Implementation of EPA's White Paper for Pennsylvania DEP Title V Permit Applications

I. BACKGROUND

On July 10, 1995, the U.S. Environmental Protection Agency (EPA) issued guidance for the efficient implementation of the requirements of Title V of the federal Clean Air Act and implementing regulations codified at 40 CFR Part 70 (relating to the operating permit program). This EPA guidance document entitled, "White Paper for Streamlined Development of Part 70 Permit Application" clarifies and simplifies various elements of the Title V permit program including, but not limited to: Title V application completeness determinations; grouping of sources; identification of insignificant activities; incorporation of permit conditions for new source review (NSR), reasonable available control technology (RACT) and other applicable requirements; identification of State Implementation Plan (SIP) applicable requirements; separation of research and development facilities; and the listing of potential to emit (PTE) and actual emissions of regulated pollutants.

The following is a discussion of the Pennsylvania Department of Environmental Protection's (DEP) application of the procedures outlined in EPA's White Paper. (This paper follows the section headings as listed in EPA's White Paper) Most of the principles addressed in the White Paper were already provided for in the Commonwealth's Title V permit program from its inception. For example, topics addressed in the Paper such as supporting information, quality of required information, phasein details for completeness determinations, changing emissions information and crossreferencing of applicable requirements are presently contained in the Title V permit application procedures implementing Pennsylvania's Title V operating permit program. Many of the clarifications contained in the White Paper have already been addressed in DEP's regulations, workbooks, instructions for permit applications and public workshops. This document, however, outlines how DEP has already implemented, or will implement, key elements of EPA's White Paper.

II. STREAMLINED DEVELOPMENT OF COMPLETE TITLE V APPLICATIONS

A. Current Requirements for Complete Applications

The EPA White Paper position is... If the permit application contains sufficient information for a state permitting agency to begin processing, the application may be considered complete.

Pennsylvania's Title V regulations have always provided that applications are complete if they contain sufficient information to begin processing - PA procedures provide additional assistance to companies through pre-printed information on the applications, pre-submittal review, and a cooperative approach that allows revisions and submittal of additional information up to final review of the permit.

In accordance with 25 Pa. Code §127.421(a), the DEP will determine if a Title V application is complete within 60 days of receipt of the application. An application is complete if it contains sufficient information to begin processing the application, has the applicable sections completed and has been signed by a responsible official.

In addition, supplemental information requirements contained in 25 Pa. Code §127.414 provide that applicants for Title V operating permits may submit additional information as necessary after the application has been submitted to the Department, but prior to Departmental action on the permit application. This additional information may include supplementary facts or corrected information or any other information consistent with changes occurring at the facility after the application submission date and prior to the Department taking action on the permit.

The Department has been and will continue to advise applicants for Title V operating permits to supply the best information available at the time of completion and submission of the Title V permit application. If a Title V facility elects to conduct additional tests to provide more accurate information, the facility would simply indicate on the permit application that supplemental information will be submitted and provide an estimated submittal date for the supplemental information. When corrections, additions or modifications to the application are necessary, such corrections or revisions can be made at the facility's discretion provided the Department has not taken final action on the permit application.

Furthermore, it is the policy of the DEP to notify applicants for Title V operating permits prior to commencing its official review of an applicant's Title V permit application. This notification of the official review of the application will provide the applicant an opportunity, if desired, to submit supplemental information. This information will need to be received within 30 days of receipt of the notification, unless the date for receipt of the revisions or amendments is extended by the Department. In addition, supplemental updates may be submitted at anytime prior to notification of the official permit review.

B. CONTENT OF TITLE V PERMIT APPLICATIONS

1. Overview

Section B of this document contains Pennsylvania DEP's description of the level of information that companies should provide in their Title V permit applications.

