

with the relevant requirements of 40 CFR part 70.

While EPA now understands that such changes were not necessary, Maryland made the changes to its regulations as recommended when EPA granted final interim approval in 1996. The changes made by Maryland simply underscore the requirement that general permits must be subject to the public participation procedures and EPA and affected state review afforded permits for individual permits.

*Comment:* The commenter believes that the permit modification procedures that apply to Maryland's general permits violate 40 CFR part 70. The applicable federal regulations do not allow an individual source operating under a general permit to unilaterally request a change to the general permit and proceed to make operational changes prior to modification of the terms of the general permit.

*Response:* Maryland's regulations do not allow an individual source operating under a general permit to formally request a change to the general permit and to proceed to make operational changes prior to modification of the general permit. As discussed above, Maryland must follow all of the public participation procedures as required by the rulemaking provisions of the State's Administrative Procedures Act prior to making a change to the general permit. Subsequent to making the change to the general permit, the State would have to revise the general permit by following all of the public participation requirements required of such actions by its operating permit regulations, namely COMAR 26.11.03.07. Therefore, it is impractical for an individual source that is covered by an existing general permit to appropriately apply for a modification of the general permit that would effect that source as well as any other source covered by the general permit.

Since Maryland must initiate any action to revise the general permit, the only available mechanism for such revisions are derived from COMAR 26.11.03.20 which governs the reopening of operating permits by Maryland. Maryland's regulations indicate that such permit revision procedures as administrative amendments and minor and significant permit modifications may only be initiated by permittees. As mentioned above, individual permittees may not initiate the rulemaking procedures that are necessary to revise general permits in Maryland. It should be noted that Maryland's Administrative Procedures Act allows the public to petition the

State to request a specific rulemaking action. Thus, an individual source may petition the State to make a revision to an existing general permit, however, Maryland is not obligated in any way by its operating permit regulations to respond to such petitions.

As part of its interim approval action, EPA identified concerns with the manner in which Maryland's regulations addressed general permit modifications. Maryland's regulations had provided the State with the authority to define the appropriate permit modification procedures on a case-specific basis or within the legal construction of a general permit. EPA felt that these provisions provided too much discretion to Maryland in terms of how future modifications to general permits would proceed. In order to address the interim approval deficiency, Maryland removed the authority to define general permit modification procedures on an informal basis or as part of the framework of a general permit. In its interim approval action, EPA further directed Maryland to clarify that the procedures for making revisions to general permits are consistent with 40 CFR 70.7(e) which governs permit modifications. Maryland addressed this issue by stating in its regulations at COMAR 26.11.03.21(L) that the permit revisions procedures that apply to permits for individual sources also apply to general permits. The EPA determined in the final interim approval action that the permit modification procedures that apply to permits for individual sources are consistent with 40 CFR 70.7(e) and the minimum requirements of part 70.

The regulations at 40 CFR 70.6(d) governing general permits provide limited discussion regarding the expected or required permit modification procedures for general permits other than requiring general permits to "comply with all requirements applicable to other part 70 permits." From this reference, it is inferred in the absence of more specific regulatory language regarding general permit modification procedures, that the permit modification procedures for permits for individual sources articulated at 40 CFR 70.7(e) would be applicable to general permits. Therefore, Maryland has amended its regulations regarding the modification procedures for general permits as directed by EPA and in a manner consistent with the minimum requirements of part 70.

As discussed above, EPA did not have a complete understanding of Maryland's regulations with regard to the general permit provisions when it granted final interim approval in 1996. The

requirements of COMAR 26.11.03.21(L) are, as a practical matter, not applicable to modifications of general permits since only the State of Maryland may revise general permits by initiating its rulemaking procedures and then using its authority to reopen the existing general permit.

It should be noted that if an affected individual source were to attempt to seek a revision to an existing general permit, there would be a number of safeguards and negative ramifications that should minimize the potential for erroneous implementation of the permit revision process on the source's part. First, it is assumed that the source would submit some form of application or formal request seeking a modification to the general permit. As part of that request, Maryland's permit modification procedures requires applicants to certify that they are using the appropriate permit revision process when filing a revision request. Upon receipt of the modification request, Maryland would deny the application on grounds that the source was not authorized to request such a change to a general permit. Furthermore, if the applicant preceded to make the change it is requesting prior to the State responding to the request, the applicant would not be operating consistent with its approved permit and could face associated enforcement and penalty ramifications. The EPA confirmed this understanding of COMAR 26.11.03.21 and how Maryland would implement its general permit provisions. (See December 12, 2002 memorandum.)

*B. Comments Pertaining to Issues Raised in Earthjustice's March 12, 2002 Letter*

The following discussion responds to comments provided by Earthjustice on October 10, 2002 regarding issues that Earthjustice initially raised as part of its March 12, 2002 letter to EPA. As discussed above, EPA provided its formal responses regarding these issues to Earthjustice on September 23, 2002 and has made those responses available to the public. The Agency does not believe it is required to respond to these comments as part of its action to grant final full approval to Maryland. Nonetheless, the following responses are provided to clarify our original responses and to respond to additional points raised by Earthjustice regarding these matters in its October 10, 2002 letter.

*Comment:* The commenter believes that EPA must unequivocally determine that Ann. Code Md. 2-106 does not interfere with the public's ability to enforce permit conditions in federal