

August 11, 1997

MEMORANDUM

SUBJECT: Implementation of Part 71 Programs at the Expiration of Part 70 Interim Approvals

FROM: Steven J. Hitte, Chief /s/
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TO: Air Program Manager
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Within the coming year and thereafter, many part 70 interim approvals will expire. Although EPA is working closely with State and local agencies to correct the program deficiencies on which interim approvals were based, some interim approvals may expire before full approval can be granted. This memorandum outlines what the Federal Operating Permits Program at 40 CFR part 71 requires of the Regional Offices and sources when an interim approval expires prior to EPA granting the program full approval.

When Does a State's Interim Approval Expire?

Interim approvals expire on the date set forth in the Federal Register notice that contains the part 70 program approval, or a later date if the State has been granted an extension through a rulemaking. Expiration dates vary from program to program, with the first expiration in October 1997 and many more expirations in the ensuing months.

How Soon After the Interim Approval Expires Must EPA Initiate a Part 71 Program (i.e., What is the Effective Date of a Part 71 Program)?

The part 71 program is effective upon expiration of the part 70 interim approval [section 71.4(a)(2)]. This is 2 years after the interim approval of the State's part 70 program was promulgated, unless the State has been granted an extension via a rulemaking pursuant to section 70.4(d)(2). For example, as explained in an October 31, 1996 rulemaking notice (61 FR 56368), EPA promulgated new expiration dates for States whose interim approvals were granted prior to June 13, 1996, giving those State interim approvals a 10-month extension.

There is no requirement for EPA to take any action to make the part 71 program effective. However, in the interest of good government, EPA should alert the affected States and sources about part 71 becoming effective and what this means.

What Steps Should the Regional Office Take to Notify the Public of the Part 71 Program?

The Regional Office should publish a Federal Register notice of the effective date of the program [section 71.4(g)]. The part 71 regulations do not specify when the notice must be published, though the effective date of the program would be an appropriate target date. The program goes into effect whether or not a notice has been published. To the extent practicable, the Regional Office should publish a notice in a newspaper of general circulation within the State and should send a letter to the Governor about the effective date of the program [section 71.4(g)]. Other outreach should also be considered (e.g., notifying the State's small business program).

What is the Obligation of Sources that Have Not Yet Been Issued a Part 70 Permit?

Sources that do not have part 70 permits must submit part 71 permit applications (using a standard EPA-approved part 71 application form) within 1 year of the effective date of the part 71 program or at an earlier date established by the Regional Office [section 71.4(i)(1)]. The Regional Office may allow sources to submit pending part 70 application forms previously submitted to the State as attachments to the part 71 application form. An application is not complete unless the source pays its part 71 permit fees [section 71.5(a)(2)]. Sources that have already paid State fees must nonetheless pay part 71 fees. Sources that want relief from State permit fee requirements should contact their State permitting authorities.

By What Time Must the Regional Offices Issue Part 71 Permits to Sources That Do Not Have Part 70 Permits?

The Regional Office has 3 years to finish permitting sources that do not have part 70 permits. The Regional Office must take action on at least one-third of the part 71 applications annually [section 71.4(i)(2)].

What Happens to the Existing Part 70 Permits?

Sources continue to operate under part 70 permits that were issued by the State until such time as the part 70 permits are revised, revoked, or reissued. At that time, sources must obtain part 71 permits. The Regional Office will administer and enforce part 70 permits until replaced by part 71 permits. The Regional Office will process all permit revisions, reopenings, terminations, revocations, and reissuances using part 71 procedures [section 71.4(k)].

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