TITLE V PERMITTING OBLIGATIONS REGARDING PORTABLE EQUIPMENT

September 30, 1998

Introduction

The United States Environmental Protection Agency, Region IX (U.S. EPA or Region IX), and the California Air Resources Board (ARB or the Board) recognize that the air pollution control districts have numerous questions about how to treat portable equipment with respect to the Title V operating permits program. The responses below address district concerns related to the State registration program for portable equipment adopted by the Board on March 27, 1997 (CCR Title 13 Sections 2450-2465, September 17, 1997) as well as district concerns that pre-date the State registration program. The primary references used to prepare the responses were: 40 CFR Part 70 (July 21, 1992), the U.S. EPA's "White Paper for Streamlined Development of Part 70 Permit Applications" (White Paper 1, July 10, 1995) Section II.B.5. Short-term Activities, and the ARB's "Regulation to Establish a Statewide Portable Equipment Registration Program (CCR Title 13 Sections 2450-2465, September 17, 1997).

Definitions

For the purpose of the Questions and Answers below:

"Associated equipment" is portable equipment that emits air pollutants over and above those emitted by the portable engine with which it is associated;

"Non-engine equipment" is portable equipment that is not associated with a portable engine, e.g., portable boilers;

"Portable" has the same definition as the term has in the ARB's "Regulation to Establish a Statewide Portable Equipment Registration Program" (CCR Title 13 Section 2450-2465, September 17, 1997) - see Attachment 1; and

"Portable engine" is an internal combustion engine that meets the ARB's "Regulation to Establish a Statewide Portable Equipment Registration Program" (CCR Title 13, Sections 2450-2465, September 17, 1997) definition of "portable" - see Attachment 1.

Questions and Answers

A. Portable Equipment Emissions in Major Source Determinations

1. What portable equipment emissions <u>should</u> be attributed to a facility that is being evaluated as a possible Title V facility?

A major facility determination for the purposes of Title V must include emissions from all stationary sources at the facility or site. Regardless of the State-registration status of the portable equipment operated at a facility, associated and non-engine equipment emissions are considered stationary source emissions and must be included in the major facility determination. Clearly, any emissions from associated or non-engine equipment that is exclusively located or operated at a facility must be included. In addition, emissions from the temporary operation of contractor-owned associated or non-engine equipment must be included.[1]

Since contractor-owned associated or non-engine equipment often generates emissions at several different facilities throughout the year, only emissions generated at the facility under evaluation should be included when determining whether or not the facility is major. Therefore, the potential to emit for the facility should include the associated or non-engine equipment's potential to emit only for that time period that the equipment is located at the facility (typically, the duration of the contract between the facility and the contractor).

In addition, facilities vary in their ability to anticipate and estimate emissions from the use of contractor-owned associated or non-engine equipment because, during the lifetime of any given facility, contracted activities may occur once, infrequently, or at irregular intervals. Indeed, some contracted activities can not be predicted at all. In recognition of these uncertainties, the districts should use the most recent year, or the most recent representative year, of complete emission source data as a guide in determining the contractor-owned associated or non-engine equipment emissions that should be included in a major facility determination.

While the State portable equipment registration program exempts military tactical support equipment, including turbines, from Title V and new source review applicability, the U.S. EPA has indicated that emissions from State-registered turbines must be counted towards applicability. To address this conflict with respect to Title V, the military has submitted information to the U.S.

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[1] See letter from John Seitz, Director, Office of Air Quality Planning and Standards, to Lisa Thorvig, Division Manager, Minnesota Pollution Control Agency, dated November 16, 1994; U.S. EPA Memorandum, "Major Source Determinations for Military Installations Under the Air Toxics, New Source Review, and Title V Operating Permit Programs of the Clean Air Act (Act)," dated August 2, 1996 (Attachment 1, ppg. 9 and 10).

EPA on the effect of including emissions from State-registered turbines used exclusively for military tactical support or other federal emergency purposes in determining major source status. The military's intention is to demonstrate that these emissions would not cause any otherwise non-major California military sources to be subject to Title V requirements. U.S. EPA is currently reviewing these demonstrations.

2. What portable equipment emissions <u>should not</u> be attributed to a facility that is being evaluated as a possible Title V facility?

For the purposes of Title V, major facility determinations are not required to include emissions from portable engines. Please see section F.2. for more information.

