

otherwise specified in an applicable requirement. However, EPA's position is that reporting only once every six months is not sufficiently "prompt" to allow for protection of public health and safety and to provide a forewarning of potential problems. Usually, reporting within two to ten days should be sufficient for these purposes, although with more serious permit deviations, earlier reporting may be necessary. Only for sources with a low level of excess emissions, would it be appropriate to allow more than ten days to elapse before reporting. EPA may veto state permits that do not require appropriately prompt reporting.

Montana has the authority to issue a variance from emission limitations. The Clean Air Act of Montana, Section 75-2-212, Montana Code Annotated (MCA), provides that the State may grant a variance if "(a) the emissions occurring or proposed to occur do not constitute a danger to public health or safety; and (b) compliance with the rules from which exemption is sought would produce hardship without equal or greater benefits to the public." EPA regards Montana's variance provision as wholly external to the PROGRAM submitted for approval under part 70, and consequently is proposing to take no action on this provision of State law. The EPA has no authority to approve provisions of State law, such as the variance provision 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. If the State uses its variance provision strictly to establish a compliance schedule for a non-complying source that will be incorporated into a title V permit, then EPA would consider this an acceptable use of a variance provision. However, the routine process for establishing a compliance schedule is through appropriate enforcement action. 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 Montana PROGRAM were sent to the State in a letter dated October 3, 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 October 20, 1994 the State committed to address the deficiencies

that require corrective action prior to interim PROGRAM approval by January 20, 1995.

Areas in which the Montana PROGRAM is deficient and require corrective action prior to final interim PROGRAM approval are as follows: (1) Section 16.8.2004(3) of Sub-Chapter 20 allows the State to exempt sources from the requirement to obtain an air quality operating permit by establishing Federally enforceable limitations which limit the source's potential to emit. However, the State's rules do not describe the process which will be used to create these limits. Prior to interim PROGRAM approval, the State must clarify how Federally enforceable limits will be created to limit a source's potential to emit, and verify its authority to create such limits. If the State plans to create Federally enforceable limits through title V operating permits, such permits must go through all of the title V public participation requirements, including affected State review, 45-day EPA review period and EPA veto authority. (2) Section 16.8.2008(2)(j) of Sub-Chapter 20 states that the State's decision regarding issuance, renewal, revision, denial, revocation, reissuance, or termination of a permit is not effective until 30 days have elapsed from the date of the decision, and that the decision may be appealed to the board by filing a request for hearing within 30 days after the date of the decision. EPA interprets this language to mean that the 30-day period for making appeals to the board would occur after EPA's 45-day review/approval period for the proposed permit. If this is the case, any permits appealed to the board that are changed must be submitted to EPA for additional review. Prior to interim PROGRAM approval, the State must clarify whether the appeal process on the State's decisions regarding permit issuance, renewal, revision, denial, revocation, reissuance, or termination occurs before or after EPA's 45-day review/approval period. If the appeal process follows EPA's review/approval period, then language must be added to the State's permitting regulation to ensure that permits that are changed after appeal to the board are submitted to EPA for additional review. (3) Section 16.8.2008(2)(a) allows the State to terminate, or revoke and reissue, permits for continuing and substantial violations, but does not provide the full authority under section 502(b)(5)(D) of the Act which requires that state permit programs have authority to "terminate, modify, revoke and reissue permits for cause." Prior to

interim PROGRAM approval, the State must clarify that it has the authority to "terminate, modify, revoke and reissue permits for cause" pursuant to section 502(b)(5)(D) of the Act. (4) Section 16.8.2021(1)(c) of Sub-Chapter 20 states that a significant modification includes "every *significant* relaxation of permit reporting or recordkeeping terms or conditions." Section 70.7(e)(4)(i) of the Federal permitting regulation requires that *any* relaxation of reporting or recordkeeping permit terms be processed as a significant modification. Prior to interim PROGRAM approval, the State must provide an Attorney General's opinion that the language in § 16.8.2021(1)(c) of Sub-Chapter 20 regarding significant modifications will be interpreted as "every relaxation of reporting or recordkeeping permit terms", and prior to full PROGRAM approval, the word "significant" must be removed from this regulatory language.

Areas in which the Montana PROGRAM is deficient and require corrective action prior to full PROGRAM approval are as follows: (1) Section 16.8.2002(1)(d) of Sub-Chapter 20 is part of the definition of administrative permit amendment and allows for the "department's discretion" in determining whether or not a change in monitoring or reporting requirements would be as stringent as current monitoring or reporting requirements. Changes in monitoring or reporting requirements must be processed through either the minor permit modification procedures or the significant permit modification procedures, unless the change requires more frequent monitoring or reporting, in which case it can be processed through the administrative permit amendment procedures. This portion of Montana's definition does not meet the criteria of an administrative permit amendment listed in § 70.7(d)(1)(iii) of the Federal permitting regulation. Prior to full PROGRAM approval, the State must delete § 16.8.2002(1)(d) of Sub-Chapter 20, which allows for the "department's discretion" in determining whether or not a change in monitoring or reporting requirements would be as stringent as current monitoring or reporting requirements.

(2) Section 16.8.2002(1)(f) of Sub-Chapter 20 is part of the definition of administrative permit amendment and allows the State to determine if other types of permit changes not listed in the definition of administrative permit amendment can be incorporated into a permit through the administrative permit amendment process. Section 70.7(d)(1)(vi) of the Federal permitting