

satisfied that it requires the State to issue permits which meet the requirements of this provision. While the permits do expire, the conditions they impose must be complied with during the entire term of the permit as well as during the transition to a renewal permit. NR 407.04(2) states that no permittee may continue operation of a source after the operation permit expires, unless the permittee submits a timely and complete application for renewal of the permit. Subsequently, NR 407.09(1)(f)1 requires the permittee to comply with all conditions of the permit provisions. The operating permit program provisions meet the fourth criterion for permit program approval.

Fifth Criterion

"The permits are issued subject to public participation." This means that the State agrees, as a part of its program, to provide USEPA and the public with timely notice of the proposed issuance of such permits, and to provide USEPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be federally enforceable.

Wisconsin's rules governing public participation in the air permit program for major sources in nonattainment areas are found in NR 407.07 and section 144.3925 of the 91-92 Wisconsin Statutes. These rules provide for public notification prior to permit issuance and an opportunity for public comment. The public comment procedure and commitments to follow them in issuing operating permits, which were submitted by the WDNR, are approvable as meeting the fifth criterion.

Wisconsin's operating permit regulation not only applies to criteria pollutants, but also to other air contaminants. Some of these are or will be regulated by sections 111 and 112 of the ACT. Thus, USEPA is also approving under section 112(l) of the ACT Wisconsin's State operating permits program for the purposes of creating federally enforceable limitations on the potential to emit Hazardous Air Pollutants (HAPs) regulated under section 112 of the ACT.

The June 28, 1989 document provided that USEPA would approve a State operating permit program into a SIP for the purpose of establishing federally enforceable limits on a source's potential to emit if the program met five specific requirements. This action, because it was written prior to the 1990 amendments to section 112, mainly addressed SIP programs to control criteria pollutants. Federally enforceable limits on criteria pollutants (i.e., VOCs or PM) may have the incidental effect of

limiting certain HAPs listed pursuant to section 112(b). This situation would occur when a pollutant classified as a HAP is also classified as a criteria pollutant.³

USEPA has determined that the five approval criteria for approving FESOP programs into the SIP, as specified in the June 28, 1989 **Federal Register** document and discussed above, are also appropriate for evaluating and approving the programs under Section 112(l). The June 28, 1989 document did not address HAPs because it was written prior to the 1990 amendments to section 112 and not because it established requirements unique to criteria pollutants. Hence, the five criteria are applicable to FESOP approvals under section 112(l).

In addition to meeting the criteria in the June 28, 1989 document, a FESOP program must meet the statutory criteria for approval under section 112(l)(5). section 112(l) allows USEPA to approve a program only if it (1) contains adequate authority to assure compliance with any Section 112 standards or requirements, (2) provides for adequate resources, (3) provides for an expeditious schedule for assuring compliance with section 112 requirements, and (4) is otherwise likely to satisfy the objectives of the Act.

USEPA plans to codify the approval criteria for programs limiting potential to emit HAPs in subpart E of part 63, the regulations promulgated to implement section 112(l) of the Act. USEPA currently anticipates that these criteria, as they apply to FESOP programs, will mirror those set forth in the June 28, 1989 document, with the addition that the State's authority must extend to HAPs in addition to pollutants such as VOCs and PM. USEPA currently anticipates that FESOP programs that are approved pursuant to section 112(l) prior to the subpart E revisions will have had to meet these criteria, and hence, will not be subject to any further approval action.

Regarding the statutory criteria under section 112(l), USEPA believes that Wisconsin's FESOP program contains authority to assure compliance with section 112 requirements because the third criterion of the June 28, 1989 document is met, since the program does not provide for waiving any section 112 requirement. Sources would still be required to meet section 112 requirements applicable to nonmajor sources. Regarding adequate resources,

³The USEPA intends to issue guidance addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAP to below section 112 major source levels.

Wisconsin has included in its request for approval under section 112(l) a commitment to provide adequate resources to implement and enforce the program. Fees will be collected from FESOP sources through both the Title V and FESOP process. Sources applying through the FESOP program will be charged a fee based upon actual emissions. Because the processing of a FESOP permit consumes considerably less resources than the processing of a Title V permit, the State believes that sufficient resources will be available to administer FESOP permits for those who request and qualify. USEPA believes this mechanism will be sufficient to provide for adequate resources to implement this program, and will monitor the State's implementation of the program to assure that adequate resources continue to be available.

Wisconsin's FESOP program also meets the requirement for an expeditious schedule for assuring compliance. A source seeking a voluntary limit on potential to emit is probably doing so to avoid a Federal requirement applicable on a particular date. Nothing in this program would allow a source to avoid or delay compliance with the Federal requirement if it fails to obtain the appropriate federally enforceable limit by the relevant deadline. Finally, Wisconsin's FESOP program is consistent with the objectives of the section 112 program since its purpose is to enable sources to obtain federally enforceable limits on potential to emit to avoid major source classification under section 112. USEPA believes this purpose is consistent with the overall intent of section 112.

After consideration of the material submitted by the State of Wisconsin, USEPA has determined that the Wisconsin Operating Permit Program satisfies the five criteria needed to establish federal enforceability of State operating permits, published in the **Federal Register** on June 28, 1989 (54 FR 27274), and the four additional criteria of section 112(l) of the ACT. USEPA approves the incorporation of this program into the SIP for the purposes of issuing federally enforceable operating permits. Therefore, emissions limitations and other provisions contained in operating permits issued by the State in accordance with the applicable Wisconsin SIP provisions, approved herewith, shall be federally enforceable by USEPA, and by any person in the same manner as other requirements of the SIP.