3. A corporation, agency, or other entity may use associated or non-engine equipment at a number of different facilities or sites that it owns or manages. How should the emissions from the equipment be allotted when determining whether or not each facility or site is major?

Provided the different facilities or sites are not on contiguous or adjacent property, emissions from the associated or non-engine equipment should be apportioned to each facility or site based on the equipment's availability to operate at each facility or site.

4. What if contractor-owned associated or non-engine equipment triggers Title V requirements, but is removed from the facility before a Title V permit is issued? The use of associated or non-engine equipment cannot always be anticipated.

A facility or site is subject to Title V if its potential to emit meets or exceeds the major source threshold at any one time, regardless of whether or not recurrence of such a potential to emit is either likely or predictable. To avoid Title V, the owner/operator of a non-major facility or site should consider voluntary restrictions (e.g., synthetic minor permit conditions) to limit potential emissions to levels below major source thresholds. Such limits would apply whether or not associated or non-engine equipment is in operation.

When an owner/operator of a non-major facility or site finds that unanticipated use of contractor-owned associated or non-engine equipment has resulted in major emissions, he or she should consult with the district regarding submittal of a Title V permit application. Under the July 21, 1992 Part 70 regulation and most district Title V rules, a newly created Title V source is allowed up to 12 months of operation before submittal of a Title V permit application and associated or non-engine equipment often does not remain on site for this entire period. Therefore, the district may use its discretion to choose whether to require a Title V application or some other regulatory mechanism. For example, a Title V permit application or limits on potential to emit may be required if major source emission levels are likely to recur. Even if no Title V permit is required, the temporary operation of associated or non-engine equipment at the

site is usually regulated under a district-issued authority-to-construct or the State portable equipment registration program.

When associated or non-engine equipment is employed at a facility on a routine basis and causes the facility to exceed the major source threshold, a Title V permit would be required.

B. Title V Applications and Permit Conditions

1. What information should the Title V application and permit include for associated or non-engine equipment that is not registered by the State?

The response to this question is based on the U.S. EPA's White Paper 1 (July 10, 1995) guidance for short-term activities. In White Paper 1, the U.S. EPA indicated that short-term activities that do not have source-specific requirements and which are not present at the facility during preparation of the permit could be treated generically. White Paper 1 discusses the generic treatment of activities and emission units.

Also, White Paper 1 indicates that associated or non-engine equipment/activities that have been designated and approved by the U.S. EPA as "trivial" or, on a case-by-case basis, have been determined by the district to be similar to activities listed in White Paper 1 Attachment A, "List of Activities that May Be Treated as 'Trivial'," can be omitted from the Title V application. Certain equipment/activities that are not trivial can be identified as insignificant in the district's U.S. EPA-approved Title V program. Information about insignificant equipment/activities need not be included in the permit application unless: 1) the equipment is defined as insignificant based on size or production rate, 2) information about the equipment is necessary to determine the applicability of, or to impose, any applicable requirement, or 3) information about the equipment is necessary to determine Title V permit fees. In such cases, the permit application may simply list the insignificant equipment/activity and include sufficient information to make the necessary determinations.

a. <u>No Applicable Requirement</u>

Associated or non-engine equipment not subject to any applicable requirements need not be addressed in the Title V permit. However, in California, we expect that most units will be subject to at least one generally-applicable requirement, such as SIP-approved district opacity or process-weight rules (see b. or c. below).

b. <u>Infrequent Activity and Applicable Requirements</u>

If there is an applicable requirement and the associated or non-engine equipment activity is infrequent and of short duration, the Title V application and permit must at a minimum include a

generic requirement or condition that need not refer to any individual emissions unit or activity, e.g., "Any equipment, including portable equipment, shall comply with all applicable requirements while operating at the facility." A general condition addressing an applicable requirement should, when appropriate, clearly indicate the type of activities or emission units subject to the requirement. For example, a general condition addressing a SIP-approved process-weight rule should indicate that the requirement applies to activities involving the handling of materials (grains, minerals, wood chips, etc.).

c. Permanently Located Equipment or Frequent Activity and Applicable Requirements

If there is an applicable requirement and the associated or non-engine equipment is either permanently located at the facility or is not permanently located at the facility but operates frequently on-site, the Title V application and permit must either: 1) include a generic requirement or condition (see B.1.b. above), or 2) if necessary to assure compliance, specifically identify the associated or non-engine equipment and the applicable requirement.

