

agencies to become permitting authorities under title V. Section 501(4) of the Act defines "permitting authority" to mean both the Administrator or the air pollution control agency "authorized" by the Administrator to carry out a permit program under title V. Section 302(b) of the Act defines "air pollution control agency" to include State and local government agencies. The EPA believes the word "authorized" as used in section 501(4) may reasonably be interpreted to apply not only to instances in which EPA approves a submitted part 70 program, but also to instances in which EPA determines that a State or local air pollution control agency demonstrates that it is capable of carrying out a title V permit program even where the State has not submitted a part 70 program that has received EPA approval.

The EPA could exercise its discretion to delegate authority to administer some portion or all of a part 71 program where, for example, it makes sense to take advantage of existing expertise of the delegate agency or where it seems probable that the delegate agency's submitted part 70 program will be approved within a short time by EPA, provided in both cases that the delegate agency has the authority to administer the portion of the program that would be delegated.

Any agency that seeks to obtain delegation of a part 71 program would be required to submit a formal request for delegation, in accordance with the provisions of proposed § 71.10, and such other documentation as is necessary for review and consideration by the Administrator to make a determination that the agency or eligible Tribe has adequate legal authority and procedures to administer and enforce a part 71 program.

The EPA would adopt a flexible approach in evaluating delegation requests. The EPA would not demand that each delegate agency administer a part 71 program in precisely the same way because each delegate agency would have to comply with its own procedures, administrative codes, regulations, and laws as well as the requirements of this part.

The Governor or designee for a State, a local agency, or the Tribal governing body for an eligible Tribe, would be required to submit to EPA a written request for delegation of authority on behalf of the State or local agency or eligible Tribe pursuant to proposed § 71.10. The request would have to include a legal opinion that certifies that the State or local agency or eligible Tribe has the requisite legal authority to

implement and administer the program. The request would also have to identify the officers or agencies responsible for carrying out the State, local, or Tribal procedures, regulations, and laws.

The EPA would respond in writing to each delegation request and shall state to what extent the request has been accepted or rejected. If the request is accepted in whole or in part, the Administrator would delegate to the Governor or designee, the local agency, or Tribal governing body, the authority to carry out the accepted portions of the delegation. If the request is rejected in whole or in part, the notification shall specify the reasons for such rejection.

The terms and conditions of the delegation would be set forth in a "delegation of authority agreement" that specifies the effective date for the agreement. The delegation of authority agreement would be published in the **Federal Register** by EPA and would identify the delegate State, local, or Tribal procedures to be used for implementing and administering the program by reference to the request and to any additional submission by the Governor or designee, or Tribal governing body supplementing or modifying the State, local or Tribal procedures.

2. Full and Partial Delegation

Although EPA encourages delegate agencies to accept full delegation of all aspects of the administration of part 71 programs, there are situations where a delegate agency may be unable or unwilling to assume all responsibility for administering these programs. Where appropriate, EPA could choose to grant partial delegations as follows:

- (1) Delegation of authority may be granted for only a portion of the State or regulatory area;
- (2) Delegation of authority may be restricted to certain source categories or parts thereof; or
- (3) Authority may be delegated for selected parts of the procedural responsibility in implementing a part 71 program with EPA acting as a partner in completing the remaining actions (e.g., delegation of authority may be granted with regard to the administrative and/or technical portion of implementing the part 71 program, with EPA providing enforcement should such action become necessary);

(4) Authority may be delegated for only the acid rain portion of a title V program, or for other parts of the title V program, not including the acid rain portion.

3. Procedural Requirements for Delegation

The delegate agency would be required to provide notice to the Administrator of all applications for any permit, permit renewal, or permit revision, including any compliance plan, or any portion thereof that the Administrator determines to be necessary to review the application and permit effectively, each proposed permit, and each final permit as provided in proposed § 71.10(d). The delegate agency would also have to provide notice of each draft permit to affected States on or before the time that the delegate agency provides this notice to the public under proposed §§ 71.7(e)(4), (h), or (i) or § 71.11(d) and would be required to provide any affected State a copy of the addendum for a de minimis permit revision within 7 days of the date on which the addendum takes effect.

Affected States that receive notice pursuant to proposed § 71.8(a) could submit written recommendations and comments on the permit to the delegate agency. If the delegate agency refuses to accept the recommendations, the reasons for the refusal would have to be provided in writing to the State(s) providing the recommendations.

The EPA could waive its own and affected States' review of permits for any category of sources, except major sources, by nationwide regulation for a category of sources. The EPA could also waive its own right to review, but maintain the requirement for a delegate agency to notify affected States. During Phase II of the acid rain program, the Agency does not intend to waive its own right to review permits for affected sources under the acid rain program.

When a part 71 program has been delegated with signature authority in accordance with the provisions of this section, the Administrator could object, in writing, to a part 71 permit if the delegate agency fails to properly submit, process, or provide notice as would be required by this part or if the part 71 permit does not assure compliance with applicable requirements of the Act. If the delegate agency fails to revise the proposed permit in response to the objection, the Administrator could deny the permit or issue a permit in accordance with the part 71 program.

4. Delegation of Authority Agreement

A delegation of authority agreement would specify the terms and conditions of the delegation and would be required to include, but not be limited to:

- (1) A provision that the delegation is made in accordance with proposed § 71.10;