is finalized and subsequently adopted by the State.

The EPA is aware that Wyoming lacks a program designed specifically to implement section 112(g). However, Wyoming does have a preconstruction review program that can serve as a procedural vehicle for establishing a case-by-case MACT or offset determination and making these requirements federally enforceable. The EPA approval of Wyoming's preconstruction review program clarifies that it may be used for this purpose during the transition period to meet the requirements of section 112(g).

The EPA believes that Wyoming's preconstruction review program will be adequate because it will allow Wyoming to select control measures that would meet MACT, as defined in section 112 of the Act, and incorporate these measures into a federally enforceable preconstruction permit. Wyoming's preconstruction permitting program allows permit requirements to be established for all air contaminants (which is broadly defined at Section 21 of the WAQSR) and includes all of the HAPs listed in Section 112(b) of the Act.

Another consequence of the fact that Wyoming lacks a program designed specifically to implement section 112(g) is that the applicability criteria found in its preconstruction review program may differ from the criteria in section 112(g). EPA will expect Wyoming to utilize the statutory provisions of section 112(g) and the proposed rule as guidance in determining when case-by-case MACT or offsets are required. As noted in the June 28, 1994 guidance, EPA intends to defer wherever possible to a State's judgement regarding applicability determinations. This deference must be subject to obvious limitations. For instance, a physical or operational change resulting in a net increase in HAP emissions above 10 tons per year could not be viewed as a de minimis increase under any interpretation of the Act. The EPA would expect Wyoming to be able to issue a preconstruction permit containing a case-by-case determination of MACT in such a case even if review under its own preconstruction review program would not be triggered.

Comment #2: The commenter questioned the need for Wyoming's title V program enforcement authority to be based on State law defining civil individual and corporate liability and asserted that EPA's requirement that the State program include strict liability for corporate officers, directors or agents in civil actions is not compelled by the Clean Air Act Amendments of 1990.

EPA Response: The Wyoming Environmental Quality Act (WEQA) states in section 35–11–901(a) that ''Any person who violates, or any director, officer or agent of a corporate permittee who willfully and knowingly authorizes, orders or carries out the violation of any provision of this act * * * is liable to either a penalty of not to exceed ten thousand dollars ($10,000.00) for each day during which violation continues * * *.'' On its face, section 35–11–901(a) establishes a more stringent burden of proof for civil violations for corporate directors, officers, or agents than for other persons. Based on EPA's position that this distinction is inconsistent with title V of the Act and part 70, EPA stated in the Federal Register notice proposing interim approval of the Wyoming PROGRAM that section 35–11–901(a) needs to be revised to include language that provides strict liability for corporate officers, directors or agents in civil actions.

The commenter stated that ''the federal statutory standard for approval of state permit programs does not require strict corporate liability in civil actions. Under 42 U.S.C. 7661a(b)(5)(E), Congress mandated only that states seeking approval of permit programs have ''adequate authority'' to ''enforce permits * * * including authority to recover civil penalties in a maximum amount of not less than $10,000 per day of violation.'' There is nothing in the State's statutory or regulatory scheme that suggests that Wyoming lacks either the will or the ability to impose civil penalties to enforce operating permits, as mandated by the Act. EPA's insistence on statute revision is, therefore, an example of Agency overreaching.''

However, section 502(b)(5)(E) of the Act requires the EPA to promulgate ''* * * regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency. These elements shall include each of the following: * * * (5) A requirement that the permitting authority have adequate authority to: * * * (E) enforce permits, permit fee requirements, and the requirement to obtain a permit, including authority to recover civil penalties in a maximum amount of not less than $10,000 per day for each violation, and appropriate criminal penalties * * *.''

Pursuant to section 502(b)(5)(E), EPA promulgated 40 CFR 70.11(a)(3) which requires that the state's part 70 programs contain the enforcement authority ''To assess or sue to recover in court civil penalties * * * according to the following: (i) Civil penalties shall be recoverable for the violation of any applicable requirement; any permit condition; any fee or filing requirement; any duty to allow or carry out inspection, entry or monitoring activities or, any regulation or orders issued by the permitting authority. These penalties shall be recoverable in a maximum amount of not less than $10,000 per day per violation. State law shall not include mental state as an element of proof for civil violations.''

It is well established that the Act imposes a strict liability standard for assessing compliance violations. *United States* v. *JBA Motorcars,* 839 F. Supp. 1572 (D.C.Fla. 1993). Further, strict liability is essential to meet the purpose of the Act to protect and improve the quality of the nation's air. *United States* v. *B & W Investment Properties,* No. 94–1892, (7th Cir. Oct. 24, 1994), LEXIS 29713.

Wyoming's provision which requires a mental state as an element of proof for corporate civil violations is inconsistent with the general purpose of the Act. More specifically, Wyoming's provision is inconsistent with the basic framework for effective enforcement of the title V program established at 40 CFR 70.11(a)(3)(i) which does not distinguish between corporate and personal liability. The commenter's objection to a requirement clearly articulated in part 70 should have been raised in a challenge to the rule itself, rather than in the context of an action to approve a state program pursuant to that rule. Finally, it is EPA's view that requiring a mental state as an element of proof for civil violations significantly hinders corporate compliance enforcement. As such, the provisions are insufficient to meet section 40 CFR 70.4(b)(3)(i) which requires Wyoming to issue permits and assure compliance with each applicable requirement and the requirements of part 70.

Based on the above, it is EPA's position that section 35–11–901(a) of the WEQA must be revised to require strict liability for civil violations for corporate entities. Because this provision is inconsistent with the Act and the regulations thereunder and adversely affects the Permitting Authority's ability to enforce title V requirements against corporate entities, this issue is a basis for granting Wyoming interim approval for the PROGRAM. Accordingly, Wyoming's PROGRAM must be revised to reflect strict liability for corporate entities to receive full PROGRAM approval.

Comment #3: The commenter objected to EPA's proposed action related to Wyoming's special rule exempting Research and Development (R&D) facilities and contended that EPA has not offered a compelling basis for