

permit program treats fees in a manner which EPA would not allow under a Title V program, because a unified fund is established for fees which are collected under the alternate permit program submitted to EPA (approved program fees) and fees which are collected under the completely local air permit program (local air program fees), and money from this unified fund will be commingled for use on both the approved program and the local program.

A Title V operating permit program is not allowed to commingle fees between the Title V program and the non-federal local program because non-federal local program fees are often used as part of the state matching grant required to receive federal funds. See the July 21, 1994 Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, "Transition to Funding Portions of State and Local Air Programs with Permit Fees Rather than Federal Grants," which can be found at <http://www.epa.gov/ttn/oarpg/t5/memoranda/grantmem.pdf>.

The Administrator has exercised her authority under Section 325 of the Act and granted Guam a conditional exemption from the Title V requirements. In addition, the Administrator has the authority to waive the Title V requirement concerning commingled fees because Congress made different rules for grants and matching fees in "Insular Areas" such as Guam, American Samoa, and CNMI. Congress authorized grants to be consolidated, and for agencies to waive any requirements for matching funds otherwise required by law to be provided by the Insular Area involved. See 48 U.S.C. 1469a (2002). More specifically, Congress authorized the Administrator of EPA to modify the maintenance or level of effort requirements for assistance grants. See Act August 27, 1986, Public Law 99-396, section 12(a), 100 Stat. 841.

EPA believes that it is appropriate to allow Guam's consolidated treatment of funds for the following reasons. The unique situation of the territories has prompted Congress to allow consolidation of grants and waiver of matching fund requirements in Insular Territories such as Guam, in recognition of factors which are relevant here. One purpose of granting a section 325 conditional exemption was to allow for the development of a streamlined part 69 program which would be protective of air quality and designed in a manner appropriate to the unique conditions of Guam. Guam EPA (GEPA) shall be implementing the 40 CFR part 69 alternate permit program and the purely

local program as a combined program. Maintaining the federal program separate from the local activities authorized under Guam's Air Pollution Control Act would require burdensome recordkeeping and reporting procedures, and the increased burden would be an unnecessary drain on the resources of GEPA which would not contribute to better air quality. Most critical, Guam's law and regulations require that fees collected under the combined program can only be used to support the program activities authorized under Guam's Air Pollution Control Act. Taking all of these factors into consideration, EPA finds that Guam's program, meets the requirements of 40 CFR 69.13(b)(2).

(b). Scope

EPA notes that Guam's Regulations Section 1102.11 (Variances) is not part of the approved alternate permit program. Variances are not available for the part 69 program. We also note that section 1102.11 by its very terms would not apply to the alternate permit program because section 1102.11(b) states "Under no circumstances shall a variance from any federal regulations or federally enforceable air pollution control permit terms or conditions be granted." All owners or operators of a source wishing to qualify for the exemption from the permitting requirements of 40 CFR part 71 must obtain an operating permit under Guam's approved alternate permit program.

(c). Regular Inspections

40 CFR 69.13(b)(8) requires a system of regular inspections of permitted sources. Section 1104.13 of Guam's Regulations provides that sources required to obtain a permit are subject to regular inspections for compliance. 40 CFR 69.13(b)(8) also requires a system to identify unpermitted major sources, and guidelines for appropriate responses to violations. The submission packet by Guam included a program description discussing inspection, compliance, enforcement and penalties.

A system of regular inspections requires that Guam provide adequate inspector staff and training and develop appropriate internal procedures to inspect all permitted sources. EPA also expects that Guam will develop appropriate guidelines for responding to violations that are discovered. EPA will continue to assist Guam by providing guidance and manuals for inspecting permitted sources. EPA reserves the right to revoke the exemption in its entirety through rulemaking if Guam does not provide adequate inspector

staff and training and develop appropriate internal procedures to inspect permitted sources so that it is adequately administering and enforcing the alternate operating permit program.

2. Alternate Permit Program Does Not Meet All Requirements

Two key requirements of the conditional exemption were not met by Guam's submission.

(a). EPA Ability To Reopen for Cause

40 CFR 69.13(b)(10) requires that the program allow EPA to reopen a permit for cause. If EPA provides Guam with written notice that a permit must be reopened for cause, Guam must issue a revised permit within 180 days (including public notice and comment) that sufficiently addresses EPA's concerns. If Guam fails to issue a permit that resolves EPA's concerns within 180 days, then EPA will terminate, modify, or revoke and reissue the permit under part 71 after providing the permittee and the public with notice and opportunity for comment. The language in Guam's submission does not match this requirement that Guam must issue a permit that resolves EPA's concerns within 180 days, or EPA will terminate, modify or revoke and reissue the permit under part 71.

Section 1104.16 of Guam's Regulations states that EPA has authority to act under 40 CFR part 71 if EPA lodges an objection concerning GEPA issuing a permit, permit renewal or permit amendment and that objection is not resolved within 180 days, but section 1104.16 does not clearly cover the situation where a permit is reopened and the action is to terminate or suspend the permit.

Under sections 1104.18(f) and 1104.18(g) of Guam's Regulations, it can take up to 360 days to terminate, suspend, reopen or amend the permit in accordance with EPA's objection. Under section 1104.18(f), GEPA has up to 180 days to submit a proposed determination. Under section 1104.18(g), if EPA then objects, GEPA has up to 180 additional days to terminate, suspend, reopen or amend the permit in accordance with EPA's objection. Further, in the case of termination or suspension of a permit, sections 1104.18 does not clearly specify that EPA shall itself have authority to act under part 71. For final approval of the alternate permit program, section 1104.18 must be amended to conform with the requirements of 40 CFR 69.13(b)(10).