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From: Thomas.Carrie@epamail.epa.gov
Sent: Friday, April 24, 2009 8:07 AM
To: Butt, Neal T.
Cc: Penland.Catherine@epamail.epa.gov; Robinson.Jeffrey@epamail.epa.gov; Watson.Lucinda@epamail.epa.gov
Subject: Proposed Amendments to 20.11.42 NMAC, Operating Permits

Follow Up Flag: Follow up
Flag Status: Orange

Hi Neal,
Thank you for the opportunity to provide comments on the current review draft of 20.11.42 NMAC, Operating Permits. As a general matter, this rule must comply with the federal permitting requirements under the Clean Air Act and 40 Code of Federal Regulations (CFR) Part 70.

EPA Region 6 has the following preliminary comments:

1) Under **20.11.42.2(D) Scope**, the draft rule states the following:

D. Existing major sources, which are not required to have a permit under 20.11.41 NMAC:
~~[(1)~~]Existing major sources which have not been required to have a permit under 20.11.41 NMAC, and wish to avoid designation as a major source under 20.11.42 NMAC, may apply for a permit under 20.11.41 NMAC to obtain federally enforceable conditions which restrict the potential to emit to non-major emission rates. Such conditions may include emissions limitations, process restrictions [~~and/~~] or limitations, restrictions on annual hours of operation, or other conditions which would reduce the facility's potential to emit.
~~[(2) Any such source which has not been issued a 20.11.41 NMAC permit as described in Paragraph (1), of Subsection D of 20.11.42.2 NMAC above prior to the application date required under Subparagraph (b), of Paragraph (2), of Subsection A of 20.11.42.12 NMAC shall be subject to the requirements of 20.11.42 NMAC.~~] {AQD}

There are a few types of major sources that have generally **not** been required to have a permit under Albuquerque's current minor source permitting program, under 20.11.41 NMAC. Those sources are: 1) PSDs under 20.11.61 NMAC, which have not had modifications under the minor source program; 2) grandfathered major sources; and 3) certain major sources under NSPS and MACT, which are not PSD sources. This proposed definition is open to interpretation, and will not be approvable if submitted as is, for the following reasons:

- PSDs cannot avoid Title V, per extensive EPA policy and guidance, regardless of their level of emissions. This proposed definition could be interpreted to be applicable to PSDs, therefore it is not approvable.

- Existing NSPS and MACT applicable majors that become minor sources of emissions, due to the controls required by NSPS and MACT, cannot avoid Title V unless the NSPS or MACT specifically exempts them from Title V or an EPA approved SIP lists them as exempt. This requirement has been explained to the AQCD permitting group a number of times, and is supported by 40 CFR 70.3 and numerous national policies and guidance. This proposed rule is not approvable because it could be interpreted to allow nonexempt NSPS or MACT applicable sources to be permitted as synthetic minors, which would allow Title V exemption.

In order for this proposed rule to be approvable into Albuquerque's Title V program, Region 6 will need an adequate demonstration from AQCD explaining how this rule meets the Title V applicability requirements of 40 CFR Part 70.3 and all applicable EPA guidance, policy, and rules.

2) Under **20.11.42.7(I) Definitions**, the draft rule states the following:

"Emissions allowable under the permit" {40 CFR 70.2} means:

(1) any [~~department or~~] federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emission limit (including a work practice standard) [~~requested by the applicant and approved by the department or determined at issuance or renewal to be an applicable requirement~~]; or

By including the qualifier "determined at issuance to be required by an applicable requirement," this proposed provision effectively restricts what emission limits are federally enforceable/allowable under the permit. If a federally enforceable condition is determined at any time other than issuance, i.e., appeal, then per this definition, unless the permit is reissued, any newly found federally enforceable requirements would not be allowable under the implementation of this definition. The phrase "at issuance" must be deleted from the proposed provision in order for this rule to be approvable.

We appreciate this opportunity to review and comment on this stakeholder review draft of the rule. Please note that additional issues, not noted here, could exist within this rule that may prevent EPA approval. Therefore, Region 6 reserves the right to disapprove the rule from inclusion in the City's approved Title V program based on issues outside the scope of the comments we submit today. If you have any questions, please fee free to call me at the number below or Ms. Catherine Penland at (214) 665-7122.

Sincerely,

Carrie K. Thomas
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Proposed Amendments to 20.11.42 NMAC, Operating Permits

Butt, Neal T. to: Catherine Penland 03/24/2009 05:26 PM

Cc: Alan Shar, Stanley Spruiell, Carrie Thomas, "Tavarez, Isreal L.", "Rocha, Dario W.", "Nieto, Margaret ", "Amend, Janice C.", Jeffrey Robinson

Catherine,

The City of Albuquerque Air Quality Division is proposing amendments to 20.11.42 NMAC, *Operating Permits.* These amendments will:

1. Change the definition of "Major Source". Currently, source categories subject to Section 111 of the Clean Air Act, *New Source Performance Standards* (NSPS), or subject to Section 112 of the Act, *National Emission Standards for Hazardous Air Pollutants* (NESHAPs), are required to include their fugitive emissions along with their direct emissions when calculating their total emissions. If/when their emissions reach a level of 100 tons per year of a pollutant, the source is then considered a "Major Source", which would require an operating permit. The proposed amendment would limit the requirement to include fugitive emissions as part of the total emissions, to only those source categories subject to NSPS and NESHAPs promulgated on or before August 7, 1980.

2. Amend language in 20.11.42 NMAC to bring it into alignment with language in 40 CFR 70, *State Operating Permit Programs*.

3. Fix style and formatting.

Please provide comments by April 24, 2009. If you have any questions please let me know. Thanks

Neal Butt
Environmental Health Scientist
Air Quality Division
(505) 768-2660

<<20.11.42 NMAC Stakeholder Review Draft 3-24-09.doc>>

"Our challenges may be new, the instruments with which we meet them may be new, but those values upon which our success depends, honesty and hard work, courage and fair play, tolerance and curiosity, loyalty and patriotism -- these things are old. These things are true. They have been the quiet force of progress throughout our history. What is demanded then is a return to these truths."

President Barack Obama

[attachment "20.11.42 NMAC Stakeholder Review Draft 3-24-09.doc" deleted by Catherine Penland/R6/USEPA/US]