

The commenter expressed a concern with a specific provision of Maryland's permit regulations, COMAR 26.11.03.01(G), that affects the general applicability of the title V operating permit program. This provision indicates that major sources with title V operating permits are not required to also obtain a State operating permit for those emission units at the source covered by the title V operating permit. The commenter suggests that the language of this provision in some way implies that there are emission units at major sources that may not be "covered" by the title V operating permit even if they have applicable requirements of the Clean Air Act. In this context, the term "covered" should be interpreted to indicate that the title V operating permit reflects federally-enforceable applicable requirements of the Clean Air Act for the emission unit in question. Maryland's regulations are indicating that if an emission unit does not have any applicable requirements of the Clean Air Act that emission unit would not be "covered" by the title V permit for purposes of the major source's obligation to also obtain a State operating permit. As discussed above, Maryland's title V regulations require permits to reflect all applicable requirements of the Clean Air Act for all emission units.

In other words, an emission unit at a major source may not have any Clean Air Act requirements, but it may be subject to State-only enforceable requirements. If that is the case, the major source must seek a State operating permit to "cover" that emission unit and to reflect its State-only enforceable applicable requirement. Maryland wants to ensure that all emission units at major sources are covered by either a title V operating permit or State operating permit, with all federal applicable requirements contained in the title V operating permit and any State-only enforceable requirements reflected in the State operating permit. Pursuant to COMAR 26.11.03.05(C), Maryland may also include State-only enforceable conditions in title V permits.

*Comment:* The commenter believes Maryland's operating permit program regulations improperly allow a facility to operate pursuant to a general permit prior to the State's approval of its application.

*Response:* The federal regulations at 40 CFR 70.5(a)(2) and 70.7(a)(4) that describe the permit application review procedures indicate that, among other things, permit applications that have not been formally deemed incomplete by the permitting authority within 60 days

of receipt shall be deemed complete. These procedures as they are applied to general permits are modified by 40 CFR 70.7(a)(1)(i) in that complete applications for general permits do not have to be received prior to issuance of the subject general permit. Maryland's regulations at COMAR 26.11.03.02(C) are consistent with the federal regulations because they provide that a permit application is deemed complete within 60 days of receipt if the State has not informed the applicant that the application is incomplete or that additional information is required.

As discussed earlier, 40 CFR 70.6(d) and COMAR 26.11.03.21 which establish the procedural requirements applicable to general permits clearly indicate that general permits shall comply with all requirements applicable to permits for individual sources. This includes the application procedures of 40 CFR 70.5(a)(2) and 70.7(a)(4) and COMAR 26.11.03.02(C) that apply to permits for individual sources. The commenter points out that COMAR 26.11.03.21(H) provides that a response to each general permit application may not be provided and that the general permit may specify a reasonable time after which the application is deemed acceptable. This provision is consistent with 40 CFR 70.5(a)(2) and 70.7(a)(4) which allows for applications to be deemed acceptable after a fixed period of time if no response is provided by the permitting authority. It should be noted that COMAR 26.11.03.21(G) indicates that the State may grant a determination that a particular applicant qualifies for a general permit. Also, COMAR 26.11.03.21(I) indicates that Maryland may issue an applicant for a general permit a letter or other document approving or deny the application. Likewise, Maryland is required by COMAR 26.11.03.13(A)(4) to take action on an application for a general permit as specified in the framework of the general permit. These provisions establish the authority and expectation that the State intends to actively respond to applications for general permits much in the same manner Maryland responds to permit applications for individual sources.

In further support of this interpretation, the granting of a major source's application request for authorization to operate under a general permit does not, according to 40 CFR 70.7(d)(6)(2) and COMAR 26.11.03.21(G), represent a final permit action for purposes of judicial review. In other words, the State takes final permit action when it issues the final general permit and not when individual sources subsequently request to be covered by

the general permit. Thus, the requirements of 42 U.S.C. 7661b(c), 40 CFR 70.4(b)(6) and 70.7(a)(2) regarding the permitting authorities' obligation to take action on permit applications by issuing or denying permits within the specified time periods are not directly applicable to the general permit process. As noted above, the federal requirements for general permits anticipate that permitting authorities will take final action on permits prior to individual sources applying for coverage under the general permit. It would be impractical to expect permitting authorities to act on permit applications in a certain time frame when no such applications may be submitted. In other words, sources requiring permits would not submit applications to be covered by a general permit before the general permit exists, therefore, the permitting authority would not have permit applications to respond to until it had already fulfilled its obligation by taking final action on the general permit. Again, practical application of the procedures for general permits do not clearly align with all of the applicable requirements established for permits for individual sources.

The commenter is concerned that an applicant for a general permit that does not qualify may operate under the terms of the general permit if the State fails to respond to its general permit application in a timely fashion. The construction of Maryland's general permit provisions require the State to explicitly define the criteria by which sources may qualify for the general permit. Further, COMAR 26.11.03.21(E) limits general permits to major sources that qualify and COMAR 26.11.03.21(C) stipulates that applicants are subject to enforcement action for operating without a permit if it is determined that they do not qualify for coverage under the general permit.

The EPA appreciates the apparent tension between a number of the provisions in Maryland's regulations governing general permits, particularly with regard to COMAR 26.11.03.21(H) and the obligation of the State to actively respond to permit applications. While EPA interprets Maryland's regulations to meet the minimum requirements of the Clean Air Act and 40 CFR part 70, the Agency expects the State to employ its authority to ensure that only qualified applicants are covered by any general permits issued by Maryland. No general permits have been issued by Maryland to date and the State has indicated informally that the prospects of such issuance in the future are minimal. (See December 12, 2002 memorandum.) Should the State