



**Department of Energy**  
Washington, DC 20585  
March 10, 2000

CERCLA Federally Permitted Release Definition  
Docket Number EC-G-1999-029  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Mail Code 2201-A  
Washington, DC 20460

Dear Sir or Madam:

*Re: 64 FR 71614. "Interim Guidance on the CERCLA Section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions"*

On December 21, 1999, the Environmental Protection Agency (EPA) published a notice and request for comments on the subject interim guidance. The guidance was developed to assist EPA Regional Offices, state and local emergency response authorities and the regulated community to determine whether a release of a Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) hazardous substance, or an Emergency Planning and Community Right-to-Know Act (EPCRA) extremely hazardous substance meet the definition of "federally permitted" and, as such, be exempted from the notification requirements of CERCLA section 103 and EPCRA section 304.

The Department of Energy (DOE) has reviewed the subject interim guidance, and this letter forwards our consolidated comments and suggestions that we believe will help make the guidance clearer as to when releases meet the definition of "federally permitted". Any questions or request for further clarification on these comments should be addressed Rich Dailey of my staff at 202-586-7117 or [richard.dailey@eh.doe.gov](mailto:richard.dailey@eh.doe.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "T. Traceski", followed by a vertical line.

Thomas T. Traceski  
Director, RCRA/CERCLA Division  
Office of Environmental Policy and Guidance

Enclosure

**Comments on EPA's Interim Guidance on the CERCLA Section 101(10)(H)  
Federally Permitted Release Definition for Certain Air Emissions**  
64 Federal Register 71614, December 21, 1999

1. Sources that are not Exempt from CAA Regulation, p. 71617, col. 1

The definition of "federally permitted release" in §101(10)(H) of CERCLA omits mention of emissions subject to an operating permit issued under Title V of the Clean Air Act (CAA). This is not surprising since Title V was added to the CAA by the 1990 Clean Air Act Amendments, while CERCLA was enacted in 1980 and amended by the Superfund Amendments and Reauthorization Act of 1986. The Interim Guidance does not discuss the issue of whether emissions authorized by a Title V operating permit would be federally permitted within the meaning of §101(10)(H). Most emissions authorized by a Title V permit will be within the federally permitted release definition either because they are authorized by the specifically enumerated sections of the CAA set out in §101(10)(H) or because they are authorized by the state implementation plan. It is possible, however, that some federally permitted emissions may only be authorized under the Title V permit. In some states, for example, the Title V operating permit replaces underlying construction permits. For this reason, DOE believes that it would be helpful if the Guidance would address the issue of whether emissions authorized by a Title V operating permit are federally permitted releases within the meaning of §101(10)(H) of CERCLA. Arguably, all emission limits for specific pollutants which are based on requirements in the Federal CAA and which are authorized under a Title V operating permit should be considered federally permitted releases for purposes of §101(10)(H). The Department believes that this interpretation would be consistent with the Congressional intent of §101(10)(H).

2. Start-Up and Shut-Down, p. 71618, col. 1

The discussion of emissions during start-up and shut-down should clarify that such emissions are federally permitted if they are within the emission limits that apply during operation of the source. As currently written, the Guidance suggests that emissions during start-up and shut-down are not federally permitted unless there are specific emission limits applicable to start-up and shut-down in the permit and the source is in compliance with those limits. If specific levels of emissions are federally permitted during operation, the same levels of emissions should be equally federally permitted during start-up and shut-down.

3. VOCs as Ozone Precursors, p. 71618, col. 3 and p. 71619, col. 1

If an emission limit for a specific VOC is set out in a CAA permit, release of that VOC within the emission limit should be federally permitted under §101(10)(H) even if the intent of the emission limit is primarily ozone control. To interpret otherwise would not be consistent with the §101(10)(H) language. The Guidance should clarify this point.

#### **4. Conclusion, p. 71619, col. 3**

The conclusion to the Interim Guidance includes the following paragraph:

The facility must determine whether its hazardous substance and EHS releases qualify for the notification exemption. In order to overcome the presumption that a release of a hazardous substance or EHS is not federally permitted and that a facility must immediately notify the NRC, SERC, and LEPC when the amount of release is equal to or greater than the substance's RQ, the facility must demonstrate that the CERCLA federally permitted release definition exempts the hazardous substance or EHS release from the notification requirements.

DOE believes that the Guidance would be improved if this paragraph were eliminated or modified. The earlier text in the Guidance does not explain why there is a presumption that a release of a hazardous substance is not federally permitted. The Guidance also does not explain how a source operating within its federally permitted release limits is to demonstrate that fact for purposes of CERCLA and EPCRA, to whom the demonstration is to be made, and why such a demonstration is necessary.