

- 212.510 Lowest Achievable Emission Rate (LAER) (Adopted 9/25/92)
- 212.600 Source Specific New Source Review Requirements (Adopted 9/25/92)
- 212.700 Source Reclassification (Adopted 9/25/92)
- 256.100 Declaration and Intent (Adopted 11/30/94)
- 256.200 Definitions (Adopted 11/30/94)
- 256.300 Prohibitions (Adopted 11/30/94)
- 256.450 Open Burning Allowed (Adopted 6/27/91)
- 256.600 Industrial, Commercial, Municipal and Research Open Burning (Adopted 8/26/87)
- 256.700 Open Burning Allowed (Adopted 11/30/94)
- 272.100 Purpose and Scope (Adopted 11/23/94)
- 272.200 Definitions (Adopted 11/23/94)
- 272.300 Ambient Air Quality Standards (Adopted 11/23/94)
- 272.500 Maximum Allowable Increases (Prevention of Significant Deterioration) (Adopted 11/23/94)
- 272.750 DER Ambient Test Methods (Adopted 9/25/92)
- 273.200 Definitions (Adopted 9/25/92)
- 273.300 Air Pollution Episodes (Adopted 9/25/92)
- 273.400 Air Alert (Adopted 9/25/92)
- 273.500 Air Warning (Adopted 9/25/92)
- 273.600 Air Emergency (Adopted 9/25/92)
- 296.100 Purpose and Scope (Adopted 11/23/94)
- 296.200 Definitions (Adopted 11/23/94)
- 296.310 General Particulate Emission Limiting Standards (Adopted 11/23/94)
- 296.320 General Pollutant Emission Limiting Standards, except (2) (Adopted 2/2/93)
- 296.330 Best Available Control Technology (BACT) (Adopted 11/23/94)
- 296.400 Specific Emission Limiting and Performance Standards (Adopted 11/23/94)
- 296.500 Reasonably Available Control Technology (RACT)—Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO<sub>x</sub>) Emitting Facilities (Adopted 11/23/94)
- 296.570 Reasonably Available Control Technology (RACT)—Requirements for Major VOC- and NO<sub>x</sub>-Emitting Facilities (Adopted 11/23/94)
- 296.600 Reasonably Available Control Technology (RACT)—Lead (Adopted 8/8/94)
- 296.601 Lead Processing Operations in General (Adopted 8/8/94)
- 296.700 Reasonably Available Control Technology (RACT)—Particulate Matter, except (2)(f) (Adopted 11/23/94)
- 296.800 Standards of Performance for New Stationary Sources (NSPS) (Adopted 11/23/94)
- 296.810 National Emission Standards for Hazardous Air Pollutants (NESHAP)—Part 61 (Adopted 11/23/94)
- 296.820 National Emission Standards for Hazardous Air Pollutants (NESHAP)—Part 63 (Adopted 11/23/94)
- 297.100 Purpose and Scope (Adopted 11/23/94)
- 297.200 Definitions (Adopted 11/23/94)
- 297.310 General Test Requirements (Adopted 11/23/94)
- 297.330 Applicable Test Procedures (Adopted 11/23/94)
- 297.340 Frequency of Compliance Tests (Adopted 11/23/94)
- 297.345 Stack Sampling Facilities Provided by the Owner of an Air Pollution Point Source (Adopted 11/23/94)
- 297.350 Determination of Process Variables (Adopted 11/23/94)
- 297.400 EPA Methods Adopted by Reference (Adopted 11/23/94)
- 297.401 EPA Test Procedures (Adopted 11/23/94)
- 297.411 DER Method 1 (Adopted 11/23/94)
- 297.412 DER Method 2 (Adopted 12/2/92)
- 297.413 DER Method 3 (Adopted 12/2/92)
- 297.414 DER Method 4 (Adopted 12/2/92)
- 297.415 DER Method 5 (Adopted 11/23/94)
- 297.416 DER Method 5A (Adopted 12/2/92)
- 297.417 DER Method 6 (Adopted 11/23/94)
- 297.418 DER Method 7 (Adopted 12/2/92)
- 297.419 DER Method 8 (Adopted 12/2/92)
- 297.420 DER Method 9 (Adopted 11/23/94)
- 297.421 DER Method 10 (Adopted 12/2/92)
- 297.422 DER Method 11 (Adopted 12/2/92)
- 297.423 DER Method 12—Determination of Inorganic Lead Emissions from Stationary Sources (Adopted 11/23/94)
- 297.424 DER Method 13 (Adopted 12/2/92)
- 297.440 Supplementary Test Procedures (Adopted 11/23/94)
- 297.450 EPA VOC Capture Efficiency Test Procedures (Adopted 11/23/94)
- 297.520 EPA Performance Specifications (Adopted 11/23/94)
- 297.570 Test Report (Adopted 11/23/94)
- 297.620 Exceptions and Approval of Alternate Procedures and Requirements (Adopted 11/23/94)

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#### 40 CFR Part 70

[OH001; FRL-5189-8]

#### Clean Air Act Proposed Approval of Operating Permit Program; Ohio

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed full approval.

