

## **EPA Issues Draft Guidance on Design of Flexible Air Permits**

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Modrall, Sperling, Roehl, Harris & Sisk, P.A.

On Tuesday, August 15, 2000, the United States Environmental Protection Agency issued its draft Guidance on Design of Flexible Air Permits (White Paper Number 3). 65 Fed. Reg. 49,803 (Aug. 15, 2000). The draft guidance document can be accessed at [www.epa.gov](http://www.epa.gov). The draft paper "provides guidance to state and local permitting authorities on how they can choose to design air permits that provide sources with more operational flexibility while insuring that they still meet all substantive and procedural requirements" of Title V of the Clean Air Act and its implementing regulations. Id. The comment period on the draft will close on September 14, 2000. EPA does not intend to respond to individual comments but rather will consider comments and information in preparing the final guidance document.

The draft guidance document primarily focuses on advance approvals as the "most versatile and potentially useful" approach for providing operational flexibility under a Title V Permit.

Advance approval of changes is the incorporation into the sources Title V Permit of terms addressing future changes anticipated at the source such that no Title V Permit revision or other approval is needed . . . before the source can make these changes. To be approvable, a Title V Permit containing an advanced approval must include: (1) a description of the advanced approved changes and a limitation on their magnitude; (2) the relevant applicable requirements which apply to the advanced approved changes; (3) other terms as necessary to link the changes to their applicable requirements and to assure compliance with them at all times; and (4) other terms to assure that requirements not appropriate for advanced approval do not apply to the advanced approved changes. . . .

The draft document provides that for a Title V Permit to include an advanced approval, it must contain the following "key elements":

1. Identification of each existing emission unit advanced approved to change, a description of the anticipated changes to these units, and identification of the advanced approved new emission units;
2. A list of all applicable requirements applying to the described changes, including any control technology requirements and/or work practice standards (in addition to an emissions cap), monitoring, or testing requirements applying to specific types of emissions units and/or emissions activities;
3. Terms, as needed, to link anticipated changes with all applicable requirements and other permit requirements;
4. Either an emissions cap or numerical limit on the amount of expected changes that can occur under the advanced approval;

5. Other terms, as needed to assure compliance with all applicable requirements;
6. An advanced notice requirement for the addition of advanced approved new emissions units and/or new control devices;
7. A permit requirement to keep an on-site implementation log to contemporaneous record each shift to a new operating scenario and its applicable requirements;
8. A permit requirement to make annual certifications for any changes made during the certification. Pursuant to an advanced approval contained in the permit. With respect to the on-site implementation log, the draft guidance document states that "a permit shield may not extend to the contents of an on-site implementation log," and that such a shield "may extend only to permit terms and conditions that have undergone prior public and EPA review." As a consequence, the shield may not extend to the outcomes of replicable operating procedures equations, applicability or non-applicability determinations, or other compliance determinations recorded exclusively in the on-site log. The draft document encourages state and local permitting authorities to consider collection of additional permit fee revenue to cover cost associated with development of flexible permits.

The draft guidance document also discusses techniques for creating specific provisions to prevent changes at a facility from tutoring applicability of certain requirements. The most common examples discussed in the draft are: (1) use of plant-wide limit on potential to emit to avoid major source status for new source review or the MACT requirements of Section 112 of the Clean Air Act; (2) a plant-wide applicability limit to avoid triggering major new source review; and (3) an aggregation of specified changes that is not subject to major new source review.

Comments on the draft guidance should be submitted to Michael Trutna, Information Transfer and Program Integration Provision (MD-12), U.S. EPA, Research Triangle Park, North Carolina 27711, telefax: (919) 541-4028, or by e-mail a [trutna.mike@epa.gov](mailto:trutna.mike@epa.gov).