

Authority entered into a memorandum of Agreement dated June 1, 2000, to guide the implementation of Oregon's Green Permits program. The MOA states that implementation of the MOA will be conducted in a manner consistent with ODEQ's responsibilities under its approved, authorized or delegated programs. Therefore, Green Permits cannot be used to change SIP requirements unless the change is submitted as a SIP revision.

Third, ORS 468.126, which remains unchanged since EPA last approved Oregon's SIP, prohibits ODEQ from imposing a penalty for violation of an air, water or solid waste permit unless the source has been provided five days' advanced written notice of the violation and has not come into compliance or submitted a compliance schedule within that five-day period. By its terms, the statute does not apply to Oregon's title V program or to any program if application of the notice provision would disqualify the program from Federal delegation. Oregon has previously confirmed that, because application of the notice provision would preclude EPA approval of the Oregon SIP, no advance notice is required for violation of SIP requirements.

Fourth, ORS 468A.330, which also is unchanged since EPA last approved the Oregon SIP, sets up a technical assistance program for compliance with air regulations and states that technical assistance visits cannot result in inspections or enforcement actions. EPA has previously determined that this statute did not pose a bar to approval of Oregon's air programs based on EPA's August 12, 1994, guidance document entitled "Enforcement Response Policy for Treatment of Information Obtained Through the Clean Air Act Section 507 Small Business Assistance Program" because Oregon operates its air technical assistance program completely separate from its air enforcement program. See 60 FR 50106, 50107 (September 28, 1995).

Finally, ORS 468A.075, which is also unchanged since EPA last approved Oregon's SIP, authorizes the Oregon Environmental Quality Commission to grant variances from air contamination rules and standards. Section 110(i) of the CAA specifically precludes States from changing the requirements of the SIP except through SIP revisions approved by EPA. SIP revisions will be approved by EPA only if they meet all requirements of section 110 of the CAA and the implementing regulations at 40 CFR part 51. See CAA section 110(l); 40 CFR 51.104. Moreover, 40 CFR 51.104(d) specifically states that in

order for a variance to be considered for approval as a SIP revision, the State must submit it in accordance with the requirements of 40 CFR 51.104.

Therefore, if Oregon grants a source-specific variance to a State air regulation, which regulation has been approved as part of the Oregon SIP, EPA is not precluded from enforcing the Federally-approved SIP limit against the source. The granting of a variance by Oregon to a SIP requirement does not change the Federally-enforceable SIP requirement for that source unless and until the variance has been approved by EPA as a source-specific SIP revision.

## VI. Scope of EPA Approval

Oregon has not demonstrated authority to implement and enforce the Oregon Administrative Rules within "Indian Country" as defined in 18 U.S.C. 1151.<sup>1</sup> Therefore, this SIP approval does not extend to "Indian Country" in Oregon. See CAA sections 110(a)(2)(A) (SIP shall include enforceable emission limits), 110(a)(2)(E)(i) (State must have adequate authority under State law to carry out SIP), and 172(c)(6) (nonattainment SIPs shall include enforceable emission limits). This is consistent with EPA's previous approval of Oregon's PSD program, in which EPA specifically disapproved the program for sources within Indian Reservations in Oregon because the State had not shown it had authority to regulate such sources. See 40 CFR 52.1987(c). It is also consistent with EPA's approval of Oregon's title V operating permits program. See 59 FR 61820, 61827 (December 2, 1994) (interim approval does not extend to Indian Country); 60 FR 50106, 50106 (September 28, 1995) (full approval does not extend to Indian Country).

## VII. Summary of Action

### A. EPA Is IBRing the Following New Divisions Into the SIP

- 200 (General Air Pollution Procedures and Definitions), except sections 0020(58), 0040, 0050, 100, 110, and 120
- 202 (Ambient Air Quality Standards and PSD Increments), except section 0110

<sup>1</sup> "Indian country" is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation.

- 204 (Designation of Air Quality Areas)
- 206 (Air Pollution Emergencies)
- 209 (Public Participation)
- 210 (Stationary Source Notification Requirements)
- 212 (Stationary Source Testing and Monitoring)
- 214 (Stationary Source Reporting Requirements), except sections 0300, 0310, 0320, 0330, 0340, 0350, and 0360
- 216 (Air Contaminant Discharge Permits)
- 222 (Stationary Source Plant Site Emission Limits), except section 0060
- 224 (Major New Source Review)
- 225 (Air Quality Analysis Requirements)
- 226 (General Emission Standards)
- 228 (Requirements for Fuel Burning Equipment and Fuel Sulfur Content)
- 232 (Emission Standards for VOC Point Sources)
- 234 (Emission Standards for Wood Products Industries), excluding references to TRS—subsections 0010(25), 0010(28)(a), 0010(46), 0210(1), 0240(2), 0250(1), 250(2), 260(3)(a)(A), 260(3)(b)(A), 310(1), 320(2), 340(2), 350(1), and 360(3)(a)(A).
- 236 (Emission Standards for Specific Industries), excluding references to Fluorides—subsections 0120(1)(a), 0120(3)(a), 0120(3)(e), 0140(1) (the words "gaseous and particulate fluorides and"), 0140(1)(b), 0140(1)(c) (the sentence "A schedule for measurement of fluoride levels in forage for new plants and ambient air for new and existing plants shall be submitted."), 0140(3) (the words "and Method 13A or 13B and Method 14 or Method 14A for fluorides or other alternative method in 40 CFR 63.849), 0150(1)(d) and 0150(1)(e).
- 240 (Rules for Areas with Unique Air Quality Needs)
- 242 (Rules Applicable to the Portland Area)
- 250 (General Conformity), except section 0110
- 252 (Transportation Conformity), except subsections 0020(3), 0050(4), 0050(5)(b), 0100(3), 0100(4), 0100(5), 0100(6), 0190(5), 0200(6)(c), 0210(1)(b), 0220(1)(a), 0220(2), and 0250(2).
- 258 (Motor Vehicle Fuel Specifications)
- 262 (Residential Woodheating), except section 0050
- 266 (Field Burning Rules (Willamette Valley))
- 268 (Emission Reduction Credits)

### B: EPA Is Approving, but Not IBRing, the Following New Divisions Into the SIP

- 12 (Enforcement Procedure and Civil Penalties)
- 200–0100, 0110, and 0120 (Conflicts of Interest)
- 262–0050 (Residential Woodheating—Civil Penalties)

### C: EPA Is Taking No Action on the Following Divisions

- 14 (Procedures for Issuance, Denial, Modification, and Revocation of Green Permits)
- 200–0020(58) (Definition of Immediately)
- 200–0040 (State of Oregon Clean Air Act Implementation Plan)
- 200–0050 (Compliance Schedules)
- 202–0110 (Particle Fallout)