

§ 66.5

challenged by means of the timely filing of an appropriate petition, no provision of this part or part 67 or appendices A, B or C, may be challenged, reviewed or re-examined in any hearing conducted under this part or part 67. This limitation on review includes, but is not limited to:

(a) Arguments that the statute is more or less restrictive than the regulations, e.g., that exemptions other than those provided herein should be granted.

(b) Arguments that the economic model does not accurately calculate the economic benefits of noncompliance, or that parameters, terms and conditions other than those provided for in the model should be used or that evidence other than that described in the Technical Support Document for establishing inputs should be considered.

§ 66.5 Savings clause.

Proceedings under these regulations for imposition of a penalty under section 120 are in addition to any other proceedings related to permits, orders, payments, sanctions or other requirements of State or Federal law. No action under this part or part 67 shall affect in any way any administrative, civil or criminal enforcement proceeding brought under any provision of the Clean Air Act or State or local law.

§ 66.6 Effect of litigation; time limits.

(a) The existence of any litigation on the validity of these regulations shall not affect the authority of the Agency to issue notices of noncompliance or to conduct subsequent administrative proceedings under parts 66 and 67.

(b) Failure of the Environmental Appeals Board or the Presiding Officer at a hearing to meet any of the time limits contained in this part 66 and part 67 of this chapter shall not affect the validity of any proceeding under these regulations.

(c) The filing of any petition for reconsideration under this part or part 67 or the institution of EPA review of a State determination under part 67 shall not toll the accrual of noncompliance penalties. The penalty will be calculated from the date on which the

40 CFR Ch. I (7-1-05 Edition)

source owner or operator receives a notice of noncompliance.

[45 FR 50110, July 28, 1980, as amended at 57 FR 5329, Feb. 13, 1992]

Subpart B—Notice of Noncompliance

§ 66.11 Issuance of notices of noncompliance.

(a) The Administrator shall issue a notice of noncompliance to the owner or operator of any source which he determines is in violation of applicable legal requirements and which is located in a State without an approved section 120 program.

(b) The Administrator shall send a notice of noncompliance to the owner or operator of any source located in a State with an approved section 120 program when he determines as provided in part 67 that the source is in violation of applicable legal requirements and the State has failed to send a notice of noncompliance to it, or has failed to pursue diligently any subsequent steps for the assessment or collection of the penalty.

(c) Failure of EPA or a State to issue a notice of noncompliance within 30 days after discovery of a violation shall not affect the obligation of a source owner or operator to pay a noncompliance penalty but shall affect the date from which the penalty is calculated. The penalty shall be calculated from the earliest date that the owner or operator of the source received a notice of noncompliance under this section, whether issued by EPA or the State.

§ 66.12 Content of notices of noncompliance.

(a) Each notice of noncompliance shall be in writing and shall include:

(1) A specific reference to each applicable legal requirement of which the source is in violation;

(2) A brief statement of the factual basis for the finding of violation, together with a reference to any supporting materials and a statement of when and where they may be inspected;

(3) Instructions on calculating the amount of the penalty owed and the schedule for payments. Such instructions shall include (i) a statement of the date from which penalties should