

may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise "federally enforceable" (e.g. standards established under sections 111 and 112 of the Clean Air Act). The permit program, at 9 VAC 5-80-820.F, requires that all "federally enforceable" permits shall contain emission limitations and other requirements that are at least as stringent as any applicable limitation in the SIP. The program also establishes that no permit shall contravene the requirements of any other permit (e.g. new source review permit) issued to a particular permittee.

Criterion 4. *The limitations, controls, and requirements of the state operating permits must be permanent, quantifiable, and otherwise enforceable as a practical matter.* The permit program defines "enforceable as a practical matter" to mean that a permit condition is permanent, quantifiable, and technically accurate and quantifiable. Also, emission limitations must provide averaging times that are at least monthly or shorter. Sufficient recordkeeping, reporting, and monitoring provisions must also be provided to ensure compliance. Furthermore, the regulation states that a permit condition must be "enforceable as a practical matter" in order to be considered "federally enforceable."

Criterion 5. *The permits are issued subject to public participation. This means that the state agrees, as part of its program, to provide EPA and the public with timely notice of the proposal and issuance of such permits, and to provide EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be federally enforceable. This process must also provide for an opportunity for public comment on the permit applications prior to the issuance of the final permit.* The "federally enforceable" permits issued under the permit program are subject to public participation. The permit program's public participation provisions at 9 VAC 5-80-1020 require that for a permit to be federally enforceable the draft permit must be subject to a 30-day public comment period that is adequately publicized. The permit program also provides the opportunity for a public hearing. The general provisions of the permit program at 9 VAC 5-80-820.F require Virginia to provide EPA with a copy of the draft permit and final permit on a timely basis.

Permits that do not undergo the public participation provisions of 9 VAC 5-80-1020 are not considered federally enforceable state operating

permits. Such permits are only enforceable by the Commonwealth of Virginia unless action is taken to otherwise confer federal enforceability on an individual permit (e.g. approval of a state permit as part of a source-specific SIP revision.) As discussed earlier, Virginia's revised state operating permit program is voluntary. Likewise, the decision to issue an operating permit that is also federally enforceable is a discretionary authority of the Commonwealth of Virginia. Therefore, only a certain number of the permits issued pursuant to Virginia's operating permit program will be "federally enforceable".

In conclusion, Virginia's operating permit program clearly satisfies the criteria for approval of a state program for the issuance of federally enforceable operating permits for purposes of limiting a source's PTE and is, therefore, approved as a SIP revision. The criteria discussed above relates to operating permit programs that are to approved as part of the SIP under section 110 of the Clean Air Act. In general, FESOP permit programs approved under a SIP relate only to those pollutants regulated under section 110, that is criteria pollutants. Virginia is also seeking approval of its state operating permit program under section 112 of the Clean Air Act for the purpose of limiting the PTE of hazardous air pollutants. The following is a discussion of EPA's criteria for approval of the permit program under section 112.

III. Evaluation of State Operating Permit Program Under Section 112 of the Act

As part of this action, EPA is approving, pursuant to section 112(l) of the Clean Air Act, the Commonwealth of Virginia's October 1, 1999 request for authority to regulate hazardous air pollutant (HAPs) through the issuance of a federally enforceable state operating permit. Approval pursuant to section 112(l) of the Act would grant the Commonwealth authority to issue federally enforceable permits which limit PTE of HAPs. The EPA has determined that the five approval criteria for approving FESOP programs into the SIP, as specified in the June 28, 1989 **Federal Register** notice referenced above, are also appropriate for evaluating and approving operating permit programs under section 112(l). The June 28, 1989 notice does not address HAPs because it was written prior to the 1990 amendments to section 112 of the Act. Since the Commonwealth's operating permits program meets the five program approval criteria for both criteria and

hazardous air pollutants, it may be used to limit the potential to emit of both criteria and hazardous air pollutants.

In addition to meeting the criteria discussed above, the Commonwealth's permit program for limiting potential to emit of HAPs must meet the statutory criteria for approval under section 112(l)(5) of the Act. This section allows EPA to approve a program only if it: (1) Contains adequate authority to assure compliance with any section 112 standard or requirement; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act.

The EPA is approving the Commonwealth's state operating permit program pursuant to section 112(l) of the Act because the program meets the applicable approval criteria in section 112(l)(5) of the Act. Regarding the statutory criteria of section 112(l)(5) of the Act, EPA believes the Commonwealth's state operating permit program contains adequate authority to assure compliance with section 112 requirements since the program does not waive any section 112 requirement(s). Sources would still be required to meet section 112 requirements applicable to non-major sources. Regarding adequate resources, the Commonwealth has included in its state operating permit program provisions for the collection of fees from sources obtaining permits. Furthermore, EPA believes that the Commonwealth's state operating permit program provides for an expeditious schedule for assuring compliance because they allow a source to establish a voluntary limit on potential to emit and avoid being subject to a federal Clean Air Act requirement applicable on a particular date. Nothing in the Commonwealth's operating permit program would allow a source to avoid or delay compliance with a federal requirement if it fails to obtain the appropriate federally enforceable limit by the relevant deadline. The Commonwealth's state operating permit program is consistent with the objectives of the section 112 program because its purpose is to enable sources to obtain federally enforceable limits on potential to emit to avoid major source classification under section 112. The EPA believes that this purpose is consistent with the overall intent of section 112.