

Article 2 unless the source owner or operator demonstrates that the toxic air contaminant emissions from the source will not result in the exceedence of any Acceptable Source Impact Level (ASIL) contained in Appendix A of Regulation III and does not otherwise cause an air pollution problem.

These PSAPCA regulations have previously been approved as part of the Washington SIP for control of criteria pollutants. They also meet all of EPA's requirements for a permit to construct program to establish Federally enforceable limitations on new and modified stationary sources of HAP. Furthermore, the WDOE has certified that, pursuant to Washington State law, the PSAPCA regulations are at least as stringent as corresponding State regulations, in this case, WAC 173-460 which EPA is also proposing to approve. EPA is therefore proposing to approve these PSAPCA regulations under the authority of section 112(l) of the Act. Note that EPA is proposing to approve WAC 173-460 which is applicable statewide and, by State law, remains in effect in all areas of the State regardless of any local agency regulations. If PSAPCA Regulation I, Article 6 or Regulation III, Article 2 is revised or revoked, PSAPCA is approved to implement WAC 173-460 as the new source review program for HAP in PSAPCA's jurisdiction until such time as EPA approves the revision or revocation of PSAPCA's regulations.

2. Voluntary Limits on Emissions

The new section for voluntary limits on emissions (WAC 173-400-091) provides a mechanism for the owner or operator of a source to apply for, and obtain, enforceable conditions that limit the source's potential to emit. The provisions of this section are applicable, as a matter of State law, to any air contaminant and not just the criteria pollutants regulated under the EPA-approved Washington SIP. In addition to requesting approval into the SIP, WDOE has also requested approval of this section under section 112(l) of the Act for the purpose of creating Federally enforceable limitations on the potential to emit of HAP. Approval under section 112(l) is necessary because the proposed SIP approval discussed in Section II.B.4. above only extends to the control of criteria pollutants. Federally enforceable limits on criteria pollutants (i.e., VOC's or PM-10) may have the incidental effect of limiting certain HAP listed pursuant to section 112(b).¹ However,

section 112 of the Act provides the underlying authority for controlling all HAP emissions.

The EPA believes that the five approval criteria for approving State operating permit programs into the SIP, as specified in the June 28, 1989 **Federal Register** notice, are also appropriate for evaluating and approving State operating permit programs under section 112(l) of the Act. The November 3, 1993 guidance document entitled "Approaches to Creating Federally Enforceable Emissions Limits," signed by John S. Seitz, Director, OAQPS, indicated that this mechanism could be extended to create Federally enforceable limits for emissions of HAP if the program were approved pursuant to section 112(l) of the Act. The June 28, 1989 notice does not address HAP simply because it was written prior to the 1990 amendments to section 112, not because it establishes requirements unique to criteria pollutants. In addition to meeting the criteria in the June 28, 1989 notice, a State operating permit program that addresses HAP must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) allows the EPA to approve a program only if it: (1) contains adequate authority to assure compliance with any section 112 standards or requirements; (2) is supported by adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act. The EPA plans to codify the approval criteria for programs limiting potential to emit of HAP, such as State operating permit programs, through amendments to Subpart E of Part 63, the regulations promulgated to implement section 112(l) of the Act. (See 58 FR 62262, November 26, 1993.) The EPA currently anticipates that these regulatory criteria, as they apply to State operating permit programs, will mirror those set forth in the June 28, 1989 **Federal Register** notice. The EPA currently anticipates that since State operating permit programs approved pursuant to section 112(l) prior to the planned Subpart E revisions will have been approved as meeting these criteria, further approval actions for those programs will not be necessary.

The EPA believes it has authority under section 112(l) to approve programs to limit potential to emit of HAP directly under section 112(l) prior to this revision to Subpart E. The EPA is therefore proposing approval of this section now so that permitting

authorities in Washington may begin to issue Federally enforceable regulatory orders as soon as possible.

As discussed in Section II.B.4. above, EPA believes that this section meets the approval criteria specified in the June 28, 1989 **Federal Register** notice. Regarding the statutory criteria of section 112(l)(5) referred to above, the EPA believes this section contains adequate authority to assure compliance with section 112 requirements because the third criterion of the June 28, 1989 notice is met, that is, because the program does not allow for the waiver of any section 112 requirement. Sources that become minor through a permit issued pursuant to this program would still be required to meet section 112 requirements applicable to non-major sources. Regarding the requirement for adequate resources, the EPA believes WDOE has demonstrated that it can provide for adequate resources to support the synthetic minor program. Permitting authorities currently cover sources not subject to title V under a "registration" program which assesses fees adequate to cover the costs of implementing and enforcing the terms of regulatory orders issued under this section. The EPA will monitor each permitting authority's implementation of this section to ensure that adequate resources are in fact available. The EPA also believes that this section provides for an expeditious schedule for assuring compliance with section 112 requirements. This program will be used allow a source to establish a voluntary limit on potential to emit to avoid being subject to a CAA requirement applicable on a particular date. Nothing in this section would allow a source to avoid or delay compliance with a CAA requirement if it fails to obtain an appropriate Federally enforceable limit by the relevant deadline. Finally, the EPA believes it is consistent with the intent of section 112 of the Act for States to provide a mechanism through which sources may avoid classification as a major source by obtaining a Federally enforceable limit on potential to emit.

EPA therefore, proposes to approve WAC 173-400-091 under the authority of section 112(l) of the Act. Furthermore, EPA proposes that, after final approval to this section, "regulatory orders" issued pursuant to the EPA-approved WAC 173-400-091, and terms and conditions for HAP contained therein, would be enforceable by the EPA and by citizens under section 304 of the Act regardless of whether such orders were issued prior to EPA approval of this section. However, such orders would have to

¹ The EPA intends to issue guidance addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting

a source's potential to emit of HAP to below section 112 major source levels.