

§ 72.73

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

operating permit issued by the State permitting authority that do not challenge or involve decisions or actions of the Administrator under this part or part 73, 74, 75, 76, 77, or 78 of this chapter shall be conducted according to procedures established by the State in accordance with part 70 of this chapter. Appeals of the Acid Rain portion of such a permit that challenge or involve such decisions or actions of the Administrator shall follow the procedures under part 78 of this chapter and section 307 of the Act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.

(ii) [Reserved]

(iii) The State permitting authority shall serve written notice on the Administrator of any State administrative or judicial appeal concerning an 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; 70 FR 25334, May 12, 2005]

§ 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, an 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, as amended at 70 FR 25334, May 12, 2005]

§ 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