

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6915-1]

Operating Permits Program

Notice of Comment Period on Program Deficiencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of comment period.

SUMMARY: The EPA is announcing a 90-day comment period for members of the public to identify deficiencies they perceive exist in State and local agency operating permits programs required by title V of the Clean Air Act (Act). The deficiencies the public claims exist can be either deficiencies in the substance of the approved program or deficiencies in how a permitting authority is implementing its program. The Agency will consider information received from the public and determine whether it agrees or disagrees with the purported deficiencies and will then publish notices of those findings. Where the Agency agrees there is a deficiency, it will publish a notice of deficiency and establish a timeframe for the permitting authority to take action to correct the deficiency.

DATES: Comments identifying possible deficiencies in State and local operating permits programs must be

received by [insert date 90 days after publication].

ADDRESSES: Comments on possible operating permits program or implementation deficiencies must be mailed to the appropriate EPA Regional Office. Addresses for the EPA Regional Offices to which comments should be sent and the permitting agencies covered by each Region are as follows:

REGION I: Susan E. T. Studlien, Deputy Director, Office of Ecosystem Protection, EPA Region I (WAA), #1 Congress Street, Box 1100, Boston, Massachusetts 92114 for Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

REGION II: Kathleen C. Callahan, Director, Division of Environmental Planning and Protection, EPA Region II, 290 Broadway, New York, New York 10007-1866 for New Jersey, New York, Puerto Rico, and Virgin Islands.

REGION III: Judith M. Katz, Director, Air Protection Division, EPA Region III (3AP00), 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 for Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.

REGION IV: Winston A. Smith, Director, Air, Pesticides, and Toxics Management Division, EPA Region IV, 12th

Floor, 61 Forsyth Street, SW, Atlanta, Georgia 30303 for Alabama; Huntsville, Alabama; Jefferson County, Alabama; Florida; Georgia; Kentucky; Louisville-Jefferson County, Kentucky; Mississippi; North Carolina; Forsyth County, North Carolina; Western North Carolina; Mecklenburg County, North Carolina; South Carolina; Tennessee; Nashville-Davidson County, Tennessee; Hamilton County, Tennessee; Knox County, Tennessee; and Memphis-Shelby County, Tennessee.

REGION V: Bharat Mathur, Director, Air and Radiation Division, EPA Region V (5A-18J), 77 W. Jackson Boulevard, Chicago, Illinois 60604 for Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

REGION VI: Carl Edlund, Director, Multimedia Planning and Permitting Division, EPA Region VI (6T), 1445 Ross Avenue Dallas, Texas 75202-2733 for Arkansas; Louisiana; New Mexico; Albuquerque, New Mexico; Oklahoma; and Texas.

REGION VII: William A. Spratlin, Director, Air, RCRA, and Toxics Division, EPA Region VII, 901 N. 5th Street, Kansas City, Kansas 66101-2907 for Iowa; Kansas; Missouri; Nebraska; Lincoln-Lancaster County, Nebraska; and Omaha-Douglas County, Nebraska.

REGION VIII: Richard R. Long, Director, Air and

Radiation Program, EPA Region VIII (8P-AR), 999 18th Street, Suite 500, Denver, Colorado 80202-2466 for Colorado; Montana; North Dakota; South Dakota; Utah; and Wyoming.

REGION IX: Amy Zimpfer, Acting Director, Air Division EPA Region IX (A-1), 75 Hawthorne Street, San Francisco, California 94105 for Arizona; Maricopa County, Arizona; Pima County, Arizona; Pinal County, Arizona; all 34 local districts in California; Nevada; Washoe County, Nevada; Clark County Nevada; and Hawaii.

REGION X: Barbara McAllister, Director, Office of Air EPA Region X (AT-081), 1200 Sixth Avenue, Seattle, Washington 98101 for Alaska; Idaho; Oregon; Lane Regional, Oregon; Washington; and all seven local agencies in Washington.

FOR FURTHER INFORMATION CONTACT: Roger Powell (telephone 919-541-5331), Mail Drop 12, EPA, Information Transfer and Program Integration Division, Research Triangle Park, North Carolina, 27711. Internet address is: powell.roger@epa.gov.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 502(b) of the Act, EPA has

promulgated regulations establishing the minimum requirements for State and local air agency operating permits programs. We promulgated these regulations on July 21, 1992 (57 FR 32250), in part 70 of title 40, chapter I, of the Code of Federal Regulations. Section 502(d) of the Act requires each State to develop and submit to EPA an operating permits program meeting the requirements of the part 70 regulations and requires us to approve or disapprove the submitted program. In some cases, States have delegated authority to local county or city air agencies to administer operating permits programs in their jurisdictions. These operating permits programs must meet the same requirements as the State programs. For 99 operating permits programs, we granted "interim" rather than full approval because the programs substantially met, but did not fully meet, the provisions of part 70. For interim approved programs, we identified in the notice of interim approval those program deficiencies that will have to be corrected before we will grant the program full approval. Some of those 99 programs have since been granted full approval and the remainder still have interim approval status.

