2/25/93

MEMORANDUM

SUBJECT: Developing Approvable State Enabling Legislation Required to Implement Title V

FROM: John S. Seitz, Director
Office of Air Quality Planning and Standards (MD-10)

TO: Air Division Director, Regions I-X

Title V of the Clean Air Act Amendments of 1990 requires that by November 15, 1993, each State submit to the Environmental Protection Agency (EPA) for approval an operating permits program that meets the requirements of title V and EPA's implementing regulations (40 CFR part 70). Although virtually all States have initiated revisions to their legislative authority to implement title V, it appears that a majority of States will need to seek at least some additional authority in their 1993 legislative sessions. The purpose of this memorandum and its attachments is to assist the Regions in identifying legislative authority issues by focussing on selected issues which have presented the most difficult and most frequent problems to the States in developing State legislation. The first attachment to this memorandum highlights these deficiencies. The second attachment, which is based on a checklist developed by an accomplished local air agency director, David Jordan of the Indianapolis Air Pollution Control Agency, provides an overview of the range of activities which a permitting authority must perform in order to implement title V. Permitting authorities may find it useful to review this list to determine whether their existing authority enables them to perform the listed functions.

This memorandum and its attachments supplement the guidance to States issued by former Assistant Administrator Rosenberg on May 21, 1991 which provided an initial "checklist" of the authorities necessary to implement title V. While the initial guidance was developed in conjunction with the May 10, 1991

proposed rule (which was substantially revised prior to promulgation), the guidance issued today is based on the final regulation.

Recognizing that it is not necessary for a State's enabling legislation to list in detail the authorities required to implement title V, EPA has encouraged States to develop legislation which grants general authority and to address implementation issues in a more detailed manner through State rulemaking. Although a "checklist" is valuable in analyzing the legislative authority of a State, it is sometimes more useful to first consider whether the existing (including newly enacted) legislation in general conveys sufficient authority to implement the requirements of title V. If so, no further legislation may be needed, although it is also necessary to review other parts of the air program legislation and other State laws (e.g., State administrative procedure act, public records laws) to confirm that there are no inappropriate restrictions on the authority granted to the air program. This approach provides States flexibility in adapting their current programs to the requirements of part 70 in a way that is responsive to particular State needs and policy choices, avoids unnecessarily consuming legislative resources to debate detailed proposals, and avoids the need to revise State legislation if certain details of EPA's rules are overturned in litigation.

States which anticipate difficulty in complying with the November 15, 1993 deadline for program submittals should contact the appropriate Regional Office. Continued State-EPA teamwork will be critical in the timely development of State operating permits programs. This is especially important not only because of the fundamental role that title V plays in implementing air quality programs, but also because sanctions are mandated by the Clean Air Act for failure to develop these programs. These sanctions can involve both the loss of Federal highway funding for the entire State and a minimum two-to-one offset ratio for emissions from newly constructed or modified sources in certain nonattainment areas.

For further information, call Kirt Cox at (919) 541-5399 or Candace Carraway at (919) 541-3189.

Attachments

cc: Air Branch Chief, Regions I-X
Regional Counsel, Regions I-X

Attachment 1

CHECKLIST FOR DEVELOPING APPROVABLE STATE ENABLING LEGISLATION

This checklist identifies the most frequently encountered and troublesome deficiencies in State legislative authority to implement title V of the Clean Air Act (Act). A more extensive list of authorities is provided in the attachment entitled "Checklist for Authority to Implement Part 70."

This checklist is organized into five major headings: program coverage; permit terms and conditions; procedures for permit issuance, renewal, reopenings, and revisions; fees; and enforcement. The discussion of each issue within these headings begins with a statement of the authority which is required by title V and/or the part 70 regulations. Sections of the Act are referenced by the word "section" followed by a three-digit number, e.g., section 112. Sections of the regulations are preceded by a section symbol, e.g., § 70.1.

