

of the Federal permitting regulation requires the permitting authority to define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements. Although the permit program regulations should define "prompt" for purposes of administrative efficiency and clarity, an acceptable alternative is to define "prompt" in each individual permit. The EPA believes that "prompt" should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given that this is a distinct reporting obligation under section 70.6(a)(3)(iii)(A) of the Federal permitting regulation. Where "prompt" is defined in the individual permit but not in the program regulations, EPA may veto permits that do not contain sufficiently prompt reporting of deviations. Sub-section 33-15-14-06.5.a(3)(c)[2] of the NDAC states that "prompt" will be defined in the permit consistent with chapter 33-15-01 of the NDAC, "General Provisions", and the applicable requirements.

North Dakota has the authority to issue a variance from air pollution control requirements imposed by State law (See North Dakota Century Code 23-25-03.11 and North Dakota Administrative Code 33-15-01-07.) The EPA regards these provisions as wholly external to the PROGRAM submitted for approval under part 70, and consequently is proposing to take no action on these provisions of State law. The EPA has no authority to approve provisions of State law, such as the variance provisions referred to, which are inconsistent with the Act. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. The EPA reserves the right to enforce the terms of the part 70 permit where the permitting authority purports to grant relief from the duty to comply with a part 70 permit in a manner inconsistent with part 70 procedures.

Comments noting deficiencies in the North Dakota PROGRAM were sent to the State in a letter dated December 22, 1994. The deficiencies were segregated into those that require corrective action prior to interim PROGRAM approval,

and those that require corrective action prior to full PROGRAM approval. In a letter dated January 5, 1995, the State committed to finalize and submit to EPA by February 15, 1995 all corrective actions required for interim PROGRAM approval. The State submitted these corrective actions in letters dated February 22, 1995, and March 20, 1995. EPA has reviewed these corrective actions and has determined them to be adequate to allow for interim PROGRAM approval with the following exception: Section IX of the PROGRAM submittal (Implementation of other Titles of the Act), part B.4 (Implementation Schedule) does not address case-by-case MACT under section 112(j) of the Act. The PROGRAM should require permit applications from sources subject to section 112(j) of the Act within 18 months after EPA fails to promulgate a MACT standard. Prior to final interim PROGRAM approval, the State must address how it will implement section 112(j) of the Act. The State's February 22, 1995 letter stated that it is currently in the process of adopting rules for implementation of section 112(j) of the Act which were promulgated under 40 CFR part 63, subpart B. These rules, which are being adopted by reference, are expected to be finalized by June, 1995. EPA must receive the final, adopted copy of these rules and determine them to be adequate before proceeding with final interim PROGRAM approval.

Areas in which the North Dakota PROGRAM is deficient and requires corrective action prior to full PROGRAM approval are as follows: (1) EPA believes that the insignificant emission levels listed in sub-section 33-15-14-06.4.c of the NDAC for various air contaminants are too high (emission levels are set at approximately 25% of the PSD major modification significant levels). It is possible that the total emissions from such "insignificant" emissions units may indeed be greater than the major modification significance levels or even greater than the major source threshold. EPA has issued informal guidance stating that a State's emissions caps for defining insignificant activities should generally be no more than 1-2 tons per year for criteria pollutants. Prior to full PROGRAM approval, the State must revise sub-section 33-15-14-06.4.c of the NDAC to lower the insignificant emissions unit threshold for criteria pollutants to more reasonable levels. (2) Sub-section 33-15-14-06.5.a.(1)(c) of the NDAC states, "Where the state implementation plan [SIP] or this article allows a

determination of an alternative emission limit at a title V source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process * * *." In order to implement this provision, the State must adopt specific provisions which detail how to determine that an alternative mission limit is equivalent to that in the SIP, and EPA must approve the provisions as part of the SIP. Until this can be accomplished, and prior to full PROGRAM approval, the State must delete the words "or this article" from the first line of sub-section 33-15-14-06.5.a.(1)(c) of the NDAC. (3) Sub-section 33-15-14-06.5.a.(11) of the NDAC does not include the requirements of 40 CFR 70.4(b)(12). Specifically, prior to full PROGRAM approval, sub-section 33-15-14-06.5.a.(11) of the NDAC must be revised to state that changes in emissions are allowed by this sub-section provided that they are not modifications under title I of the Act and the changes do not exceed the emissions allowed under the permit. (4) Sub-section 33-15-14-06.5.f.(1) of the NDAC states that " * * * as of the date of permit issuance, the source is considered to be in compliance with any applicable requirements * * *." EPA's permit shield provision in 40 CFR 70.6(f) requires such considerations to be dependent on compliance with the conditions of the permit. Thus, prior to full PROGRAM approval, the State must revise sub-section 33-15-14-06.5.f.(1) of the NDAC to read " * * * the department shall include in a title V permit to operate a provision stating *that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance* * * *." (5) Sub-section 33-15-14-06.5.a.(8) of the NDAC states that, "No permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit and the state implementation plan or this article." Sub-sections 33-15-14-06.5.a.(10) and 33-15-14-06.6.e.(1)(a)[2] of the NDAC are related. Currently, the State does not have an economic incentives, marketable permits or generic emissions trading program approved in its SIP, and these provisions cannot be implemented by the State. Prior to full PROGRAM approval, the State must delete "or this article" from sub-section 33-15-14-06.5.a.(8) of the NDAC, and "this article" from sub-sections 33-15-14-06.5.a.(10)