2. What information should the Title V application and permit include for associated or non-engine equipment that is registered by the State?

a. No Applicable Requirement

Please see B.1.a. above.

b. Infrequent Activity, Applicable Requirement

If there is an applicable requirement and the associated or non-engine equipment activity is infrequent and of short duration, the Title V application and permit must include a generic requirement or condition stating a general duty to comply with State registration requirements, e.g., "State-registered portable equipment shall comply with State registration requirements. A copy of the State registration shall be readily available whenever the portable equipment is at the facility."

c. Frequent Activity, Applicable Requirement

If there is an applicable requirement and the associated or non-engine equipment activity is frequent, the Title V application and permit must either include the generic requirement to comply with State registration requirements (see B.2.b. above) alone, or specify the portable equipment activity as well as include the generic requirement to comply.

The State registration requirements are federally-enforceable when the equipment operates at a Title V facility and the Title V permit contains the condition described in B.2.b. By law

[H&SC 41753(b)], districts can neither permit State-registered portable equipment nor enforce any requirements beyond the State registration. We expect State registration requirements to address the majority of applicable requirements; however, there may be SIP-approved district requirements, e.g., process weight requirements, that are not specifically addressed. Please see section F.1. for more information.

C. Title V Permit Revision

1. When should a Title V permit be revised to address associated or non-engine equipment?

A Title V facility change involving associated or non-engine equipment could potentially require a permit revision, for example: if the change conflicts with the permit, triggers an applicable requirement that is not already addressed in the permit, or causes emissions to exceed new source review (NSR) or prevention of significant deterioration (PSD) thresholds. However, most changes in associated or non-engine equipment at a Title V facility would not require a permit revision or would be handled "off permit," provided operation of the equipment would not violate any existing federally-enforceable permit terms or conditions and are not Title I modifications. A Title V permit revision would not be necessary for associated or non-engine equipment activity that is not specifically identified in the Title V permit and is already subject to federally-enforceable requirements addressed in general Title V permit conditions (See B.1. and 2.). Portable equipment activity that will be specified in the permit but does not constitute a major modification may be handled "off permit" pursuant to Part 70.4(b)(14) (July 21, 1992) provided no new applicable requirements are identified. The facility is responsible for contemporaneous notice of off-permit equipment changes to the district and U.S. EPA and the activity should be specified in the permit at the first opportunity, i.e., permit renewal or a related permit revision.

"Off permit" treatment requires advanced planning with respect to changes involving State-registered associated or non-engine equipment. According to State law [H&SC Section 41753(b)], the districts can neither permit State-registered portable equipment nor enforce requirements beyond those contained in the State registration. Therefore, if the owner/operator of a Title V facility can foresee the use of State-registered associated or non-engine equipment, we suggest that the permit for the facility should include a generic condition requiring compliance with the State registration and a copy of the State registration should be readily available (see B.2.b.). The State registration should address the majority of applicable requirements (see section F.1.).

When the operation of associated or non-engine equipment results in a major modification under Part C or D of the Clean Air Act, district Title V rules (please check your district's rule) may allow up to 12 months of operation before submittal of a Title V permit revision application

provided no existing Title V permit terms or conditions would be violated. Typically, such equipment would be regulated under a district-issued authority-to-construct or State registration and would leave the facility or site before the 12-month Title V permit revision application deadline. However, if such activity is anticipated to occur again, the owner or operator should consider submitting a Title V application with an alternative operating scenario that covers it. Any associated or non-engine equipment that is used frequently and/or returns on a predictable or foreseeable basis must be included (see section B., Title V Applications and Permit Conditions) in the Title V permit at renewal, or if the permit is otherwise reopened.

D. Compliance Certification and Liability for Non-compliance

1. If associated or non-engine equipment is owned and operated by a contractor, who must certify that the equipment is complying or not complying with Title V permit conditions?

