

Attorney General to the Chief Counsel for the Air Quality Division who has full authority to represent the State in all matters relating to the Department's environmental programs. This opinion with the supplement adequately addresses the thirteen provisions listed at 40 CFR 70.4(b)(3)(i)–(xiii).

The State statutes cited in the AG's Opinion authorize the imposition of criminal fines in the amount of \$10,000 per violation as required by 40 CFR 70.11(a)(3)(ii) for knowing violations of applicable requirements, permit conditions, as well as fee and filing requirements. Further, these statutes authorize the fine amounts to be imposed on a per day per violation basis as required by 40 CFR 70.11(a)(3)(ii). The statute at Title 27A O.S. Supplement, 1993, Section 2–5–116, appears to establish a cap in the amount of \$250,000 on criminal penalties. The State is requested to supplement the Attorney General's Opinion again to clarify that this limit will not impede the State or EPA from enforcing daily violations with a \$10,000 per day per violation fine. This supplemental AG Opinion should be submitted to the EPA before the publication of the final interim approval notice.

40 CFR 70.4(b)(4) requires the submission of relevant permitting program documentation not contained in the regulations, such as permit forms and relevant guidance to assist in the State's implementation of its program. The State addresses this requirement in its program submittal under Attachment 39—"Instructions for Title V Part 70 Operating Permit Application and General Permit Application Completeness Checklist", Attachment 40—"Permit Form", Attachment 41—"Permit Reporting Forms", and Attachment 42—"Inspection Protocol, Point Source Inspection Form."

## 2. Regulations and Program Implementation

The State of Oklahoma has submitted the Oklahoma Air Quality Council Regulations (OAC) 252:100–8 "Operating Permit Regulations" and OAC 252:100–8–9 "Permit Fee Requirements," for implementing the State's part 70 program as required by 40 CFR 70.4(b)(2). Sufficient evidence of their procedurally correct adoption was submitted in the package on January 7, 1994, showing evidence of adoption which was sent to the EPA in the State's original submittal. Copies of all applicable State and local statutes and regulations which authorize the part 70 program, including those governing State administrative procedures, were submitted with the State's program.

The State submitted as Attachment 1, OAC 252–100–8 titled "Operating Permits (Part 70)" (Subchapter 8), as required at 40 CFR 70.4(b)(2). Subchapter 8 follows the rule at 40 CFR part 70 very closely. Supporting documentation of procedurally correct adoption and copies of all applicable State statutes and regulations which authorize the part 70 program, including those governing State administrative procedures, were submitted with the State's program. Subchapter 8 received written comments from May 7 through October 19, 1993, and public hearings were held July 13, August 17, September 14, and October 19, 1993. The response to comments was made by ODEQ on October 19, 1993. Sufficient evidence of their procedurally correct adoption was submitted and meets the requirements of 40 CFR 70.4(b)(2).

The following requirements, set out in the EPA's part 70 rule, are addressed in the State's submittal: (a) provisions to determine applicability (40 CFR 70.3(a)), OAC 252–100–8–3; (b) provisions to determine complete applications (40 CFR 70.5(a)(2)), OAC 252–100–8–5; (c) public participation (40 CFR 70.7(h)), OAC 252–100–8–7(i); (d) provisions for minor permit modifications (40 CFR 70.7(e)(2)), OAC 252–100–8–7(e); (e) provisions for permit content (40 CFR 70.6(a)), OAC 252–100–8–6; (f) provisions for operational flexibility (40 CFR 70.4(b)(12)), OAC 252–100–8–6(h); and (g) enforcement provisions (40 CFR 70.4(b)(5) and 70.4(b)(4)(ii)), OAC 252–100–8–6(b–c) and the AG Opinion.

Following is a discussion of certain specific provisions in the State's submission as they relate to requirements of 40 CFR part 70:

(a) Applicability criteria, including any criteria used to determine insignificant activities or emissions levels (40 CFR 70.4(b)(2) and 70.3(a)): Applicability criteria are listed at OAC 252:100–8–3 with "applicable requirement" defined at OAC 252:100–8–2. The regulations at OAC 252:100–8–2 defines a "major source." The State included a paragraph (4) to this definition which does not allow aggregation of emission sources at oil and gas wells, compressor stations, and pump stations for criteria pollutants. Paragraph (4) is in conflict with the rule because oil and gas sources may not be aggregated to determine major source status for Hazardous Air Pollutants only. Therefore, as a condition for full approval, the regulations at OAC 252:100–8–2, "major source," must be revised to delete paragraph (4).

Oklahoma's "major source" definition creates the possibility that sources that

would otherwise be major under part 70 would not be major due to the non-aggregation provision for oil and gas facilities. Non-aggregation of oil and gas units is provided only for the emission of hazardous air pollutants in the Federal rule. 40 CFR 70.2 requires all sources located on contiguous or adjacent properties, under common control, and belonging to a single major industrial grouping to be considered as the same source. The Oklahoma permit regulations could cause certain part 70 major sources, as defined in 40 CFR 70.2, or portions of such sources, to be treated as separate sources. This could cause some part 70 sources to be exempted from coverage by part 70 permits which must ensure all part 70 requirements for these sources are met. The EPA considers Oklahoma's misinterpretation of the non-aggregation provision for criteria pollutants to allow an unknown number of oil and gas facilities to avoid title V of the Act. The EPA expects that any permits issued by the State will address all applicable requirements, as required by 40 CFR 70.7(a)(1)(iv).

The State of Oklahoma submitted under the signature of the Executive Director of the ODEQ, Mark Coleman, a request dated January 23, 1995, for the EPA to grant source category-limited interim approval allowing more time to permit these extra sources and correct the regulations. In the original submittal the Governor of Oklahoma delegated the authority to submit non-regulatory changes under the signature of the Executive Director of the ODEQ. Because the request for source category-limited interim approval requires a regulatory change, the EPA must receive a formal request under the Governor's signature before the EPA can publish final interim approval in the **Federal Register**. The request included a revised transition schedule that demonstrates the State will permit at least 60% of its sources and at least 80% of its emissions during the first three years. The request is consistent with the policy memo from John Seitz, Director of the Office of Air Quality Planning and Standards dated August 2, 1993. The EPA can grant source category-limited interim approval to States whose programs do not provide for permitting all required sources if the State makes a showing that two criteria were met: 1) that there were "compelling reasons" for the exclusions and 2) that all required sources will be permitted on a schedule that "substantially meets" the requirements of part 70. The EPA considers Oklahoma's misinterpretation of use of the non-aggregation provision