2. REQUIRED EMISSIONS INFORMATION AND SOURCE DESCRIPTIONS

Potential to Emit

The EPA White Paper position is... EPA's White Paper describes the minimum requirements state permitting authorities may use to determine whether a Title V permit application is complete. The document provides that Title V applications should contain information necessary to determine: (a) major source status; (b) Title V applicability or applicable requirements; (c) compliance with applicable requirements; and (d) computation of emission fees. Emissionsrelated information such as tons per year (tpy) estimates for pollutants should not be required if the information serves no useful purpose, if a quantifiable emissions rate is not applicable or where generic requirements apply to emission sources.

The Department will not require the reporting of potential emissions in the Title V permit application unless the information is needed to determine major source status, applicable requirements, or compliance with applicable requirements. This will provide significant relief especially in the area of Hazardous Air Pollutants(HAPs), where no HAP emission standards have been established for a given source.

Pursuant to 25 Pa. Code §127.503 (relating to application information), emissionsrelated information is to include emissions of air contaminants for which the facility is a Title V facility as well as emissions of regulated air pollutants. Identification of emissions should be provided in sufficient detail to establish a basis for emission fees and applicable requirements of the Clean Air Act. The emission rate data, expressed in tons per year (tpy), also is to be expressed in terms necessary to establish compliance consistent with the applicable emission limit and standard reference test methods.

EPA's guidance relating to how a facility identifies the PTE and actual emissions for a given source has been included in the implementation of Pennsylvania's Title V operating permit program. For facilities that are, or will be identified as Title V facilities, a determination as to the applicability of Title V will not be necessary, thereby reducing or eliminating the need for emissions information for Title V applicability purposes. For example, facilities identified as Title V facilities are no longer required to provide emissions information relating to the PTE for a source of hazardous air pollutants (HAPs) where no applicable requirements presently exist for such HAPs. However, the source's PTE still needs to be reported if the

emissions information is needed to demonstrate compliance with an applicable requirement that is expressed in terms of emissions. The PTE for a source is not required where the applicable requirement is a work practice such as installation of a conservation vent, housekeeping, or leak detection provisions.

For facilities submitting "synthetic minor" applications, it will be necessary for these facilities to submit emissions information on the PTE for each Title V pollutant. The PTE will become an applicable requirement in the Stateonly operating permit subsequently issued the facilities, because these facilities will be escaping an otherwise applicable requirement (obtaining a Title V permit).

In circumstances in which a facility is willing to stipulate that it is a Title V facility, the Title V permit application no longer needs to specify the PTE unless the PTE has been previously defined for regulatory or applicability reasons. For example, if the potential to emit was utilized in a technology decision, or a previous applicability determination such as NSR or RACT, then the PTE is an applicable requirement that has to be included in the Title V application.

For those sources for which there are no applicable requirements, the facility still needs to identify source details sufficient for DEP to track modifications that may occur that would make the source subject to other applicable requirements such as NSR, RACT, or Maximum Achievable Control Technology (MACT). A company has the responsibility to identify all of its sources along with the source's maximum capacity (or maximum level of operation), any air pollution control equipment, and emission stack details. Where there are no applicable requirements, the source related information is not to be used to create an emission cap or emission limit on the source; but to define parameters which can be used to determine when modifications occur.

For sources that have applicable requirements the following additional information is required: the identification of the applicable requirements and the associated emission limits (as appropriate), provide appropriate information on the control equipment and how the controls limit actual and PTE emissions, and how the source will demonstrate compliance.

PTE will not be established for a source if there is no applicable emission standard, unless a company chooses to define a PTE for a particular source and pollutant to in order to limit, or possibly limit, applicability of that source to certain regulatory standards.

An important reminder: Redefining a facility's PTE for a particular pollutant cannot be used to escape applicability to NSR after a facility has already become a major facility for NSR purposes.

NOTE: Even when the PTE is defined for a particular source and pollutant, It does not always define the maximum allowable emissions for a given source. If the PTE is defined utilizing an emission estimate, rather than an emission standard, the PTE can change through no fault other than a better estimate of emissions. In that case, the only effect would be to now subject a source or facility to an applicable requirement (i.e. RACT). Where the PTE is defined by an allowable emission limit for a given pollutant, a maximum allowable limit is established. A source's PTE defined solely by an emission estimate does not set an emission cap for that source, but may define which requirements are applicable to the source. If the emission estimate changes, then it will be necessary to reevaluate certain requirements such as RACT determinations.