The U.S. EPA requires the responsible official of the Title V facility to certify compliance with all applicable federally-enforceable permit conditions, including conditions for contractor-owned associated or non-engine equipment operating at the facility. These are most likely to be general conditions that do not specify the portable equipment. As a condition of the contract, the facility owner or operator may require the contractor to certify the compliance status of his or her equipment. Provided that the contractor's certification specifically identifies each piece of portable equipment and the applicable conditions in the Title V permit, such certification may serve as the primary basis for the responsible official's certification. In addition, the facility owner or operator may investigate other contract options, e.g., an indemnity provision. However, a contractor's certification or indemnity provision does not relieve the Title V facility from liability for non-compliant contracted equipment. It is advisable that the Title V facility request the certification statement covering the time period during which the portable equipment is under contract.

E. Responsibility for Fees

1. Who is responsible for paying Title V fees on emissions from contractor-owned associated or non-engine equipment?

The owner/operator of the Title V facility is responsible for fees on all emissions generated at the facility, unless the associated or non-engine equipment is registered in the State portable equipment registration program. State law prohibits districts from charging fees (other than enforcement fees) for State-registered portable equipment. If the State portable equipment registration program seriously impacts a district's Title V fee revenues, the district must submit a Title V program revision adjusting its Title V fee schedule such that adequate funding for its Title V program is maintained.

F. Unresolved and Other Issues

1. What conflicts remain between the Statewide portable equipment program and Title V?

Under State law, portable equipment owners/operators must choose between two mutually-exclusive alternatives: either to have their equipment permitted by the district or registered by the State. The State registration program, which prohibits districts from permitting, registering, or otherwise regulating ARB-registered portable equipment, poses a problem for districts with permitting, SIP, or other applicable requirements that are not addressed by State registration, since Title V requires all applicable requirements to be included in the Title V permit. U.S. EPA is required to object to Title V permits that do not contain all applicable requirements.

Regardless of the associated or non-engine equipment's registration status, the Title V facility is liable for the equipment's compliance with all of the aforementioned requirements (including any preconstruction review and permitting requirements) for the entire time period that the equipment is on site (see D.1., above). Sources failing to comply with federal requirements may be subject to EPA enforcement action or citizen suits. Serious failures to comply with the SIP could result in EPA action under 113(a)(5).

2. What is the regulatory status of portable engines?

The U.S. EPA recently determined that all portable engines, regardless of date of manufacture, are nonroad engines.[2] States and local agencies are preempted from setting emission standards for nonroad engines, regardless of date of manufacture. (California may apply to U.S. EPA for a waiver from this preemption.) If a district formerly used the preempted limits to meet SIP emission reductions, it must require commensurate emission reductions to compensate. While emission standards are preempted, the CAA does not prohibit State and local agencies from permitting nonroad engines, or from regulating the use of nonroad engines. Therefore, State and local agencies may still require offsets, and set limits on hours of operation or mass emission rates affecting portable engines. Requirements of this type previously imposed under preconstruction permits or other SIP rules continue to be in effect.

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[2] See letter from Alan W. Eckert, Associate General Counsel, Air and Radiation Law Office, to Kathleen Walsh, General Counsel, California Air Resources Board, dated March 20, 1998.

Attachment 1

Definition of Portable

Portable means designed and capable of being carried or moved from one location to another. Indica of portability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform. For the purposes of this regulation, dredge engines on a boat or barge are considered portable. The engine or equipment unit is not portable if any of the following are true:

1) the engine or equipment unit or its replacement is attached to a foundation, or if not so attached, will reside at the same location for more than 12 consecutive months. Any engine or equipment unit such as back-up or stand-by engines or equipment units, that replace engine(s) or equipment unit(s) at a location and is intended to perform the same or similar function as the engine(s) or equipment unit(s) being replaced, will be included in calculating the consecutive time period. In that case, the cumulative time of all engine(s) or equipment unit(s), including the time between the removal of the original engine(s) or equipment unit(s) and installation of the replacement engine(s) or equipment unit(s), will be counted toward the consecutive time period; or
2) the engine or equipment unit remains or will reside at a location for less than 12 consecutive months if the engine or equipment unit is located at a seasonal source and operates during the full annual operating period of the seasonal source, where a seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location at least three months each year; or
3) the engine or equipment unit is moved from one location to another in an attempt to circumvent the portable residence time requirements.

[The period during which the engine or equipment unit is maintained at a storage facility shall be excluded from the residency time determination.]

CCR Title 13, Sections 2450-2465, September 17, 1997