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**DAQ-2018-006843**

## GUIDELINES

**TO: Permitting Branch**

**FROM: Marty Gray** *mg*

**DATE: Update September 24, 2018**

**SUBJECT: Clarification of Area Source Exemptions and Deferrals**

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### Purpose

This guideline clarifies which Title V area sources are exempt or deferred from the Title V program.

### Implementation

As of the date of this memo, the following area sources are exempt from the Title V Program:

- 40 CFR Part 60**, Subpart AAA – Residential Wood Heaters
- \*40 CFR Part 60, Subpart WWW – Municipal Solid Waste Landfills
- \*40 CFR Part 60, Subpart XXX – Municipal Solid Waste Landfills After July 17, 2014
- 40 CFR Part 60, Subpart IIII – Stationary Compression Ignition ICE
- 40 CFR Part 60, Subpart JJJJ – Stationary Spark Ignition ICE
- 40 CFR Part 60, Subpart OOOO-Crude Oil and Nat. Gas Prod., Trans., & Distribution
- 40 CFR Part 60, Subpart OOOOa- Crude & NG Prod., Trans., & Dist. After 9/18/2015
  
- \*\*40 CFR Part 61**, Subpart M Section 61.145 – HAPS Asbestos
  
- 40 CFR Part 63**, Subpart M – Perchloroethylene for Dry Cleaners
- 40 CFR Part 63, Subpart O – Ethylene Oxide for Sterilization Facilities
- 40 CFR Part 63, Subpart T – Halogenated Solvent Cleaning
- 40 CFR Part 63, Subpart RRR – Secondary Aluminum Production
- 40 CFR Part 63, Subpart N – Chromium Electroplating and Anodizing Tanks
- 40 CFR Part 63, Subpart HH – Oil and Natural Gas Production
- 40 CFR Part 63, Subpart ZZZZ – Stationary Reciprocating Internal Combustion Engines
- 40 CFR Part 63, Subpart WWWW – Hospital Sterilizers
- 40 CFR Part 63, Subpart ZZZZZ – Iron and Steel Foundries
- 40 CFR Part 63, Subpart BBBB – Gasoline Dist. Bulk Term, Bull, Pipe
- 40 CFR Part 63, Subpart DDDDD – Polyvinyl Chloride & Copolymers Production

- 40 CFR Part 63, Subpart CCCCCC – Gasoline Dispensing Facilities
- 40 CFR Part 63, Subpart HHHHHH – Paint Stripping & Misc. Surface Coating
- 40 CFR Part 63, Subpart JJJJJJ – Industrial, Commercial, and Institutional Boilers
- 40 CFR Part 63, Subpart LLLLLL – Acrylic and Modacrylic Fibers Production
- 40 CFR Part 63, Subpart OOOOOO – Flexible Polyurethane Foam
- 40 CFR Part 63, Subpart PPPPPP – Lead Acid Battery Manufacturing
- 40 CFR Part 63, Subpart QQQQQQ – Wood Preserving
- 40 CFR Part 63, Subpart RRRRRR – Clay Ceramics
- 40 CFR Part 63, Subpart TTTTTT – Secondary Nonferrous Metals
- \*\*\*40 CFR Part 63, Subpart VVVVVV – Chemical Manufacturing
- 40 CFR Part 63, Subpart WWWWWW – Plating and Polishing Operations
- 40 CFR Part 63, Subpart XXXXXX – Nine Metal Fabrication & Finishing Categories
- 40 CFR Part 63, Subpart YYYYYY - Ferroalloys Production Facilities
- 40 CFR Part 63, Subpart ZZZZZZ - Aluminum, Copper, and Other Nonferrous Foundries
- 40 CFR Part 63, Subpart AAAAAAA - Asphalt Processing & Asphalt Roofing Mfg.
- 40 CFR Part 63, Subpart BBBBBBBB – Chemical Preparations Industry
- 40 CFR Part 63, Subpart CCCCCC - Paints and Allied Products Manufacturing
- 40 CFR Part 63, Subpart DDDDDDD - Prepared Feeds Manufacturing

### **Analysis and Authority**

The applicability of the Title V program to area sources is reflected in our rules and is consistent with EPA's position on exempting or deferring area sources from the Title V program.

