

June 13, 1996

MEMORANDUM

SUBJECT: Extension of Interim Approvals of Operating Permits Programs

FROM: Lydia N. Wegman, Deputy Director /s/
Office of Air Quality Planning and Standards (MD-10)

TO: Director, Office of Ecosystem Protection, Region I
Director, Environmental Planning and Protection Division, Region II
Director, Air, Radiation and Toxics Division, Region III
Director, Air, Pesticides and Toxics Management Division, Region IV
Director, Air and Radiation Division, Region V
Director, Multimedia Planning and Permitting Division, Region VI
Director, Air, RCRA and TSCA Division, Region VII
Assistant Regional Administrator, Office of Pollution Prevention, State and Tribal Assistance, Region VIII
Director, Air and Toxics Division, Region IX
Director, Office of Air, Region X

This memorandum is to announce the Agency's intended policy for extending interim approvals of part 70 operating permits programs. Briefly, for those programs which have interim approval deficiencies which will require substantial effort to remedy, the program revision addressing the interim approval deficiencies may be submitted with the program revision to address the revised part 70 operating permits regulations. Part 70 is projected to be revised by early 1997. Notwithstanding that extension, all programs with an interim approval as of today's date will be granted a 10-month extension beyond the date on which the interim approval is currently set to expire. This policy will be effected through a rulemaking expected to be final this summer.

Background

The preamble to the August 31, 1995 supplemental proposal to revise part 70 noted the concern of permitting authorities over having to revise their programs twice--once to correct interim

approval deficiencies, and again to address the revisions to part 70. In the August 1995 preamble, the Agency proposed that States with interim approval ". . . should be allowed to delay the submittal of any program revisions to address program deficiencies previously listed in their notice of interim approval until the deadline to submit other changes required by the proposed revisions to part 70" (60 FR 45552). Comment was solicited on this action and on a legal rationale. The Agency also proposed ". . . to exercise its discretion under proposed section 70.4(i)(1)(iv) to provide States 2 years to submit program revisions in response to the proposed part 70 revisions . . ." (60 FR 45551).

In combination, these actions could extend all interim approvals such that permitting authorities would not have to submit program revisions addressing interim approval deficiencies until up to 2 years after part 70 is revised. Only three comments were received on this subject during the public comment period on the August 1995 proposal. These comments supported the extension, but provided no legal rationale.

Policy Summary

A summary of the policy set forth in this memorandum is:

- o All programs granted interim approval prior to the date of this memorandum will have their interim approval expiration dates extended by 10 months.
- o Programs with interim approval for which the revisions to part 70 require legislative changes may have their interim approval program revision submittal dates extended until 18 months after promulgation of the part 70 revisions.
- o Programs with interim approval for which the revisions to part 70 require only regulatory changes may have their interim approval program revision submittal dates extended until 1 year after promulgation of the part 70 revisions.

Discussion

To encourage permitting authorities to proceed with program revisions within their interim approval timeframes, rather than wait for the revised part 70, EPA intends that all interim approvals granted prior to the date of issuance of this

memorandum will be extended by 10 months. The reason for this automatic extension is that permitting authorities, upon reading the August 1995 proposed action, may have delayed their efforts to develop program revisions to address interim approval deficiencies because they believed the proposed policy to extend interim approvals until revised part 70 program revisions are due would be adopted for all programs. Approximately 10 months have passed since the August 1995 proposal. The additional 10-month extension will offset any time lost in permitting authority efforts to develop program revisions addressing interim approval deficiencies. The Agency does not, however, feel this 10-month extension should be applied to application submittal dates for the second group of sources covered by a source-category limited interim approval.¹

In light of the 10-month extension for all programs with interim approval, the Agency asks that permitting authorities make every effort to correct interim approval deficiencies without the longer extension until program revisions are submitted to meet the revised part 70. For example, to correct some interim approval program deficiencies, no regulatory or legislative changes will be necessary. There is little justification to wait for the revised part 70 to correct those deficiencies. As another example, if a single interim approval deficiency requires legislative action, and no other action will be required by the legislature, including for meeting the revised part 70, there is no reason not to proceed with legislative action to correct that deficiency.

Interim Approval Extension Policy Beyond 10-Month Period

This section discusses EPA's policy regarding extensions beyond the automatic 10-month extension. The EPA's policy is that any permitting authority may have an extension beyond 10 months of the date on which corrections to its interim approval program are due in accordance with the following guidance.

¹Several States have been granted source-category limited interim approvals. Under that type approval, a subset of the part 70 source population is to submit permit applications during the first year of the program. The application submittal period for the remaining sources begins upon full approval of the program. The Agency feels this second group of sources should still submit permit applications during a period beginning on the original expiration date of a State's interim approval as opposed to that date extended by 10 months. The other interim approval program deficiencies, however, will be eligible for the 10-month extension.

1. If the program revisions needed to meet the revised part 70 require State or local legislative action, the permitting authority may have 18 months after promulgation of the part 70 revisions to submit a program revision addressing both the revised part 70 and the interim approval deficiencies. The interim approval will expire 2 years after promulgation of the part 70 revisions.

2. If the program revisions needed to meet the revised part 70 require only regulatory revisions, the permitting authority may have 1 year after the promulgation of the part 70 revisions to submit its program revision addressing both the revised part 70 and the interim approval deficiencies. The interim approval will expire 18 months after promulgation of the part 70 revisions.

Even though these timeframes are shorter than the 2 years proposed in the August 1995 notice, this policy still provides significant additional time to allow for combining program revisions. The purpose of the shorter timeframes is to minimize the delay in correcting the interim approval deficiencies, while at the same time accommodating permitting authorities' desire to prepare and submit only one program revision.

The 2-year timeframe for submitting revisions to address the revised part 70 would apply to any program granted full approval or to any program for which the two program revisions to correct interim approval deficiencies and to meet the revised part 70 are not combined. This timeframe will be established in the final promulgation of the part 70 revisions.

Implementing Mechanism

The action to extend all interim approvals by 10 months will be taken in the near future in a Federal Register final rulemaking notice which will revise the relevant provisions of part 70 and will modify the deadlines in the individual Federal Register notices that granted interim approvals. This time period will subsequently be superseded if any permitting authority requests, and EPA grants by rulemaking, the longer extension until the program revision to address the revised part 70 is due.

To request the longer timeframe beyond the 10-month extension, permitting authorities must apply in writing to the appropriate Regional Office for the extension. This application should be submitted to the Regional Office within 30 days of the promulgation of the part 70 revisions. This will allow EPA to take a single rulemaking action to adopt the new interim approval

deadlines for all permitting authorities.

The policies set forth in this memorandum are intended solely as guidance, do not represent final Agency action, and cannot be relied upon to create any rights enforceable by any party. The upcoming Federal Register action will establish this policy by rulemaking. If you have any questions, you may contact Roger Powell at (919) 541-5331.

cc: S. Hitte
A. Schwartz
M. Trutna
R. Powell
Chief, Air Branch, Regions I-X
Regional Operating Permits Staff, Regions I-X