For each issue, deficiencies or problem areas are identified. The deficiencies/problem areas are divided into 1) problems which would cause a State program submittal to be disapproved, and 2) problems which do not have to be resolved prior to initial program submittal but which would lead to the withdrawal of program approval if not resolved. Because some of the downstream problem areas will become important soon after State programs are approved, States are encouraged to resolve these problems prior to program submittal.

I. PROGRAM COVERAGE

A. Major Sources

Approvable permits programs must have authority to cover major sources, defined to include:

1. Major stationary sources of hazardous air pollutants, as defined in section 112(a) of the Act. These are sources with the potential to emit 10 tons per year (tpy) of any hazardous air pollutant or 25 tpy of any combination of hazardous air pollutants or a lesser quantity of a given pollutant as specified in future Environmental Protection Agency (EPA) rulemaking. For radionuclides, EPA will promulgate a separate rule which

specifies different criteria for defining "major source." [Note that these requirements will necessitate statutory revisions immediately after the promulgation of a lesser quantity cutoff if the State does not have sufficiently broad enabling legislation.]

2. Major stationary sources as defined in section 302, which are sources with the potential to emit 100 tpy of any air pollutant.

3. Sources in nonattainment areas which are major stationary sources as defined in title I, part D.

[See section 502(a); § 70.2, § 70.3(a).]

Problem Areas for Program Approval

- Statutory limitation on the pollutants which can be regulated (such as a specific list of pollutants) that is narrower than pollutants which must be covered under part 70.

- State implementation plan (SIP) and/or new source review (NSR) definitions of "major source" that have not been updated to reflect the new, varied thresholds for major sources and are incorporated by reference into the operating permits program.

- Exemption from permitting requirements of specific types or sizes of machinery/emission units which either come within the definition of major source or are components of major sources.

- Exemption of source categories subject to or soon likely to become subject to, permitting requirements (e.g., a few States have exemptions for agricultural sources and for sources constructed before a certain date).

B. Noncomplying Sources

Approvable permits programs must have authority to issue permits to sources not in compliance with applicable requirements, and permits must include compliance schedules which will bring sources into compliance [see section 502(b)(5)(A), section 504(a); § 70.6(c)(3)].

Problem Area for Program Approval

- Prohibitions on permitting sources which are not in compliance with applicable requirements.

C. Other Sources

Approvable permits programs must have authority to cover the following types of sources regardless of size:

1. Acid rain: affected sources under the acid deposition provisions of title IV. [These sources may not be exempted from permitting even if nonmajor.]

2. Sources within categories designated by EPA subsequent to notice and comment rulemaking. [This requirement provides another reason to enact broadly worded enabling legislation.]

In addition, approvable permits programs must have the authority to cover the following types of nonmajor sources unless exempted from permitting requirements by EPA rulemaking:

3. National Emission Standards for Hazardous Air Pollutants (NESHAP): sources subject to a hazardous air pollutant standard or other requirement under section 112 [except a source would not be required to obtain a permit solely on the basis of being subject to section 112(r)].

4. New Source Performance Standards (NSPS): sources subject to a NSPS or other requirement under section 111.

Sources subject to preconstruction review pursuant to the PSD program under title I, part C, or the nonattainment area NSR program under title I, part D are generally major sources which must obtain part 70 permits. Some States may elect to bring nonmajor sources into their federally-approved PSD/NSR programs. The EPA will issue guidance on whether such sources must be issued part 70 permits.

[See section 502(a); § 70.3(a).]

Problem Areas Which May Result in Withdrawal of Program Approval

- Exemption of specific types or sizes of machinery/emission units which applies to nonmajor sources which become subject to permitting requirements subsequent to program approval.

- Exemption of source categories which applies to nonmajor sources which become subject to permitting

requirements subsequent to program approval (e.g., a few States have exemptions for agricultural sources).

