

approval based solely on Maryland's correction of its interim approval deficiencies and to separately address any deficiencies alleged or identified post-interim approval. Section 502(d) requires that the Administrator, upon disapproving a state's initial program submission, formally notify the state of changes that must be made prior to full approval. Similarly, while not directly applicable here, section 502(g) requires EPA to notify a state of changes needed as conditions of full approval. It would be inconsistent with the structure of these provisions for EPA to deny full approval to Maryland's revised part 70 program because of newly alleged deficiencies, where Maryland's interim approval has lapsed but EPA has not yet had an opportunity to evaluate the allegations or provide notice of any identified deficiencies to the State.

Furthermore, the notice of deficiency mechanism authorized by section 502(i) provides a means for EPA to require a state to correct any newly identified deficiencies while granting full approval to the state's program. Section 502(i)(4) of the Act and 40 CFR 70.4(i) and 70.10 authorize EPA to issue a notice of deficiency (NOD) whenever EPA makes a determination that a permitting authority is not adequately administering or enforcing an approved part 70 program, or that the state's permit program is inadequate in any other way. Consistent with these provisions, any NOD issued by EPA will specify a reasonable time-frame for the permitting authority to correct the identified deficiency. Requiring Maryland to correct deficiencies that have been alleged or identified as recently as October 2002 in order to receive full approval would run counter to the statutory and regulatory process that is already in place to deal with newly identified program deficiencies.

As discussed above, the interim approval status of Maryland's title V operating permit program lapsed on December 1, 2001. Since that time, Maryland has been implementing the delegated federal operating permit program pursuant to 40 CFR part 71. Maryland has also addressed all of the interim approval deficiencies and has fulfilled the conditions identified by EPA in order for the State to be eligible for full approval. Denying the State's program full approval because of issues alleged as recently as October 2002 would cause disruption and further delay in the issuance of title V permits to major stationary sources in Maryland. As explained above, we do not believe that title V of the Clean Air Act requires such a result. Rather, EPA believes that in the case of Maryland, where interim

approval lapsed, the appropriate mechanism for dealing with additional deficiencies that are identified after the program received interim approval but prior to a revised program receiving full approval is twofold: full approval based solely on the State's correction of its interim approval deficiencies and, if necessary, issuance of a notice of deficiency to address any newly identified deficiencies. It should be noted that NODs may also be issued by EPA after a program has been granted full approval. Following the defined process for the identification of deficiencies and the issuance of NODs will provide the State an adequate amount of time after such findings to implement any necessary changes without unduly disrupting the entire State operating permit program. At the same time, addressing any newly identified problems separately from the full approval process will not cause these issues to go unaddressed. To the contrary, if EPA determines that any of the alleged deficiencies in Maryland's program are well-founded, it will issue a NOD and place Maryland on notice that it must promptly correct the non-interim approval deficiencies within a specified time period or face Clean Air Act sanctions and withdrawal of program approval.

Therefore, EPA disagrees with Earthjustice that the Agency must consider all alleged deficiencies prior to granting full approval of Maryland's operating permit program. Through EPA's full approval rulemaking, interested parties have had an opportunity to identify any concerns they may have with the various aspects of Maryland's title V operating permit program. In light of the above discussion, the Agency has grouped Earthjustice's comments into three categories. The first category of comments are those related to deficiencies identified by EPA when we granted final interim approval of Maryland's program in 1996. The second category are those comments that address issues regarding Maryland's program that Earthjustice raised on March 12, 2001 and for which EPA provided formal responses in a letter to Earthjustice on September 23, 2002. The final category pertains to comments raised by Earthjustice regarding portions of Maryland's program that were approved by EPA when the Agency granted final interim approval in 1996 and that were not the subject of the proposed full approval rulemaking action published on September 10, 2002. As noted above, Maryland also made regulatory amendments to its

program in addition to changes it made to address the program deficiencies identified by EPA. Earthjustice did not provide comments on any of these regulatory amendments.

Only EPA's responses to the comments related to interim approval corrections are integral to EPA's full approval of its operating permit program announced in this rulemaking. Should it be determined that EPA's consideration of the other two categories of comments in Earthjustice's October 10, 2002 letter as being outside the scope of the full approval action is inconsistent with the Clean Air Act, its implementing regulations, and the Administrative Procedures Act, 5 U.S.C. 551 *et seq.*, the Agency's responses to those comments provided below shall be considered EPA's final action in response to those comments.

#### *A. Comments Related to Interim Approval Corrections*

The following discussion responds to comments provided by Earthjustice on October 10, 2002 that pertain directly to the corrections Maryland made in order to address issues identified by EPA when it granted the State final interim approval in 1996. As discussed above, EPA believes it must respond to these comments because they are germane to this action to grant final full approval of Maryland's program. The EPA finds that Maryland has corrected all of its interim approval deficiencies.

*Comment:* The commenter believes Maryland's operating permit program regulations violate 40 CFR 70.5(c) and 40 CFR 70.5(c)(3)(i) by granting the State unfettered discretion to exempt units from permit application requirements even though they are not identified on a "list" that is approved by EPA as part of the State's program.

*Response:* The EPA disagrees with the commenter's assertion that Maryland's program does not meet the minimum requirements of 40 CFR 70.5(c) regarding permit application content. Maryland's regulations at Code of Maryland Regulations (COMAR) 26.11.03.04(A) exempt permittees from the obligation to provide in their permit applications detailed emissions and operational information for specific types or categories of emission units. Maryland's regulations enumerate 13 emission units or categories that are not required to be included in permit applications. These so-called "insignificant activities" represent emission units that are expected to have very low potential emissions and are not likely to be subject to any applicable requirements. The commenter has not raised a concern with the insignificant