Exhibit 21

Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, and Robert I. Van Heuvelen, Director, Office of Regulatory Enforcement, Re: Options for Limiting the Potential to Emit of a Stationary Source under Section 112 and Title V of the Clean Air Act (Jan. 25, 1995)

1/25/95

MEMORANDUM

SUBJECT: Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)

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

Robert I. Van Heuvelen, Director
Office of Regulatory Enforcement (2241)

TO: Director, Air, Pesticides and Toxics
Management Division, Regions I and IV
Director, Air and Waste Management Division,
Region II
Director, Air, Radiation and Toxics Division,
Region III
Director, Air and Radiation Division,
Region V
Director, Air, Pesticides and Toxics Division,
Region VI
Director, Air and Toxics Division,
Regions VII, VIII, IX, and X

Many stationary source requirements of the Act apply only to "major" sources. Major sources are those sources whose emissions of air pollutants exceed threshold emissions levels specified in the Act. For instance, section 112 requirements such as MACT and section 112(g) and title V operating permit requirements largely apply only to sources with emissions that exceed specified levels and are thus major. To determine whether a source is major, the Act focuses not only on a source's actual emissions, but also on its potential emissions. Thus, a source that has maintained actual emissions at levels below the major source threshold could still be subject to major source requirements if it has the potential to emit major amounts of air pollutants. However, in situations where unrestricted operation of a source would result in a potential to emit above major-source levels, such sources may legally avoid program requirements by taking federally-

enforceable permit conditions which limit emissions to levels below the applicable major source threshold. Federally-enforceable permit conditions, if violated, are subject to enforcement by the Environmental Protection Agency (EPA) or by citizens in addition to the State or Local agency.

As the deadlines for complying with MACT standards and title V operating permits approach, industry and State and local air pollution agencies have become increasingly focused on the need to adopt and implement federally-enforceable mechanisms to limit emissions from sources that desire to limit potential emissions to below major source levels. In fact, there are numerous options available which can be tailored by the States to provide such sources with simple and effective ways to qualify as minor sources. Because there appears to be some confusion and questions regarding how potential to emit limits may be established, EPA has decided to: (1) outline the available approaches to establishing potential to emit limitations, (2) describe developments related to the implementation of these various approaches, and (3) implement a transition policy that will allow certain sources to be treated as minor for a period of time sufficient for these sources to obtain a federally-enforceable limit.

Federal enforceability is an essential element of establishing limitations on a source's potential to emit. Federal enforceability ensures the conditions placed on emissions to limit a source's potential to emit are enforceable by EPA and citizens as a legal and practical matter, thereby providing the public with credible assurances that otherwise major sources are not avoiding applicable requirements of the Act. In order to ensure compliance with the Act, any approaches developed to allow sources to avoid the major source requirements must be supported by the Federal authorities granted to citizens and EPA. In addition, Federal enforceability provides source owners and operators with assurances that limitations they have obtained from a State or local agency will be recognized by EPA.

The concept of federal enforceability incorporates two separate fundamental elements that must be present in all limitations on a source's potential to emit. First, EPA must have a direct right to enforce restrictions and limitations imposed on a source to limit its exposure to Act programs. This requirement is based both on EPA's general interest in having the power to enforce "all relevant features of SIP's that are necessary for attainment and maintenance of NAAQS and PSD increments" (see 54 FR 27275, citing 48 FR 38748, August 25, 1983) as well as the specific goal of using national enforcement to ensure that the requirements of the Act are uniformly

implemented throughout the nation (see 54 FR 27277). Second, limitations must be enforceable as a practical matter.

It is important to recognize that there are shared responsibilities on the part of EPA, State, and local agencies, and on source owners to create and implement approaches to creating acceptable limitations on potential emissions. The lead responsibility for developing limitations on potential emissions rests primarily with source owners and State and local agencies. At the same time, EPA must work together with interested parties, including industry and States to ensure that clear guidance is established and that timely Federal input, including Federal approval actions, is provided where appropriate. The guidance in this memorandum is aimed towards continuing and improving this partnership.

Available Approaches for Creating Federally-enforceable Limitations on the Potential to Emit

There is no single "one size fits all" mechanism that would be appropriate for creating federally-enforceable limitations on potential emissions for all sources in all situations. The spectrum of available mechanisms should, however, ensure that State and local agencies can create federally-enforceable limitations without undue administrative burden to sources or the agency. With this in mind, EPA views the following types of programs, if submitted to and approved by EPA, as available to agencies seeking to establish federally-enforceable potential to emit limits:[1]

1. Federally-enforceable State operating permit programs (FESOPs) (non-title V). For complex sources with numerous and varying emission points, case-by-case permitting is generally needed for the establishment of limitations on the source's potential to emit. Such case-by-case permitting is often accomplished through a non-title V federally-enforceable State operating permit program. This type of permit program, and its basic elements, are described in guidance published in the Federal Register on June 28, 1989 (54 FR 27274). In short, the program must: (a) be approved into the SIP, (b) impose legal obligations to conform to the permit limitations, (c) provide for limits that are enforceable as a practical matter, (d) be issued in a process that provides for review and an opportunity for

[1]This is not an exhaustive list of considerations affecting potential to emit. Other federally-enforceable limits can be used, for example, source-specific SIP revisions. For brevity, we have included those which have the widest applicability.

comment by the public and by EPA, and (e) ensure that there is no relaxation of otherwise applicable Federal requirements. The EPA believes that these type of programs can be used for both criteria pollutants and hazardous air pollutants, as described in the memorandum, "Approaches to Creating Federally-Enforceable Emissions Limits," November 3, 1993. This memorandum (referred to below as the November 1993 memorandum) is included for your information as Attachment 1. There are a number of important clarifications with respect to hazardous air pollutants subsequent to the November 1993 memorandum which are discussed below (see section entitled "Limitations on Hazardous Air Pollutants").

2. Limitations established by rules. For less complex plant sites, and for source categories involving relatively few operations that are relatively similar in nature, case-by-case permitting may not be the most administratively efficient approach to establishing federally-enforceable restrictions. One approach that has been used is to establish a general rule which creates federally-enforceable restrictions at one time for many sources (these rules have been referred to as "exclusionary" rules and by some permitting agencies as "prohibitory" rules). A specific suggested approach for volatile organic compounds (VOC) limits by rule was described in EPA's memorandum dated October 15, 1993 entitled "Guidance for State Rules for Optional Federally-Enforceable Emissions Limits Based Upon Volatile Organic Compound (VOC) Use." An example of such an exclusionary rule is a model rule developed for use in California. (The California model rule is attached, along with a discussion of its applicability to other situations--see Attachment 2). Exclusionary rules are included in a State's SIP and generally become effective upon approval by EPA.

3. General permits. A concept similar to the exclusionary rule is the establishment of a general permit for a given source type. A general permit is a single permit that establishes terms and conditions that must be complied with by all sources subject to that permit. The establishment of a general permit provides for conditions limiting potential to emit in a one-time permitting process, and thus avoids the need to issue separate permits for each source within the covered source type or category. Although this concept is generally thought of as an element of a title V permit program, there is no reason that a State or local agency could not submit a general permit program as a SIP submittal aimed at creating potential to emit limits for groups of sources. Additionally, general permits can be issued under the auspices of a SIP-approved FESOP. The advantage of a general permit, when compared to an exclusionary rule, is that upon approval by EPA of the State's permit program, a