

II. Proposed Action and Implications

A. Analysis of State Submission

EPA has concluded that the operating permit program submitted by Ohio meets the requirements of title V and part 70 and is proposing to grant full approval to the program. For more detailed information on the analysis of the State's submission, please refer to the technical support document (TSD) included in the docket at the address noted above.

1. Support Materials

Donald Schregardus, Director of the Ohio Environmental Protection Agency and the Governor of Ohio's designee, submitted Ohio's title V operating permit program to EPA on July 22, 1994. The State supplemented the submittal on September 12, 1994, November 21, 1994, December 9, 1994, and January 5, 1995. The submittal contains all required elements of 40 CFR 70.4, including a description of Ohio's operating permit program, relevant permitting program documentation, and the Attorney General's legal opinion that the laws of the State provide adequate authority to carry out all aspects of the program.

2. Regulations and Program Implementation

EPA has determined that the Ohio operating permit program, including State statutes (Ohio Revised Code (ORC) 3704.035, 3704.036, 3704.05, 3704.06, 3704.99, 3745.11, and 3745.112) and regulations (Ohio Administrative Code (OAC) 3745-77 and 3745-78), meets the requirements of 40 CFR 70.2 and 70.3 for applicability; 40 CFR 70.5 for criteria which define insignificant activities¹ and for complete application forms; 40 CFR 70.4, 70.5, and 70.6 for permit

¹ Ohio includes research and development (R&D) units, as defined at Ohio Revised Code (ORC) 3704.01(P), as an insignificant activity. However, this definition of all R&D units as insignificant activities is limited in effect because an R&D unit is not exempt from the State's permit application requirements if the unit's emissions exceed one ton per year of total hazardous air pollutants or has a potential to emit more than five tons per year or twenty percent of an applicable major source threshold under the Act for any regulated air pollutant other than a HAP (OAC 3745-77-02(G)). In addition, Ohio's general provisions governing insignificant activities and emissions levels apply to R&D units. Ohio regulations provide that insignificant activities and emissions levels that are exempted because of size or production rate must be listed in the permit application and do not affect the determination of whether a stationary source is a major source (OAC 3745-77-02(G)). In addition, an applicant may not omit information, including the emissions levels for insignificant activities, that is necessary to determine the applicability of any applicable requirement, to impose any applicable requirement, or to evaluate any fee amount (OAC 3745-77-03(A)).

content (including operational flexibility); 40 CFR 70.7 and 70.8 for permit processing requirements (including public participation and minor permit modifications); and 40 CFR 70.11 for requirements for enforcement authority. The TSD contains a detailed analysis of Ohio's program and describes the manner in which the State's program meets all the operating permit program requirements of 40 CFR Part 70.

3. Permit Fee Demonstration

EPA has determined that the Ohio operating permit program meets the fee requirements of 40 CFR 70.9. Ohio is adopting the presumptive minimum approach to fees outlined in 40 CFR 70.9(b)(2).

4. Provisions Implementing the Requirements of Other Titles of the Act

a. *Authority for Section 112 Implementation.* In its program submittal, Ohio demonstrates adequate legal authority to implement and enforce all section 112 requirements through the Title V permit. This legal authority is contained in Ohio's enabling legislation and in regulatory provisions defining "applicable requirements" and stating that permits must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow the State to issue permits that assure compliance with all section 112 requirements.

EPA is interpreting the above legal authority to mean that Ohio is able to carry out all section 112 activities with respect to part 70 sources. For further rationale on this interpretation, please refer to the TSD.

b. *Implementation of 112(g).* EPA issued an interpretive notice on February 14, 1995 (60 FR 8333), which outlines EPA's revised interpretation of 112(g) applicability. The notice postpones the effective date of 112(g) until after EPA has promulgated a rule addressing that provision. The notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow States time to adopt rules implementing the Federal rule and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Ohio must have a federally enforceable mechanism for implementing section

112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing Federal regulations.

EPA is aware that Ohio lacks a program designed specifically to implement section 112(g). However, Ohio does have a preconstruction review program (OAC 3745-31) that can serve as an adequate implementation vehicle during the transition period because it would allow Ohio to select control measures that would meet MACT, as defined in section 112, and incorporate these measures into a federally enforceable preconstruction permit.

EPA is approving Ohio's preconstruction permitting program (OAC 3745-31) under the authority of Title V and Part 70 solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between 112(g) promulgation and adoption of a State rule implementing EPA's section 112(g) regulations. Although section 112(l) generally provides authority for approval of State air programs to implement section 112(g), Title V and section 112(g) provide for this limited approval because of the direct linkage between the implementation of section 112(g) and Title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purposes of any other provision under the Act (e.g., section 110). This approval will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. The duration of this approval is limited to 18 months following promulgation by EPA of the 112(g) rule to provide adequate time for the State to adopt regulations consistent with the Federal requirements.

c. *Program for delegation of Section 112 Standards as Promulgated.* The requirements for program approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a State program for delegation of section 112 standards, as promulgated by EPA, as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under 40 CFR part 70. Therefore, EPA is also proposing to grant approval, under section 112(l)(5) and 40 CFR 63.91, of Ohio's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated.