1. What is the Status of EPA's "Once In, Always In" Policy for Air Toxics Sources?

EPA's May 16, 1995 guidance memo is entitled "Potential to Emit for MACT Standards - Guidance on Timing Issues" and it can be found on Region 7's website (http://www.epa.gov/Region7/programs/artd/air/title5/t5memos/pteguid.pdf) or on EPA's TTN. To date, there have been no changes to the policy although EPA intends to propose modifications to the policy to address pollution prevention projects through revisions to 40 CFR part 63. Attached is a Q and A document discussing the MACT/T5 interface issues, which we developed after a MACT workshop in Seattle.

2. Does EPA Run An Air Construction Permit Program in any State?

In answering this question, we solicited input from EPA Headquarters and other Regions and considered minor new source review and the two programs for major new source review, Prevention of Significant Deterioration (PSD) and major new source review in non-attainment areas (Part D NSR). In addition, we limited our response to areas within a State's jurisdiction where EPA runs these programs, and did not consider Indian Country, U.S. territories, or the Outer Continental Shelf.

Minor new source review: EPA does not operate a minor new source review program in any State.

PSD: The federal PSD program of 40 CFR 52.21 applies in several states that do not have SIP-approved PSD programs, such as Washington, Hawaii, and Michigan, although most of these states have full or partial delegation of the PSD program. The attached map shows the status of PSD programs in the various States as of June 2002.

Part D NSR: EPA does not operate a Part D NSR program in any State.

3. Identify State Title V Programs that Have Closely Followed the Part 70 Regulations. How well are these State Programs Running?

Based on inquiries to other EPA Regions and EPA Headquarters, we understand that the following permitting authorities closely followed the part 70 regulations in adopting their title V operating permit programs. We also understand that although these permitting authorities, like most permitting authorities, may have not met the part 70 deadlines for permit issuance, these permitting authorities have been fairly successful in issuing permits in a timely manner as compared to all permitting authorities as a whole. We have also provided a contact name and number for each of the permitting authorities:

Mississippi: Dan McLeod, (601) 961-5162, Dan_mcleod@deq.state.ms.usa
North Dakota: Tom Bachman, (701) 328-5188
Washington: Tom Todd, (360)407-7528, ttod461@ecy.wa.gov
South Carolina: Carl Richardson, (803) 898-4111, richarcw@columb31.dhec.state.sc.us.

4. Prepare a List of State Title V Permit Programs, Showing the Various Fees Charged (e.g., Dollars per Ton; Hourly Rates).

EPA headquarters compiled the attached chart in 2000. More current information is not available and would be too time consuming to for Region 10 to compile. We suggest you contact STAPPA/ALAPCO to see if they have more current information.

5. What are the Minimum Requirements for Monitoring, Reporting and Record Keeping in Title V Permits?

Simply stated, all title V permits must include monitoring sufficient to assure compliance with the permits' terms and conditions. See 67 FR 56851, 58564 (September 17, 2002). Section 504 of the Clean Air Act makes it clear that each Title V permit must include "conditions as are necessary to assure compliance with applicable requirements of [the Act], including the requirements of the applicable implementation plan" and "inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions." 42 U.S.C. § 7661c(a) and (c). In addition, Section 114(a) of the Act requires "enhanced monitoring" at major stationary sources, and authorizes EPA to establish periodic monitoring, record keeping, and reporting requirements at such sources. 42 U.S.C. § 7414(a). The regulations at 40 C.F.R. § 70.6(a)(3) specifically require that each permit contain "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit" where the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring (which may consist of record keeping designed to serve as monitoring). In addition, 40 C.F.R. § 70.6(c)(1) requires that all Part 70 permits contain, "compliance certification, testing, monitoring, reporting, and record keeping requirements sufficient to assure compliance with the terms and conditions of the permit." Alaska's Title V regulations also require that all permits contain terms and conditions to ensure that each source complies with all applicable requirements, including monitoring, record keeping, and reporting requirements. See 18 AAC 50.530(d)(4), (g), (h), and (i).

EPA has interpreted these provisions of the Clean Air Act and the Part 70 regulations in a recent Federal Register proposing clarifying changes to the part 70 regulations, 67 FR 56851 (September 17, 2002), as well as several orders responding to petitions under title V requesting that the EPA Administrator object to certain permits, In the Matter of Pacificorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants, Petition No. VIII-00-1 (November 16,

2000) (Pacificorp);[1] and In the Matter of Fort James Camas Mill, Petition No. X-1999-1 (December 22, 2000) (Fort James).[2] In those notices and orders, EPA has stated that where an

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[1] Available on the Internet at http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/woc020.pdf.

[2] Available on the Internet at: http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/fortjamesdecision1999.pdf

applicable requirement did not require any periodic testing or monitoring, 40 CFR 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B) requires permit conditions to establish "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit." In contrast, where the applicable requirement already requires "periodic" testing or monitoring but that monitoring was not sufficient to assure compliance, the separate regulatory standard at 40 CFR 70.6(c)(1) would apply instead to require monitoring "sufficient to assure compliance with the terms and conditions of the permit." Furthermore, where 40 CFR 70.6(a)(3)(i)(B) applies, monitoring that meets 40 CFR 70.6(a)(3)(i)(B) would satisfy the general sufficiency requirement of 40 CFR 70.6(c)(1). See 67 FR at 58564; Pacificorp at 18-19; Fort James at 5-9.

The Fort James petition response provides some additional guidance on what EPA expects in Title V permits, including the need to include appropriate QA/QC (see p10, Section IIIA) , some criteria to consider in establishing parameter ranges (See Section IIID), criteria to consider when establishing frequency of source testing (see Section IIIC), and the basis for the surrogate parameters selected (see Section IIIE). In addition, NSPS and NESHAP standards, particularly post-1990 standards, include the kinds of monitoring that EPA considers acceptable.

EPA has also made clear that part 70 requires that the rationale for the selected monitoring methods must be clear and documented in the permit record. Fort James at 8, Section II. This is incorporated in the requirement at 40 C.F.R. § 70.7(a)(5) that the permitting authority "shall provide a statement that sets forth the legal and factual basis for the draft permit conditions." This requirement is also incorporated into State of Alaska regulations at 18 AAC 50.340(j).

Please note that, as stated in a letter dated September 4, 2001 from Roylene Cunningham, EPA Region 10, to John Kuterbach, of ADEC, regarding EPA's comments on proposed revisions to 18 AAC 50, EPA stated that EPA would not approve 18 AAC 50.346 (Construction and Operating Permits: Other Permit Conditions) as part of the Alaska State Implementation Program or Alaska's Title V program unless certain changes were made to that provision. This is because Title V and Part 70 require that appropriate monitoring must be established in a Title V permit on a case-by-case basis. Alaska adopted 18 AAC 50.346 without making the changes identified by EPA as necessary to meet the requirements of the Clean Air Act.