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COMMENTARY

Federal air emissions regulations ill-conceived?

By J. Daniel Hull

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By Nov. 15, 1991 — one year from the date President Bush signed the 1990 Clean Air Act Amendments into law — the Environmental Protection Agency must issue regulations that spell out the minimum requirements for a nationwide, state-run permit program established by Title V of the amendments. Most industrial stationary sources of air pollutants will be obligated to obtain federal operating permits for the first time. The new program is modeled after the current permitting scheme in the federal Clean Water Act in which states with EPA-approved programs (such as Pennsylvania) issue and enforce permits governing discharges into the nation's waters.

Title V's purpose is to place all requirements concerning air emissions from an affected source into one regulatory document. Prior to the 1990 amendments, the Clean Air Act contained limited provisions for permits, requiring certain new or modified major stationary sources to obtain permits prior to construction. Generally, Title V will cover sources which emit 100 tons or more a year of a regulated pollutant, smaller sources in nonattainment (or "dirtier") regions of the country, and facilities emitting lesser amounts of specified hazardous air pollutants. Other sources, already subject to regulation under the pre-1990 Act, will be subject to more extensive or stringent controls. Permits will also be required for certain utilities under the amendment's acid rain control program.

Since the 1990 amendments left untouched most of the pre-1990 Clean Air Act, the "new" act is exceedingly lengthy (over 800 pages) and complex. As a result, industry can be expected to struggle with interpreting and applying the 1990 amendments and subsequent regulations for years to come.

As the November deadline approaches for EPA'a promulgation of state permit regulations, increased attention has turned to whether the ambitious new permit program of Title V can work.

First, the program may be hampered by a conceptual defect. The model for Title V — the National Pollutant Discharge Elimination System of the Clean Water Act — was enacted by Congress in 1972. It is regarded widely to be a regulatory success. By 1974, most major dischargers had been issued permits, and by 1980 many of these facilities had installed new water pollution control equipment. The notion built into Title V that what works for water pollution will work for air emissions, however, may be ill-conceived. Air and water emissions are different, and are treated differently at industrial facilities. Monitoring and regulating emissions of air pollution is far more difficult than monitoring water discharges from a single plant.

Second, Title V, even with the most efficient procedures imaginable, thrusts upon the administering states very real administrative burdens. In two years, or by Nov. 15, 1993, each state is required to file its proposed program with EPA. Simultaneous filings of applications by industry sources in the initial years will cause significant backlogs in the processing of permit applications.

Finally, Title V also will be particularly onerous, expensive and time-consuming for business. Regulated facilities are required to submit permit applications within 12 months after EPA approves their state's program. The state must then deny or issue the permit within 18 months. The permit must include emissions limitations and standards, a schedule for compliance, and any other conditions applicable to the particular source. The resulting permit bottleneck may pose enormous difficulties for these sources unless a system is designed to give special consideration to these applications. Because overall the 1990 Amendments represents the first major revision of the Clean Air Act in thirteen years, Title V's permit program is unlikely to undergo any significant statutory change until the next century. In the meantime, industry and government must devote increased resources to emissions monitoring and reporting, rethink long-range compliance planning needs, and take steps to ensure that current state air pollution requirements can be coordinated with the new federal standards and procedures.

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