#### Title V exempt sources:

Our rules currently read as follows:

*R307-415-4(2)(c) An area source subject to a regulation under Section 111 or 112 of the Act (42 U.S.C. 7411 or 7412) promulgated after July 21, 1992 is exempt from the obligation to obtain a Part 70 permit if:*

- (i) the regulation specifically exempts the area source category from the obligation to obtain a Part 70 permit, and*
- (ii) the source is not required to obtain a permit under R307-415-4(1) for a reason other than its status as an area source under the Section 111 or 112 regulation containing the exemption.*

#### Federal Rules:

Section 111 or 112 refer to the New Source Performance Standards (NSPS) which are found in 40 CFR 60, the National Emission Standards for Hazardous Air Pollutants (NESHAPs) found in 40 CFR 61, and the National Emission Standards for Hazardous Air Pollutants, also called the Maximum Achievable Control Technology or MACTs found in 40 CFR 63. The EPA intends to make an affirmative declaration on a standard-by-standard basis as to whether or not each source category should be included in the Title V program. Language similar to the following would be included in each standard:

*If you are an owner or operator of an area source subject to this subpart you are exempt from the obligation to obtain a permit under 40 CFR 70 or 71 provided you are not required to obtain a permit under 40 CFR 70.3(a) (b), or 71.3 (a) or (b) for a reason other than your status as an area source under this subpart. Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart applicable to area sources.*

The preamble of the 2005 – “Five Area Source MACT Exemptions” and the OAQPS interpretation of the preceding language is that these area sources are exempt from the Operating Permit Program. This would include our ability to charge Title V fees and therefore no Title V funds should be used for permitting, inventory, or compliance (including inspections) of these sources.

These sources may still be required to submit inventories pursuant to R307-150; however these sources should not be charged Title V fees. They may also be required to obtain permits under other sections of our rules.

Title V deferred sources:

A second category of area sources are those that have been “temporarily” deferred. These sources and their Title V obligation are outlined in the state rules, and read:

R307-415-5a(3)(c) Area sources.

*(i) Except as provided in (c)(ii) and (c)(iii) below, each Part 70 source that is not a major source, a Title IV affected source, or a solid waste incineration unit required to obtain a permit pursuant to section 129(e) (42 U.S.C. 7429), is deferred from the obligation to submit an application until 12 months after the Administrator completes a rulemaking to determine how the program should be structured for area sources and the appropriateness of any permanent exemptions in addition to those provided in R307-415-4(2).*

These area sources have not been exempted from the Title V program; they are only deferred from submitting permit applications until we (and the EPA) conduct rulemaking to address these sources. Therefore, these sources are currently part of the Part 70 program and should be charged applicable Title V fees and Title V funds may be used for inventory and compliance of these sources.

**This Guideline shall be audited every Five years by the Operating Permits Manager to determine the current status and relevance of the information.**

\*40 CFR Part 60, Subpart WWW – Municipal solid waste landfills and 40 CFR Part 60, Subpart XXX – Municipal Solid Waste Landfills After July 17, 2014: These exemptions are specific to landfills with small design capacity only, they contain the following exemption language: “For purposes of obtaining an operating permit under title V of the Act, the owner or operator of a MSW landfill subject to this subpart with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not subject to the requirement to obtain an operating permit for the landfill under part 70 or 71 of this chapter, unless the landfill is otherwise subject to either part 70 or 71”.

\*\*40 CFR Part 61, Subpart M Section 61.145 – HAPS Asbestos: This exemption is specific to demolition and renovation activity within a source, whereas these activities shall be treated as a separate source for the purposes of Title V. All other provisions of 40 CFR 61, Subpart M are not exempt and therefore fall into the category of “temporarily” deferred sources as outlined above.

\*\*\*40 CFR 63, Subpart VVVVVV – Chemical Manufacturing: The exemption language in this subpart varies from the standard language with a conditional exemption as follows:

*(e) Any source that was a major source and installed a control device on a CMPU after November 15, 1990, and, as a result, became an area source under 40 CFR part 63 is required to obtain a permit under 40 CFR part 70 or 40 CFR part 71. Otherwise, you are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not otherwise required by law to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3(a). Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart.*