

## INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

**Title:** Title V Permitting Issues: On-Site Contractors

**Identification Number:** Air-006-NPD

**Date Originally Adopted:** September 24, 1996

**Dates Revised:** none

**Other Policies Repealed or Amended:** none

**Brief Description of Subject Matter:** On-Site contractors and Definition of source under Title V

**Citations Affected:** 326 IAC 2-7-1(21); 326 IAC 2-7-2

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### BACKGROUND

The Title V permitting program requires major sources of air pollutants to obtain a Title V operating permit. Under relevant law, a source is defined as all activities located on contiguous or adjacent property that are under common control and belong to a single industrial grouping, for sources of criteria pollutants and all activities located on contiguous or adjacent property that are under common control, for sources of Hazardous Air Pollutants (HAPs). Several sources have requested clarification regarding the characterization of on-site contractors. Specifically, the sources questioned whether on-site contractors should be included as part of the primary source located on the property or whether the on-site contractors are independent sources from the primary source.

### DISCUSSION

After reviewing EPA guidance, the agency has determined that an on-site contractor is presumed to be part of the primary source located on the property if the contractor provides a majority of its goods or services to the primary source. In these cases, the on-site contractor should be included as part of the primary source for Title V permitting purposes. A primary source or on-site contractor can rebut this presumption by establishing that the on-site contractor does not provide the majority of its goods or services to the primary source. If IDEM agrees that the primary source or on-site contractor has successfully rebutted this presumption, the two activities will be characterized as independent sources for Title V permitting purposes.

The agency recognizes that this determination may create administrative issues for both the sources and the agency. Specifically, primary sources are reluctant to certify compliance for on-site contractors. In addition, the sources point out that the agency determination will result in a cumbersome Title V permit, detracting from the permit's usefulness as a compliance tool for both the source and the agency. In order to alleviate these administrative issues, the agency proposes several solutions.

First, the agency will accept separate Title V permit applications for the primary source and the on-site contractors. The compliance certification for each application may be signed by a representative from the primary source or the on-site contractor, as appropriate. However, each official signing the compliance certification must qualify as a responsible official as that term is defined under Indiana regulations. If the primary source and the on-site contractor elect to submit separate Title V permit

applications, each submittal should be accompanied by a cover letter explaining the connection between the submittal and other submittals. The primary source submittal should identify the on-site contractors that are included as part of the primary source and the on-site contractor application should identify the primary source of which it is a component.

Sources are also concerned that combining on-site contractors and the primary source into a single Title V permit will diminish the effectiveness of the Title V permit as a compliance tool. To respond to this concern, the agency may issue several Title V permits to sources that employ on-site contractors. The permits will be issued based on a logical division of operations, with the operations of the on-site contractors segregated from the operations of the primary source and contained in a separate Title V permit. Thus, on-site contractors will not be required to dissect the Title V permit of the primary source in order to determine the applicable requirements for the on-site activities. Each permit will be issued to either the primary source or the primary source and the on-site contractor for permits covering on-site activities.

Sources also requested clarification regarding the enforcement implications of issuing several Title V permits to a single Title V source. Consistent with current enforcement practice, the on-site contractor will be responsible for complying with all applicable regulations. If an on-site contractor violates a provision of the Title V permit, the agency will attempt to resolve the issue with the on-site contractor. If the agency is unable to reach a settlement with the on-site contractor, the agency may include the primary source in the enforcement proceeding in an attempt to resolve the issues. The agency anticipates that in most cases, negotiations between the on-site contractor and IDEM will successfully resolve the issues.

## **CONCLUSION**

For Title V permitting purposes, an on-site contractor who provides a majority of its goods or services to the primary source is presumed part of the primary source. To minimize administrative burden, the primary source and on-site contractor may submit separate Title V permit applications and the agency may issue several Title V permits for the various activities that comprise the source. Accordingly, the agency would pursue enforcement actions against on-site contractors that violate their Title V permits but could pursue a remedy against the primary source.