

The EPA also does not believe it is necessary at this time to require Maryland to reopen all existing permits to further clarify the six-month monitoring report requirements. If the Agency becomes aware of a particular existing permit that, based on the facts specific to that permit, warrants reopening to clarify the six-month monitoring reporting requirements, EPA will proceed with the appropriate actions to ensure the permit is revised. At this time, the Agency believes that Maryland should focus its resources on reestablishing its program and issuing the remaining initial permits.

Comment: The commenter believes Maryland's minor permit modification procedures apply to changes that must be subject to significant permit modification procedures. Specifically, the commenter is concerned that Maryland could inappropriately add new requirements to a permit or change the required test method specified in a permit via the minor modification process when such modifications could represent significant modifications.

Response: Maryland's regulations at COMAR 26.11.03.16 specify the types of changes that may qualify to be processed as minor permit modifications. One of the requirements a proposed change must meet in order to be considered a minor permit modification is that the change is not required to be processed as a significant modification. While other provisions of COMAR 26.11.03.16 identify specific types of modifications that could be processed as minor permit modifications, COMAR 26.11.03.16(B)(6) requires that all minor modifications must also meet the test that they do not represent significant permit modifications. Therefore, it is important to evaluate Maryland's regulations with respect to the criteria for significant permit modification. Maryland's criteria for significant permit modifications at COMAR 26.11.03.17 are consistent with 40 CFR 70.7(e)(4). In summary, Maryland's and EPA's regulations require any changes to a permit that represent a significant change in existing monitoring conditions and any relaxation of reporting or recordkeeping conditions must be treated as a significant modification.

According to COMAR 26.11.03.16, the addition of a new applicable monitoring, reporting, and recordkeeping requirement or the specification of a different approved test method must not be considered a significant change or relaxation of existing permit conditions in order to be considered a minor modification. If

such changes constitute a significant change or relaxation, Maryland's regulations requires the such changes to be processed as significant permit modifications.

In constructing its minor permit modification procedures, it appears that Maryland has attempted to provide more direction to permittees in terms of the types of changes that may be considered minor modifications than is provided in the federal regulations at 40 CFR 70.7(e). Other than this added specificity, COMAR 26.11.03.16 is consistent with the minor permit modification procedures expressed at 40 CFR 70.7(e)(2). As discussed above, this added detail does not authorize sources to make changes using the minor modification procedures that would otherwise be considered significant permit modifications. Furthermore, 40 CFR 70.4(b)(13) and 70.7(e) do not require permit programs to establish modification procedures that are identical to the federal requirements. Rather, state procedures must be substantially equivalent to procedures outlined in 40 CFR 70.7(e). The EPA believes that Maryland's permit modification procedures are substantially equivalent to 40 CFR 70.7(e) and provide adequate safeguards to prevent inappropriate application of the permit modification procedures.

C. Comments Related to Issues Raised in Earthjustice's October 10, 2002 Letter

The following discussion responds to comments provided by Earthjustice on October 10, 2002 regarding issues that are being identified for the first time. Earthjustice's October 10, 2002 letter raises concerns with portions of Maryland's program that were approved by EPA in 1996 and that were not the subject of the proposed full approval rulemaking action published on September 10, 2002. The Agency does not believe it is required to respond to these comments in order to grant final full approval to Maryland. Nonetheless, the following responses are provided to reinforce the merits of our approval of the relevant program provisions in 1996. In the event that a court finds that EPA is obligated to respond to these comments in order to grant final full approval to Maryland's program, then the following responses should be considered EPA's final action on the issues raised.

Comment: The commenter believes that Maryland's operating permit program regulations are unclear regarding whether all emissions units, including "insignificant" emissions units, are included in operating permits. The commenter is particularly

concerned that only "relevant" emission units are covered by operating permits.

Response: Maryland's operating permit program regulations require, pursuant to numerous provisions, that all applicable requirements be identified in permit applications and permits. The federal regulations at 40 CFR 70.3(c) indicate that permits for major sources shall include "all applicable requirements for all relevant emission units." Maryland's regulations at COMAR 26.11.03.05(A) are virtually identical to the federal regulations, including the reference to "relevant" emission units. Maryland's regulations, like the federal regulations, do not ascribe further meaning to the term "relevant" emission units. COMAR 26.11.02.01(B)(18) defines the term "emission unit" to include "a part or activity of a stationary source, including an installation, that emits or has the potential to emit a regulated air pollutant or hazardous air pollutant listed under § 112(b) of the Clean Air Act." In other words, Maryland does not limit the applicability of its operating permit program to certain types of units at major sources. In addition, like EPA's regulations at 40 CFR 70.6(a)(1), Maryland's regulations at COMAR 26.11.03.06(A)(1) require that part 70 permits assure compliance with all applicable requirements of the Clean Air Act. Thus, under the Clean Air Act, part 70 and Maryland's regulations, any permit for a major source must assure compliance with all applicable requirements for any and all emission units at that source. Maryland's regulations meet the minimum federal requirements.

Furthermore, Maryland's regulations governing permit application content at COMAR 26.11.03.03(B)(14), 26.11.03.03(E), and 26.11.04(C) require applicants to provide all information to implement and enforce any applicable requirements or determine the applicability of such requirements; determine if a source is subject to all applicable requirements; and, ensure that all applicable requirements of the Clean Air Act are included in the permit, regardless of whether or not the emission unit is a "relevant" unit or an insignificant activity as defined in Maryland's regulations. Maryland's regulations at COMAR 26.11.03.04(D) further confirms that insignificant activities or emission units are not exempt from any applicable requirements of the Clean Air Act other than those related to the amount of information applicants must provide in permit applications regarding those activities.