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QS & AS; TITLE IV/TITLE V INTEGRATION

1. **How is the Acid Rain Program different from other programs under the Clean Air Act?**

The Acid Rain Program uses traditional and innovative market-based approaches to reduce sulfur dioxide and nitrogen oxide emissions. For sulfur dioxide, the program utilizes the concept of an "allowance," which is an authorization to emit one ton of sulfur dioxide. Sources can buy, sell, trade, or bank allowances. A source's acid rain emissions limit will be the number of allowances that each unit holds, which is very flexible and could vary throughout the year if the source participates in the allowance market and trades allowances with other sources. For nitrogen oxides, the statute allows "emissions averaging" across two or more sources, as long as total annual emissions are equivalent to or less than what the sources would have emitted had they complied with their applicable emission rates. Both these approaches allow sources flexibility in determining how they will compliance will be achieved under the Acid Rain Program, but neither affects a source's obligation to comply with other emissions limitations under the Act.

Continuous emissions monitoring (CEM) is instrumental in ensuring that mandated reductions of SO₂ and NO_x are achieved; stringent monitoring and reporting requirements are being implemented to help ensure that these goals are met. By requiring that each affected unit account for each ton of emissions it emits, the Acid Rain Program will provide the means for ensuring whether a source is in compliance or not (through the comparison of annual emissions emitted by a source with the allowances it holds). Continuous emissions monitoring also instills confidence in the "currency" (SO₂ allowances) being used in the allowance trading market.

Another unique and significant feature of the Acid Rain Program is the provision requiring that affected sources with more emissions than allowances at the end of a year (i.e., the source is out of compliance) pay an automatic penalty of \$2000.00 for every ton of sulfur dioxide for which the source did not hold an allowance, and \$2000 for every ton of nitrogen oxides above the level necessary to comply with the emission rate required of the source. These penalties are to be paid to EPA in both Phase I and Phase II of the Acid Rain Program. In addition, the source must offset its excess SO₂ emissions in the next calendar year.

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2. If a state has no Phase I or Phase II sources, will it still be required to promulgate regulations to implement the Acid Rain Program?

All states in the continental United States must have the capability to implement the Acid Rain Program in order to receive a fully approved operating permits program. Even though a state has no Phase I or Phase II units, new utility sources may be built or sources in that state may choose to opt-in to the program. The state therefore needs to be prepared to issue acid rain permits in the event of either of these possibilities. Alaska and Hawaii, however, need not promulgate regulations to implement the Acid Rain Program since the program applies only to the continental United States. (Similarly, Guam, the Virgin Islands, Puerto Rico and the Trust Territories need not promulgate Acid Rain Program regulations.)

3. In what cases are acid rain sources exempt from the title V fee provisions during Phase I of the Acid Rain Program?

Section 408(c)(4) of the Act provides that "during the years 1995 through 1999 inclusive, no fee shall be required to be paid under section 502(b)(3) or under section 110(a)(2)(L) with respect to emissions from any unit which is an affected unit under section 404." This means that states may not use emissions-based fees from affected units under section 404 for any purpose related to the approval of their operating permits programs for the period from 1995 through 1999. However, before 1995 and after 1999, states may collect and use emissions-based fees to support their program. States are also free to collect application fees and other non-emissions-based fees from all affected sources during Phase I and Phase II.

Units exempted from fees pursuant to §408(c)(4) would include any Phase I affected units (listed in Table A of the Clean Air Act) and any substitution units. OGC staff are examining the issue of whether compensating units (under a reduced utilization plan) are entitled to the fee exemption.

Finally, opt-in units under §410 of the Act are not entitled to the fee exemption of §408(c)(4). (Opt-in units include industrial sources of SO₂ and any existing utility units serving generators smaller than 25 MWe.) See also the December 18, 1992 memorandum from John Seitz to Air Division Directors regarding state fee schedules.

EPA will be providing permitting authorities with additional guidance on fee issues related to §408(c)(4) in the near future.

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4. How can states reconcile the Phase II acid rain permit application deadline (January 1, 1996) with the Title V permit application deadline?

