

September 21, 2000

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MD-12  
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Research Triangle Park, NC

Dear Mr. Trutna,

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 EPA's August 14, 2000 draft White Paper 3, entitled *Operational Flexibility in Facilities Subject to Title V Permitting* (65 FR 49803). Specifically, the White Paper proposes to allow state and local agencies to issue "smart permits" that would build more flexibility for industry into the Title V permitting program.

STAPPA and ALAPCO support EPA's continued efforts to facilitate flexibility in state and local Title V permit programs and commend the agency for exploring ways to provide flexible permitting mechanisms to improve both the environment and economic competitiveness. However, rather than issuing another guidance document that provides flexibility on a limited basis, the associations urge EPA remove the numerous barriers to flexibility that currently exist in the Title V permitting program. Over the past few years, we have repeatedly urged EPA to remove and/or resolve numerous barriers to flexibility, including the unresolved Title III/V interface issues, the question of federal enforceability of terms and conditions in preconstruction permits, as well as the uncertainty of the agency's position on potential-to-emit limits definition and the pending Part 70 revisions. We believe that it is only through a revision of the current rules that these issues will be resolved and the barriers to flexibility truly removed from state and local permitting programs.

However, if EPA plans to issue the White Paper, we believe that significant modifications are necessary before it can be successfully utilized by state and local permitting agencies. The following comments explain our specific concerns and offer our recommendations.

## New Source Review (NSR) Reform

One of the key aspects of this White Paper is the ability of sources to obtain advance approval of changes at a plant, thereby assisting state and local air pollution control agencies who are under continuing pressure to quickly review construction permits. The White Paper acknowledges that certain administrative requirements of NSR may delay operational changes at a facility, and attempts to develop a procedure that will replace the formal review process. However, while state and local agencies have been working with EPA to streamline the issuance of modifications of existing Title V permits, and appreciate EPA's efforts to do so on a limited basis in this guidance, we do not believe that EPA can accomplish these objectives for a select number of sources through guidance. Therefore, we strongly urge EPA to incorporate these flexibility concepts in the upcoming revisions to the Title V regulations, thereby assuring implementation.

### Eligibility of Sources

We also have concerns regarding the numbers and types of sources that may believe they are eligible for flexible permits. EPA's stated goal is to have all initial Title V permits issued by December 31, 2000. While we support the concept of flexible permits, there must be a recognition that the process for development of a flexible permit is time-consuming and, in the cases where state and local permitting authorities will not meet the December 31, 2000 goal, devoting time to issuing flexible permits will only further delay the Title V issuance rate. To that end, the state and local permitting authorities must have the discretion to determine the extent that flexible permits can be reviewed and issued consistent with workload allocation.

Moreover, while we agree that the ultimate decision to issue a flexible permit should rest solely within the discretion of state and local permitting agencies, the draft White Paper contains little or no guidance on "rejecting sources." Instead, the White Paper includes a broad statement that flexible permits are appropriate when marketplace demands require an ability to make quick changes to products or services. We believe this statement could be misinterpreted by sources to imply that the options outlined in the White Paper, most of which state and local agencies already have discretion to use, are mandatory. As a result, many sources that cannot identify flexibility needs may still want flexible permits. EPA should provide examples of sources that are not likely candidates for application of this policy. In addition, we believe that the White Paper should recommend that state and local agencies develop a "criteria of eligibility" list for the prioritization of reviewing flexible permit applications. Such criteria could include, but would not be limited to, compliance history of the facility, resources to maintain monitoring and reporting requirements and a demonstrated need for flexibility.

## Enforcement Issues

We also note that implementation of the proposed White Paper may raise potential enforcement issues. For example, in Section III (Preserving Flexibility of Applicable Requirements), under “replacement conditions,” the guidance suggests that retaining a VOC “emission limit,” but removing specific restrictions on materials usage and/or production, may provide additional flexibility. This “replacement conditions” flexibility conflicts with current EPA guidance regarding “federal enforceability” of conditions. In an effort to avoid these potential enforcement issues, STAPPA and ALAPCO recommend that a clear statement of approval by the Office of Enforcement and Compliance Assistance be included in the final guidance.

