

Environmental Protection Agency

§ 72.74

(iii) The State permitting authority shall serve written notice on the Administrator of any State administrative or judicial appeal concerning as Acid Rain provision of any operating permit or denial of an Acid Rain portion of any operating permit within 30 days of the filing of the appeal.

(iv) Any State administrative permit appeals procedures shall ensure that the Administrator may intervene as a matter of right in any permit appeal involving an Acid Rain permit provision or denial of an Acid Rain permit.

(v) The State permitting authority shall serve written notice on the Administrator of any determination or order in a State administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an Acid Rain permit.

(vi) A failure of the State permitting authority to issue an Acid Rain permit in accordance with § 72.73(b)(1) or, with regard to combustion or process sources, § 74.14(b)(6) of this chapter shall be ground for filing an appeal.

[58 FR 3650, Jan. 11, 1993, as amended at 60 FR 17113, Apr. 4, 1995; 62 FR 55482, Oct. 24, 1997; 66 FR 12978, Mar. 1, 2001]

§ 72.73 State issuance of Phase II permits.

(a) *State Permit Issuance.* (1) A State that is authorized to administer and enforce an operating permit program under part 70 of this chapter and that has a State Acid Rain program accepted by the Administrator under § 72.71 shall be responsible for administering and enforcing Acid Rain permits effective in Phase II for all affected sources:

(i) That are located in the geographic area covered by the operating permits program; and

(ii) To the extent that the accepted State Acid Rain program is applicable.

(2) In administering and enforcing Acid Rain permits, the State permitting authority shall comply with the procedures for issuance, revision, renewal, and appeal of Acid Rain permits under this subpart.

(b) *Permit Issuance Deadline.* (1) A State, to the extent that it is responsible under paragraph (a) of this section as of December 31, 1997 (or such later date as the Administrator may

establish) for administering and enforcing Acid Rain permits, shall:

(i) On or before December 31, 1997, issue an Acid Rain permit for Phase II covering the affected units (other than opt-in sources) at each source in the geographic area for which the program is approved; *provided* that the designated representative of the source submitted a timely and complete Acid Rain permit application in accordance with § 72.21.

(ii) On or before January 1, 1999, for each unit subject to an Acid Rain NO_x emissions limitation, amend the Acid Rain permit under § 72.83 and add any NO_x early election plan that was approved by the Administrator under § 76.8 of this chapter and has not been terminated and reopen the Acid Rain permit and add any other Acid Rain Program nitrogen oxides requirements; *provided* that the designated representative of the affected source submitted a timely and complete Acid Rain permit application for nitrogen oxides in accordance with § 72.21.

(2) Each Acid Rain permit issued in accordance with this section shall have a term of 5 years commencing on its effective date; *provided* that, at the discretion of the permitting authority, the first Acid Rain permit for Phase II issued to a source may have a term of less than 5 years where necessary to coordinate the term of such permit with the term of an operating permit to be issued to the source under a State operating permit program. Each Acid Rain permit issued in accordance with paragraph (b)(1) of this section shall take effect by the later of January 1, 2000, or, where the permit governs a unit under § 72.6(a)(3) of this part, the deadline for monitor certification under part 75 of this chapter.

[62 FR 55483, Oct. 24, 1997]

§ 72.74 Federal issuance of Phase II permits.

(a)(1) The Administrator will be responsible for administering and enforcing Acid Rain permits for Phase II for any affected sources to the extent that a State permitting authority is not responsible, as of January 1, 1997 or such later date as the Administrator may

establish, for administering and enforcing Acid Rain permits for such sources under § 72.73(a).

(2) After and to the extent the State permitting authority becomes responsible for administering and enforcing Acid Rain permits under § 72.73(a), the Administrator will suspend federal administration of Acid Rain permits for Phase II for sources and units to the extent that they are subject to the accepted State Acid Rain program, except as provided in paragraph (b)(4) of this section.

(b)(1) The Administrator will administer and enforce Acid Rain permits effective in Phase II for sources and units during any period that the Administrator is administering and enforcing an operating permit program under part 71 of this chapter for the geographic area in which the sources and units are located.

(2) The Administrator will administer and enforce Acid Rain permits effective in Phase II for sources and units otherwise subject to a State Acid Rain program under § 72.73(a) if:

(i) The Administrator determines that the State permitting authority is not adequately administering or enforcing all or a portion of the State Acid Rain program, notifies the State permitting authority of such determination and the reasons therefore, and publishes such notice in the FEDERAL REGISTER;

(ii) The State permitting authority fails either to correct the deficiencies within a reasonable period (established by the Administrator in the notice under paragraph (b)(2)(i) of this section) after issuance of the notice or to take significant action to assure adequate administration and enforcement of the program within a reasonable period (established by the Administrator in the notice) after issuance of the notice; and

(iii) The Administrator publishes in the FEDERAL REGISTER a notice that he or she will administer and enforce Acid Rain permits effective in Phase II for sources and units subject to the State Acid Rain program or a portion of the program. The effective date of such notice shall be a reasonable period (established by the Administrator in the notice) after the issuance of the notice.

