

The docket also contains the actual comment letters and supporting documentation developed for the final rule.

*A. What Issues Were Raised Regarding the Sources That Are Subject to the Rule as Proposed?*

There were no issues raised by commenters regarding the sources subject to the proposed rule and the affected source, as a mercury cell chlor-alkali plant is a distinct and easily identifiable entity. There were, however, issues raised regarding the proposed requirement for all affected sources to obtain a title V permit and regarding the specific emission points that were addressed in the proposed rule.

*Comment:* Three commenters disagreed with the proposed requirements for all mercury cell chlor-alkali plants to obtain a title V permit, including area sources. The commenters requested that this provision be deleted from the final rule. The commenters stated that the facilities affected by the proposal are minor sources of HAP emissions. All three commenters maintained that requiring minor source facilities to obtain title V permits would be burdensome, e.g., due to duplicative recordkeeping and reporting provisions, for the area sources; one commenter further stated that this burden would not yield any environmental benefit. Additionally, according to this commenter, dropping the title V permit requirement for area sources would not lessen any substantive requirements for monitoring, recordkeeping, or operation of any and all air pollution control devices. Commenters noted that the CAA allows EPA to exempt certain sources from obtaining a title V permit “\* \* \* if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome \* \* \*”.

One commenter noted that in previously promulgated area source MACT standards (e.g., Dry Cleaning MACT and Halogenated Solvent Cleaning MACT), EPA identified area sources as being subject to title V permitting. However, EPA allowed the permitting authorities to defer area sources from title V permitting requirements until December 9, 2004.

In contrast, another commenter supported the proposed requirement to require all affected sources to obtain title V permits. The commenter argued that title V permits are needed because they consolidate sources’ applicable requirements in a single place. The commenter further noted that “\* \* \* given the detailed work practice

requirements, it is reasonable to expect significant source-specific tailoring of the standard for each plant’s individual configuration.” See, e.g., 67 FR 44706–07. The commenter also stated that requiring title V permits of area sources of mercury is especially appropriate because a small quantity of mercury is as toxic as far greater amounts of other HAP.

*Response:* Section 502(a) of the CAA requires any source, including an area source, subject to standards or regulations under section 111 or 112 of the CAA to operate in compliance with a title V permit after the effective date of any title V permits program. The Administrator may not exempt any major source from the requirements of title V.

In order to exempt area sources under the final rule from title V requirements, the test in section 502(a) of the CAA must be met. Specifically, the Administrator must make a finding that title V requirements are impracticable, infeasible, or unnecessarily burdensome for the source category or categories in question. Commenters may provide data which would help the Administrator make such a finding, but the commenters who were opposed to area sources being permitted under the final rule did not provide any such data. Commenters providing supporting data for their arguments is consistent with what the Agency stated in its final rule for the Municipal Solid Waste Landfills NESHAP in reference to the test in section 502(a) of the CAA (68 FR 2227, 2234, January 16, 2003).

In terms of the commenters’ concern about title V adding duplicative recordkeeping and reporting requirements, the only potential duplicative requirement that we are aware of is in relation to deviation reporting under the semiannual compliance report required by § 63.8254 of the final rule and the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). However, this potential duplication was addressed by § 63.8254(d) in the proposed rule and this has been clarified in the final rule.

As to the deferral for area sources subject to the Dry Cleaning MACT and the Halogenated Solvent Cleaning MACT, the area sources subject to these MACT standards were deferred from title V permitting until December 9, 2004. See final deferral rulemaking (64 FR 69637, December 14, 1999). This deferral was granted in part because of the concern that area sources would not be able to obtain the technical and procedural assistance from permitting authorities needed to file timely and

complete title V applications given that permitting authorities would be focused on the permitting of major sources. However, as the title V program is no longer in its initial stages and the initial permitting of existing major sources is nearing completion, we would not be justified in granting a deferral to area sources under the final rule for the same reason.

In terms of the commenter who supported the permitting of affected sources under the final rule, we agree that the consolidation of requirements in a title V permit is one of the ways that title V helps assure compliance with all applicable requirements. As this commenter also pointed out, title V permits clarify which requirements in standards apply to a source where requirements may vary due to various factors, e.g., design of the facility. Additionally, the title V regulations at 40 CFR part 70 and 40 CFR part 71 help a source assure compliance with its applicable requirements by requiring that a source self-certify to compliance initially and annually, by requiring that a source promptly report deviations from its permit requirements, and by requiring that a permit contain monitoring requirements. It is also important to note that the title V permitting process provides an opportunity for the public to comment on whether a source is complying with its applicable requirements. In short, title V permits can enhance the effectiveness of rules such as the final rule, and EPA, therefore, disagrees that there are no environmental benefits to requiring title V permits for area sources.

In conclusion, as the test in section 502(a) of the CAA has not been met, EPA has retained the requirement in the final rule that affected sources subject to the final rule must obtain title V permits. Therefore, whether an affected source under the final rule is a part of a major or area source, the major/area source is required to obtain a title V permit.

*Comment:* One commenter believed that the proposed rule violated the CAA because the Agency did not establish standards for some parts of chlor-alkali plants that emit mercury. The commenter noted that under the proposed rule, EPA defined two affected sources: Mercury cell chlor-alkali production facilities and mercury recovery facilities. The commenter did not agree with EPA’s determination that within mercury cell chlor-alkali production facilities, chlorine purification, brine preparation and wastewater treatment operations should not be subject to emission standards