## Resources

Although EPA recognizes that the development of a flexible permit will require additional resources, the language in the draft White Paper does not appear to recognize the difficulty permitting authorities have in obtaining additional resources through Title V fee increases. In many cases, Title V fees are codified by statute, therefore, it is impractical and highly unlikely that fee increases could be affected through legislative change just to accommodate flexible permits. EPA needs to recognize that resources to operate Title V permit programs will continue to diminish in the future as sources reduce emissions, thereby reducing the ability of state and local agencies to issue flexible permits.

## Clean Building/MOM/Cap and Track

We are concerned that the draft White Paper contains concepts that have never been put into practice before. For example, we are not aware of any instance where EPA has piloted the clean building/MOM/cap and track concepts outlined in the draft White Paper. While we are interested and intrigued by these concepts, we fear they may have unforeseen implementation issues. Therefore, we are uncomfortable with incorporating them into an official EPA policy at this time. Instead, we recommend that EPA test these concepts in a pilot program and would welcome working with EPA to identify suitable candidates.

## PALs

We also have concerns with the “Plant-wide Applicability Limits” concept outlined in the White Paper. On October 8, 1998 STAPPA/ALAPCO submitted the attached comments to EPA expressing concerns regarding the application of PALs in EPA’s July 24, 1998 New Source Review reform proposal (63 FR 39857). The associations believe that any guidance from EPA concerning PALs must address our concerns.

### Interim Use of Emission Factors

We agree that continuous emission monitors should be utilized whenever possible to verify the emissions from a source. However, in light of the recent periodic monitoring guidance decision, we do not believe that this can be required through guidance. It is our understanding that such a requirement can only be recommended to be included as part of a flexible permit.

### Pollution Prevention

STAPPA and ALAPCO are strongly supportive of the encouragement provided by White Paper 3 to states and local permitting agencies to incorporate pollution prevention (P2) into Title V permits. The lessons learned through the *Pollution Prevention in Permitting* pilot projects, elements of which are contained in this White Paper, pave the way for broader implementation by state and local agencies. These can be easily applied to construction permits, as well.

### EPA Regional Support

Overall, the concepts embodied in the White Paper (e.g., flexible permits, expedited and more efficient permit issuance) are commendable, however, the success of such concepts are dependent on EPA regional offices. Therefore, EPA regional staff, including Title V, NSR and enforcement staff, need to be educated on the uses of White Paper 3 so that they may appropriately promote its benefits while still maintaining compliance with all applicable requirements. If there is lack of support from regional EPA staff, the development of flexible permits may be stifled. Unless there is cooperation and support at the federal, state and local levels, there will be little incentive for state and local agencies to utilize the tools provided in the White Paper. Finally, we recommend that in the final guidance, EPA include a prefatory statement to the effect that this guidance is not intended to limit other possible approaches to permit flexibility and advance approvals.

### Conclusion

STAPPA and ALAPCO are encouraged that EPA has taken this initial step to increase flexibility in the Title V permit program. However, we continue to urge EPA to focus first on removing the numerous barriers to flexibility that currently exist in the Title V permitting program. Therefore we recommend that EPA move forward with a comprehensive program to provide for increased permit flexibility through rules for both construction and operating permit programs.

We remain committed to work with EPA to explore ways to provide enforceable, well-written permits in a timely manner that improve both the environment and economic competitiveness. Towards this end, we encourage EPA to address and incorporate our concerns and recommendations in its final version of White Paper 3.

If you have any further questions or desire additional information, please contact either of us or Geri O'Sullivan of STAPPA and ALAPCO.

Sincerely,

Robert Hodanbosi  
STAPPA Chair  
Permitting Committee

Wendy Barrott  
ALAPCO Chair  
Permitting Committee

Cc: Bill Harnett