

within 1 year after receiving the submittal. EPA's program review is conducted pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval of an operating permits program submittal. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by November 15, 1995, or, in the case of interim approval, by the expiration of the interim approval period, it must establish and implement a federal program.

On September 21, 1995, EPA proposed interim approval of the operating permits program for the State of Delaware. (See 60 FR 48944). EPA 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 State of Delaware.

II. Analysis of State Submittal

On November 15, 1993, the State of Delaware submitted an operating permits program to satisfy the requirements of the CAA and 40 CFR part 70. The submittal was supplemented by additional materials on November 22, 1993, and was found to be administratively incomplete pursuant to 40 CFR 70.4(e)(1) on January 18, 1994. Additional materials were submitted on February 9, 1994, and May 15, 1995. Based on the additional information, EPA found the submittal to be administratively complete on May 19, 1995. The State submitted supplemental information on September 5, 1995. EPA reviewed Delaware's program against the criteria for approval in section 502 of the CAA and the part 70 regulations. EPA determined, as fully described in the notice of proposed interim approval of Delaware's operating permits program (see 60 FR 48944; September 21, 1995) and the TSD for this action, that Delaware's operating permits program substantially meets the requirements of the CAA and part 70.

III. Public Comments

EPA received no public comments on the notice of proposed interim approval.

IV. Insignificant Activities

In the notice of proposed interim approval, EPA generally described Delaware's list of insignificant activities contained in Appendix A of Regulation No. 30. Today, EPA is clarifying its

rationale for approving Delaware's insignificant activities provision. Although Delaware's Regulation No. 30 states that any information required by the permit application need not be submitted for insignificant activities listed or described in Appendix A, sources must provide a list of any activities excluded because of size, emissions rate, or production rate. The application form reflects this requirement and provides detail on the specific information that must be included. Delaware's regulation also requires applications to include information needed to determine the applicability of, or to impose, any applicable requirement, and that the emissions from insignificant activities shall be included when determining the applicability of any applicable requirement.

Paragraph (i) of Appendix A allows sources flexibility to consider as insignificant those activities for which no applicable requirement applies and which are not otherwise listed in the rule if they have the potential to emit at less than the following aggregate rates: 25 tons per year (tpy) of VOC in New Castle or Kent Counties or 50 tpy of VOC in Sussex County; 40 tpy of particulate [matter]; 15 tpy of PM-10; 40 tpy of sulfur dioxide (SO₂); and 25 tpy of nitrogen oxides (NO_x) in New Castle or Kent Counties or 100 tpy of NO_x in Sussex County. While these emission levels for insignificant activities are higher than those approved by EPA for other states, EPA believes that Delaware's program is acceptable because Delaware, in fact, requires the application to contain more detailed information about these activities than many other State programs. Delaware's permit application form (#AQM-1001DD, submitted on February 9, 1994 and May 15, 1995) requires sources to identify the following information for insignificant activities based on emissions levels: the pollutant, emission rate (e.g., tons per year, pounds per day), number of units and type of source. This level of detail should ensure that Delaware has enough information to adequately establish permitting requirements and the applicable requirements of the Act. Because Delaware requires an acceptable level of information in the permit application form, EPA believes that the emission thresholds established in paragraph (i) of Appendix A need not be an interim approval issue for Delaware's program. Since this decision depends on the safeguard provided by the requirements in the application form, EPA will process changes to the

application form that may reduce the quality or level of information relative to insignificant activities as a formal program revision; that is, application form revisions relative to insignificant activities will not be approved by way of an exchange of letters between EPA and the State of Delaware. Further, EPA's approval of Delaware's insignificant activities is based on Section 5(d) of Regulation No. 30 (Standard Application Form and Required Information) which states that the activities listed in Appendix A are to be included for purposes of determining whether a source is subject to the regulation. This provision ensures that the emissions levels established in paragraph (i) of Appendix A will not interfere with the determination of whether a source is major under the Clean Air Act.

Final Action

EPA is promulgating interim approval of the operating permits program submitted by the State of Delaware on November 15, 1993, with supplemental submittals on November 22, 1993, February 9, 1994, May 15, 1995, and September 5, 1995. The State of Delaware must make the changes identified in the notice of proposed rulemaking in order to fully meet the requirements of the July 21, 1992 version of part 70. (See 60 FR 48944, September 21, 1995). Delaware must adopt acid rain regulations by July 1, 1996, consistent with the commitment made in a September 5, 1995 letter to EPA.

The scope of the State's part 70 program applies to all part 70 sources ("covered sources" as defined in the State's program) within the State, except for sources of air pollution over which an Indian Tribe has jurisdiction. See, e.g., 59 FR 55813, 55815-18 (Nov. 9, 1994). The term "Indian Tribe" is defined under the CAA as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." See section 302(r) of the CAA; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

This interim approval, which may not be renewed, extends until January 5, 1998. During the interim approval period, Delaware is protected from sanctions for failure to have a fully approved Title V, part 70 program, and EPA is not obligated to promulgate, administer and enforce a federal permits program in the State. Permits issued