

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

JANUARY 26, 1994

MEMORANDUM

SUBJECT: Operating Permit Program Approval Issues

FROM: Lydia Wegman, Deputy Director
Office of Air Quality Planning and S cards (MD-10)

TO: Air Division Director, Regions I-X

At the most recent Division Directors' meeting in Washington, D.C., you requested that the Operating Permits Task Force develop a list of issues which, if present in a Title V program submittal, would be cause for disapproval or interim approval of the program. Following several discussions among members of the Operating Permits Task Force, including the participation of several Regions, the Office of General Counsel and the Office of Enforcement, we have developed a draft list of "showstopper" issues. The list represents those issues of which we are currently aware that would prevent full approval. As the substantive reviews of State operating permit programs may identify other problematic issues, we anticipate that this initial list may be expanded to include new issues that emerge from the program reviews.

I would appreciate receiving your comments on this initial list by February 14, since we are eager to reach agreement on the list. Questions on specific issues should be directed to Rich Damberg (919-541-5592) or Kirt Cox (919-541-5399) of the Permits Programs Branch. I look forward to hearing your comments.

Revised 1/20/94

PROPOSED DISAPPROVAL ISSUES

(or, if a program has any one of these flaws, this deficiency would be grounds for program disapproval)

1. Program lacks authority for permitting authority to issue permits to major sources which assure compliance with the applicable requirements of title V, title IV, and title I (including §§111 and 112). (Note: In limited cases, this may not be a disapproval issue. For example, it may be acceptable for FIP requirements to not be listed as applicable requirements in State regulations, as long as the State provides a commitment to implement a FIP if one ever becomes applicable).
 - e.g. Permitting authority lacks authority to conduct §112 (g) determinations. Or program does not require compliance/monitoring information to be submitted consistent with §70.5 and §70.6.
2. Program does not provide for public participation as required under §70.7. Note: A program which allows the minor permit modification procedure to process changes which are addressed by gatekeeper 3 (case-by-case determinations) or gatekeeper 5 (Title I modifications) [70.7(e)(2)] may be eligible for interim approval. See item #1 of interim approval list.
3. Program intrudes on EPA opportunity for review/veto of permit actions, or restricts opportunity for affected state review.
 - e.g. Program allows for default issuance of permit.
 - e.g. District may issue a permit to which EPA has objected if the district determines that EPA's objection is based-on a mistake of law or fact.
4. Program does not provide ANY enforcement authority.
- 4A. Program does not provide ANY authority to seek civil penalties against sources in violation of permit terms.
5. Program provides a blanket allowance which is not approved into the SIP for sources to exceed applicable requirements at start-up, shut-down or during routine maintenance without risk of enforcement. (Note: Exceedances during these events can be allowable if they are provided for in specific applicable requirements.)
6. Program overly restricts the universe of sources that are subject to the permits process.

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- e.g. Program provides too narrow a definition of major source by basing applicability on actual emissions rather than potential to emit.
 - e.g. Program provides for operating permits or other mechanisms which are not federally enforceable to establish limits on a source's potential to emit.
7. Program overly restricts the amount or type of information that is publicly available.
 - e.g. Program provides that public may not have access to information in the permit if source makes claim of confidentiality, which conflicts with the requirement of 70.4(b)(3)(Viii)
 8. State's fee schedule is inadequate to cover reasonable direct and indirect costs of administering permit program. (Interim approval criteria cannot be granted based on an inadequate fee demonstration.)
 9. Public notice and EPA review are to be provided for in implementation agreement, not in rule.
 10. Terms and conditions of NSR permits (a "non-enhanced" NSR program) are added to operating permit through the administrative amendment process, without opportunity for public comment / review or EPA veto.
 11. Structure of the agency's rule would require that EPA recognize State variances.
 12. The components of 70.6, permit content (e.g. emission limits, monitoring, recordkeeping, reporting), are not contained in the agency's rule.
 13. The compliance requirements of 70.5(c)(9) (compliance certifications and progress reports) are not in the agency's rule.
 14. The rule allows a source whose permit application has been denied to continue to operate under the local operating permit program.
 15. Fugitives are not counted for toxics sources at all (thereby failing to require permits for all major sources), and State fails to provide an adequate showing for source-category limited interim approval (e.g. a description of the number and type of sources excluded from the program, or a demonstration of other compelling reasons).

Revised 1/20/94

PROPOSED INTERIM APPROVAL ISSUES

Note: "*" indicates an issue which may not be cause for interim approval independently, but should be discussed in any Federal Register notice granting interim approval.

1. A program which allows the minor permit modification procedure to process changes currently prohibited by gatekeeper 3 (case-by-case determinations) or gatekeeper 5 (Title I modifications) [70.7(e)(2)] may be eligible for interim approval. Note: Current thinking is to allow this through a revision to the part 70 interim approval criteria BEFORE final program approvals are made (November 1994). Refer to draft memo from OGC on "EPA interpretation of 'title I modifications' and other provisions of 40 CFR Part 70."
2. Program provides some civil enforcement authority, but not FULL authority. Program can lack criminal enforcement authority and still receive interim approval.
 - e.g. State has penalty/fine amounts less than \$10,000/violation/day.
 - e.g. State has mental state provision associated with civil penalties.
3. State law exempts certain source categories (e.g. agricultural sources) from any permitting requirements.
4. Various problems with insignificant activities. We have yet to sort out which could be handled through interim approvals and which could not.
5. Fugitives are not counted for toxics sources, and State provides adequate showing for source-category limited interim approval (e.g. description of which sources are excluded from program, or demonstration of compelling reasons).
6. The State program does not include written commitments for one of the following:
 - a commitment to submit any missing portions (or all) of the acid rain program (regulations, forms, etc.) to EPA by 1/1/95;
 - a commitment to obtain the necessary authority to implement and enforce future section 112 standards and requirements;
 - a commitment to obtain the necessary authority to implement and enforce future enhanced monitoring requirements.

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- *7. The permit issuance deadline is eighteen months from the date the completeness determination is made, rather than eighteen months from the date a complete application is received.
- *8. Requirements arising from a FIP are not included in the list of applicable requirements.