Potential-to-Emit Emission estimates are not required where a quantifiable emission rate is not applicable.

Actual Emissions

The EPA White Paper position is... "wherever emissions estimates are needed ... use of available information should suffice."

The Department will not require the reporting of estimates of actual emissions of regulated pollutants on Title V operating permit applications where such estimates of actual emissions have already been provided to comply with the emission fee or emission inventory reporting requirements.

The reporting of actual emissions of regulated pollutants for 1994 are to be reported and emission fees paid by September 1, 1995, and each calendar year thereafter to satisfy the requirements of 25 Pa. Code §127.705 (relating to emission fees). This reporting of actual emissions data will suffice, provided the emissions are detailed at the source level and properly speciated.

A facility has the obligation to report all regulated pollutants that can reasonably be expected to be emitted during the term of the Title V permit. Therefore, if a pollutant exists for which no PTE has been defined, and this pollutant was not emitted in 1994, then this pollutant is to be reported separately. This pollutant's emissions need not be quantified either for PTE or actual levels of emissions, but has to be reported so that the DEP can determine which facilities may be subject to future applicable requirements (i.e. MACT standards). If a 112(r) pollutant is also a criteria pollutant, it should be quantified for actual emissions in its speciated 112(r) form, as well as, be reported as a criteria pollutant. The DEP does not expect a facility to determine all pollutants that could be emitted, but only those emissions from the facility that are reasonably foreseeable.

The accuracy of a facility's actual emissions establishes the basic framework for various applicable requirements. Therefore, an owner or operator of a Title V facility is obligated to accurately determine its actual emissions, not only for emission fee or Title V fee purposes, but also for emission inventory data reported to EPA to meet certain SIP requirements. In addition, accurate emissions data is critical to NSR applicability determinations and the generation of emission reduction credits (ERCs). Although Title V facilities will no longer be obligated to provided estimates of actual emissions in the Title V permit application, it is important to review the preprinted actual emissions data provided by the DEP to ensure the accuracy of the preprinted estimates of actual emissions.

Facilities that are subject to the requirements of Title VI of the CAA are not required to report actual emissions of chlorofluorocarbons (CFCs) or hydrochlorofluorocarbons (HCFS). In such instances, a facilitywide applicable requirement concerning the requirements of Title VI will be sufficient. Facilities should also be aware of the need to include any special requirements, when applicable, where the CFC units exceed the 50 lbs. charge thresholds and where the facility services its own CFC vehicle units.

In summary, for emissionsrelated information, a facility needs to provide maximum capability of operation for a source, allowable emissions, applicable requirements and control equipment information. If a facility does not limit hours of operation, the DEP will assume that a source operates 8760 hours per year. A source's PTE need not be included in the Title V permit application unless that pollutant has an applicable emission requirement, or a facility would like for operational reasons to define a PTE as an applicable requirement in its Title V permit. In most instances, actual emissions information required for Title V purposes will be captured during the calculation and payment of emission fees. Consequently, the reporting of actual emissions information on the Title V Application Form, where the reporting is a duplicate of emission fee information, is not necessary.

3. INSIGNIFICANT ACTIVITIES

The EPA White Paper position is... The EPA Administrator is authorized under 40 CFR §70.5(c) to approve as part of a State's Title V program, a list of insignificant activities or emission levels that need not be included in a Title V operating permit application. An activity should be added to the listing of insignificant activities if the information is not necessary to determine: (1) which applicable requirements apply; (2) whether the facility is major; or (3) whether the facility is in compliance with applicable requirements.

Pennsylvania's Title V program has always provided for a list of insignificant activities that need not be considered when preparing the Title V application. DEP's insignificant activities list provides for even more activity types than EPA's. The Department is also presently revising this list to include more activity types that may be considered insignificant. Furthermore, a facility may request Departmental review of the facility's list of insignificant activities.