- Lack of authority to issue permits to nonmajor sources.
- Exemption of all nonmajor source categories on a permanent basis.

II. PERMIT TERMS AND CONDITIONS

A. Incorporating All Applicable Requirements

Permits must incorporate terms and conditions to assure compliance with all applicable requirements under the Act, including the SIP, title VI, sections 111 and 112, the sulfur dioxide allowance system and NO_x limits under the acid rain program, emission limits applicable to the source, monitoring, recordkeeping and reporting requirements, and any other federally-recognized requirements applicable to the source [see section 504(a); § 70.2, § 70.6(a)].

Problem Areas for Program Approval

- Lack of authority to incorporate into permits the requirements of a federally-promulgated implementation plan.
- Lack of authority to promptly implement new Federal requirements.
- Lack of authority to incorporate future effective requirements into permits.

B. Compliance Provisions

Approvable programs must require that all part 70 permits contain inspection, entry, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit [see section 504(c); § 70.6(c)]. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, the permit must require periodic monitoring sufficient to yield reliable data representative of

the source's compliance with the permit [see § 70.6(a)(3)(i)]. Approvable programs must have the authority to require enhanced monitoring and submissions of compliance certifications, including the completion of annual compliance certifications and specification of the compliance method to be used as the basis for the certification [see section 114(a)].

Problem Areas for Program Approval

- Lack of authority to issue permits granting the permitting authority access to, and authority to inspect, regulated activities and required records.
- Lack of authority to incorporate into permits monitoring, recordkeeping and reporting requirements as required by part 70, such as requirements for annual compliance certifications, retention of monitoring/testing records for 5-year period, or semiannual progress reports consistent with the source's schedule of compliance.
- Lack of authority to impose (through permitting) compliance requirements which require periodic monitoring or testing.
- Lack of authority to impose (through permitting) compliance requirements which incorporate averaging times (where required).
- Prohibition of the use of periodic monitoring or testing data in compliance certifications and for enforcement purposes.
- Prohibition of the use of enhanced monitoring data for compliance purposes for direct enforcement.

C. Permit Terms Which Last No More Than 5 Years

States must have authority to issue permits for a fixed term, not to exceed 5 years (except that municipal waste combustors may be issued permits for a period not to exceed 12 years) [see section 502(b)(5)(B), section 129(e); § 70.6(a)(2)].

Problem Area for Program Approval

- Requirements that permits have terms in excess of 5 years.

III. PROCEDURES FOR PERMITS ISSUANCE, RENEWAL, REOPENINGS, AND REVISIONS

A. Public Participation

Approvable programs must provide adequate procedures for public participation for initial permit issuance, significant modifications, and renewals including offering an opportunity for public comment and a hearing on draft permits [see section 502(b)(6); § 70.7(a)(1)(ii), § 70.7(h)].

Problem Areas for Program Approval

- Lack of authority for public notice concerning initial permit issuance, significant modifications, and renewals.
- Restrictions on the persons who are allowed to submit comments on draft permits.
- Restrictions on the types of permits for which public comment or the opportunity to request a hearing is provided (e.g., allowing comments solely during permit proceedings which involve new construction or toxics sources).
- Restrictions on the public availability of permit applications, compliance plans, permits, and monitoring or compliance reports [except for information entitled to confidential treatment under section 114(c) of the Act].

Problem Area Which May Result in Withdrawal of Program Approval

- No provisions for public participation in permit proceedings which involve nonmajor sources (which may become subject to permitting requirements subsequent to program approval).

B. Default Issuance

Approvable programs must not allow permits to be issued by default when the program fails to take action on the application within applicable time limits [see § 70.8(e)].

Problem Area for Program Approval

- Legislation which provides that a permit shall be issued automatically if the permitting authority does not take timely action on an application. [Such provisions may be found within the State administrative procedure act as well as within statutes governing the air program.]

