

applicable Clean Air Act requirements into a federally enforceable document. By consolidating all of the applicable requirements for a given air pollution source into an operating permit, the source, the public, and the state environmental agency can more easily understand what Clean Air Act requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include "major" sources of air pollution and certain other sources specified in the Clean Air Act or in the EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of "major" sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides, or particulate matter (PM₁₀); those that emit 10 tons per year of any single hazardous air pollutant (HAP) specifically listed under the Clean Air Act; or those that emit or have the potential to emit 25 tons per year or more of a combination of HAPs. In areas that are not meeting the national ambient air quality standards (NAAQS) for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification.

Why Is EPA Taking This Action?

Where a title V operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 CFR part 70, EPA granted interim approval contingent upon the state revising its program to correct the deficiencies. Because the Maryland operating permit program substantially, but not fully, met the requirements of part 70, EPA granted final interim approval of Maryland's program in a rule promulgated on July 3, 1996 (61 FR 34733). The interim approval notice described the conditions that had to be met in order for the Maryland operating permit program to receive full approval. Initially, Maryland's interim approval period, during which it was required to address its interim approval deficiencies, was scheduled to lapse two years after the effective date of the final interim approval action. However, EPA extended the interim approval period until December 1, 2001 for 86 operating permit programs, including Maryland's, in a rule promulgated on May 22, 2000 (65 FR 32035).

Maryland was unable to fully address each of the conditions it had to meet in

order to be considered for full approval by December 1, 2001. Therefore, Maryland's interim approval has lapsed and the State has suspended its implementation of an approved program pursuant to 40 CFR part 70. Lapse of the part 70 program did not cause the State's operating permit program regulations to become disapproved or rescinded, although Maryland has not implemented or enforced these provisions during the period of the lapse. On December 5, 2001 (66 FR 63236), EPA announced that the 40 CFR part 71 federal operating permit program became effective in Maryland on December 1, 2001. In that same announcement, EPA granted full delegation to Maryland to implement and enforce the 40 CFR part 71 program. The 40 CFR part 71 program will be effective in Maryland until the State is granted final full approval of its program.

On July 15, 2002, Maryland submitted to EPA amendments to its title V operating permit program. These amendments are intended to correct deficiencies identified by EPA when it granted final interim approval of Maryland's program in 1996. In addition, Maryland also made revisions to its operating permit program since its program received final interim approval in 1996. The revisions were not intended to address any of the identified interim approval deficiencies. Rather, the intent of these discretionary program changes was to improve implementation of the existing program. The approval of the discretionary program revisions is not necessary in order for Maryland to adequately address its interim approval deficiencies, nor must they be approved prior to Maryland receiving full approval.

The EPA proposed final full approval of Maryland's operating permit program on September 10, 2002 (67 FR 57496). On October 10, 2002, EPA received comments from Earthjustice pursuant to the September 10, 2002 notice of proposed rulemaking granting final full approval of Maryland's operating permit program.

It should be noted that in response to a separate, earlier action, Earthjustice provided EPA with comments regarding Maryland's permit program. As discussed above, in May 2002 EPA extended the interim approval period for Maryland, among others, until December 1, 2001. The extension was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, EPA agreed to publish a notice in the **Federal Register** that

would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** notice. That notice was published on December 11, 2000 (65 FR 77376).

In response to the December 11, 2000 notice, EPA received a March 12, 2001 letter from Earthjustice identifying what it believed to be deficiencies with respect to the Maryland title V program. The EPA notified Earthjustice in a letter dated December 14, 2001 that the Agency would not respond to Earthjustice's March 12, 2001 comments at that time but that EPA would consider the comments and provide a written response to each comment at a later date.

In its September 10, 2002 **Federal Register** notice proposing to fully approve Maryland's operating permit program, EPA stated that we did not intend to take formal action on Earthjustice's March 12, 2001 comment letter in any final rulemaking action pertaining to the final full approval. In the proposed rulemaking notice, EPA announced that it would publish a notice of deficiency (NOD) pursuant to 40 CFR 70.4(i) and 70.10(b) when we determine that a deficiency exists, or we will notify the commenter, in writing, to explain our reasons for not making a finding of deficiency.

On September 23, 2002, EPA formally responded to Earthjustice's March 12, 2001 comments. In our response, we explain that we did not agree with the Earthjustice's assertions and detail our reasons for not issuing a notice of deficiency with regard to Maryland's program. In the near future, a notice of availability will be published in the **Federal Register** notifying the public that we have responded, in writing, to these comments and how the public may obtain a copy of our responses. The EPA's September 23, 2002 letter is currently available at the following web address: (<http://www.epa.gov/air/oaqps/permits/response/maryland.pdf>).

As mentioned above, on October 10, 2002, EPA received comments from Earthjustice pursuant to the September 10, 2002 notice of proposed rulemaking granting final full approval of Maryland's operating permit program. A number of the issues raised by Earthjustice are the same as those raised in its March 12, 2001 comment letter. The October 10, 2002 letter also raised a number of issues that previously had not been raised.