EPA AIR DOCKET #: A-95-16, V-B-1 stamp signed on May 20, 1996

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

MEMORANDUM

SUBJECT: Guidance Concerning Implementation of National Emission Standards for Hazardous Air Pollutants for Perchloroethylene Dry Cleaning Facilities

FROM: John S. Seitz, Director
Office of Air Quality Planning and Standards (MD-10)

TO: See Below

National emission standards for hazardous air pollutants (NESHAP) for perchloroethylene (perc) dry cleaning facilities were promulgated on September 22, 1993. On December 20, 1993, the International Fabricare Institute (IFI), a trade association representing commercial and industrial dry cleaners nationwide, submitted a statement of issues to the U.S. Court of Appeals for the District of Columbia Circuit that challenged the NESHAP.

In the course of discussions with IFI, the Agency was able to convince IFI that their original statement of issues could be reduced to two issues. The first issue dealt with transfer machines purchased or installed between proposal and promulgation of the NESHAP. The second issue dealt with exceedances of the perc consumption limits that determine whether a source is a small area source, large area source, or major source. The Agency has entered into a settlement agreement with IFI to resolve these issues, as outlined below.

Regarding the issue of transfer machines purchased or installed between proposal and promulgation, IFI's concern stems from the fact that the Agency did not propose to ban new transfer machines, yet at promulgation did ban such machines. The IFI argued that dry cleaners who installed new transfer machines between proposal and promulgation did so with the understanding that the Agency had not proposed any prohibitions against this.

These dry cleaners now have no recourse but to scrap these new transfer machines and replace them with new dry-to-dry machines in order to comply with the NESHAP. IFI asserted that this is unfair, given these dry cleaners acted in accordance with the law to the best of their knowledge at the time.

At the time of proposal, the Agency believed that no new transfer machines were being sold or installed, and for this reason did not propose to ban purchase of new transfer machines. However, due to new information that the Agency received after proposal that is explained in the preamble to the final rule, the Agency banned the purchase of new transfer machines. The ban was considered reasonable because the Agency's analysis showed that emissions from clothing transfer could be eliminated by requiring dry-to-dry machines in their place. Emissions from clothing transfer account for about 25 percent of transfer machine emissions. The Agency's analysis also showed that in the typical case where a new dry-to-dry machine was installed instead of a new transfer machine, a net savings of $300 per ton of emission reductions would be realized by the dry cleaner. Hence, the Agency decided at promulgation to effectively "ban" new transfer machines from being introduced subsequent to promulgation, by making the emission limit for new transfer machines impossible to achieve. It was believed this decision would have no impact on dry cleaners, since no new transfer machines were being purchased or installed. It was only after promulgation that it became apparent that a few new transfer machines had been sold and installed between proposal and promulgation of the NESHAP.

The Agency has agreed with IFI on this issue. Consequently, the settlement agreement calls for the Agency to propose amendments to the NESHAP which would subcategorize "new" transfer machines into two types: "new transfer machines installed after promulgation" and "new transfer machines installed between proposal and promulgation". The requirements for new transfer machines installed after promulgation would not change from what they are in the NESHAP--under no circumstances are new transfer machines installed after promulgation allowed to operate. The requirements for new transfer machines installed between proposal and promulgation would be similar to those for existing transfer machines, as a result of the settlement agreement.

These amendments were proposed on May 3, 1996 in the Federal Register. The Agency expects to promulgate these amendments in the Federal Register by September 22, 1996, the date that these transfer machines must be in compliance.

Regarding the issue of exceedances of the perc consumption limits in the NESHAP, IFI objected to a single exceedance of these limits serving to reclassify a dry cleaning facility. The NESHAP contains annual consumption levels for existing sources that determine whether a source is a small area source, a large area source, or a major source. To monitor the status of a source, the NESHAP requires dry cleaners to calculate their annual perc consumption levels each month by totalling the amount of perc purchased at their facilities for the previous 12 months.

International Fabricare Institute argued that a single exceedance should not reclassify a dry cleaning facility since an isolated exceedance would be due to unusual and unique circumstances beyond the control of the dry cleaner. Such circumstances could occur if two unusual peak cleaning seasons fell during any 12 month period, resulting in atypical perc consumption.

In negotiating the settlement agreement with IFI on this issue, the Agency agreed to the following policy of enforcement flexibility for perc dry cleaners. Any exceedance by a dry cleaning facility of an applicable perc consumption level shall be examined to determine if the exceedance represents a true change in the regulatory status of the source, or merely represents an exceedance which is episodic. An exceedance of any perc consumption level is considered episodic if the circumstances of the exceedance suggest these circumstances (and hence an exceedance due to these circumstances) are not likely to be repeated on a frequent basis and, if considered episodic, shall not affect the regulatory status of the source. Any exceedance of any perc consumption level which occurs at least three years after the most recent prior exceedance shall be considered "episodic" and, hence, shall not affect the regulatory status of the source.

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