

March 23, 2000

MEMORANDUM

SUBJECT: Applicability of the May 16, 1995 Memorandum “Potential to Emit for MACT Standards – Guidance on Timing Issues” for Subpart T Sources Who Become Non-major after the Compliance Date of the Standard

FROM: William T. Harnett, Acting Director /s/s  
Information Transfer and Program Integration Division, OAQPS (MD-12)

TO: John Courcier, Acting  
Air Permit Program Manager, Region I

This memorandum is in reply to your June 14, 1999 inquiry in which you asked if a source which was a major source under section 112 as of the compliance date for an applicable MACT standard, could subsequently become a non-major source of Hazardous Air Pollutants (HAP) emissions and defer title V permitting. Your inquiry presented two different situations - in one situation the facility took Potential to Emit (PTE) limits after the compliance date of the standard and in the other situation, the facility replaced all of its equipment subject to a relevant standard after the compliance date. We've identified the situations you described and our position on each of them below.

**Question one:**

You indicated that a facility operating an existing halogenated solvent cleaning machine was a major source of HAP and subject to 40 CFR part 63, subpart T, as of the “first compliance date” for that standard, but subsequently took facility-wide PTE limits to become a non-major (i.e., area) source. Pursuant to 40 CFR 63.468(j), permitting authorities have the option of deferring affected non-major halogenated solvent sources from title V permitting requirements. Does the title V permitting authority have the option of deferring title V permitting for this affected subpart T source?

## **Position:**

An existing major source subject to subpart T that takes limitations on its PTE after the first compliance date cannot be deferred from title V permitting. In that the facility's change in PTE did not occur until after the "first compliance date" of subpart T, the halogenated solvent cleaning machine continues to be considered a major source for the purposes of subpart T and must obtain a title V permit.

### Timing for obtaining potential to emit restrictions and title V applicability

The EPA's May 16, 1995 memorandum, "Potential to Emit for MACT Standards -- Guidance on Timing Issues," states that an existing facility may switch to area source status at any time until the "first compliance date" of that standard. In order to be considered an area source under a section 112 standard, a major source must take limitations on its PTE by this date, otherwise, the source is required to comply permanently with that standard to ensure that maximum achievable reductions in toxic emissions are achieved and maintained.

By this we mean that major sources subject to a MACT standard must change to area source status prior to the "first compliance date" of that standard in order to avoid the requirements for major sources under that standard, including the necessity for a title V permit. If a facility does not take appropriate emission limits by this deadline, then the facility is classified as a major source for the purposes of that standard since section 501(2) provides that any source that is major under section 112 will also be major under title V. Had the facility taken appropriate action to limit its PTE prior to the "first compliance date" of subpart T, it may have been able to classify its subpart T affected source as an area source and defer title V permitting.<sup>1</sup>

### Applicability of multiple standards to a single facility

As a point of clarification, for facilities subject to multiple MACT standards, the May 16, 1995 memorandum also explains that a facility that is subject to the major source requirements of one section 112 standard is not necessarily subject as a major source for all future section 112 standards - a facility may take potential to emit limits to become an area source before the "first compliance date" of a future standard.

For example, if the facility you described above wanted to ensure that it would not be subject to the major source requirements of the Miscellaneous Metal Parts standard (a future MACT standard), the facility could take PTE limits to become an area source before the "first compliance date" of the Miscellaneous Metal Parts standard. In this case, the facility would continue to be classified as a major source for the purposes of subpart T and title V, but would not be subject to the major source requirements under the Miscellaneous Metal Parts MACT

---

<sup>1</sup> Some facilities may be eligible to limit PTE based on EPA's Transition Policy. For further information, see EPA's December 20, 1999 memo titled "Third Extension of January 25, 1995 Potential to Emit Transition Policy."

standard. Rather, area source requirements, if any, under this standard would apply to the facility.<sup>2</sup>

**Question two:**

You indicated that an existing facility operating a halogenated solvent cleaning machine was a major source for the purposes of subpart T as of the first compliance date for that standard, but recently removed the solvent cleaning machine subject to subpart T and replaced it with a new enclosed-technology that has a physical maximum potential to emit that is less than the major source threshold. The emissions from the solvent cleaning machine are the only hazardous air pollutant emissions at the facility and the facility is minor for criteria pollutants. Can the facility be deferred from title V permitting?

**Position:**

The facility in this example can be deferred from title V permitting since the affected source subject to subpart T is a new source located at a non-major facility - the new solvent cleaning machine is a new non-major source for the purposes of subpart T.

Under 40 CFR 63.460(a) of subpart T, an affected source is identified as each individual solvent cleaning machine. Section 63.461 further describes an existing source as “any solvent cleaning machine the construction or reconstruction of which was commenced on or before November 29, 1993” and a new source as “any solvent cleaning machine the construction or reconstruction of which is commenced after November 29, 1993.” Because this facility replaced all its solvent cleaning machines subject to subpart T (e.g., permanent shutdown) and constructed new solvent cleaning machines after November 29, 1993, the new machine is classified as a new source for the purposes of subpart T.

The new solvent cleaning machine in this example was also not located at a major source upon startup of the machine.<sup>3</sup> Therefore, the facility can be classified as a non-major source for the purposes of subpart T and can be deferred from title V permitting if title V is not otherwise triggered. However, had the new, non-major source been located at a facility that remained major

---

<sup>2</sup> Under 40 CFR §§ 70.3(c) and 71.3(c), permits for major sources must include all applicable requirements for all relevant emission units at a facility and area sources must include all applicable requirements for emission units that cause the facility to be subject to part 70 or part 71.

<sup>3</sup> EPA’s May 16, 1995 memorandum, “Potential to Emit for MACT Standards -- Guidance on Timing Issues,” states that a new source that is major at the time of promulgation or startup, whichever is later, will remain major for purposes of that standard. In this case, the new affected source was non-major upon startup of the new solvent cleaning machine. The facility used section 63.465(e) of Subpart T to determine its potential to emit for each new individual solvent cleaning machine and then determined that its facility-wide potential to emit hazardous air pollutants was below the major source threshold (as defined in Section 63.2 of the General Provisions) upon startup of the new machines.

after the solvent cleaning machine was replaced, then title V permitting could not be deferred in accordance with EPA's May 16, 1995 memorandum, "Potential to Emit for MACT Standards -- Guidance on Timing Issues."

Please keep in mind that the position set forth in this memorandum is intended solely as guidance, does not represent final Agency action, and cannot be relied upon to create any rights enforceable by any party. Should you have other questions concerning this position, please contact Ingrid Ward of my staff at (919) 541-0300.

cc:

Air Program Managers, Regions I - X  
Title V contact, Regions I - X  
Title III contacts, Regions I - X  
John Walke, OGC  
Charlie Garlow, OECA/ORE  
Scott Throwe, OECA/OC  
Sally Shaver, ESD  
Dianne Byrne, ESD  
Steve Hitte, OPG  
Racqueline Shelton, PIRG