

February 10, 1999

MEMORANDUM

SUBJECT: Interpretation of the Definition of Fugitive Emissions
in Parts 70 and 71

FROM: Thomas C. Curran, Director /s/
Information Transfer and Program
Integration Division (MD-12)

TO: Judith M. Katz, Director
Air Protection Division, Region III (3AT00)

This is in response to your memorandum of August 8, 1997 and subsequent discussions regarding the definition of "fugitive emissions." Specifically, you asked how this definition applies to the emissions of volatile organic compounds (VOC) from the printing industry, whiskey warehouses, paint manufacturing facilities, and other similar sources for purposes of title V. The delay in getting back to you was principally due to extensive consultation as needed among the various Headquarters and Regional Offices and has resulted in more technically and legally supportable policy.

When counting emissions to determine if a source exceeds the major source thresholds under title V (parts 70 and 71), nonfugitive VOC emissions are always counted. Fugitive VOC emissions, however, are counted only in certain circumstances. Because of this, the determination of whether emissions are fugitive or nonfugitive can be critically important for major source determinations under title V.

The EPA defines "fugitive emissions" in the regulations promulgated under title V as "those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening" (see title 40 of the Code of Federal Regulations, sections 70.2 and 71.2). This definition is identical to the definition of "fugitive emissions" adopted by EPA in the regulations implementing the new source review (NSR)

program. Given this, the precedents established in the NSR program should be relied on in interpreting the definition of "fugitive emissions" for purposes of title V.

In 1987 and again in 1994, EPA issued guidance regarding the classification of emissions from landfills for NSR applicability purposes.¹ In these guidance memorandums, EPA made clear that emissions which *are actually collected* are not fugitive emissions. Thus, for example, when a source is subject to a national standard requiring collection of emissions, these emissions cannot be considered fugitive. Whether or not a source is subject to such a national standard, emissions which pass through a stack, chimney, vent, or other functionally-equivalent opening are not fugitive.

Where emissions are not actually collected at a particular site, the question of whether the emissions are fugitive or nonfugitive should be based on a factual, case-by-case determination made by the permitting authority. As noted in EPA's 1994 guidance,

In determining whether emissions could reasonably be collected (or if any emissions source could reasonably pass through a stack, etc.), "reasonableness" should be construed broadly. The existence of collection technology in use by other sources in a source category creates a presumption that collection is reasonable. Furthermore, in certain circumstances, the collection of emissions from a specific pollutant emitting activity can create a presumption that collection is reasonable for a similar pollutant-emitting activity, even if that activity is located within a different source category.

Based on the above principles, EPA believes it appropriate to presume that VOC emissions from the printing industry and paint manufacturers could reasonably be collected and thus are

¹ See memorandums entitled "Classification of Emissions from Landfills for NSR Applicability Purposes" from John S. Seitz, Office of Air Quality Planning and Standards, to Air Division Directors, Regions I-X, dated October 21, 1994, and "Emissions from Landfills" from Gerald A. Emison, Director, Office of Air Quality Planning and Standards, to David P. Howekamp, Director, Air Management Division, Region IX, dated October 6, 1987.

not fugitive. In addition, unless this presumption is rebutted by the source, such emissions should be counted in major source determinations.

We have reached this conclusion for printers and paint manufacturers because certain printers are subject to national standards and State implementation plan (SIP) requirements (e.g., reasonably achievable control technology, best available control technology, or lowest achievable emissions rate) requiring collection. Moreover, sources in both of these source categories commonly employ collection devices. The common use of collection technology by other printing and paint manufacturing sources creates a presumption that collection of emissions is reasonable at other similar sources.

In the case of whiskey warehouses, the presumption that emissions could reasonably be collected is less compelling and may warrant further consideration by States in consultation with the EPA Regional Offices. For example, we are not aware of any national standards or SIP requirements for the collection of VOC emissions from whiskey warehouses, and we believe it is uncommon for them to have voluntarily installed collection devices. On the other hand, EPA is aware of warehouses in other source categories that collect emissions and thus a presumption is created that whiskey warehouse emissions could reasonably be collected. In addition, in a factual determination for a whiskey warehouse in the State of Indiana, EPA Region V found, after careful review, that the emissions of the warehouse were not fugitive.

In addition, you ask whether costs should be a factor used to determine if emissions can be reasonably collected. Obviously, when emissions are actually collected, cost considerations are irrelevant to determine whether emissions are fugitive. On the other hand, when a source does not actually collect its emissions, but there is a presumption that collection would be reasonable, a permitting authority could consider costs in determining whether this presumption is correct. However, when analyzing whether collection is reasonable for a particular source, the permitting authority should not focus solely on cost factors, nor should cost factors be given any more weight than other factors. Instead, the permitting authority should focus on determining whether a particular source is truly similar to the "similar sources" used to create the presumption. This determination can be made by looking at whether there are substantial differences in the technical or engineering characteristics of the sources. In this stage of the analysis, a

comparison of the costs of collecting emissions could be relevant where it illustrates the underlying technical or engineering differences. Moreover, keep in mind that title V does not impose any requirements on subject sources to collect (or control) their emissions and that collection is only assumed for the purpose of determining title V applicability. Thus, no source will ever be required to incur the costs of installing, operating, or maintaining collection devices (or control devices) because of a presumption that its emissions are not fugitive or subsequently because it is found to be subject to title V.

The approach for interpreting the definition of fugitive emissions outlined in this memorandum is consistent with the approach used historically by Headquarters, as well as the majority of EPA Regions and States. We believe, therefore, that the impact of this memorandum will be limited, both in the number of sources for which reclassification of emissions from fugitive to nonfugitive may be required, and to a greater extent, in the number of sources subject to reclassification from minor to major source.

We recognize that this interpretation may present enforcement issues for an unknown (but presumably small) number of sources whose initial title V applicability determinations were overly broad with respect to which emissions they have interpreted as being fugitive. Therefore, EPA recommends that the following steps be taken. If the policies of an EPA Region or State for interpreting the definition of fugitive emissions are consistent with the policies described in this memorandum, then the EPA Region or State should continue to enforce its policies as it has in the past. However, if the policies of an EPA Region or State have not been as inclusive as the policies described in this memorandum, then major sources that have not applied for operating permits on the basis of these less-inclusive policies should be instructed to immediately notify the State and EPA Region in writing of their obligation to obtain a title V permit. Such sources should be instructed to prepare and submit permit applications to the appropriate permitting authority as expeditiously as possible.

The EPA will use its enforcement discretion in deciding whether or not to seek an enforcement action against sources for failure to obtain an operating permit. However, factors that may be considered in deciding whether to seek enforcement action against sources may include whether the sources relied on less inclusive policies of a State or EPA Region and whether the sources expeditiously submit permit applications after they

become aware of the national policy described in this memorandum.

If you have any questions, please contact Steve Hitte at 919-541-0886 or Jeff Herring at 919-541-3195 of the Operating Permits Group.

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