

approvable under the currently effective regulations at 40 CFR 51.166; and that EPA, in fact, has no choice but to approve them.

The state rules EPA is approving today are now effective as a matter of Federal and state law, providing clarity and certainty to subject Indiana sources. Once the 2002 revisions to the Federal NSR rules become effective, Indiana will then have the opportunity—if it so desires—of revising its rules and submitting them for Federal approval into the SIP. More specifically, Indiana will have up to January 2, 2006 in which to review and analyze the new Federal rules, and then determine whether to adopt and submit the same rules, or “customize” its program with “different but equivalent regulations” (67 FR 80241).

With regard to the impact of NSR revisions on the “conditional” nature of this approval, EPA notes that there is actually only one provision at issue: Indiana’s omission of rule language that would specifically exclude changes prohibited in a previously-issued minor construction permits from the alternative fuel/raw material exemption under the definition of “major modification.” In response to the commentor’s question as to how EPA could fully approve Indiana’s program once revised Federal NSR rules are in effect, EPA notes that the revised Federal NSR rules to which the commentor refers actually adopt the same approach with regard to the applicable definition, *i.e.*, that provision would not be revised. Furthermore, and given the uncertainty as to what the applicable Federal requirements may be in one year, disapproval of Indiana’s submission because of such a minor omission is not warranted.

*Comment:* Once comments have been addressed, EPA should provide an additional opportunity for public input.

*Response:* The Administrative Procedure Act guarantees opportunities for public review and comment in the SIP approval process, and we make every effort to provide opportunity for meaningful and extensive public participation. For this action, we provided a public comment period from January 15, 2003, to February 14, 2003. Once the public has commented, we must respond to issues raised, reach a final decision, and take action. Since we are responding to all comments we received regarding the SIP approval of the Indiana PSD program and we have determined that the commentors have not raised any issues warranting disapproval, we must take final action.

*Comment:* Indiana has issued a permit which does not conform with the applicable requirements.

*Response:* This comment is not relevant to today’s action.

We also received comments regarding the experience and background of the OEA judges which are not relevant to the approvability of the Indiana PSD regulations. Therefore, we are not responding to those comments in this action. In addition, a commentor requested, as a response to comments, information on previous instances of PSD injunctive relief and information on work hours invested by EPA regarding the Indiana PSD regulations. These requests are not relevant to the approvability of the Indiana PSD regulations and we are not responding to these requests in this action. Requests for information from EPA should be made using the appropriate Freedom of Information Act procedures.

### C. What Action Is EPA Taking Today?

EPA is conditionally approving the following rules as part of Indiana’s SIP: 326 IAC 2–2–1, Definitions; 326 IAC 2–2–2, Applicability; 326 IAC 2–2–3, Control technology; 326 IAC 2–2–4, Air quality analysis; 326 IAC 2–2–5, Air quality impact; 326 IAC 2–2–6, Increment consumption requirements; 326 IAC 2–2–7, Additional analysis; 326 IAC 2–2–8, Source obligation; 326 IAC 2–2–9, Innovative control technology; 326 IAC 2–2–10, Source information; 326 IAC 2–2–11, Stack height provisions; 326 IAC 2–2–12, Permit recission; 326 IAC 2–2–13, Area designation and redesignation; 326 IAC 2–2–14, Sources impacting Federal Class I areas: additional requirements; 326 IAC 2–2–15, Public participation; 326 IAC 2–2–16, Ambient air ceilings; 326 IAC 2–1.1–6, Public notice, and 326 IAC 2–1.1–8, Time periods for determination on permit applications.

As noted in EPA’s January 15, 2003 direct final rulemaking, EPA believes that it is appropriate to grant conditional approval. However, should Indiana fail to correct the identified deficiency within one year of this action, EPA will initiate withdrawal of this approval. In addition, while EPA is approving Indiana’s PSD SIP, EPA recognizes that it has a responsibility to insure that all states properly implement their preconstruction permitting programs. EPA’s approval of the State’s PSD program does not divest the Agency of the duty to continue appropriate oversight to insure that PSD determinations made by Indiana are consistent with the requirements of the CAA, EPA regulations, and the SIP. EPA’s authority to oversee PSD program

implementation is set forth in sections 113, 167, and 505(b) of the Act. For example, section 167 provides that EPA shall issue administrative orders, initiate civil actions, or take whatever other enforcement action may be necessary to prevent construction of a major stationary source that does not “conform to the requirements of” the PSD program. Similarly, section 113(a)(5) provides for administrative orders and civil actions whenever EPA finds that a State “is not acting in compliance with” any requirement or prohibition of the Act regarding construction of new or modified sources. Likewise, section 113(a)(1) provides for a range of enforcement remedies whenever EPA finds that a person is in violation of an applicable implementation plan.

Enactment of Title V of the CAA and the EPA objection opportunity provided therein has added new tools for addressing deficient new source review decisions by states. Section 505(b) requires EPA to object to the issuance of a permit issued pursuant to Title V whenever the Administrator finds during the applicable review period, either on her own initiative or in response to a citizen petition, that the permit is “not in compliance with the requirements of an applicable requirement of this Act, including the requirements of an applicable implementation plan.”

Regardless of whether EPA addresses deficient permits using objection authorities or enforcement authorities or both, EPA cannot intervene unless the state decision fails to comply with applicable requirements. Thus, EPA may not intrude upon the significant discretion granted to states under new source review programs, and will not “second guess” state decisions. Rather, in determining whether a Title V permit incorporating PSD provisions calls for EPA objection under section 505(b) or use of enforcement authorities under sections 113 and 167, EPA will consider whether the applicable substantive and procedural requirements for public review and development of supporting documentation were followed. In particular, EPA will review the process followed by the permitting authority in determining best available control technology, assessing air quality impacts, meeting Class I area requirements, and other PSD requirements, to ensure that the required SIP procedures (including public participation and Federal Land Manager consultation opportunities) were met. EPA will also review whether any determination by the permitting authority was made on reasonable