C. Lapsing Permits

Approvable permits programs must have authority to enforce terms and conditions of a permit which has expired so as to assure compliance with all applicable requirements (provided there has been a timely and complete application for renewal) [see section 502(b)(5)(A); § 70.4(b)(10)].

Problem Area for Program Approval

- Provisions which render the conditions of a permit not applicable to the source after the expiration of the permit term.

D. Reopening of Permits

Approvable permits programs must have authority to revise all permits for major sources with remaining terms of 3 or more years to incorporate applicable requirements under the Act which are promulgated after issuance of the permit. Revision must be made within 18 months after promulgation, but revision is not required if the effective date of the requirement is after the expiration of the permit term. The State must be able to reopen permits when additional acid rain requirements become applicable. Approvable programs must also provide that the permitting authority may revoke and reissue permits for cause (such as for material errors in the permit) [see section 502(b)(9) and section 502(b)(5)(D); § 70.7(f), § 70.4(b)(3)(vi)].

Problem Area for Program Approval

- Lack of authority to reopen permits prior to renewal.

E. Judicial Review

States must provide an opportunity for judicial review of final permit actions in State court to the source, anyone who participated in the public comment process, and any other person who could obtain judicial review under applicable State law [see section 502(b)(6); § 70.4(b)(3)(x)]. The EPA expects that

reasonable standing restrictions may apply in actions to review permit actions in State courts, if the standing requirements are no more restrictive than those applicable under Article III of the U.S. Constitution.

The opportunity for judicial review in State court must be the exclusive means for challenging a State final permit action, and these challenges must be filed with the court within 90 days (or such shorter time as the permitting authority may require) after the final action or within 90 days (or such shorter period designated by the State) after new grounds for challenge arise [see § 70.4(b)(3)(xii)].

Problem Areas for Program Approval

- Legislation that provides a cause of action to a class of persons that does not include all those persons who meet Article III's threshold standing requirements (e.g., limiting standing to those persons who actually appeared and testified at a public hearing held on a permit).

- Limitations on parties entitled to submit comments during the public comment period.

- Failure to provide for judicial review to the applicant or the public when there is a failure to take timely action on an application (which must be considered a final permit action subject to judicial review).

- Failure to provide that the sole means for challenging a State final permit action shall be an action filed in State court within 90 days of the final permit action or when new grounds for challenge arise (or a shorter time as designated by the State).

Problem Area Which May Result in Withdrawal of Program Approval

- Failure to provide that EPA may intervene in all administrative appeals involving Phase II acid rain permits.

F. EPA Veto

Permits may not be issued over timely EPA objection [see section 502(b)(5)(F); § 70.4(b)(3)(ix)].

Problem Area for Program Approval

- Lack of authority to deny issuance of permits based on EPA objection.

G. Operational Flexibility

States must have authority to issue permits which allow changes within a permitted facility without requiring a permit revision if the changes are not modifications under any provision of title I, and the changes do not exceed the emissions allowable under the permit, provided the source provides at least 7 days notice to the State (unless the State sets a lesser time for emergencies) [see section 502(b)(10); § 70.4(b)(12)].

Problem Areas for Program Approval

- Lack of authority to allow "section 502(b)(10) changes" as defined in § 70.2 which contravene permit terms (without requiring modification) provided the changes are not modifications under title I and changes do not exceed the emissions allowable under the permit as required by § 70.4(b)(12)(i).

- Lack of authority to provide for enforceable emissions trading under an emissions cap in the permit as required by § 70.4(b)(12)(iii).

IV. FEES

A. Program Support Requirement

Approvable permits programs must collect revenue from permit fees sufficient to cover all direct and indirect costs required to develop, administer, and enforce the permits program [see section 502(b)(3)(A); § 70.9(b)(1)]. A State program which collects an amount equal to or greater than the $25 per tpy statutory presumptive minimum program costs (adjusted to reflect Consumer Price Index increases) will be approvable unless serious questions are raised as to the adequacy of the fee revenues to cover program costs [see section 502(b)(3)(B); § 70.9(b)(2)].

