UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

February 22, 2000

Mr. Mike Tollstrup
Chief, Project Assessment Branch
California Air Resources Board
1001 I Street
Sacramento, California 95812

SUBJ: Important Part 70 Interim Approval Language Change for Insignificant Activities

Dear Mr. Tollstrup:

I am writing to notify you that EPA Headquarters recently identified problematic language for insignificant activities contained in the widely distributed December 12, 2000 and the February 2, 2001 versions of the CARB table entitled, "Summary of Title V Interim Approval Issues." (For purposes of this letter I refer to both versions as "the table" because there is no difference between the two with respect to the problematic insignificant activity language contained therein). The table was developed by CARB and EPA Region 9 and was intended to provide non-grantee Districts rule language that was sufficient to correct interim approval deficiencies, including two options to correct the common rule deficiency related to insignificant activities. As discussed more fully below, EPA Headquarters has identified problematic language in both options. I have enclosed new, acceptable language that we have worked with you and your staff and EPA Headquarters to develop. Therefore, if a District in the State had relied, or was planning to rely, on either of the two options available in the table, they should use the new language. Of course, a District may choose to provide its own option to correct this interim approval deficiency provided it is consistent with Part 70.

EPA Headquarters is concerned about two issues: (1) language that appears to allow insignificant activities to be exempt from the 40 C.F.R. § 70.6 permit content requirements, including periodic monitoring, compliance certification, and deviation reporting; and (2) language that conflicts with § 70.5(c), which requires insignificant activities to be listed in the application if they qualify for insignificant activity treatment based on size or production rate.

On the first point, Headquarters fears that the language in Option 1 (two instances) and Option 2 (one instance), allows certain insignificant activities to not be "specified in the permit."

This language could be interpreted to mean the insignificant activities never have to be included in the permit and, therefore, effectively provides an exemption from all permitting requirements for such units. Such an exemption is not provided anywhere in part 70 and, although White Paper II offers permit content streamlining opportunities for insignificant activities, it clearly does not imply that they are exempt from permit requirements.

EPA Headquarter's second concern is with Option 2, paragraph 1, which would allow insignificant activities defined based on emission rates (e.g., 2 tpy criteria or 0.5 tpy HAP) to not "be listed in the permit application..." Although Part 70 generally allows insignificant activities to be omitted from the application requirements, if an activity is insignificant based on "size or production rate" it must be listed on the part 70 permit application (see 40 C.F.R. § 70.5(c)). EPA Headquarters indicated that the term "size" includes the emissions rate, and thus, if an insignificant activity is defined based on its emissions rate as provided for under option 2, it would have to be listed in the application.

With this letter I ask that you revise the table developed by CARB and EPA Region 9 and redistribute it as soon as possible. I will transmit this letter via electronic mail to all title V contacts within the State. Further, we will telephone Districts to inform them of this important change.

We appreciate your willingness to work with us to make the change quickly. I am sensitive to the lateness of our notice on this matter. We trust that Districts – even Districts that had already adopted the previous language -- will be able to make the necessary change in time to meet the revised program submittal deadline of June 1, 2001.

Again, thanks to your staff for all of their hard work on developing this important table and for assisting the Districts in the State in correcting all interim approval issues within their control. If you have any questions please contact David Wampler of my staff at (415) 744-1256.

Sincerely,

//signed//

Gerardo C. Rios
Acting Chief, Permits Office

Enclosure

cc: Beverly Werner, CARB
Barbara Cook, CARB
California Title V Contacts

ENCLOSURE

New Insignificant Activities Language

Please insert the following new language for Insignificant Activities at page 2 and 3 of the Summary of Title V Interim Approval Issues.

OPTION NUMBER 1

Rule Revision
Add the following as IV.C.1.q.(Pre-1996) or v. (1996) and attach Attachment 1 of this summary to your Title V rule:

"Activities identified as insignificant in Attachment 1 of Rule [insert the District's Title V rule number] based upon size and production rate shall be listed in the permit application. An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required in Section VII of this rule. [Reference: 40 CFR Part 70.5(c)]"

[NOTE: In order that the List of Insignificant Activities be considered "regulatory," it must be adopted by the District. Therefore, public comment must be solicited on both Attachment 1 and the revised Title V rule during the District's adoption process.]

Program Revision
Replace Section III.B.1.e. with the following:
"The District's criteria for Title V insignificant activities are set forth in Section IV.C.1. and Attachment 1 of Rule [insert the District's Title V Rule number]."

OPTION NUMBER 2

Rule Revision
Add the following as IV.C.1.q. (Pre-1996) or v. (1996):

"1) For the purposes of this rule, an insignificant activity shall be any activity, process, or emissions unit which is not subject to a source-specific applicable federal requirement and which emits no more than 0.5 tons per year of a HAP and no more than two tons per year of a regulated air pollutant that is not a HAP. Source-specific applicable federal requirements include requirements for which emission unit-specific information is required to determine applicability.
2) An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required in Section VII of this rule. [Reference: 40 CFR Part 70.5(c)]"

Program Revision
Replace Section III.B.1.e. with the following:
"The District's criteria for Title V insignificant activities are set forth in Section IV.C.1. of Rule [insert the District's Title V Rule Number]"