

## § 66.4

## 40 CFR Ch. I (7-1-08 Edition)

motion is referred to the Administrator, all parties shall be so notified and the rules in this part referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator.

(h) *Major stationary source* means any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant regulated by EPA under the Clean Air Act.

(i) *Manual* means the *Noncompliance Penalties Instruction Manual* which accompanies these regulations. This Manual appears as appendix B to these regulations.

(j) *Owner or operator* means any person who owns, leases, operates or supervises a facility, building, structure or installation which emits or has the potential to emit any air pollutant regulated by EPA under the Act.

(k) *Potential to emit* means the capability at maximum design capacity to emit a pollutant after the application of air pollution control equipment. Annual potential shall be based on the larger of the maximum annual rated capacity of the stationary source assuming continuous operation, or on a projection of actual annual emissions. Enforceable permit conditions on the type of materials combusted or processed may be used in determining the annual potential. Fugitive emissions, to the extent quantifiable, will be considered in determining annual potential for those stationary sources whose fugitive emissions are regulated by the applicable state implementation plan.

(l) *Source* means any source of air pollution subject to applicable legal requirements as defined in paragraph (c).

(m) *Technical Support Document* means the *Noncompliance Penalties Technical Support Document* which accompanies these regulations. The Technical Support Document appears as appendix A to these regulations.

All other terms are defined as they are in the Act.

[45 FR 50110, July 28, 1980, as amended at 57 FR 5328, Feb. 13, 1992]

### § 66.4 Limitation on review of regulations.

No applicable legal requirement, which could have been reviewed or 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 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 non-compliance.

(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 non-compliance.

(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 be calculated and (ii) a copy of the Technical Support Document and the Manual;

(4) Notice of the right to petition for a hearing to challenge the finding of noncompliance or to claim an exemption; and

(5) Notice that the penalty continues to accrue during the pendency of any hearings granted under this part or Part 67.

(b) Each notice of noncompliance shall be transmitted to the source owner or operator either by personal service or by registered or certified mail, return receipt requested.

#### § 66.13 Duties of source owner or operator upon receipt of a notice of non-compliance.

(a) Within forty-five days after receiving a notice of noncompliance a source owner or operator shall either:

(1) Calculate the amount of the penalty owed and the appropriate quarterly payment schedule, as provided in the Technical Support Document and Instruction Manual, and transmit that calculation, together with supporting data sufficient to allow verification of the penalty calculation, to the Administrator; or

(2) Submit a petition for reconsideration, alleging that the source is not in violation of applicable legal requirements or that the source owner or operator is entitled to an exemption pursuant to §§ 66.31 through 66.33, or both. A source owner or operator must present both grounds in the petition if he wishes to preserve a claim to an exemption in the event that the source is found to be in violation. Issues relating to the existence of a violation or entitlement to an exemption not raised in the petition shall be deemed waived.

(b) Any submittal pursuant to this subsection shall specify the identity of the person responsible for the payment of any noncompliance penalty, and to whom any reimbursement, if necessary, shall be sent.

(c) A source owner or operator may amend any petition for reconsideration pursuant to paragraph (a) of this section within 45 days from receipt of a