An applicant for a Title V operating permit may identify activities at the facility which an applicant believes are insignificant, whether or not they fall within the DEP's current list of insignificant activities. A facility is merely required to list on the Title V permit application those activities or sources believed to be insignificant, along with any necessary demonstration. The DEP will ultimately determine whether the activities listed in the permit application are insignificant. If additional information is needed, or DEP determines that such activities at the source are not insignificant, the facility will be notified by the Department to provide supplemental information which may include corrections to the application.

In addition to a number of source categories submitted by applicants for Title V operating permits, the DEP is presently evaluating additional source categories included in EPA listing of "trivial" activities for inclusion in Pennsylvania's Title V program. The DEP will also periodically update its listing of insignificant activities following determinations that certain activities are, in fact, insignificant.

4. GENERIC GROUPING OF EMISSION UNITS AND ACTIVITIES

The EPA White Paper position is... Grouping of certain sources or activities in circumstances in which identical requirements apply to a class of activities or sources and the requirements may be enforced in the same manner without requiring a specific listing of each source. The grouping of sources generically is recommended for units and activities that have identical requirements for all sources at a facility such as: facilitywide opacity limits, general housekeeping requirements and applicable requirements that are generally identical such as process weight standards. For example, small combustion sources providing hot water or heat in a facility may be reported together for emissions and applicable requirements. Sources and activities considered generic should not be described individually in the Title V permit application if the applicability of the requirement is documented and a description of the compliance status is also provided.

PA Title V permit application already provides for grouping of sources and activities that have the same applicable requirements. This provides a great deal of flexibility for companies. The PA forms significantly reduce paper work by eliminating unnecessary redundant listing of applicable requirements for like sources.

Prior to EPA's issuance of guidance related to the generic grouping of sources and activities, Pennsylvania's Title V operating permit program incorporated and implemented generic grouping of sources and activities. The DEP continues to believe that sourcebysource or activitybyactivity listings of generic requirements is burdensome and welcomes EPA's validation of the grouping of emission sources and activities.

5. SHORTTERM ACTIVITIES

The EPA White Paper position is... Activities which are infrequent and of short duration may be addressed generically in Title V permit applications by simply stating that these source types have the obligation to meet whatever requirements apply to them. The permit application and permit would not include "emissions unit specificity". Shortterm activities that are considered insignificant would not be reported in the application.

Pennsylvania has always stated that a facility may identify any operations that it believes are insignificant sources including shortterm activities. However, the Department believes that EPA broadly defined the term shortterm activities in a manner that may inappropriately exclude from Title V permits certain types of activities that may be significant to public health.

DEP's implementation guidance on this issue would come to the same conclusion for a situation such as the EPA's White Paper example of a contractorrun sandblasting operation that would qualify as a shortterm activity.

However, certain shortterm activities such as a toxic chemical product batch operations, for which there is no current maximum achievable control technology standards, DEP would not be considered as an insignificant activity because of the public health concerns. Pollutants emitted from such an operation should be listed in the permit application in order to obtain a permit shield for the activity.

Title V facilities need to determine whether their shortterm activities qualify for listing as insignificant activities, or sources of minor significance. Those shortterm activities that qualify as insignificant would not need to be described in detail on the Title V permit application. However, consideration should be given to listing certain shortterm or insignificant sources in a special listing in the application for clarity and to afford facilities protection under the permit shield provision contained in 24 Pa. Code §127.516.

6. DETERMINATION OF APPLICABLE SIP REQUIREMENTS

The EPA White Paper position is... EPA acknowledges the difficulty faced by applicants for Title V permits when identifying all applicable SIP requirements in the Title V permit application. The White Paper addresses the referencing of applicable requirements using either a checklist or referencing citations approach rather than a description of applicable requirements.

Pennsylvania's position is more flexible than EPA's in that companies are not required to identify which regulations are State Implementation Plan (SIP) approved. The Department has assumed the responsibility for identifying which requirements are part of PA's SIP. Identification of applicable requirements can be as simple as citing the section number from the regulations. Pennsylvania also simplified the completion of its Title V permit applications by pre-printing emission unit information where companies have already been submitting emission inventory source information.