States should encourage sources to submit their acid rain application with the rest of their Title V application. However, if the Acid Rain portion of the permit application is submitted after the Title V deadline (but no later than January 1, 1996), the state may choose to either: 1) delay processing the permit until receipt of the Acid Rain portion of the application or 2) process the Title V application immediately, then later revise the permit once the Acid Rain application is received. Note that the deadline for submitting the acid rain application (which, at the state's discretion, may be before the January 1, 1996 deadline), does not alter the part 70 deadline for submitting the other pieces of the title V permit application.

5. How can states reconcile the Phase II acid rain permit issuance deadline (December 31, 1997) with the Title V permit issuance deadlines in light of the mandatory 5 year permit term?

The federal acid rain rules require states to issue all phase II permits by December 31, 1997 with terms lasting 5 years from the permit's effective date. The effective date can be no later than January 1, 2000. EPA will provide guidance in the future on how these dates can best be reconciled with the title V issuance deadlines.

6. How will the acid rain requirements be integrated into the operating permit?

The acid rain portion of the permit will have its own discrete segment in the operating permit. Acid rain requirements will be different from other permit requirements, and must be included in the permit whether or not other SO₂ or NO_x requirements are more stringent. Both the acid rain requirements for SO₂ and NO_x must be included in the permit, and both are enforceable.

7. What are some of the permitting differences between Title IV and Title V?

Here are some of the key differences between the permitting process for Title IV compared with Title V.

- a. Designated representative: Under the acid rain rules, only the "designated representative" (DR) or "alternate designated representative" (ADR) for a source is authorized to make acid rain related submissions. These persons must file a

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certificate of representation with EPA before they can assume their duties as the DR and ADR. Part 70's "responsible official" does not qualify as a designated representative unless EPA has received a certificate of representation from that individual. EPA will maintain an electronically accessible list of designated representatives and alternate designated representatives.

- b. Administrator's right to intervene: The acid rain rules require that the state allow the EPA to intervene in any appeal of an acid rain permit. By participating in a state's appeal process, EPA will be able to support a state's decision on a permit or bring to light and resolve differences of opinion early so that a veto of the acid rain permit can be avoided.
- c. 90 day appeal period: Unlike 40 CFR part 70, the acid rain rules limit the period by which the acid rain portion of an operating permit can be appealed administratively. 40 CFR part 70 does not specify a period by which an administrative appeal must be filed. Both 40 CFR parts 70 and the acid rain rules limit the judicial appeal period to 90 days. However, unlike 40 CFR part 70, the acid rain rules do not allow a judicial appeal beyond 90 days under any circumstance.
- d. Application is binding and enforceable as a permit: The federal acid rain rules state that a source's complete acid rain permit application is binding and enforceable. The purpose of this provision is to ensure that a source has the equivalent of an acid rain permit in the unlikely case that a permit is not issued before the beginning of Phase II (January 1, 2000) or by the expiration date of a previously issued permit.
- e. Mandatory permit shield: The acid rain portion of every operating permit is covered by a permit shield. This shield assures the source that if it operates in accordance with a permit issued in accordance with Title IV of the Act, the source is deemed to be operating in compliance with the Acid Rain Program.
- f. Permit revisions: Under the acid rain rules there are four different types of permit revisions: permit modifications, administrative amendments, fast-track modifications, and automatic amendments. The acid rain rules identify in which situations one or more of these types of revisions can be used.

The permit modification is essentially the same thing as a significant modification under 40 CFR part 70; in fact, the acid rain rules cite the part 70 regulations for the process. Similarly, the acid rain rules cite part 70 for the procedure for administrative amendments.

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Both the fast-track modification and the automatic amendment are unique to part 72. The fast-track modification procedure can be used at the source's option for certain kinds of revisions that would normally go through the permit modification procedure. If selected, the source, instead of the state, is required to meet the public notice requirements of part 70 at the same time that it sends its request for a modification to the state. Public comments are sent to both the state and the source, and once the comment period is over, the state acts on the revision as it would normally under the permit modification procedure.

The automatic amendment is a change to the permit that does not require any action by the state. This type of amendment is effected when there is a change to the number of allowance in a source's Allowance Tracking System account maintained by EPA. For instance, the purchase or deduction of allowances triggers an automatic amendment.