(3) When the Administrator administers and enforces Acid Rain permits under paragraph (b)(1) or (b)(2) of this section, the Administrator will administer and enforce each Acid Rain permit issued under the State Acid Rain program or portion of the program until, and except to the extent that, the permit is replaced by a permit issued under this section. After the later of the date for publication of a notice in the FEDERAL REGISTER that the State operating permit program is currently approved by the Administrator or that the State Acid Rain program or portion of the program is currently accepted by the Administrator, the Administrator will suspend federal administration of Acid Rain permits effective in Phase II for sources and units to the extent that they are subject to the State Acid Rain program or portion of the program, except as provided in paragraph (b)(4) of this section.

(4) After the State permitting authority becomes responsible for administering and enforcing Acid Rain permits effective in Phase II under § 72.73(a), the Administrator will continue to administer and enforce each Acid Rain permit issued under paragraph (a)(1), (b)(1), or (b)(2) of this section until, and except to the extent that, the permit is replaced by a permit issued under the State Acid Rain program. The State permitting authority may replace an Acid Rain permit issued under paragraph (a)(1), (b)(1), or (b)(2) of this section by issuing a permit under the State Acid Rain program by the expiration of the permit under paragraph (a)(1), (b)(1), or (b)(2) of this section. The Administrator may retain jurisdiction over the Acid Rain permits issued under paragraph (a)(1), (b)(1), or (b)(2) of this section for which the administrative or judicial review process is not complete and will address such retention of jurisdiction in a notice in the FEDERAL REGISTER.

(c) *Permit Issuance Deadline.* (1)(i) On or before January 1, 1998, the Administrator will issue an Acid Rain permit for Phase II setting forth the Acid Rain Program sulfur dioxide requirements for each affected unit (other than opt-in sources) at a source not under the

jurisdiction of a State permitting authority that is responsible, as of January 1, 1997 (or such later date as the Administrator may establish), under § 72.73(a) of this section for administering and enforcing Acid Rain permits with such requirements; *provided* that the designated representative for the source submitted a timely and complete Acid Rain permit application in accordance with § 72.21. The failure by the Administrator to issue a permit in accordance with this paragraph shall be grounds for the filing of an appeal under part 78 of this chapter.

(ii) Each Acid Rain permit issued in accordance with this section shall have a term of 5 years commencing on its effective date. Each Acid Rain permit issued in accordance with paragraph (c)(1)(i) of this section shall take effect by the later of January 1, 2000 or, where a permit governs a unit under § 72.6(a)(3), the deadline for monitor certification under part 75 of this chapter.

(2) *Nitrogen Oxides*. Not later than 6 months following submission by the designated representative of an Acid Rain permit application for nitrogen oxides, the Administrator will amend under § 72.83 the Acid Rain permit and add any NO_x early election plan that was approved under § 76.8 of this chapter and has not been terminated and reopen the Acid Rain permit for Phase II and add any other Acid Rain Program nitrogen oxides requirements for each affected source not under the jurisdiction of a State permitting authority that is responsible, as of January 1, 1997 (or such later date as the Administrator may establish), under § 72.73(a) for issuing Acid Rain permits with such requirements; *provided* that the designated representative for the source submitted a timely and complete Acid Rain permit application for nitrogen oxides in accordance with § 72.21.

(d) *Permit Issuance*. (1) The Administrator may utilize any or all of the provisions of subparts E and F of this part to administer Acid Rain permits as authorized under this section or may adopt by rulemaking portions of a State Acid Rain program in substitution of or in addition to provisions of subparts E and F of this part to admin-

ister such permits. The provisions of Acid Rain permits for Phase I or Phase II issued by the Administrator shall not be applicable requirements under part 70 of this chapter.

(2) The Administrator may delegate all or part of his or her responsibility, under this section, for administering and enforcing Phase II Acid Rain permits or opt-in permits to a State. Such delegation will be made consistent with the requirements of this part and the provisions governing delegation of a part 71 program under part 71 of this chapter.

[62 FR 55483, Oct. 24, 1997]

Subpart H—Permit Revisions

§ 72.80 General.

(a) This subpart shall govern revisions to any Acid Rain permit issued by the Administrator and to the Acid Rain portion of any operating permit issued by a State permitting authority.

(b) Notwithstanding the operating permit revision procedures specified in parts 70 and 71 of this chapter, the provisions of this subpart shall govern revision of any Acid Rain Program permit provision.

(c) A permit revision may be submitted for approval at any time. No permit revision shall affect the term of the Acid Rain permit to be revised. No permit revision shall excuse any violation of an Acid Rain Program requirement that occurred prior to the effective date of the revision.

(d) The terms of the Acid Rain permit shall apply while the permit revision is pending, except as provided in § 72.83 for administrative permit amendments.

(e) The standard requirements of § 72.9 shall not be modified or voided by a permit revision.

(f) Any permit revision involving incorporation of a compliance option that was not submitted for approval and comment during the permit issuance process or involving a change in a compliance option that was previously submitted, shall meet the requirements for applying for such compliance option under subpart D of this part and parts 74 and 76 of this chapter.