

Review (NSR) regulations, including PSD (67 FR 80186). These revisions, which do not take effect until March 3, 2003, will change existing NSR requirements in a number of ways. States which have approved programs under 40 CFR part 51 (as Indiana now has as a result of today's action), will have up to three years in which to adopt and submit revisions implementing the new requirements.

#### **B. What Comments Did EPA Receive and What Are EPA's Responses?**

EPA received the comments described below from a number of parties, including corporations, trade associations and private citizens.

*Comment:* The proposed SIP does not comport with current EPA requirements because it does not incorporate the alternative fuel/raw material exemption of 40 CFR 51.166(b)(2)(iii)(e). The commenter contends that this omission is significant because it means that Indiana's rule fails to provide an exemption for "certain anticipated operational fluctuations, thereby potentially triggering [NSR] in Indiana for otherwise federally exempt minor modifications."

*Response:* As noted in EPA's January 15, 2003 direct final rulemaking notice, this provision may inadvertently allow changes prohibited in a previously-issued minor construction permit to qualify for the alternative fuel/raw material exemption. Indiana's regulatory language does not prevent minor sources from applying this provision when appropriate to avoid PSD applicability. As EPA also previously noted, Indiana has agreed to address this inadvertent omission within one year of the effective date of approval (68 FR 1971). EPA does not believe that this minor, inadvertent omission warrants the disapproval of the rules.

*Comment:* Indiana's rule fails to address "pollution control projects."

*Response:* Currently, federal PSD regulations provide an exemption only for pollution control projects installed at electric utility steam generating units. As a result, Indiana did not submit to EPA for approval of its provision extending the exemption to non-utility sources; and EPA, therefore, could not take any action on the State's provision.

*Comment:* The Indiana regulations include a definition of "pollution control project." In addition, Indiana regulations omit the word "utility" from the term "electric utility steam generating unit" in the pollution control project exclusion portion of the definition of "major modification" in 326 IAC 2-2-1(x)(2)(H).

*Response:* As stated above, IDEM did not submit its pollution control project provision to EPA. Therefore, this definition is merely extraneous. In addition, any comments relative to this provision are not relevant.

*Comment:* IDEM's Office of Environmental Adjudication (OEA) does not provide the same amount of time to file an appeal of a PSD determination as does EPA's Environmental Appeals Board under 40 CFR 124.19. In addition, if an appellant sought to stop construction of a facility, the OEA would require the posting of an appeal bond, something not required under the federal procedures in 40 CFR part 124.

*Response:* After communications with IDEM's Office of Legal Counsel, it is EPA's understanding that, although there is no provision for an extension of the 15-day filing period, a party may amend and supplement its timely petition for review after filing. EPA also understands that, under Indiana law, a party appealing a PSD permit to the OEA may request a stay of that permit, and that no appeal bond is required.

*Comment:* 326 IAC 2-1.1-6(a)(5) is written as if a public hearing is optional. The Indiana regulations do not meet or exceed the requirements of 40 CFR 51.166(q)(2)(iii) and do not provide informed public participation in accordance with congressional intent. There appears to be no provision under the Indiana PSD rules for the extension of comment time (see 40 CFR 124.13).

*Response:* With respect to public participation, Indiana's rules conform with applicable EPA regulations at 40 CFR 51.166. In addition, under Indiana Code 4-21.5, IDEM must individually notify potentially affected parties (which include all commentors) of its final decision. Historically, IDEM's practice has been to go beyond the minimum legal requirements by providing internet postings of applications received, permits subject to public notice and permits issued. IDEM also directly notifies potentially affected parties, which would include previous commentors and contiguous landowners. Also, IDEM has historically granted additional public comment time when it deems it necessary. 40 CFR 124.13 does not mandate that the permitting authority automatically grant additional public comment time upon any request. As a result of the above, EPA does not believe that any procedural differences which may exist between the state and federal programs warrant disapproval.

*Comment:* There is nothing in 40 CFR part 52, as it is now or as amended by this final approval, stating that Indiana is or would be an approved State to

issue PSD permits. EPA has not amended 40 CFR 52.793, which incorporated the federal PSD rules into Indiana's SIP.

*Response:* Our final action amends the SIP at 40 CFR 52.770(c)(147) to incorporate the Indiana PSD rules into the SIP.

This amendment approves the Indiana PSD program as part of the SIP, thus giving Indiana the authority to issue PSD permits under its own regulations. Our approval of the SIP, therefore, supercedes 40 CFR 52.793.

*Comment:* Indiana omitted the word "national" from the term "ambient air quality standards" in 326 IAC 2-2-5(a)(1), so as to be able to invoke 326 IAC 1-3 rather than 40 CFR part 50, the national ambient air quality standards.

*Response:* Indiana has incorporated the national ambient air quality standards from 40 CFR part 50 into 326 IAC 1-3. The omission of the word "national" has no bearing on the approvability of 326 2-2-5(a)(1).

*Comment:* Indiana regulations have no text resembling 40 CFR 50.10 and 40 CFR part 51, Appendix I, the revised 8-hour ozone standard.

*Response:* States are not currently required to address the revised ozone standard in their PSD SIPs.

*Comment:* A number of commentors asserted that EPA should not approve Indiana's current PSD program, but instead rely on the PSD/NSR rules published in the **Federal Register** on December 31, 2002. They further claimed that failure to do so would: (1) Put both the State and Indiana sources at a disadvantage; (2) subject Indiana sources to conflicting PSD obligations; (3) preclude Indiana sources from "tak[ing] advantage of the improvements" under the December 31, 2002 rules, including provisions for "plant-wide applicability limits" and "clean units;" and (4) delay implementation of new rules by three years. One commentor also noted that this makes EPA's conditional approval of Indiana's PSD program problematic because the Indiana regulations must be compared to the 2002 revisions to the Federal NSR rules when the conditional approval issue is corrected and submitted to EPA for approval.

*Response:* On September 11, 1980, EPA delegated to IDEM the authority to implement and enforce the Federal PSD program. Since that time, Indiana has devoted considerable time and energy to develop its own regulations, for approval by EPA and incorporation into Indiana's SIP. For the reasons provided in EPA's January 15, 2003 direct final rulemaking and in today's action, EPA believes that Indiana's revisions are