

exempt major agricultural sources subject to the part 71 program due to diesel engine emissions must submit their permit applications by May 14, 2003, while all other major stationary agricultural sources must submit part 71 applications to EPA no later than August 1, 2003. On January 21, 2003, EPA began implementation of the part 71 program for major stationary sources in the Antelope Valley APCD as a result of the expiration of the program's interim approval.

II. Revisions to the Fee Payment Requirements

Part 71 requires that permit applicants submit permit fees with their applications in order for the application to be deemed complete. See § 71.5(a)(2). If a source fails to submit a timely and complete application, it may be subject to an enforcement action for operating without a permit. See § 71.7(b). Also, a source that fails to submit fees within 30 days of the due date is subject to a 50 percent penalty. See § 71.9(l)(2).

We are deferring the fee payment due date for State-exempt agricultural sources in California that are subject to the part 71 program because we believe the standard part 71 fee may significantly exceed the actual cost of administering a program for agricultural sources, and we do not have the information to complete a rulemaking to establish a different fee prior to the May 14, 2003, application deadline. The part 71 fee schedule in § 71.9(c) is designed to cover the cost of permitting more complex, industrial sources. We need additional time to evaluate the likely costs of permitting the State-exempt agricultural sources. Also, as we gain experience with the program, we will be in a better position to establish a cost-based fee. For these reasons, we are amending § 71.9(f) to extend the due date for permit fees for State-exempt agricultural sources until May 14, 2004. Unless we set a different fee amount through rulemaking before that extended date, the fee schedule in § 71.9(c)(1) would apply.

At this time the Agency has no experience with or data on the cost of permitting agricultural sources, but we expect that agricultural sources will have fewer applicable requirements and associated monitoring requirements, and they will require simpler permits than do most industrial sources. One key difference, for example, is that no State-exempt agricultural source has been issued a permit to construct emission sources associated with its agricultural operation, whereas most, if not all, nonagricultural major stationary sources of air pollution in the State have

been issued preconstruction permits. Requirements and conditions in preconstruction permits are applicable requirements that must be folded into a title V permit. In addition, State implementation plan-approved stationary source prohibitory rule requirements are mostly directed at nonagricultural operations. Similarly, few, if any, State-exempt agricultural sources would be subject to maximum achievable control technology standards. For an example of the type and complexity of nonagricultural title V permits, please see certain district permits posted on the California Air Resources Board webpage at: <http://www.arb.ca.gov/fcaa/tv/tvinfo/permits/permits.htm>.

Based on this difference in the number of applicable requirements, we believe that at every stage of the permit process, permitting agricultural sources will on average be less complex and time consuming than permitting industrial sources. For agricultural sources, the technical review of the application will be less time consuming because it will be easier to determine if all the applicable requirements are referenced in the application. Similarly, it will be easier to determine whether the source is in compliance with all of its applicable requirements and whether a compliance schedule needs to be developed in the permit. Permits that have fewer applicable requirements will require less time to develop with respect to monitoring issues which typically involves a review of the monitoring proposed by the permit applicant for each applicable requirement and a justification in the permit's statement of basis for the monitoring required in the permit. There will be fewer recordkeeping and reporting requirements tied to applicable requirements to include in the permits. Finally, because there are fewer applicable requirements and reports required by the permit, these permits should be easier for EPA to implement and enforce compared to the typical industrial source permit.

EPA also expects to develop some general permits for some State-exempt agricultural sources which would be less resource intensive to develop and implement than permits that are issued on a case-by-case basis. Although EPA has not issued any general permits, we estimate that it takes on average 328 hours to develop and issue an individual permit and 80 hours to develop and issue a general permit that would apply to many sources. See Information Collection Request for Part 70 Operating Permit Regulations, EPA Number 1587.05. One reason for the

difference in the estimates is that general permits are only appropriate for less complex sources with few applicable requirements.

Once a general permit is developed, EPA would not make individual judgments relative to the permit terms for the sources covered by the permit. The monitoring, recordkeeping, and reporting requirements of the general permit would not vary from source to source. Once the general permit has been issued after an opportunity for public participation and affected State review, EPA may grant or deny a source's request to be covered by a general permit without further public participation or affected State review. Thus, EPA would bear the cost of one public hearing at most on the permit, as opposed to the individual public hearings that can be requested for permits that are developed individually.

Once we have determined where it is appropriate to develop general permits, we will be in a position to add those costs to other data on the cost of implementing the program for agricultural sources.

In order to implement the later fee payment due date, we are also amending § 71.9(f) to remove the requirement that fees be paid at the time of the permit application in order for the applications from State-exempt agricultural sources to be considered complete.

Absent these amendments, State-exempt agricultural sources would have been required to pay fees that may substantially exceed the cost of administering the part 71 program or become subject to enforcement actions for operating without a title V permit and for failure to pay fees.

III. Direct Final Rule

EPA believes this direct final rule is necessary because the standard part 71 fee that is based on costs of permitting industrial sources may substantially exceed the cost of permitting the simpler agricultural sources, and many of these sources must submit applications and fees by May 14, 2003. Even with a direct final rulemaking, this rule will not be effective by the date permit applications are due for certain agricultural sources. Thus, applications submitted on May 14, 2003, without a payment of fees will be temporarily incomplete while this rulemaking is conducted. Once this rulemaking is completed and effective, however, applications otherwise meeting the requirements of part 71 that are submitted without fees can be deemed complete without further action by the applicant.