Problem Areas for Program Approval

- Lack of authority to collect permit fees.
- Legislative cap limiting permit fees to a level which is inadequate to fund the permits program.
- Legislative requirement to defray permits program costs with revenue from a source other than permit fees imposed on part 70 sources (e.g., license tag fees, legislative appropriations).

Problem Areas Which May Result in Withdrawal of Program Approval

- Legislative cap on permit fees which may require further legislative action to adjust the fee amount to reflect changes in program costs.
- Legislative ceilings on staffing levels or budgets.

B. Use of Fee Revenues

Fees required to be collected in order to support direct and indirect permits program costs must be spent solely on permits program [see section 502(b)(3)(C)(iii); § 70.9(a)].

Problem Area for Program Approval

- Failure to assure that the air agency will get the benefit of permit fees to support the direct and indirect costs of the permits program.

V. ENFORCEMENT

A. Civil Enforcement

States must have civil authority to enforce any applicable requirement, permit terms and conditions, permit fees, any duty to allow or carry out inspection or monitoring activities, any regulation or order issued by the State, and the requirement to obtain a permit, including authority to recover civil penalties in a maximum amount of not less than $10,000 per day per

violation [see section 502(b)(5)(E); § 70.11(a)(3)(i)]. States must have injunctive authority to restrain activity in violation of a permit and activity which presents an imminent and substantial endangerment to the public health or welfare or the environment [see § 70.11(a)(1) and (2)].

Problem Areas for Program Approval

- Maximum penalties under State law are inadequate.
- No provision for imposing penalties on a per-day per-violation basis when violation is continuing.
- State law includes mental state as an element of proof for civil violations.
- Lack of injunctive authority to restrain activity in violation of a permit.
- Lack of authority to restrain or enjoin immediately, by order or by suit in court, activity that presents an imminent and substantial endangerment to the public health or welfare or the environment.
- Limits on fines for monitoring or reporting violations below the $10,000 minimum.

B. Criminal Sanctions

States must have authority to impose criminal fines against persons who knowingly violate any applicable requirement, any permit condition or any fee or filing requirement, or who knowingly make false material statements, representations or certifications in any form in any notice or report required by a permit, or who knowingly render inaccurate any monitoring device or method required to be maintained by the permitting authority. The maximum fine must be no less than $10,000 per day per violation [see section 502(b)(5)(E); § 70.11(a)(3)(ii) and (iii)].

Problem Areas for Program Approval

- Maximum fines under State law are inadequate.
- Mental state required for establishing criminal violations is greater than Federal requirement (e.g., State statute requires intent to violate an applicable requirement).

- No provision for imposing fines on a per-day per-violation basis when violation is continuing.

C. Affirmative Defense for Emergencies

Other than allowing affirmative defenses provided for in applicable requirements (such as NSPS "emergency" provisions), States may not allow an affirmative defense to enforcement actions which is less stringent than that provided for in § 70.6(g) which allows an affirmative defense based on emergency in actions brought for noncompliance with technology-based emission limitations.

Problem Areas for Program Approval

- Affirmative defense (which is independent of any applicable requirement) is allowed in actions brought for noncompliance with health-based emissions limitations.

- Affirmative defense (which is independent of any applicable requirement) based on emergency operates as a bar to bringing an enforcement action.

Attachment 2

CHECKLIST FOR AUTHORITY TO IMPLEMENT PART 70

The core activities required of State operating permits programs by title V and 40 CFR part 70 are outlined below. To supplement their understanding of the requirements of title V and 40 CFR part 70, permitting authorities may find it useful to review this list to determine whether their existing authority enables them to perform the listed functions.

In contrast to the "Checklist for Developing Approvable State Enabling Legislation," this checklist includes many authorities which nearly all States already possess and does not distinguish between authority which must be in place in order to obtain program approval and those authorities which States may later be required to possess. By offering different approaches to the issue of enabling authority, these checklists are designed to complement one another.