The Title V permit application provides for the listing of applicable requirements by specifying citation numbers and the standard or emission limitation associated with the appropriate citation number. An additional column is provided for the optional proposal of more stringent emission limitations. The DEP will, at time the permit is issued, identify in the Title V permit which requirements are Federal requirements under the SIP and which requirements are Stateonly applicable requirements. This approach does not unduly burden the applicant for a Title V permit. Although an applicant for a permit may identify Federal and Stateonly applicable requirements, there is no obligation to do so under Pennsylvania's Title V operating permit program.

7. INCORPORATION OF PRIOR NEW SOURCE REVIEW (NSR) PERMIT TERMS

AND CONDITIONS

The EPA White Paper position is... That there is no need for state permitting agencies to automatically incorporate all applicable requirements from previous permits. The guidance describes how NSR permit terms may be revised in conjunction with the Title V permitting process. During the processing of Title V permit applications, permitting agencies may revise "applicable NSR requirements" in order to determine which existing operating permit requirements to include in the Title V permit.

The DEP will be reviewing, as part of the Title V permit building process, whether it is appropriate to incorporate prior permitting requirements into the permit.

Although Title V facilities are not required to reconsider prior NSR and PSD applicability decisions, an opportunity will exist to appropriately revise erroneous or obsolete permit conditions. Pennsylvania has

always taken this position and has advised facilities that the Title V operating permit is analogous to a cooperative agreement which clearly identifies all applicable requirements for the permitted facility. Therefore, the DEP will not incorporate prior permitting requirements that are no longer appropriate to a facility's current operations.

8. SECTION 112(r) REQUIREMENTS

The EPA White Paper position is... Applications for Title V facilities subject to §112(r) of the CAA may acknowledge the applicability of §112(r) based on the "List of Regulated Substances and Their Thresholds" rule published at 59 F.R. 4478 (January 14, 1994). Quantification of emissions of §112(r) pollutants is not required unless the pollutants are also listed under §112(b) or the emission estimates are needed to establish emission fees. State permitting agencies may request additional information if the facility does not indicate that it may be subject to §112(r) and risk management plan submittal requirements.

The Department already simplified reporting of §112(r) pollutants on the Title V permit application.

Owners or operators of Title V facilities are not required to define the PTE for a pollutant that is exclusively a 112(r) pollutant. However, the quantification of emissions of 112(r) pollutants is required if the pollutants are also criteria pollutants and/or hazardous air pollutants listed in §112(b) of the CAA.

This scenario should be evaluated carefully to determine that the 112(r) pollutant is not, for example, a particulate or VOC, that readily decomposes and is actually released to the atmosphere as a criteria pollutant. If a 112(r) pollutant is also a criteria pollutant it is also to be quantified for actual emissions in its speciated 112(r) form. In the event a facility does meet the thresholds listed for 112(r) pollutants, the requirements applicable to these sources are generally to be listed on the Title V permit application.

9. RESEARCH AND DEVELOPMENT ACTIVITIES

The EPA White Paper position is... Generally, research and development (R&D) facilities will not be subject to Title V requirements because R&D facilities are "typically independent, nonmajor sources." The EPA's White Paper confirms that R&D facilities that are "colocated" with major facilities may be treated as separate nonmajor facilities if emissions from such facilities do not meet or exceed major source threshold limits. If there are no applicable requirements for R&D activities occurring at a major source, the R&D activities may be listed as insignificant activities.

The DEP has structured its Title V regulations to recognize the unique circumstances associated with the permitting of R&D facilities. PA requirements already allow the separation of R&D operations from the Title V permit.