After a State or local permitting program is granted

full or interim approval, EPA has oversight of the program to insure that the program is implemented correctly and is not changed in an unacceptable manner. Section 70.4(i) of the part 70 regulations requires permitting authorities to keep us apprised of any proposed program modifications and also to submit any program modifications to us for approval. Section 70.10(b) requires any approved operating permits program to be implemented " . . . in accordance with the requirements of this part and of any agreement between the State and the Administrator concerning operation of the program." That section goes on to specify actions, as described more fully below, we will take if the permitting authority does not adequately implement the program.

DISCUSSION OF ACTION

On May 22, 2000, EPA issued a final action in the Federal Register, extending the interim approval period for 86 operating permits programs until December 1, 2001. The Sierra Club and New York Public Interest Research Group (NYPIRG) challenged our final action in the Court of Appeals for the District of Columbia Circuit. In the context of discussing settlement of that litigation,

Sierra Club and NYPIRG raised concerns that many programs with interim approval, as well as those with full approval, have program and or implementation deficiencies. Sierra Club and NYPIRG recognized that sections 70.4(i) and 70.10(b) provide authority for us to require permitting authorities to correct program or implementation deficiencies, but were concerned that we had not responded timely to petitions they had filed requesting us to require such corrections. To address the concerns raised by Sierra Club and NYPIRG, we are announcing in this notice that the public may submit comments within the 90-day comment period being provided requesting us to take action consistent with the procedures in sections 70.4(i) and 70.10(b). We are further announcing that we will respond by specific dates to those comments and any petitions that have previously been submitted and will take action under sections 70.4(i) and 70.10(b), requiring permitting authorities to correct any program or implementation deficiencies.

This action applies to all approved part 70 operating permits programs, regardless of whether they have been granted full or interim approval. Within the timeframes specified below, we will take action to

respond to any claims of deficiency.

Do not include in your comments any program deficiencies that were identified as such by us when we granted the program interim approval. Those program deficiencies are already identified and permitting authorities are already taking action to correct them in order to avoid imposition of the Federal permitting program on December 1, 2001. We will not consider comments that generically assert deficiencies for multiple programs. Be specific in your comments both as to the State or local permitting program and the deficiencies being raised. With respect to program deficiencies, please note the specific provisions of concern in the permitting authority's regulations or the State statute and identify the provision or provisions in part 70 or title V with which the program conflicts. For implementation deficiencies, identify the relevant regulatory or statutory provision that is not being properly implemented and provide the bases for the claim that the permitting authority is not properly implementing that portion of the program. For example, if you assert that permits are being issued in a manner inconsistent with an element of the program, identify

specific permits that you believe were incorrectly issued and the ways in which you believe those permits to be deficient.

Send comments concerning potential deficiencies to the appropriate EPA Regional Office, the addresses for which are provided above under ADDRESSES.

After reviewing comments received within the comment period, we will issue a notice of deficiency (NOD) for any claimed shortcoming in an operating permits program that we agree constitutes a "deficiency" within the meaning of part 70. For those alleged deficiencies with which we disagree, we will publish a notice explaining our reasons for not making a finding of deficiency. We will substantively consider all specific claims of deficiency, including claims that could have been raised during the initial approval process. For any NOD, a timeframe for correction of the deficiencies consistent with sections 70.4(i) or 70.10(b) will be specified in the notice. Consistent with section 70.4(i), in no event will a permitting authority be allowed more than 2 years to correct a program deficiency.

By December 1, 2001, we will publish NOD's for deficiencies identified for programs that have not been

granted full approval as of [insert date of publication]. We will at the same time also publish a notice identifying any alleged problems that we do not agree are deficiencies. For programs that have been granted full approval as of [insert date of publication], we will publish any NOD's by April 1, 2002, along with any notices of disagreement. We believe these time periods provide adequate time for us to respond to comments raised during the aforementioned comment period.

Dated: December 5, 2000 Elizabeth Craig,
Acting Assistant Administrator
for Air and Radiation.