PROGRAM COVERAGE AUTHORITY

- To require permits for major sources, acid rain sources, municipal waste incinerators [see § 70.3(a) and (b)].

- To issue permits to sources in violation of applicable requirements [see § 70.1(b)].

- To address, in permit applications and permits, "regulated air pollutants" (including Class I and Class II ozone depleting substances as defined in title VI and radionuclides) and pollutants for which the source is major [including pollutants listed in section 112(b)], [see § 70.2 "regulated air pollutant" definition, § 70.5(c)(3)(i)].

AIR TOXICS AUTHORITY

- To determine case-by-case maximum achievable control technology (MACT) under section 112(g) and incorporate MACT into new source permits [see § 70.6(a)(1)].

- To implement Environmental Protection Agency (EPA) established MACT for individual sources and incorporate the resulting requirements into permits

[see § 70.6(a)(1)].

- To determine MACT under section 112(j) and incorporate it into permits if EPA misses statutory deadline for determining MACT [see § 70.6(a)(1)].

- To implement the early reductions program and issue early reduction permits within 9 months of receipt of complete application [see § 70.4(b)(11)(iii)].

- To require submission of accidental release plans under section 112(r) [see § 70.6(a)].

ACID RAIN AUTHORITY

- To issue acid rain permits with a term of no more and no less than 5 years [see § 70.6(a)(2)].

- To prohibit emissions which exceed the sulfur dioxide allowances which are held by a source [see § 70.6(a)(4)].

- To ensure that the acid rain program requirements will not be modified by the permitting authority [see § 70.4(b)(3)(xiii)].

PERMIT TERMS AND CONDITIONS AUTHORITY

- To require permitted sources to comply with monitoring, recordkeeping, reporting, and compliance certification requirements [see § 70.4(b)(3)(ii)].

- To incorporate into the permit enforceable periodic monitoring or testing requirements (gap-fillers) where the SIP or other applicable requirement does not contain such a requirement [see § 70.6(a)(3)(i)(B)].

- To reopen and revise permits to incorporate applicable requirements which become applicable to major sources which have remaining permit terms of 3 or more years [see § 70.7(f)(1)(i)].

- To incorporate Federal implementation plan provisions into permits [see § 70.4(b)(3)(v)].

- To include severability clause in permits (i.e., clauses that ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit) [see § 70.6(a)(5)].

OPERATIONAL FLEXIBILITY AUTHORITY

- To incorporate alternative operating scenarios in permits [see § 70.6(a)(9)].

- To allow "section 502(b)(10) changes" which contravene permit terms (without requiring modification) provided the changes are not modifications under title I and changes do not exceed the emissions allowable under the permit [see § 70.4(b)(12)(i)].

- To allow trading among emissions units solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit, independent of otherwise applicable requirements (without requiring modification) [see § 70.4(b)(12)(iii)].

- To adopt streamlined permit modification procedures [see § 70.4(b)(13)].

- To prohibit off-permit changes in conflict with title IV, or where such changes are modifications under title I, if off-permit changes are allowed [see § 70.4(b)(15)]. [Note that there may be an alternative approach for section 112(g) changes.]

PERMIT ISSUANCE, RENEWAL, REOPENINGS AND REVISIONS AUTHORITY

- To require sources to submit permit applications within 12 months (or some earlier time period) after the source becomes subject to the permits program [see § 70.5(a)(1)].

- To issue renewable operating permits (permits must be renewable every 5 years or less) [see § 70.4(b)(3)(iii)].

- To give priority to taking action on applications for construction or modification under title I, parts C and D [see § 70.7(a)(3)].

- To terminate, modify, or revoke and reissue operating permits for cause [see § 70.4(b)(3)(vi) and § 70.7(f)(1)].