Section 127.502(c) of the Pennsylvania Code provides that R&D facilities located at a Title V facility need not be included as a part of the Title V facility. The emissions from an R&D facility will be aggregated with the other emissions from a facility to determine whether the facility meets the requirements of the definition of a Title V facility. The definition of R&D facility in 25 Pa. Code, section 121.1, states that the emissions from the R&D facility alone cannot exceed the emission thresholds for a Title V facility. However, the R&D facility still is required to obtain a state-only permit by Nov. 1, 1996. Additionally, the DEP will consider an accounting of the actual emissions from a R&D facility as its PTE, because of the nature of these types of operations. An annual accounting of the R&D emissions is required to be made to demonstrate its PTE status.

10. APPLICATIONS FROM NONMAJOR SOURCES

The EPA White Paper position is... Permits from nonmajor sources are only required to address applicable requirements such as §§111 and 112 of the CAA which would cause the sources to be subject to 40 CFR

Part 70. If there are other emission units at the facility that do not trigger Part 70 applicability, those units are not included in the permit.

Pennsylvania has always deferred the Title V permit obligations for nonmajor facilities until the EPA promulgates regulations establishing a permitting program for nonmajor facilities.

C. Quality of Required Information

D. Phase-in Details for Completeness

E. Updates to Initially Complete Applications Due to Change

F. Content Streamlining

These EPA White Paper sections (C.,D.,E. & F.) describe procedures that DEP has utilized from the start of the implementation of Pennsylvania's Title V program. All of EPA's positions in these sections are consistent with DEP's Title V implementation procedures. However, DEP believes that EPA does not provide as much flexibility as DEP has provided for these issues.

G. RESPONSIBLE OFFICIAL

The EPA White Paper position is... Responsible officials are required to certify the truth, accuracy and completeness of all information submitted as part of the Title V permit application. As defined in §70.2, the term "responsible official" specifies which officials or officers may be responsible officials for Title V purposes. The White Paper confirms that the same categories of officers who can act as a responsible official for corporations can do likewise for partnerships if their responsibilities are substantially the same.

Pennsylvania's Title V permit application already provides for a responsible official that certifies compliance as true and accurate to best of their knowledge based on belief formed after reasonable inquiry.

The DEP's definition of "responsible official" contained in 25 Pa. Code §121.1 is identical to the definition of responsible official in 40 CFR §70.2. Consequently, the Department will also interpret the term as described in EPA's White Paper. The same category of officials that can act as responsible officials for corporations can also act in that capacity for partnerships.

H. Compliance and Certification Issues

The EPA White Paper position is... A compliance certification based on information and belief formed after reasonable inquiry requires a review of existing permits and requirements and not historical information.

Pennsylvania has never required facilities to consider previous applicable requirements over an extended period of time for determining compliance with applicable requirements for Title V. Section 127.513(1) states that the compliance certification shall contain information "sufficient to assure compliance with the terms and conditions of the permit."

Pennsylvania's compliance certification does not involve a review of past permitting decisions to assure that all the applicable requirements were imposed. However, this does not absolve a company from all previous obligations such as obtaining plan approval and operating permits for sources. Sources are also to be in compliance with existing applicable requirements. It is very important for a facility to identify any areas where noncompliance continues to exist so that a compliance schedule can be included in the Title V permit or into a compliance permit. Compliance permits are currently available to all facilities, regardless of their Title V status. The compliance permit provides some protection from third party lawsuits. As long

as a facility complies with the terms and conditions of the compliance permit, the facility will be considered in compliance with applicable requirements.

Related Compliance Issue

Section 127.412 of Title 25, Air Resources requires that a compliance review form be submitted as part of an application for an operating permit, or on a periodic basis. The compliance review is to be completed by the Department prior to the issuance of an operating permit. This requirement also applies to a Title V operating permit. Therefore, for the initial Title V application process, the compliance review form will not be considered in the determination of completeness for the Title V application. However, the compliance review form has to be received by the Department prior to final action on the Title V application.

CONCLUSION

In conclusion the key components of EPA's White Paper have been addressed in this document. The Department believes that the majority of EPA's White Paper follows that which already exists in PA's Title V operating permit program. The DEP will continue to evaluate its implementation procedures for the permitting of Title V facilities and will, when necessary, provide additional guidance to streamline and effectively implement Pennsylvania's Title V operating permit program.