

are inconsistent with part 70. 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. 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.

Part 70 of the operating permit regulations requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) 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 this is a distinct reporting obligation under § 70.6(a)(3)(iii)(A). 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. The South Dakota PROGRAM will define prompt reporting of deviations in each permit consistent with the applicable requirements.

There are certain provisions of South Dakota's operating permit regulation for which EPA feels it is appropriate to offer clarification to ensure that they are interpreted to be consistent with part 70. These are as follows: (1) The definition of "federally enforceable" which appears at ARSD 74:36:01:01(28) reads as follows:

"Federally enforceable," all limits and conditions that are enforceable by the administrator of EPA pursuant to federal law. These limits and conditions include those requirements developed pursuant to this article, those appearing in 40 CFR 60 and 61 (July 1, 1993), requirements within the state implementation plan and permit requirements established pursuant to this article or 40 CFR 51 Subpart I (July 1, 1993). The use of this term does not impede the Department's authority under state law to enforce these limits and conditions.

This definition could be significant for determining whether a source is subject to the part 70 PROGRAM. Thus, the second sentence of the above definition cannot and should not be read to expand on the first sentence of the definition. For example, requirements developed pursuant to ARSD Article 74:36 might be, but wouldn't necessarily be, Federally enforceable. EPA's interpretation is that the requirements delineated in the second sentence of the definition are only Federally enforceable if they are enforceable by the administrator of EPA pursuant to federal law.

(2) The second sentence of ARSD 74:36:01:08(1) reads as follows: Emissions from any oil exploration or production well and its associated equipment and emissions from any pipeline compressor or pump station may not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

To be consistent with part 70, this sentence must be read as only being applicable to a determination of whether a source is major under section 112 of the Act. This language cannot be applied when determining whether a source is major under other sections of the Act.

Comments noting deficiencies in the South Dakota PROGRAM were sent to the State in a letter dated July 8, 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 August 18, 1994, the State committed to complete the regulatory process to correct both interim and full PROGRAM approval deficiencies related to its PROGRAM regulations, and submit these changes to EPA by approximately December 15, 1994. EPA responded in a letter dated October 3, 1994 that they would review all of the State's corrective actions. However, these corrective actions would be considered a material change to the PROGRAM and the date for final interim approval would be extended. The State adopted the regulatory changes on November 17, 1994, which EPA has reviewed and has determined to be adequate to allow for interim approval.

One remaining issue noted in EPA's July 8, 1994 letter that require corrective action prior to full PROGRAM approval is as follows: The PROGRAM submittal contained an Attorney General's opinion which stated that South

Dakota's criminal enforcement authorities are not equivalent to those required in part 70.11. The State's criminal enforcement statute only allows for a maximum penalty of \$1,000 for failure to obtain a permit and \$500 for violation of a permit condition. The State must adopt legislation consistent with § 70.11 prior to receiving full PROGRAM approval to allow for a maximum criminal fine of not less than \$10,000 per day per violation for knowing violation of operating permit requirements, including making a false statement and tampering with a monitoring device.

Refer to the technical support document accompanying this rulemaking for a detailed explanation of each comment and the corrective actions required of the State.

### 3. Permit Fee Demonstration

The State of South Dakota established an initial fee for regulated air pollutants below the presumptive minimum set in title V, section 502 and part 70, and was required to submit a detailed permit fee demonstration as part of its PROGRAM submittal. The basis of this fee demonstration included a workload analysis, which estimated the annual cost of running the PROGRAM in fiscal year (FY) 1995 to be \$438,215; a fee structure based on the estimated direct and indirect costs of the PROGRAM, the number of part 70 sources permitted, and the actual emissions for the previous year. The fees established for FY 1995 are as follows: rock crushers will be charged a flat fee of \$250.00; an annual administrative fee will be assessed to all major sources (based on actual emissions of each source for one calendar year), excluding rock crushers, consisting of \$100.00 for sources emitting less than 50 tons per year, \$500.00 for sources emitting 50 to less than 100 tons per year, and \$1,000.00 for sources emitting 100 tons per year or greater; and an air emission fee will be assessed to all major sources (excluding rock crushers) of \$6.10 per ton per year based on emissions from calendar year 1992 (the State will not use the 4,000 tons per year per pollutant emissions cap allowed by Act). This fee structure will be reevaluated each year. After careful review, the State of South Dakota has determined that these fees would support the South Dakota PROGRAM costs as required by 40 CFR 70.9(a).

### 4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or commitments for section 112 implementation South Dakota has demonstrated in its