

the end of an interim program, the Agency must establish and implement a Federal program.

On September 13, 1994, EPA proposed interim approval of the operating permits program for the MPCA. See 59 FR 46948. The EPA received public comment on the proposal and compiled a Technical Support Document (TSD) which describes the operating permits program in greater detail. In this notice EPA is taking final action to promulgate interim approval of the operating permits program for the MPCA.

II. Final Action and Implications

A. Analysis of State Submission and Response to Public Comments

The EPA received comments on a total of 9 topics from 9 organizations. The EPA's response to these comments is summarized in this section. Comments supporting EPA's proposal are not addressed in this notice; however, EPA's TSD responding to all comments is available in the docket at the address noted in the ADDRESSES section above.

1. Criminal Enforcement Authority

EPA proposed as a condition for full approval of the Minnesota permit program the removal of Subdivision 14 of Section 609.671 of the Minnesota Criminal Code (Subdivision 14). Subdivision 14 provides that "*except for intentional violations*, a person is not guilty of a crime * * * if the person notified the pollution control agency of the violation as soon as the person discovered the violation and took steps to promptly remedy the violation." (Emphasis added.) EPA has subsequently determined that the definition of "intentional" used by the State of Minnesota in the context of this defense is equivalent to the definition of "knowledge." Therefore, EPA no longer requires that Minnesota remove Subdivision 14 for full approval of the Minnesota permit program.

Specifically, a letter dated April 21, 1995, from Hubert H. Humphrey III, Attorney General for the State of Minnesota, to Valdas Adamkus, Regional Administrator of Region 5, EPA, clarifies the definition of "intentional" as follows:

"Intentional violations" do not mean the state must show a violation was committed with specific intent. See *State v. Orsello*, 1995 WL 141748 (Minn. Ct. App.) * * *. "Intentional violations" require only the same type of intent as is required for a general intent crime in Minnesota; namely, an intent to do the act prohibited by the statute. The phrase "intentional violations" in this context is thus used to distinguish

criminal conduct from the accidental. See *State v. Lindahl*, 309 N.W.2d 763, 767 (Minn. 1981) * * *.

EPA had proposed the removal of Subdivision 14 as a condition for full approval of the Minnesota permit program because 40 CFR 70.11(a)(ii) requires that a state have the authority to seek criminal remedies, including, among other things, fines against "any person who knowingly violates any applicable requirement * * *." With the clarification of the definition of "intentional" by Minnesota, it is clear that Minnesota does have the authority to seek criminal remedies for knowing violations. Further, this clarification of the definition of "intentional" also satisfies EPA's other concern that Subdivision 14 required the State to meet a higher degree of proof than that required by the Clean Air Act. 40 CFR 70.11(b).

2. Monitoring Reports

EPA received one comment from the MPCA on its proposal to require Minnesota to revise Minnesota Rules 7007.0800, subpart 6, to require submittal of semi-annual monitoring reports from all part 70 sources. EPA based its proposal on 40 CFR 70.6(a)(3)(iii)(A), which requires the "submittal of reports of required monitoring at least every 6 months." MPCA believes that it is reasonable to interpret this provision to only require a report if there is required monitoring during the 6 month period. Furthermore, MPCA asserts that "it would be pointless and wasteful for a part 70 source to be required to submit a semi-annual report when there is nothing to report."

While EPA agrees with this comment, a revision to this rule is still necessary for full program approval. Minnesota Rules 7007.0800, subpart 6(B), requires submittal of reports at least every six months for "any stationary source that is required to monitor * * * *more frequently than every six months*." (Emphasis added.) Part 70 requires semi-annual reports from sources required to monitor every 6 months. In addition, it is not clear from this provision that a source required to monitor less frequently than every six months is ever required to submit a monitoring report. Therefore, to receive full program approval, MPCA must revise Minnesota Rules 7007.0800, subpart 6 to require at least a semi-annual monitoring report from sources required to monitor at least every 6 months, and to require annual reports from sources required to monitor less frequently than every 6 months.

3. Administrative Permit Amendment Procedures

EPA received 2 adverse comments regarding EPA's proposal to require MPCA to revise Minnesota Rules 7007.1400. This rule allows the use of the administrative amendment procedures to "clarify" a permit term. In the proposal, EPA states this ambiguous provision may result in the implementation of permit modifications through the administrative amendment procedures, rather than through the permit modification procedures, in contravention of 40 CFR 70.7(d) and (e). Because this provision is inconsistent with the requirements of 40 CFR 70.7(d), Minnesota must revise this rule for full program approval.

The American Forest & Paper Association (American Forest) and the National Environmental Development Association (NEDA) are concerned that the "removal" of this provision will require MPCA, as a condition for full approval, "to disapprove environmentally insignificant permitting modifications that otherwise should be approvable through the administrative amendments." These commenters also feel that EPA's concerns are "unwarranted, since EPA would retain, under its proposed rule changes, an adequate opportunity to object to administrative amendments." According to 40 CFR 70.1(c), EPA will approve State programs "to the extent that they are not inconsistent with the Act and these regulations." Section 70.7(d) sets forth those matters that may be corrected through administrative permit amendments. Section 70.7(e) sets forth the criteria for permit modifications. Because a broad interpretation of Minnesota Rules 7007.1400 would allow permit modifications to be implemented as administrative permit amendments, the rule expands the scope of those matters which may be corrected pursuant to 40 CFR 70.7(d), in contravention of the Act and part 70 regulations. Therefore, the ambiguity in the rule must be clarified. With respect to EPA's ability to object to administrative amendments, the current part 70 regulations do not provide for EPA review and objection.

4. Incorporation by Reference

EPA proposed as a condition for full approval of MPCA's program that Minnesota Rules 7007.0800, subpart 16 be revised to require that all conditions required by section 70.6(a) contained in that subpart be expressly stated in the part 70 permits. EPA received one comment from MPCA opposing this change. MPCA argues that the inclusion