

EPA makes and to terminate, revise, or revoke and reissue the permit in accordance with the Administrator's objection.

(5) If the permitting authority fails to submit a proposed determination pursuant to paragraph (j)(2) of this section or fails to resolve any objection pursuant to paragraph (j)(4) of this section, the Administrator will terminate, revise, or revoke and reissue the permit after taking the following actions:

(i) Providing at least 30 days notice to the permittee in writing of the reasons for any such action. This notice may be given during the procedures in paragraphs (j)(1) through (j)(4) of this section.

(ii) Providing the permittee an opportunity for comment on the Administrator's proposed action and an opportunity for a hearing.

#### § 71.8 Affected State Review.

(a) *Notice of draft permits.* When a part 71 operating permits program becomes effective in a State or Tribal area, the permitting authority shall provide notice of each draft permit to any affected State, as defined in § 71.2, on or before the time that the permitting authority provides this notice to the public pursuant to §§ 71.7(e)(4), 71.7(h), 71.7(i) or 71.11(d) and shall 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.

(b) *Notice of refusal to accept recommendations.* Prior to issuance of the final permit, the permitting authority shall notify any affected State (and the Administrator, in the case of a program delegated pursuant to § 71.10) in writing of any refusal by the permitting authority to accept all recommendations for the proposed permit that the affected State submitted during the public or affected State review period. The notice shall include the permitting authority's reasons for not accepting any such recommendation. The permitting authority is not required to accept recommendations that are not based on applicable requirements or the requirements of this part.

(c) *Waiver of notice requirements.* The Administrator may waive the requirements of paragraph (a) of this section for any category of sources (including any class, type, or size within such category) other than major sources by regulation for a category of sources nationwide.

#### § 71.9 Permit Fees.

(a) *Fee requirement.* The owners or operators of part 71 sources shall pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs, in accordance with the procedures described in this section.

(b) *Permit program costs.* These costs include, but are not limited to, the costs of the following activities as they relate to a part 71 program:

(1) Preparing generally applicable guidance regarding the permit program or its implementation or enforcement;

(2) Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;

(3) Processing permit reopenings;

(4) General administrative costs of the permit program, including transition planning, interagency coordination, contract management, training, informational services and outreach activities, assessing and collecting fees, the tracking of permit applications, compliance certifications, and related data entry;

(5) Implementing and enforcing the terms of any part 71 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;

(6) Emissions and ambient monitoring, modeling, analyses, demonstrations, preparation of inventories, and tracking emissions, provided these activities are needed in order to issue and implement part 71 permits; and

(7) Providing direct and indirect support to small business stationary sources in determining applicable requirements and in receiving permits under this part (to the extent that these services are not provided by a State Small Business Stationary Source Technical and Environmental Compliance Assistance Program).

(c) *Establishment of fee schedule.*

(1) For part 71 programs that are administered by EPA, each part 71 source shall pay an annual fee in the amount of \$45 dollars per ton (as adjusted pursuant to the criteria set forth in paragraph (n)(1) of this section) times the total tons of the actual emissions of each regulated pollutant (for fee calculation) emitted from the source, including fugitive emissions.

(2) For part 71 programs that are delegated pursuant to § 71.10, the annual fee for each part 71 source shall be the amount specified in paragraph

(c)(1) of this section plus a surcharge of \$3 per ton per year. The surcharge will be used to defray the Agency's cost of administering program delegation.

(3) For part 71 programs that are administered by EPA with contractor assistance, the per ton fee will vary depending on the extent of contractor involvement and the cost to EPA of contractor assistance. The EPA shall establish a per ton fee that is based on the contractor costs for the specific part 71 program that is being administered, using the following formula:

$$\text{Cost per ton} = (E \times \$45) + [(1 - E) \times \$C] + \$3 \text{ surcharge}$$

Where  $E$  represents EPA's proportion of total effort (expressed as a percentage of total effort) needed to administer the part 71 program,  $1 - E$  represents the contractor's effort, and  $C$  represents the contractor assistance cost on a per ton basis. The \$3 surcharge covers EPA's cost for administering contractor permit program activities.  $C$  shall be computed by using the following formula:

$$C = [B + T + N] \text{ divided by } 12,300,000$$

Where  $B$  represents the base cost (contractor costs), where  $T$  represents travel costs, and where  $N$  represents non-personnel data management and tracking costs.

(4) For programs that are delegated in part and that also use contractor assistance, the fee shall be computed using the formula in paragraph (c)(3) of this section, provided that  $E$  represents the proportion of total effort (expressed as a percentage) expended by EPA and the delegate agency.

(5) The following emissions shall be excluded from the calculation of fees under paragraph (c)(1) of this section:

(i) The amount of a part 71 source's actual emissions of each regulated pollutant (for fee calculation) that the source emits in excess of four thousand (4,000) tpy;

(ii) A part 71 source's actual emissions of any regulated pollutant (for fee calculation) already included in the fee calculation; and

(iii) The insignificant quantities of actual emissions not required to be listed or calculated in a permit application pursuant to § 71.5(g).

(6) "Actual emissions" means the actual rate of emissions in tpy of any regulated pollutant (for fee calculation) emitted from a part 71 source over the preceding calendar year. Actual emissions shall be calculated using each emissions unit's actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year.