

August 21, 1995

FACT SHEET

SUPPLEMENTAL NOTICE PROPOSING REVISIONS TO THE CLEAN AIR ACT OPERATING PERMITS REGULATIONS

TODAY'S ACTION...

- ◆ In August 1994, the Environmental Protection Agency (EPA) proposed revisions to its operating permits programs under the permits provision (Title V) of the Clean Air Act. EPA is today issuing a supplement to its August 1994 proposal.
- ◆ EPA's supplemental proposal will significantly simplify and streamline the process for revising operating permits as well as other provisions of the operating permits program. Simplifying the operating permits revisions process was part of President Clinton's Regulatory Reinvention initiative announced earlier this year. EPA's proposal will also ensure adequate opportunity for public review of proposed operational changes at facilities that could have significant environmental impacts.
- ◆ EPA developed the supplemental proposal with extensive input from stakeholders, including representatives from industry, states, and the environmental community.

WHY IS EPA ISSUING A SUPPLEMENTAL PROPOSAL?

- ◆ EPA promulgated the operating permits regulation on July 21, 1992. Many of the provisions of the final regulation were legally challenged by representatives from state and local agencies, industry, and environmental groups. As a result of negotiations with these groups, the Agency proposed changes to the rule in August 1994 that addressed many of the issues raised during litigation. The result, however, was a proposal that stakeholders believed was too complicated and administratively burdensome. EPA agreed with many of these criticisms and has worked closely with stakeholders over the past year to develop a supplemental proposal that will create a more flexible and streamlined operating permits program.

HOW DOES EPA'S SUPPLEMENTAL PROPOSAL PROVIDE FLEXIBILITY TO INDUSTRY AND STATES?

- ◆ EPA's supplemental proposal provides states with much more flexibility in meeting their requirements under the Clean Air Act by allowing them to build on their existing state permits programs. This will minimize duplicative requirements and save time and money.
- ◆ Today's proposal significantly simplifies the process for revising operating permits, which gives industry greater flexibility to make operational changes while still providing for public participation and review.
- ◆ EPA has also taken a number of other steps to simplify the operating permits program and assist states and industry in meeting their requirements under the Clean Air Act. For example, in July 1995, EPA issued a guidance document, known as the "white paper," to clarify EPA's view of the minimum federal requirements under the current regulation for permit applications. These clarifications should enable states to implement several streamlining actions to address concerns over the size and cost of permit applications.

WHAT ARE THE MAIN COMPONENTS OF EPA'S SUPPLEMENTAL PROPOSAL?

- ◆ EPA's supplemental proposal includes provisions which provide for the advance approval of many changes at facilities through the use of "flexible" permits. These provisions allow facilities to make operational changes without going through the process of revising their operating permits.
- ◆ In particular, the supplemental proposal promotes a flexible approach to permitting that is already being piloted in a project with several participating facilities nationwide. "Flexible" permits allow facilities to make process changes without modifying their permits. EPA continues to explore different ways flexible permits can be used by facilities for meeting requirements under Title V of the Clean Air Act.
- ◆ Where a permit revision is necessary, states would have the flexibility to match the amount of public review to the environmental significance of an operational change at a facility. States would not be required to provide for public or EPA review of changes that are de minimis--

-this allows for small changes without delays.

- ◆ Most changes approved under the state minor source preconstruction review programs can automatically be incorporated into the Title V permit without additional processing. This eliminates any delay that could have been imposed by Title V.
- ◆ EPA's ability to object to permit revisions would be restricted to only the most environmentally significant changes, such as major emission increases. The proposal will include a waiver of EPA's veto opportunity for "less environmentally significant" changes, which constitute the vast majority of changes at facilities requiring a permit revision, for a five-year period, during which EPA will audit how well state programs are working. EPA would exercise its veto authority during the five-year period if a meritorious petition were received from a citizen that a proposed revision would have a significant adverse environmental effect.
- ◆ Finally, the supplemental proposal contains additional provisions to resolve outstanding litigation on source certifications and emergency defense provisions and to facilitate improved implementation of the program. For example, it clarifies that most research and development activities that are co-located with manufacturing operations will be exempt from the Title V operating permits process.

HOW MUCH WILL THE SUPPLEMENTAL PROPOSAL COST?

- ◆ EPA's supplemental proposal will save industry about \$600 million annually compared to the costs of the permit revision process under the current regulation.

FOR FURTHER INFORMATION...

- ◆ Anyone with a computer and a modem can download the supplemental proposal from the Clean Air Act Amendments bulletin board (look under "Recently Signed Rules") on EPA's Technology Transfer Network by calling (919) 541-5742. For further information about how to access the board, call (919) 541-5384. For further information about the supplemental proposal, call Mike Trutna at (919) 541-5345, Roger Powell at (919) 541-5331, or Ray Vogel at (919) 541-3153.

BACKGROUND: EPA'S OPERATING PERMITS PROGRAM

The Clean Air Act Amendments of 1990 included sweeping new revisions requiring all states to develop operating permits programs that meet certain federal criteria. The states, in turn, are to require sources (facilities affected by the proposed rule) to obtain permits that contain all of their Clean Air Act requirements.

On July 21, 1992, EPA issued a regulation outlining the specific minimum requirements that states must meet in their operating permits program. State and local agencies were required to submit programs to EPA by November 15, 1993, and EPA is required to approve or disapprove these programs within one year of their submittal. (see attached status report on the operating permits program)

EPA's operating permits regulation requires states to develop comprehensive operating permit programs that cover "major" sources of air pollution. Major sources include (1) those that emit 100 tons/year or more of volatile organic

compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or particulate matter (PM-10) {note: cut-off levels are lower for more seriously polluted areas}; and (2) those that emit 10 tons/year or more of any single toxic air pollutant (specifically listed under the Clean Air Act), or those that emit 25 tons/year or more of a combination of toxic air pollutants. The primary purpose of the operating permits program is to improve enforcement by issuing each source a permit that consolidates all of the Clean Air Act requirements into a federally enforceable document.

State programs that "substantially" meet the regulatory requirements may be granted interim approval for up to two years by EPA. To obtain interim approval, programs must satisfy a number of minimum requirements. Permitting authorities receiving interim approval must correct deficiencies in their programs and submit the corrections to EPA at least six months prior to expiration of the interim approval.

Facilities must submit permit applications to the state or local permitting authority within one year after EPA's approval of the program. Initially, the agencies have three years after program approval in which to issue all permits. After a permit is issued, sources must apply to their permitting authorities to revise their permits as needed to make changes in the operation of their facilities.

About 20 litigants, including environmental groups, industry, and states challenged the July 1992 rule primarily on the provisions for revising permits. While no final settlement was reached, in August 1994, EPA issued a proposed rule describing a new revision procedure that attempted to accommodate the litigants' varying concerns. The result, however, was a proposal that was criticized as being more complicated and administratively burdensome. Therefore, EPA worked with stakeholders to develop the approach in the supplemental proposal, which is specifically designed to streamline and simplify the current permit revision process.

EPA will issue the revisions to the operating permits program in final form in the Spring of 1996.