STAPPA / ALAPCO

STATE AND TERRITORIAL
AIR POLLUTION PROGRAM
ADMINISTRATORS

ASSOCIATION OF
LOCAL AIR POLLUTION
CONTROL OFFICIALS

S. WILLIAM BECKER
EXECUTIVE DIRECTOR

May 20, 2005

Air and Radiation Docket
U. S. Environmental Protection Agency
Mail Code: 6102T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Docket No. OAR-2004-0010

To Whom It May Concern:

On behalf of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO), thank you for the opportunity to comment on the U. S. Environmental Protection Agency's "Proposal to Exempt Area Sources Subject to NESHAPS from Federal and State Operating Permit Programs under Title V of the Clean Air Act ("the Act")." The associations support EPA's proposal to exempt from Title V the five area source categories of dry cleaners, halogenated solvent degreasers, chrome electroplaters, ethylene oxide sterilizers, and secondary aluminum smelters. We encourage EPA to promulgate this rule as expeditiously as possible.

The associations also support the criteria used by EPA to analyze Title V's applicability to these area source categories. Specifically, we believe that EPA's analysis appropriately focused on whether compliance with Title V permitting would be "impracticable, infeasible, or unnecessarily burdensome" for the source categories. STAPPA and ALAPCO concur that adequate oversight by our permitting authorities will achieve high compliance with the particular NESHAP requirements without Title V permitting. We also agree with EPA's conclusion that Title V permitting should be required for secondary lead smelters, based on a determination that Title V permits for that area source category would not be impracticable, infeasible, or unnecessarily burdensome.

We disagree with EPA, however, on its reinterpretation of the requirements of section 502(a) of the Act. EPA states that the Act contemplates that only those area sources required to be permitted under section 502(a) and not exempted by the Administrator through notice and comment rulemaking are properly subject to Title V requirements. Section 506(a), EPA notes, provides that permitting authorities "may

444 North Capitol St. N.W. Washington, D.C. 20001 Tel. (202) 624-7864 Fax (202) 624-7863

establish additional permitting requirements not inconsistent with the Act." According to EPA, it would be inconsistent with the Act for States to include sources in their Title V programs that EPA has exempted from Title V because the Administrator alone is granted the discretion to define the universe of area sources subject to the Title V programs. This reasoning contradicts EPA's previous interpretations and is, moreover, inconsistent with the framework of the Act and the state and federal partnership envisioned.

In fact, EPA has previously arrived at directly opposite conclusions. In its December 14, 1999 promulgation deferring area sources from operating permit requirements until December 9, 2004, the agency stated, "The Title V operating permit deferral is an option at the permitting authority's discretion under EPA-approved State operating permit programs and not an automatic deferral that the source can invoke. Thus, State operating permit authorities are free to require area sources subject to the five NESHAPS to obtain Title V permits. (Emphasis added) (64 *Federal Register* 69637) This unequivocal statement, with which we agree, does not support the conclusion of the current proposed rule.

Underscoring the freedom of states to issue Title V permits if they choose to do so is the statement on EPA's website that "EPA regulations currently allow States to decide whether to require Title V permits of other non-majors that are subject to a national emission standard for hazardous air pollutants (NESHAPS) under Section 112." www.epa.gov/oar/oaqps/permits/whogets.html [last updated March 24, 2005] We support the current Part 70 regulations that have been interpreted to allow states the freedom to require operating permits as they see fit for these area sources and urge EPA not to revise them.

Moreover, Congress intended that the states administer the operating permit program. States retain the right to impose more stringent operating permit requirements than contained in 40 CFR Part 70 (42 U.S.C. 7416). EPA's proposed rule, necessitating reopening and rescission, or nonrenewal, of Title V permits for area sources that have been issued such permits, impairs the state-federal partnership created by the Act.

With regard to general permits, STAPPA and ALAPCO agree with EPA that, although general permits are less burdensome and costly than standard permits under Title V, there are still significant issues associated with the issuance of general Title V permits. We are aware that some states have been successful in the issuance of general Title V permits to some source categories. It cannot be inferred, however, that all permitting authorities have the ability or authority to issue general Title V permits. STAPPA and ALAPCO encourage EPA to finalize a rule that does not require general permits, but rather leaves this decision up to the individual permitting authority.

Whether or not a state chooses to implement a general permit program, states generally find that compliance rates are maximized when inspectors monitor these area sources and give practical compliance advice. STAPPA and ALAPCO urge EPA to clarify that state and local agencies can continue to use Title V Small Business Assistance Program funds for these five area source categories.

Thank you for this opportunity to comment on the proposed rule to exempt area sources subject to NESHAPS from federal and state operating permit programs. We look forward to EPA's expeditious issuance of the final rule exempting the five area source categories. Please do not hesitate to contact one of us or Mary Stewart Douglas if you have any questions concerning this comment.

Sincerely yours,

Bob Hodanbosi
Co-Chair STAPPA

Ursula Kramer
Co-Chair ALAPCO