



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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July 31, 2013

TO: Jim Pendowski, Manager
Toxics Cleanup Program

FROM: Maia D. Bellon, Director

SUBJECT: Determination of Application of MTCA Permit Exemption, RCW 70.105D.090,
to Air Quality Program Permits

Under RCW 70.105D.090(2), Model Toxics Control Act (MTCA) exempts parties conducting cleanups under order or decree from having to obtain certain permits. However, the permit exemption “shall not apply if [Ecology] determines that the exemption would result in loss of approval from a federal agency necessary for the state to administer any federal law, including ... the federal clean air act[.]”

The Department of Ecology (Ecology or we) has determined that we can no longer use the MTCA exemption to exempt from permitting air emissions from remedial actions at MTCA clean-up sites that are sufficient to trigger the need for Title V air operating permits (AOPs), prevention of significant deterioration permits (PSD permits), or nonattainment new source review permits (nonattainment NSR permits). These permits are mandated by the Federal Clean Air Act (CAA). *See* 42 U.S.C. § 7475 (requiring PSD permits); 42 U.S.C. § 7661a (requiring Title V air operating permits); 42 U.S.C. §7502(c)(5) (requiring Nonattainment NSR permits). Pursuant to the CAA, the United States Environmental Protection Agency (EPA) has authorized Ecology to issue these permits.

Only Congress can create exemptions to the CAA’s requirement that these permits be issued when air emissions are sufficient to trigger the need for them. Based on this analysis, we are determining, pursuant to RCW 70.105D.090(2), that the application of the permit exemption RCW 70.105D.090(1) to air emissions from remedial actions at MTCA cleanup sites that would otherwise require PSD permits, Title V AOPs, or Nonattainment NSR permits would result in the state’s loss of federal authorization to implement these CAA permitting requirements in

Washington. This determination applies solely to emissions into the air from remedial actions at MTCA cleanup sites, and is not intended to apply to any other circumstance.

In addition, the federal Clean Air Act requires Washington to develop and implement a plan (SIP) for the attainment and maintenance of the national ambient air quality standards (NAAQS). Washington's SIP includes the requirement that each new or modified minor source of air pollutants in Washington file a notice of construction with Ecology, and obtain a permit regulating its air emissions. Washington's SIP has been approved by EPA and, as a result, has become enforceable federal law. Ecology's failure to implement the permit requirements in the SIP could result in sanctions against the state and the issuance of a federal plan (FIP).

Based on this analysis, we are determining, pursuant to RCW 70.105D.090(2), that until the MTCA exemption for minor source permits are approved into Washington's SIP, application of the permit exemption RCW 70.105D.090(1) to remedial actions at MTCA cleanup sites that emit NAAQS pollutants or their precursors would result in the state's loss of federal authorization to implement these CAA permitting requirements in Washington. This determination applies solely to NAAQS pollutants which would be emitted into the air from remedial actions at MTCA cleanup sites, and is not intended to apply to any other circumstance.

cc: Toxics Cleanup Program Management Team
Air Quality Program Management Team
Kay Shirey, Assistant Attorney General
Ivy Anderson, Assistant Attorney General