

### What Action Is Being Taken by EPA?

EPA is granting final full approval to Maryland's revised part 70 operating permits program. For the reasons discussed below, EPA's final full approval is based on Maryland's satisfactory correction of the nine program deficiencies identified when EPA granted final interim approval of Maryland's operating permit program on June 3, 1996, and it also includes other revisions that Maryland has made to improve its program since receiving interim approval. The operating permit program amendments submitted by Maryland on July 15, 2002, considered together with that portion of Maryland's operating permit program that was earlier approved on an interim basis fully satisfy the minimum requirements of 40 CFR part 70 and the Clean Air Act. Furthermore, EPA has determined that Earthjustice's October 10, 2002 comments relating to Maryland's interim approval deficiencies do not identify deficiencies in Maryland's part 70 program.

In addition, EPA is responding to Earthjustice's October 10, 2002 comments alleging other deficiencies in Maryland's part 70 program, including comments related to those first made by Earthjustice on March 12, 2001 and addressed in EPA's September 23, 2002 response and comments first raised on October 10, 2002. While EPA believes it is not obligated to respond to comments that do not pertain to interim approval deficiencies in this rulemaking, EPA has concluded that none of the concerns raised in those comments constitute deficiencies in the Maryland operating permit program. If a court should determine that EPA is obligated to respond to those additional comments in order to grant final full approval to Maryland's part 70 program, then the responses set forth in this notice should be considered EPA's final action in response to those comments.

### What Were the Concerns Raised by the Commenters?

The EPA received one comment letter during the public comment period. In its October 10, 2002 letter, Earthjustice commented on the proper scope of EPA's full approval of Maryland's part 70 program. Earthjustice also commented on several specific aspects of Maryland's program, which can be grouped into three categories. First, Earthjustice commented on a number of the corrections Maryland made to its program in order to address the deficiencies that EPA previously determined must be corrected in order for the State to receive full approval of

its program. These program deficiencies, called interim approval deficiencies, were identified when EPA granted final interim approval of Maryland's program in 1996. As discussed in the notice of proposed rulemaking, Maryland was required to address each of the nine deficiencies identified by EPA in order to be eligible for full approval of its program. Second, Earthjustice commented on a number of alleged deficiencies that it first raised in its March 12, 2001 letter and that EPA addressed in the Agency's September 23, 2002 response. Finally, Earthjustice provided comments alleging, for the first time, that certain other issues constitute deficiencies in Maryland's program.

Earthjustice asserts that in order to fully approve Maryland's part 70 program, EPA must determine that the entire program complies with the Clean Air Act and part 70, and that EPA's proposal to grant full approval based solely on Maryland's correction of its interim approval deficiencies is inconsistent with section 502(d)(1) of the Clean Air Act, which authorizes EPA to approve a state operating permit program "to the extent that the program meets the requirements of [the Clean Air Act and EPA's implementing regulations]." Accordingly, Earthjustice asserts that EPA cannot grant full approval of Maryland's part 70 program without first addressing all alleged deficiencies identified by Earthjustice in its October 10, 2002 comment letter.

The EPA is aware that Earthjustice has alleged deficiencies other than those interim approval deficiencies listed in Maryland's June 3, 1996 final interim approval notice, and EPA agrees that those allegations must be addressed through appropriate actions by EPA and/or the State of Maryland. Indeed, EPA is responding to those allegations in this notice. For the reasons discussed below, however, we disagree that the deficiencies alleged in the October 10, 2001 comment letter that do not pertain to interim approval deficiencies prohibit EPA from granting full approval of Maryland's operating permit program at this time.

Title V of the Clean Air Act, 42 U.S.C. 7661–7661f, provides a framework for the development, submission and approval of state operating permit programs. Following the development and submission of a state program, the Act provides two different approval options that EPA may utilize in acting on state submissions. *See* 42 U.S.C. 7661a(d) and (g). Pursuant to section 502(d), EPA "may approve a program to the extent that the program meets the requirements of [the Clean Air Act and

implementing regulations]." The EPA may act on such program submissions by approving or disapproving, in whole or in part, the state program. If a program is disapproved, section 502(d) requires the Administrator to notify the Governor of the State of "any revisions or modifications necessary to obtain approval."

An alternative option for acting on state programs is provided by the interim approval provision of section 502(g), which states: "If a program . . . substantially meets the requirements of [title V], but is not fully approvable, the Administrator may by rule grant the program interim approval." This provision provides EPA with the authority to act on state programs that substantially, but do not fully, meet the requirements of title V and part 70. Only those program submissions that meet the requirements of eleven key program areas are eligible to receive interim approval. *See* 40 CFR 70.4(d)(3)(i)–(xi). Finally, section 502(g) directs EPA to "specify the changes that must be made before the program can receive full approval." 42 U.S.C. 7661a(g); 40 CFR 70.4(e)(3). This explicit directive encompasses another, implicit one: Once a state with interim approval corrects the specified deficiencies then it will be eligible for full program approval. The EPA believes this is so even if deficiencies have been identified sometime after final interim approval, either because the deficiencies arose after EPA granted interim approval or, if the deficiencies existed at that time, EPA failed to identify them as such in proposing to grant interim approval. Thus, the Clean Air Act clearly addresses initial title V program submissions by outlining the alternate mechanisms of sections 502(d) and 502(g). However, the statute does not specifically address Maryland's situation, where the State's interim approval has lapsed and the State has submitted a revised part 70 program, rather than an initial program.

The EPA believes that the interim approval provision, section 502(g), is not applicable to Maryland's current situation. Section 502(g) expressly provides that interim approval "shall expire" on a date certain and "may not be renewed." The EPA agreed in resolving the Sierra Club's interim approval litigation not to extend interim approvals beyond December 1, 2001, the date when Maryland's interim approval expired.

The EPA believes, however, that under section 502(d) and the notice of deficiency mechanism authorized by section 502(i), it is appropriate to grant Maryland's revised part 70 program full