- To refrain from issuing a permit if EPA objects to its issuance [see § 70.4(b)(3)(ix), § 70.8(c) and (d)].

- To require permit renewal applications at least 6 but no longer than 18 months prior to permit expiration [see § 70.5(a)(1)(iii)].

- To prevent the default issuance of permits (e.g., if a State fails to act) [see § 70.8(e)].

- To determine application completeness within 60 days and deem the application complete if no action is taken within 60 days [see § 70.5 (a)(2)].

- To provide sources with the application shield when a complete and timely application is filed [see § 70.7(b)].

- To require the same procedures for permit renewal and permit reopenings as for issuance of initial operating permits [see § 70.7(c)(1)(i)].

- To require that permit expiration terminates a source's right to operate (except as provided by application shield provisions) [see § 70.7(c)(1)(ii)].

FEES AUTHORITY

- To charge and collect fees sufficient to fund all direct and indirect costs of the permits program [see § 70.9(a)].

- To ensure that permits program costs of State and local programs are covered solely by permit fees imposed on part 70 sources [see § 70.9(d)].

- To take enforcement actions for failure to pay applicable fees [see § 70.4(b)(3)(vii)].

NOTICE/JUDICIAL REVIEW AUTHORITY

- To provide 30-day public notice and the opportunity for public hearing and comment (with 30-day notice for public hearings) for all permit applications, significant modifications, and renewals [see § 70.7(h)].

- To make permit applications, compliance plans, permits and monitoring or compliance reports available to the public, subject to the confidentiality portion of section 114(c) of the Act [see § 70.4(b)(3)(viii)].

- To allow opportunity for judicial review in State court of final permit actions by the source, persons who participated in the permit proceedings and who would have standing under Article III of the U.S. Constitution, and any other person who could obtain judicial review under State law [see § 70.4(b)(3)(x)].

- To provide that State court challenge of final permit action is exclusive means of challenging permit terms and conditions in State court [see § 70.4(b)(3)(xii)].

- To provide that petitions for judicial review must be filed within 90 days after final permit action or some shorter time (except if such petitions are based solely on grounds arising after the deadline for judicial review) [see § 70.4(b)(3)(xii)].

- To allow opportunity for judicial review of failure of agency to take timely final action on a permit, renewal or modification [see § 70.4(b)(3)(xi)].

ENFORCEMENT AUTHORITY

- To obtain entry and inspect permitted sources to assure compliance [see § 70.6(c)(2)].

- To require compliance plans [see § 70.5(c)(8)].

- To require compliance schedules [see § 70.5(c)(8)(iii)].

- To require compliance certifications [see § 70.5(c)(9)].

- To enforce the conditions of a permit after the end of the term of the permit or after expiration (provided there has been a timely and complete application for renewal) [see § 70.4(b)(10)].

- To restrain or enjoin immediately violations which present an imminent and substantial endangerment to public health or welfare or to the environment [see § 70.11(a)(1)].

- To seek injunctive relief without first having to revoke the source's permit [see § 70.11(a)(2)].

- To recover civil penalties in a maximum amount of not less than $10,000 per day per violation [see § 70.11(a)(3)(i)].

- To recover civil penalties without proof of mental state (i.e., strict liability) [see § 70.11(a)(3)(i)].

- To recover criminal fines in a maximum amount of not less than $10,000 per day per violation against any person who knowingly violates any applicable requirement, any permit condition or any fee or filing requirement and against any person who knowingly makes any false material statement, representation or certification in any form, or who knowingly renders inaccurate any required monitoring device or method [see § 70.11(a)(3)(ii) and (iii)].

- To recover civil penalties and criminal fines on a per-day per-violation basis when the violation is continuous or when more than one violation occurs on the same day [see § 70.11(a)(3)].

- To provide that the burden of proof and degree of knowledge or intent for establishing civil and criminal liability for violations shall be no greater than required under the Act [see § 70.11(b)].