 VAC 5-80-90.J.1.

and this affects insignificant units subject to applicable requirements as well. However, that compliance certification is based on a reasonable inquiry by the responsible official, and the reasonable inquiry, in turn, is based on available information. Where the applicable requirement (generally applicable or otherwise) does not require monitoring, there is no need to require monitoring to support the certification. The same is true for emission testing if that is not required by the applicable requirement.[54]

c. Permit content - applicable requirements. In this regard, and following White Paper I, standard permit terms can be used to address generally applicable requirements for activities or units grouped together. As long as the scope of the requirement and manner of its enforcement are clear, there is little or no need to make specific reference to any particular emission unit covered by the requirement.[55]

d. Permit content - monitoring, record-keeping, and reporting. The Department has broad discretion in determining the nature of periodic monitoring required in the permit. Where generally applicable requirements -- those covering insignificant units as well as others -- are concerned, the need for this discretion is evident. There is no need for the same level of rigor with respect to all emission units and applicable requirements; some units are less important to control than others. While Part 70 requires the inclusion of monitoring requirements in all permits,[56] this can mean "no monitoring" in cases where monitoring would not significantly enhance the permit's ability to ensure compliance with applicable requirements. A streamlined approach is appropriate where monitoring is needed for insignificant units subject to generally applicable requirements.[57]

e. Permit content - compliance certifications. Where the emissions unit presents little possibility of violation of an applicable requirement, the "reasonable inquiry" required as a basis for the compliance certification can be abbreviated. As long as there is no observed, known, or documented non-compliance, the compliance certification can

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[54] Loc. cit.

[55] White Paper II, page 29.

[56] See э 70.6(a)(3)(i), and also 9 VAC 5-80-110.E. in Rule 8-5.

[57] White Paper II, page 30.

be supported.[58]

D. Use of major source and applicable requirement stipulation. The second White Paper allows a source to make three stipulations which enable it to refrain from providing additional supporting information. These are:

* that it is major. In this case, however, it must list the pollutants for which it is major in keeping with Part 70 and Rule 8-5.[59]

* That it is subject to applicable requirements. This stipulation is available only if either of two pre-requisites pertain:

  -- DEQ has issued previous permits to the source, or

  -- DEQ is otherwise familiar with the operation of the source, such as through the emission inventory.[60]

* That the source is subject to some portions of a requirement but not to others.

The guidance on this matter follows. As with White Paper I and Rule 8-5,[61] the application must include the information necessary to allow DEQ to determine and impose applicable requirements. In Virginia, the major source stipulation should come almost naturally, since we have spent much time determining Title V major status.

White Paper II indicates that where an applicant stipulates that some portions but not others apply, the Department may request that the source provide information to demonstrate that it is not subject to the requirements it claims do not apply, and that more information will be required in any case if a permit shield is requested. DEQ has anticipated this stipulation by:

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[58] White Paper II, page 31.

[59] White Paper II, page 32; see Part 70, э 70.5(c)(3)(i) and Rule 8-5, 9 VAC 5-80-90.D.1. for the requirement to list pollutants for which the applicant is major; this is done on page 13 of Form 805.

[60] White Paper II, Pages 32-33.

[61] See White Paper I, page 6, and also 9 VAC 5-80-90.D.1.a.(2).

* mandating the permit shield in every Title V permit,[62] and

* offering a page in Form 805 which allows identification of requirements that do not apply.[63]

The required permit shield, which covers all applicable requirements identified in the permit and excludes those requirements specified in the permit as not applying,[64] enhances the importance of identifying requirements, or portions of require-ments, which do and do not apply. Optional page 3 of Form 805 is the vehicle for these distinctions. We encourage sources to use this page, but do not encourage them to put in every conceivable Clean Air Act requirement that does not apply. Such overuse of the stipulation opportunity will defeat the purpose of stipulating, which is to streamline the application and the process of reviewing it.

E. Referencing existing information in applications and permits. White Paper II allows the applicant and the DEQ to cite, cross-reference, or incorporate by reference existing information in the application and in the permit provided the information in question is currently applicable and is available to the agency and the public. The White Paper gives guidance on the precision with which the information must be referenced and what is meant by "available." Some highlights follow.

1. In general. The citation of or reference to documents containing existing information must be clear, including such details as dates, titles, versions, and document numbers so as to leave no ambiguity. The reference must offer enough detail so that both the manner in which the information applies and the extent to which it applies are not reasonably subject to misinterpretation. And availability of the information means that it must be in the docket on the permit action, available in the DEQ office, or readily available in places open to the public.[65]

2. Cross-referencing in applications. The White

[62] See 9 VAC 5-80-140.

[63] See Form 805, optional page 3, "**Requirements which do not apply to the source.**"

[64] See 9 VAC 5-80-140.B.

[65] White Paper II, pages 34-35.

Paper suggests that DEQ may wish to identify types of information which can be cross-referenced or cited in the application; but it indicates that this policy is not intended to create a burden for the agency of copying or obtaining the information. Types of information which might be suitable for cross-referencing or citation might include, but not be limited to, the following, depending on the agency's judgment:

* rules, regulations, and published protocols;

* criteria pollutant and HAP emission inventories and supporting calculations;

* emission monitoring reports, compliance reports, and source tests;

* annual emission statements;

* process and air pollution control equipment lists and descriptions;

* current operating and pre-construction permit terms.

Cross-referenced or cited information, like other application information, is subject to certification of truth, accuracy, and completeness.[66]

3. Cross-referencing in permits. Cross-referencing in permits is a slightly different matter than cross-referencing in applications, because of the Title V purpose of developing comprehensive, unambiguous permits. Streamlining presents a potential conflict with this purpose, and a balance must be struck. Among the information categories amenable to cross-referencing or incorporating by reference in permits are the following:

* test method procedures;

* inspection and maintenance plans;

* calculation methods for determining compliance;

* details of applicable emission limits, once those limits are listed. This is subject to two conditions:

  -- applicability issues and compliance obligations must be clear; and

[66] White Paper II, pages 35-36.

-- the permit must include additional terms sufficient to ensure compliance with all applicable requirements.

As discussed in White Paper I, the permit application should not be incorporated by reference into the Title V permit.[67]

White Paper II goes on to discuss the topic of different and independent compliance options allowed by a given applicable requirement, and when and how to incorporate these by reference. The example is given of using low-sulfur fuel or adding a control device. The entire applicable requirement may be cited, if the citation meets all of the following conditions:

* the reference is unambiguous in its applicability and requirements;

* the permit contains obligations to certify compliance and report compliance monitoring data reflecting the chosen control approach;

* the DEQ determines that such referencing will meet the purposes of Title V (i.e., provide a comprehensive permit).[68]

Conclusions

As indicated in the "Background and Purpose" discussion at the front of this Memo, the practical experience that we gain in implementing Title V in the coming years may result in new interpretations of the White Papers, not only by DEQ but by their authors in EPA as well. This Memo may be changed in consequence.

[67] See White Paper I, page 22 for this proposition. The rest is attributable to White Paper II, pages 36-37.

[68] White Paper II, pages 36-37.