



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
999 18TH STREET - SUITE 500
DENVER, CO 80202-2466

September 10, 1999

Ref: 8P-AR

Michael Tarrillion
Vastar Resources, Inc.
15375 Memorial Drive
Houston, Texas 77079

Dear Mr. Tarrillion:

This is in response to your request for a determination regarding the applicability of the 40 CFR part 71 federal operating permits requirements to two of your sources. (See your attached letter to Monica Morales of March 20, 1999.) Specifically, you request confirmation or denial (with an explanation) of your interpretation that Treating Sites #2 and #9 are not subject to the part 71 rule or that these sites are exempt from the obligation to obtain a part 71 permit until further rulemaking by the Administrator. Treating Sites #2 and #9 were issued Prevention of Significant Deterioration (PSD) permits by EPA Region VIII in August 1997. Now that Best Available Control Technology (BACT) has been applied to both of these sources, their potential emissions are each below the major source threshold of 100 tons per year. This is your basis for interpreting that Treating Sites #2 and #9 are nonmajor sources and thus, not subject to the part 71 regulation.

Our response is based on the information you provided to us in your March 20, 1999 letter, and presumes that the factual information contained in your letter is accurate and true. We are also relying on the accuracy of the information you provided Ms. Morales by phone on April 19, 1999. EPA has always intended that sources required to have PSD permits or nonattainment New Source Review (NSR) permits under part C or D of title I of the Clean Air Act ("Act") would be subject to the applicable title V operating permits program in their area. This is clarified in the following references:

- (1) Section 502(a) of the Act specifically identifies "any other source required to have a permit under part C or D of title I" as being subject to the title V operating permits program. Section 502(a) also lists "a major source" as being subject to title V, which is separate from the requirement that sources required to have a part C or D permit are to obtain a title V permit. This supports EPA's interpretation that sources required to have a part C or D permit are subject to title V regardless of whether their potential to emit meets or exceeds the major source threshold.



- (2) Sections 71.5(a)(1)(ii) and 70.5(a)(1)(ii) refer to the part 71 or part 70 application requirements for sources subject to part C or D of title I of the Act. Specifically, the rules state that sources required “to have a permit under the preconstruction review program approved into the applicable implementation plan under part C or D of title I of the Act, shall file a complete application to obtain the part [71/70] permit or permit revision within 12 months after commencing operation or on or before such earlier date as the permitting authority may establish.” This requirement is not based on whether the part C or D source is a “major source” as defined in title V, but on the fact that the source is required to have a part C or D permit.
- (3) Section 502(b)(10) of the Act, and EPA’s implementing regulations at sections 70.4(b)(12), 70.4(b)(14)-(15), and 71.6(a)(12)-(13) also show that all changes that are “title I modifications,” including all PSD permitting actions, are required to be reflected in title V permits. These provisions, in setting forth which changes may occur “off-permit” or without the need for title V permit revisions, explicitly exclude all “title I modifications” and therefore all PSD actions from the types of changes that do not trigger title V permitting. Moreover, EPA’s rules specifically exclude all “title I modifications” such as PSD actions from eligibility for fast-track minor permit modifications, at sections 70.7(e)(2)(i)(A) and 71.7(e)(1)(i)(A), which again shows the emphasis the title V program places on covering all sources subject to part C or D requirements.
- (4) Sections 503(c) and (d) of the Act also reflect title V’s applicability for PSD sources, in requiring permitting authorities to prioritize applications for sources undergoing construction or modification and in specifically excluding such sources from relief from liability for not having a title V permit in certain situations. EPA’s rules implement these provisions at sections 70.7(a)(3), 71.7(a)(3), 70.7(a)(6), and 71.7(a)(6).
- (5) The preamble of the July 1, 1996 final part 71 operating permits rule explicitly states under the applicability discussion that the operating permits program applies to “Any source subject to the PSD program or the NSR program under title I, part C or D.” (See 61 FR 34206, II.A.4.). In your March 20, 1999 letter, you reference a paragraph in this same section which begins as follows: “Part 71 follows the approach of part 70 in deferring nonmajor sources from permitting requirements.” It is important to note that the nonmajor sources discussed in this paragraph are those that are subject to title V solely due to being subject to requirements promulgated under section 111 or 112 of the Act.
- (6) The preamble of the July 21, 1992 final part 70 operating permits rule similarly states under the applicability summary that the operating permits program applies to “Any source required to have a preconstruction review permit pursuant to the

requirements of the prevention of significant deterioration (PSD) program under title I, part C or the nonattainment area, new source review (NSR) program under title I, part D.” (See 57 FR 32252, II.A.5.).

The above references show that EPA has always considered sources subject to part C or D of title I to also be subject to the title V operating permits program. After consulting with the EPA Headquarters Office of Air Quality Planning and Standards (OAQPS) we were informed that the source category exemption under 40 CFR §71.3(b) was never intended to apply to sources requiring permits under part C or D of title I. Moreover, this provision and its counterpart at section 70.3(b)(1) cannot be appropriately interpreted as allowing title V permitting authorities to exempt nonmajor part C or D sources from title V, especially in light of the explicit requirement in sections 71.5(a)(1)(ii) and 70.5(a)(1)(ii) that these sources obtain title V permits.

Your letter addressed to Ms. Morales was dated March 20, 1999. Our office did not receive this letter until April 23, 1999. You and Ms. Morales discussed the issue of part 71 applicability to Vastar’s Treating Sites #2 and #9 in a phone conversation on April 19, 1999, which leads us to believe that your March 20, 1999 letter was improperly dated and should possibly have been dated April 20, 1999.

We look forward to receiving your part 71 permit applications for Treating Sites #2 and #9 on or before the September 22, 1999 application deadline. If you have any questions concerning this response, please contact Monica Morales, of my staff, at (303) 312-6936.

Sincerely,

/s/

Richard R. Long, Director
Air and Radiation Program

Enclosure: March 20, 1999 letter to Monica Morales

cc: Cheryl Wiescamp (Southern Ute Tribe, w/enclosure)