

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
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December 1, 1997

4APT-ARB

Mr. Jimmy Johnston, Manager
Stationary Source Permitting Program
Air Protection Branch Georgia Environmental Protection Division
4244 International Parkway, Suite 120
Atlanta, Georgia 30354

SUBJ: Request for Terminology Clarification

Dear Mr. Johnston:

This is in response to a letter from Jack Taylor dated July 18, 1997, requesting clarification of the phrase "modifications under any provision of title I of the Act." Although this phrase is found in the current 40 CFR part 70 regulation, it has not yet been officially defined by the Environmental Protection Agency (EPA). We hope that the following discussion, which is excerpted from the preamble to the final part 71 rule (61 FR 34201, July 1, 1996), is helpful to you.

As you are probably already aware, the part 71 proposal contained a proposed definition of the phrase "title I modification or modification under any provision of title I of the Act." EPA subsequently proposed a revised definition in the August 1995 supplemental proposal for parts 70 and 71. EPA is in the process of reviewing and developing a position in response to the comments on the several proposals with respect to this issue. EPA intends to include a definition in the part 70 revisions, which the Agency expects to promulgate in 1998.

A detailed discussion of the history of this definition is contained in the preamble to the August 1995 part 70 proposal (60 FR 45545). At issue is whether the phrase "modifications under any provision of title I" as used in section 502(b)(10) of the Act includes not only modifications subject to major NSR requirements of parts C and D of title I, but also modifications subject to minor NSR programs established by the States pursuant to section 110(a)(2)(C).

In August 1994, EPA proposed to interpret the title I modification language of part 70 to include minor as well as major NSR modifications (55 FR 44527). However, EPA received many comments from industry and States contesting this interpretation. The commenters argued that EPA had interpreted title I modification in the preamble to the May 1991 proposed part 70 rule to exclude minor NSR (56 FR 21746-47 and footnote 6) and did not redefine it in the final July 1992 rule. As a result, the commenters argued that they were relying on the current rule to be interpreted consistent with the proposed rule preamble and that EPA could not change its interpretation without undertaking further rulemaking.

Based in part on the arguments raised by commenters, EPA revised its proposed interpretation of the definition of title I modification in the August 1995 supplemental notice to exclude modifications

subject to minor NSR. In addition, EPA proposed regulatory language which defined title I modification as excluding the reference to section 110(a)(2) of the Act.

While EPA has not yet adopted a final regulatory definition for the term, the Agency's current interpretation is that title I modifications do not include changes subject to State minor NSR programs. This is consistent with the approach the states were advised to take under the current part 70 regulation.

If you have questions regarding the status of EPA's rulemaking efforts or other concerns, please contact Carla Pierce of my staff at 404/562-9099. You may also contact Kim Gates at 404/562-9124.

Sincerely,

/s/

R. Douglas Neeley
Chief
Air & Radiation Technology
Branch
Air, Pesticides & Toxics
Management Division

cc: Region 4 State/Local
Air Directors
Region 4 State/Local
Title V Contacts