UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

REGIONAL ADMINISTRATOR

September 29, 2009

Mr. Bill Green
424 Shoreline Court
Richland, Washington 99354-1938

Dear Mr. Green:

I am writing in response to your letter addressed to Lisa Jackson, Administrator of the U.S. Environmental Protection Agency (EPA), dated July 29, 2009. The Administrator has delegated responding to your inquiry to me, as the Acting Regional Administrator for Region 10, which includes the State of Washington and the Hanford Site.

Your letter requests EPA's opinion regarding the adequacy of Washington Department of Ecology's (Ecology) regulation of radioactive air emissions under the state's Clean Air Act Title V operating permit program. Specifically, you asked whether Ecology's program has provisions for judicial review of final permit actions and for public comment, affected states review, and EPA review that meet the requirements of Title V of the Clean Air Act and 40 C.F.R. Part 70.

Your letter contends that Ecology's air operating permit program does not meet the requirements for judicial review because Ecology does not provide an opportunity for judicial review of the establishment of certain underlying applicable requirements that are later incorporated into a Title V permit. As you note, 40 C.F.R. § 70.4(b)(3)(k) requires that the Attorney General certify as part of a state Title V program submittal that state law provides "an opportunity for judicial review in State court of the final permit action by...any person who participated in the public participation process." The final permit, as used in this provision, refers to the Title V permit. Nothing in your letter calls into question our previous conclusion, in approving Ecology's Title V program, that Ecology meets this requirement. 59 Federal Register 55813 (November 9, 1994) (final interim approval); 66 Federal Register 42439 (August 13, 2001) (final full approval).

Your letter acknowledges that the provisions that you seek to challenge -- provisions in a license issued by the Washington Department of Health (Health) establishing air pollution control requirements for radioactive emissions, which are later incorporated into a Title V permit issued by Ecology -- are created under other provisions of State law, and not under the authority of Ecology's Title V program. To the extent these license requirements are "applicable requirements" as defined in 40 C.F.R. § 70.2, Ecology must include them in the Title V permit for a subject source. Any change to such underlying applicable requirements, however, would need to be made pursuant to the rules that govern the establishment of such license requirements,

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such challenges are outside of the scope of the Title V operating permits program.

i.e., by Health. Similarly, any challenge to such underlying applicable requirements would be governed by the laws that apply to establishment of such license requirements. The requirements of Title V, including the judicial review requirement of 40 C.F.R. § 70.4(b)(3)(k), do *not* apply to the establishment of, or challenge to, applicable requirements authorized under separate statutory or regulatory authority. We therefore agree with the portion of the opinion quoted in your letter that, to the extent you seek to challenge prior requirements established in issuing the license, such challenges are outside of the scope of the Title V operating permits program.

You also questioned whether Ecology's Title V program complies with the public notice and review procedures when requirements for radioactive air emissions established in a license issued by Health are included in a Title V permit. The provisions that govern issuance, renewal, reopening, and revision of Title V permits in 40 C.F.R § 70.7(h) only establish requirements for Title V permits and do *not* apply as a matter of federal law to Health when issuing licenses pursuant to WAC 246-247. EPA agrees that when Ecology issues a Title V permit that contains applicable requirements established by Health, Ecology is required to provide public notice, affected states review, and EPA review as required by 40 C.F.R. § 70.7(h). Again, nothing in your letter calls into question our previous conclusion that, in approving Ecology's Title V program, Ecology meets these requirements when it issues Title V permits that contain applicable requirements consisting of radioactive air emissions from a license issued by Health.

If you have any other questions regarding the Title V process or permits, please contact Doug Hardesty in our Boise, Idaho office at (208) 378-5759.

Sincerely,

Michelle L. Pirzadeh
Acting Regional Administrator

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