

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
RESEARCH TRIANGLE PARK NC 27711

MAR - 1,1996

Mr. Donald P. Gabrielson  
Pinal County Air Quality Control District  
Post Office Box 987  
Florence, Arizona 85232

Dear Mr. Gabrielson:

Thank you for your letter of October 25, 1995 to Lydia Wegman regarding a clarification of the definition of "regulated pollutant" for the purpose of title V applicability determinations with respect to open-pit mining operations.

Prior to addressing your questions, I would like to apologize for the delay in responding to your letter. It is my understanding that during a discussion with Joanna Swanson of my staff, you indicated that you were more interested in our addressing some of the fundamental issues underlying your questions than in receiving our response by any specified deadline. The issues which you raise in your letter have been reviewed and discussed by staff within the Office of Air Quality Planning and Standards (particularly with people in the new source review and operating permits programs), Region IX, the Office of General Counsel, and the Office of Enforcement and Compliance Assurance. These discussions have delayed our response, but have hopefully resulted in a letter which is more useful to you.

! Where should the analytical quantification of "regulated emissions" occur?

Under this general question, you raise a particular question relative to Lydia Wegman's October 16, 1995 memorandum entitled "Definition of Regulated Pollutant for Particulate Matter for Purposes of Title V." Specifically, you ask where the quantification of PM-10 (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) should occur for purposes of title V applicability.

As you know, a source is determined to be a major source under title V based on its potential to emit. The October 16, 1995 memorandum was intended to provide guidance on what pollutant to consider in determining title V applicability, not to change the procedure for calculating potential to emit.

Nevertheless, if actual emissions are used as the basis for determining the potential to emit for a source, then these emissions should be measured at the point where emissions are released.

! For regulatory purposes, which emissions are "fugitive?"

Under this topic, you ask for the proper interpretation of fugitive emissions in relation to Lydia Wegman's memorandum of March 8, 1994 entitled "Consideration of Fugitive Emissions in Major Source Determinations." You specifically ask whether "the fact that some sources have actually installed capture-and-control systems on various crusher, screen, and conveyor drop facilities necessarily dictate that emissions from all such facilities be treated as nonfugitive?" As noted in the October 21, 1994 memorandum from John Seitz, which you cite, entitled "Classification of Emissions from Landfills for NSR Applicability Purposes," the use of collection technology by certain sources in a source category creates a presumption that collection is reasonable for all such sources in that category. As a result, although the use of capture-and-control systems on various pieces of equipment would not necessarily dictate that emissions from all such equipment in that category should be treated as nonfugitive, the presumption would be that these emissions are nonfugitive.

! Do sources fairly characterized as falling within the "source category" to which a pre-August 7, 1980 new source performance standard (NSPS) applies, but which sources are "grandfathered" around the NSPS applicability provisions, also need to include "fugitive" emissions in making a major source determination?

Fugitive emissions are to be included in major source determinations if a facility or source falls within a source category which has been listed pursuant to section 302(j) of the Act. Whether a facility has been regulated as an affected facility, and/or whether it is modifying or under construction, does not determine whether its fugitive emissions are to be counted in determining whether the source as a whole is major under title V. Rather, if a facility or source falls within a source category which has been listed pursuant to section 302(j) of the Act, then all fugitive emissions of any "air pollutant" [as EPA defines the term for purposes of 302(g) of the Act] from that facility or source are to be included in a title V applicability determination.

In regard to the aggregation of unlisted sources of fugitive

emissions with listed sources of fugitive emissions for purposes of determining whether a source is a major source, please refer to Lydia Wegman's memorandum of June 2, 1995 entitled "EPA Reconsideration of Application of Collocation Rules to Unlisted Sources of Fugitive Emissions for Purposes of Title V Permitting." This memorandum states that EPA is currently reconsidering its application of the collocation language in 40 CFR, part 70 as it applies to unlisted sources of fugitive emissions. Due to this reconsideration, EPA's interpretation of the part 70 collocation language (as announced in the preamble of the May, 1991 proposed part 70 rule) is no longer binding with respect to unlisted sources of fugitive emissions.

Nevertheless, absent a binding interpretation from EPA, permitting authorities have discretion in interpreting what part 70's collocation language requires with respect to unlisted sources of fugitive emissions. For example, permitting authorities have discretion to include fugitive emissions from sources outside of a listed source category, that are collocated with the affected facility, when they are determining whether the source as a whole is major under title V. Moreover, it is important to note that EPA is not reconsidering or rescinding its interpretation of the collocation provisions of the new source review regulations with respect to unlisted sources of fugitive emissions.

- ! To the extent that merely falling within a source category subject to a pre-August 7, 1980 NSPS does not inherently require inclusion of all "fugitive" emissions in a major source determination, which "fugitive" emissions at a facility are rendered "regulated" as a result of the actual installation of new facilities affected by a pre-August 7, 1980 NSPS?

As described above, fugitive emissions from a facility or source are to be included in major source determinations if the facility or source falls within a source category which has been listed pursuant to section 302(j) of the Act. As a result, the specific questions you raise need to be answered according to whether the facilities or operations in question fall within a source category listed pursuant to section 302(j).

In addition to the above questions, it is my understanding that, based on discussions you have had with Joanna Swanson of my staff, one NSPS of concern for a source in your district is the NSPS for metallic mineral processing plants (40 CFR, part 60, subpart LL). The information which you provided to our office regarding this source has been forwarded to Keith Brown in the Office of Enforcement and Compliance Assurance, the office

responsible for NSPS applicability determinations. Mr. Brown will be contacting you in the near future; however, for future reference, Mr. Brown can be reached at (202) 564-7124.

I appreciate this opportunity to be of service and trust this information will be helpful to you. Please understand these responses are intended solely as guidance as to how EPA would interpret its regulations in your situation, and are based on the information you have provided to EPA.

Sincerely,

Robert G. Kellam  
Acting Director  
Information Transfer and Program  
Integration Division