



State of Utah

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**DAQ-2018-006829**

## GUIDELINES

**TO: Permitting Branch Staff**

**FROM: Marty Gray, Permitting Branch Manager**

**DATE: June 30, 2018**

**SUBJECT: Title V Applicability for Area Sources having NSPS or NESHAP/MACT Record Keeping-Only Requirements.**

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### **Purpose**

This guideline addresses Title V applicability determinations for area sources having “**record keeping-only**” requirements from NSPS or MACT/NESHAPS standards.

### **Implementation**

The Title V program is not triggered for area sources subject **only** to an NSPS or NESHAP/MACT record keeping requirement. If, however, any other limitation or standard from the NSPS or NESHAP applies, Title V would also apply.

### **Analysis**

Having an NSPS or MACT/NESHAPS record keeping requirement does not make an area source subject to the Title V program if the record keeping supports no limitation. For example, 40 CFR 60, Subpart Dc has a requirement for natural gas boilers to maintain consumption records that support no consumption limit. Another example would be 40 CFR 60, Subpart Kb requiring sources to maintain storage tank dimensions for the life of the tank, regardless of tank size or vapor pressure of the contents.

### **Authority**

State Rule R307-415-4(a) and 40 CFR 70, state that Title V is triggered when a source is subject to a standard, limitation or other requirement in an NSPS, or subject to a standard or other requirement under MACT/NESHAPS. Our position is that “**record keeping-only**” requirements are not intended for use as “standard(s), limitation(s) or other requirement(s)...” that trigger Title V applicability for area sources.

The attached EPA memorandum reinforces our position. Quoting from that memorandum, “We

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interpret the Clean Air Act and the regulations . . . to mean that these sources are 'not subject to standards or regulations under section 111' for purposes of Title V permitting..."

**This Guideline shall be audited every five years by the Title V Section Manager to determine the current status and relevance of the information.**

**ATTACHED: 4/19/1999 EPA MEMORANDUM**

April 19, 1999

MEMORANDUM

SUBJECT: Title V Applicability of One-time "Reporting" Provisions for Nonmajor Sources

FROM: Steven J. Hitte, Group Leader /s/  
Operating Permits Group (MD-12)

TO: Gerald C. Potamis, P.E., Manager  
Air Permit Program Unit, Region I

This memorandum is in reply to your November 10, 1997 letter where you asked us to confirm your office's view that an individual non-major source subject to a part 60 or 61 standard or an individual area source subject to a part 63 standard is not required to obtain a title V permit, provided that the source meets the two conditions shown below. Please appreciate the delay in responding was to ensure that your questions got a thorough analysis.

Condition 1. The source's only applicable requirement is a one-time or ongoing notification, reporting, or record keeping requirement; and

Condition 2. The notification, reporting, or record keeping requirement exists to show that the source's actual emissions are below a certain threshold established by the standard.

Your letter proposes that Condition 2 is a requirement to demonstrate a source is not subject to a particular standard, as opposed to being a requirement of a standard developed under section 111 or 112 of the Clean Air Act (CAA). Your letter also suggests that area sources subject to requirements found in Condition 2 constitute a new category of sources, which you refer to as "nominal sources."

We share your view regarding the nonapplicability of title V sources subject only to a one-time or ongoing notification, reporting, or record keeping requirement which demonstrates the sources are below a certain threshold. Many recently-promulgated rules have such requirements, including subparts Cb, Cc, Ce, Ea, Eb, Ec, JJJ, SSS, VVV, and WWW of part 60 and subparts M, N, O, R, X, and JJ of part 63. By way of example, subpart Ec of part 60 requires owners or operators of combustors that burn only pathological waste, low-level radioactive

waste, and/or chemotherapeutic waste and co-fired combustors, as defined in section 60.51c, to comply only with certain record keeping and reporting requirements set forth in subpart Ec. Those owners and operators are not subject to the other substantive requirements of subpart Ec as long as they comply with the record keeping and reporting requirements set forth as conditions for their exemption. Nor are owners or operators of these sources required to obtain title V operating permits as a matter of federal law, if the only reason they would potentially be subject to title V is these record keeping and reporting requirements. We interpret the Clean Air Act and the regulations at parts 70 and 71 to mean that these sources are "not subject to standards or regulations under section 111" for purposes of title V permitting [see CAA section 502(a) and 40 CFR sections 70.3(a)(2) and 71.3(a)(2)]. Therefore, these sources are not required to apply for title V permits on the basis of their record keeping and reporting requirements as a matter of federal law. However, owners and operators of sources that burn only pathological waste, low-level radioactive waste, and/or chemotherapeutic waste and co-fired combustors that do not comply with the record keeping and reporting requirements necessary to qualify for exemption from the other requirements of the Federal plan would become subject to those other requirements and would have to obtain title V permits. Moreover, if in the future we promulgate regulations subjecting any of these sources to substantive requirements other than these record keeping and reporting requirements, these sources could become subject to title V at that time.

Regarding your nominal source category, we do not see a need for establishment of such a category. The present area source and nonmajor source terms should suffice.

Please keep in mind that the position set forth in this memorandum is intended solely as guidance, does not represent final Agency action, and cannot be relied upon to create any rights enforceable by any party. Should you have other questions concerning this position, please contact me at (919) 541-0886.

cc: John Walke, OGC  
Air Program Manager, Regions I - X  
Title V Contact, Regions I - X  
Title III Contact, Regions I-X