


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

 ATLANTA FEDERAL CENTER
 61 FORSYTH STREET
 ATLANTA, GEORGIA 30303-8960

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 Art Williams, Director
 Air Pollution Control District
 of Jefferson County
 850 Barrett Avenue, Suite 200
 Louisville, Kentucky 40204

 A.P.C.D.
 ADMINISTRATION

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TO: Matt Tamer

FROM: Star Marks

Dear Mr. Williams:

This letter is to provide clarification on the issue of "parallel permit review" of title V permits under the Clean Air Act. This topic has recently been discussed at the State and Local Air Directors Meeting and on the title V permits conference call between the Environmental Protection Agency (EPA) and the state and local agencies. Both discussions explained that as a result of the D.C. District Court's ruling in the case of Sierra Club v. Whitman, Civil Action No. 01-01991(ESH), the Region will no longer conduct parallel review of title V permits. A copy of this ruling was previously distributed at the State and Local Air Directors Meeting and e-mailed to all of the Region 4 title V permitting contacts for reference.

The parallel permitting process and timeline for public participation was challenged in this case (in accordance with 40 C.F.R. Part 70) Section III. of the ruling, titled *Commencement of the EPA's 45-Day Statutory Review Period*, clearly states the rationale behind the Court's decision. The Court made it clear that both the Clean Air Act and federal implementing regulations distinguish between "proposed" and "draft" permits. Permitting Authorities must provide the public an opportunity to comment on permits it intends to issue. The Court reasoned that conducting EPA review prior to the close of the public comment period and before the Permitting Authority's or EPA's consideration of any public comments would undermine the public's ability to participate in the permitting process. A procedure that allows simultaneous permit review by the public and EPA provides little time to address public comments, signals irrelevance of public input, and contravenes the intent of title V. Therefore, the Court concluded that the 45 day EPA review period starts after the 30 day public comment period.

The CAA and Part 70 regulations state that EPA's 45 day review begins upon receipt of a proposed permit. In order to clearly establish this date for the public, EPA has committed to post the date of receipt of each proposed permit on the internet. Starting August 1, 2002, the Region 4 website will list the date EPA received each proposed title V permit. All Permit Processing Protocols or Implementation Agreements need to be amended to remove the parallel permit review process. Each agency is requested to do the following:

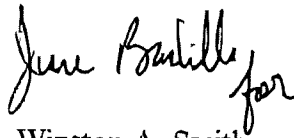
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- a. remove all language referring to **parallel or concurrent reviews** from their public notices and other correspondence submitted with the permit;
- b. notify EPA when each draft permit has been public noticed; and
- c. notify EPA (by e-mail or letter) that no comments were received and that the **draft** permit can now be considered **proposed** or submit a new **proposed** permit, including comments and responses made during the public comment period for EPA review.

The permitting authority is encouraged to continue to submit permits at the time of public notice or before so that EPA can provide input as early in the process as possible. However, this permit would only be considered as **draft** until after the public comment period has concluded and appropriate notification is received. In conclusion, the permitting authority should not issue a permit prior to the end of EPA's 45 day review period.

If you have any questions regarding this letter, please contact me or Ms. Kay T. Prince, Chief of the Air Planning Branch at (404) 562-9026.

Sincerely,



Winston A. Smith
Director
Air, Pesticides and Toxics
Management Division