- g. Permit issuance procedures. In general, acid rain permits are to be issued using part 70 procedures. However, there are a few exceptions. For instance, within 10 days of determining whether an acid rain application is complete, the state is required to notify the EPA of that determination. Another example is that part 72 requires the state to notify EPA of any state or judicial appeal within 30 days of the filing of the appeal. See S-600 of the model rule for other differences between title IV and V permit issuance procedures.

8. What will be the practical effect of the different permit revision procedures for acid rain and operating permits?

Only two elements differ between the two revision processes: (1) the acid rain rules do not allow the minor permit amendment procedure; and (2) acid rain has a fast-track modification procedure which is different from the part 70 program.

Source changes that constitute minor permit amendments under part 70 would probably not require a permit revision under part 72. Similarly, changes that are fast-track modifications under the Acid Rain Program are governed by the part 72 permit revision procedures, rather than the part 70 procedures, because the changes are specific to acid rain. Therefore, no conflict exists between the two procedures: source changes that can be executed through the minor permit amendment procedure under part 70 would probably require no separate revision procedure under part 72, and changes that are fast-track modifications under part 72 would require no separate revision procedure under part 70.

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Finally, note that "permit modifications" in part 72 follow the same procedures as "significant modifications" in part 70.

9. Could one permit review process (to include public participation) be developed to issue the entire Title V permit, including the Acid Rain portion?

Yes, with one caveat. When state/local permitting authorities issue their operating permits, acid rain will simply be one "chapter" of that permit. Therefore, the permit will be subjected to only one public review process that will cover the entire permit. EPA will also review the permit only once, looking at acid rain and other requirements simultaneously. The caveat comes when the state reopens the permit to add the acid rain NO_x requirements. The nitrogen oxides portion of the acid rain application is due January 1, 1998, a day after the permitting authority is required to issue the initial acid rain permit. Because the NO_x requirements must also undergo public review, a second public review process will be required when NO_x is incorporated in the sources permit.

10. Who will be reviewing the acid rain portion of state/local operating permits during EPA's 45 day review period before permit issuance?

EPA expects the Regional Offices to review individual permits, with EPA Headquarters support provided on an "as needed" basis, similar to the New Source Review process.

11. Phase II sources are required to submit Phase II permit applications by January 1, 1996. Do Phase I sources also have to submit Phase II applications by January 1, 1996, even though the Phase I permit just became effective in 1995?

Yes. Both Phase I and Phase II sources have to submit Phase II permit applications by January 1, 1996.

12. What happens if the state issues the Title V permit before the acid rain portion of the state's operating permits program is in place?

So long as the state permit program is approved before July 1, 1996, the state will be responsible for issuing the Phase II acid rain permit. (See §408(d)(3) of the Act.) If the state has already issued the Title V permit, that permit would be reopened to include the acid rain requirements. EPA recommends, however, that states plan their timing of Title

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V permit issuance for the affected utility sources in their state so that permits need not be reopened to include acid rain.

If the state does not have an approved program that includes acid rain by July 1, 1996, EPA is responsible for issuing the Phase II permit.

13. Will EPA require local permitting authorities to track Phase II sulfur dioxide allowances?

No. EPA is responsible for tracking allowances in both Phase I and Phase II. However, EPA plans to give state and local permitting authorities view-only access to computerized records in the allowance tracking system.

14. How does the nitrogen oxides portion of the Acid Rain Program differ from the sulfur dioxide portion?

The nitrogen oxides portion of the Acid Rain Program will also be flexible, but will not utilize an allowance trading system (Congress did not provide for an allowance program for NO_x). A source has the option of meeting the applicable NO_x emission rate out right, applying for a NO_x averaging plan (where the average rate of several units may not exceed a given amount), or applying for an alternative emissions limitation. In addition, the concept of banking is also under consideration. This rule is not yet final, so only general language regarding NO_x will be required in state operating permit program submittals.

15. What should states do about including NO_x requirements in their state operating permit program submittals, since these rules are not yet final?

Since 40 CFR part 76 (NO_x) has not yet been finalized, a state must only demonstrate that it has the ability to integrate NO_x requirements (once the NO_x rule is finalized) in its Title V submittal. EPA will provide states with guidance on how to amend their legal authority as needed to include NO_x requirements once the final rule has been promulgated.