

signed October 1995

Francisco Claudio, Director
Air Program Area
Puerto Rico Environmental Quality Board
P.O. Box 11488
Santurce, Puerto Rico 00910

Re: Question on Timing of When Control Equipment Must Be In
Operation In Order To Limit Potential To Emit For Title V
Purposes

Dear Mr. Claudio:

This letter is to inform you of the U.S. Environmental Protection Agency's (EPA's) response to a question raised by an industry in Puerto Rico on whether control equipment pursuant to a permit to construct must be in operation in order for a source to be considered a synthetic minor and, therefore, not subject to Title V.

Carlos Colon of the law firm McConnell Valdes asked for EPA input on the following situation. His client wishes to add-on control equipment to limit emissions below 100 tpy. The source currently operates above 100 tpy. The question is if the source gets a permit to construct from your office by the date that the source is required to submit a Title V permit application pursuant to the Part VI rules (i.e., by November 1996), although **the control equipment will not be constructed or operating yet so that emissions are still above 100 tpy**, can that source get out of Title V? Mr. Colon suggested that your office would issue a compliance plan as part of the permit to construct so that the source is required to construct and begin operation of the control equipment within 6 months.

EPA's response is no; the source could not get out of applying for a Title V permit in the above situation. The control equipment must be in operation before EPA views this as a limit to potential to emit. Under New Source Review, a source cannot operate until the limitation to potential to emit is in effect. Title V is viewed similarly. Only if this source is willing to shut down while the control equipment is being constructed or reduce its operation during the 6 month period (beginning with time period from when the Title V permit application is due) so that emissions are below 100 tpy on a rolling average basis could the source get out of Title V.

Therefore, the source has several options based on the situation described by Carlos Colon.

- a) The source can be issued a permit to construct and build the add-on control equipment so that the new controls are in operation by the time the source is required to submit a Title V application.
- b) The source can be issued a permit to construct which includes: (1) conditions that curtail operation (i.e., limit emissions, reduce hours of operation) using existing equipment during the time period between Title V application due date and operation of new controls; (2) conditions for the new controls; (3) conditions 1 and 2 must result in total emissions to be less than 100 tpy on a rolling average basis; and (4) condition 1 would expire upon operation of the new controls. In this way, the source would be operating as a minor source as required under the permit to construct even before the new controls were added.
- c) The source applies and is issued a permit to construct and begins construction of new control equipment. However, because emissions remain above 100 tpy during this construction, the source also submits a Title V permit application by the timeframe required in Puerto Rico's Part VI rules. Once the control equipment is in operation so that emissions, in compliance with the permit to construct, are below 100 tpy, the source can withdraw its Title V application (or request that EQB rescind its Title V permit in case the permit had already been issued). The source would then be operating as a minor source and would no longer be subject to Title V.

If you have any questions, please call me or have your staff contact Christine Fazio of my office at 212-637-4015.

Sincerely yours,

Kenneth Eng, Chief
Air Compliance Branch

cc: Carlos Colon, Esq.
McConnell Valdes