

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

August 28, 1994

MEMORANDUM

SUBJECT: Additional Guidance on Funding Support for State and Local Air Programs

FROM: Mary D. Nichols
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for Air and Radiation

TO: Regional Administrators
Regions I - X

On July 21, 1994 I forwarded guidance to the Regions on policies and procedures to follow to facilitate the smooth transition and interface of the federal grant and Title V permit fee provisions that are to support state and local air pollution control programs. At that time I noted that I would issue guidance on additional transition issues, as they arose.

This memorandum addresses several concerns which were still the subject of discussion when the initial guidance was released. These concerns center on the timing and eligibility of certain activities for coverage with either grants or with Title V permit fees. Specifically, these concerns include: the degree of flexibility that agencies have with respect to treatment of 'synthetic' minor sources, coverage of costs associated with a source subject to Title V but prior to issuance of its Title V permit, coverage of the costs of bringing a less than adequate Title V program up to full approval status, and whether an agency can borrow against its grant funds to cover Title V costs until it realizes its Title V fee revenue. Our response to these concerns is provided in the attached supplemental 'questions and answers.'

I reiterate my commitment to the implementation of strong Title V programs, a smooth programmatic transition as Title V programs are approved, and the provision, to the extent possible, of the funding necessary for state and local agencies to effectively implement the Clean Air Act. For further information on this guidance please contact either Bill Houck in the Office of Air and Radiation at 202-260-1754 or Susanne Lee in the Office of the General Council at 202-260-1484.

QUESTION: If air grants can no longer be used to fund Title V-related activities once a Title V program is approved, how does an agency cover its Title V costs when EPA's Title V approval precedes the initiation of fee collection by that agency?

- A. OGC has indicated that Title V program costs cannot be changed to section 105 grants, even on a reimbursable basis (i.e., borrowed), because Title V costs are not allowable costs under the section 105 program. However, an agency could utilize fee revenue accumulated in advance of the approval of its Title V program, subject to the criteria previously set forth by EPA, to cover Title V-related program expenses. Alternatively, an agency might also seek emergency fee authority or a temporary outlay of funds (subject to repayment with Title V revenues) from its governing body.

QUESTION: After a state's Title V program has been approved, how should permitting costs related to prospective Title V sources be treated? [A prospective Title V source is a source which has submitted a timely and complete Title V application but has not yet received its initial Title V permit.]

- A. EPA has previously stated that the costs of implementing and enforcing the terms and conditions of other permits required under the Act (e.g, a Title I operating permit or new source review permit affecting a Title V source are applicable Title V costs. EPA's guidance was not explicit as to when this status obtains. For prospective Title V sources, EPA has concluded that the costs related to other permits under the Act need not be Title V costs until Title V fees covering such costs are collected from the source under the fee provisions in the approved Title V permit program. If a state is able to clearly differentiate such costs, and can demonstrate that Title V fees adequate to cover such costs are not yet due from the source under the approved fee provisions, fee costs may be funded under the section 105 grant or grant match (including non-Title V fees from the source).

However, all costs associated with the review and issuance of the Title V permit must be covered by Title V fees and the fees collected to cover such Title V program costs are not eligible for use as grant match.

QUESTION: How should costs related to 'synthetic minor' sources be treated?

- A. Depending upon how a state has designed its Title V program, permitting expenses associated with the costs of synthetic minor sources may be either Title V or grant eligible. Synthetic minor sources are those which have the capacity to emit pollutants in excess of threshold quantities for major sources but, through federally enforceable restrictions, are required to emit less. If a state chooses to establish limits on potential to emit using its approved Title V program, then the costs related to creating these limits are Title V costs. If a state chooses a mechanism for creating synthetic minor sources apart from Title V (e.g., a SIP-approved state operating permit program, a separate minor source permitting program); then these costs and any separate fee charged of these sources, can be related to the federal grant.

QUESTION: Many agencies are likely to receive interim approval of their Title V operating permit program submission. How are the costs of bringing these programs into full approval to be covered?

- A. OGC has stated the costs of bringing Title V programs which receive interim approval up to full approval status are Title V-related expenses and are not grant allowable.