

## ***EPA Proposes to Approve Michigan Operating Permits Program***

On October 30, 2001, the United States Environmental Protection Agency (EPA) proposed to fully approve Michigan's Clean Air Act Title V operating permits program, which requires all major stationary sources of air emissions and certain other emission sources to obtain operating permits that are subject to renewal every five years.

Title V of the Clean Air Act Amendments of 1990 requires each state to implement a program to require all major stationary sources of air emission and certain other emission sources to obtain operating permits that describe all air quality requirements applicable to each source. These permits, which are known in Michigan as Renewable Operating Permits, also generally contain monitoring, recordkeeping and reporting requirements designed to verify whether the source is in compliance with all provisions of the Renewable Operating Permit. Most existing sources subject to the Renewable Operating Permits program were required to submit applications for the permits in 1996 and 1997. A significant number of permits have been issued under the program.

The Clean Air Act requires each state to obtain EPA approval of its Renewable Operating Permit program. The Michigan Department of Environmental Quality (MDEQ) originally submitted its Renewable Operating Permit regulations to EPA for approval in 1995. EPA, however, identified eight issues that prevented EPA from granting full approval to Michigan's Renewable Operating Permit program. Consequently, EPA granted "interim approval" to the program in 1997 (62 Fed. Reg. 1387 (Jan. 10, 1997)). **[Cite to previous MECU article on this.]**

In the October 30 proposal, EPA stated that MDEQ had satisfactorily resolved all eight issues and, therefore, MDEQ's Renewable Operating Permit program could be fully approved. Specifically, EPA stated that the following issues had been resolved in the following manner:

- MDEQ revised its requirements regarding a schedule of compliance for a source that is not in compliance with all applicable requirements at the time of permit issuance to require the schedule to be at least as stringent as that contained in any judicial consent decree or administrative order.
- MDEQ amended its definition of "stationary source" to clarify that adjacent *and contiguous* operations should be considered a single stationary source.

- MDEQ amended its regulations to specify that municipal solid waste incineration units must obtain a Renewable Operating Permit even if they are not major sources.
- MDEQ revised its regulations to provide that all emissions, including emissions from insignificant emission units, must be included in a source's emissions for purposes of determining whether it is a major source subject to the Renewable Operating Permits program.
- MDEQ amended its regulations to specify that all Renewable Operating Permit applications must include a certification of compliance with all applicable requirements and a statement of the methods used for determining compliance.
- Section 5534 of the Natural Resources and Environmental Protection Act (NREPA) was repealed to eliminate an exemption from fines or penalties for violations caused by an act of God, war, strike, riot catastrophe, or other conditions where negligence or willful misconduct was not the proximate cause that EPA believed was too broad to be consistent with the Clean Air Act.
- MDEQ rescinded Rules 913 and 914, which had provided limited defenses for violations that result from startup, shutdown and malfunction conditions and which EPA believed were too broad to be consistent with the Clean Air Act.
- Michigan amended its Environmental Audit Privilege and Immunity statutes (Part 148 of NREPA) and provided Michigan Attorney General opinions that addressed several concerns EPA had with Part 148.

Because EPA considers all of the issues to be resolved, it has proposed to grant full approval to Michigan's Renewable Operating Permit program. EPA will accept comments on this proposal until November 21, 2001.

**66 Fed. Reg. 54737 (October 30, 2001)**

S. Lee Johnson