**SUMMARY:** The EPA proposes full approval of the operating permit program submitted by the State of Ohio for the purpose of complying with Federal requirements which mandate that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

**DATES:** Comments on this proposed action must be received in writing by May 15, 1995.

**ADDRESSES:** Comments should be addressed to Steven Pak at the Region 5 address. Copies of the State's submittal and other supporting

information used in developing the proposed full approval are available for inspection during normal business hours at the following location: EPA Region 5, Air and Radiation Division (AE-17J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Steven Pak, EPA Region 5, Air and Radiation Division (AE-17J), 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-1497.

#### SUPPLEMENTARY INFORMATION:

##### I. Background and Purpose

As required under title V of the Clean Air Act ("the Act") as amended by the 1990 Clean Air Act Amendments, EPA promulgated rules on July 21, 1992 (57 FR 32250), which define the minimum elements of an approvable State operating permit program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of State operating permit programs. These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V and part 70 require that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. If the State's submission is materially changed during the one-year review period, 40 CFR 70.4(e)(2) allows EPA to extend the review period for no more than one year following receipt of the additional materials. Because Ohio provided EPA with additional materials that materially changed the State's Title V program submittal on September 12, 1994, November 21, 1994, December 9, 1994, and January 5, 1995, EPA has extended the review period and will work expeditiously to promulgate a final decision on the State's program.

EPA reviews State operating permit programs pursuant to section 502 of the Act and 40 CFR part 70, which together outline criteria for approval or disapproval. When a program substantially, but not fully, meets the requirements of 40 CFR part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by November 15, 1995, or by the end of an interim program, it must establish and implement a Federal operating permit program for that State.

## II. Proposed Action and Implications

### A. Analysis of State Submission

EPA has concluded that the operating permit program submitted by Ohio meets the requirements of title V and part 70 and is proposing to grant full approval to the program. For more detailed information on the analysis of the State's submission, please refer to the technical support document (TSD) included in the docket at the address noted above.

#### 1. Support Materials

Donald Schregardus, Director of the Ohio Environmental Protection Agency and the Governor of Ohio's designee, submitted Ohio's title V operating permit program to EPA on July 22, 1994. The State supplemented the submittal on September 12, 1994, November 21, 1994, December 9, 1994, and January 5, 1995. The submittal contains all required elements of 40 CFR 70.4, including a description of Ohio's operating permit program, relevant permitting program documentation, and the Attorney General's legal opinion that the laws of the State provide adequate authority to carry out all aspects of the program.

#### 2. Regulations and Program Implementation

EPA has determined that the Ohio operating permit program, including State statutes (Ohio Revised Code (ORC) 3704.035, 3704.036, 3704.05, 3704.06, 3704.99, 3745.11, and 3745.112) and regulations (Ohio Administrative Code (OAC) 3745-77 and 3745-78), meets the requirements of 40 CFR 70.2 and 70.3 for applicability; 40 CFR 70.5 for criteria which define insignificant activities<sup>1</sup> and for complete application forms; 40 CFR 70.4, 70.5, and 70.6 for permit

<sup>1</sup> Ohio includes research and development (R&D) units, as defined at Ohio Revised Code (ORC) 3704.01(P), as an insignificant activity. However, this definition of all R&D units as insignificant activities is limited in effect because an R&D unit is not exempt from the State's permit application requirements if the unit's emissions exceed one ton per year of total hazardous air pollutants or has a potential to emit more than five tons per year or twenty percent of an applicable major source threshold under the Act for any regulated air pollutant other than a HAP (OAC 3745-77-02(G)). In addition, Ohio's general provisions governing insignificant activities and emissions levels apply to R&D units. Ohio regulations provide that insignificant activities and emissions levels that are exempted because of size or production rate must be listed in the permit application and do not affect the determination of whether a stationary source is a major source (OAC 3745-77-02(G)). In addition, an applicant may not omit information, including the emissions levels for insignificant activities, that is necessary to determine the applicability of any applicable requirement, to impose any applicable requirement, or to evaluate any fee amount (OAC 3745-77-03(A)).

content (including operational flexibility); 40 CFR 70.7 and 70.8 for permit processing requirements (including public participation and minor permit modifications); and 40 CFR 70.11 for requirements for enforcement authority. The TSD contains a detailed analysis of Ohio's program and describes the manner in which the State's program meets all the operating permit program requirements of 40 CFR Part 70.

#### 3. Permit Fee Demonstration

EPA has determined that the Ohio operating permit program meets the fee requirements of 40 CFR 70.9. Ohio is adopting the presumptive minimum approach to fees outlined in 40 CFR 70.9(b)(2).

#### 4. Provisions Implementing the Requirements of Other Titles of the Act

a. *Authority for Section 112 Implementation.* In its program submittal, Ohio demonstrates adequate legal authority to implement and enforce all section 112 requirements through the Title V permit. This legal authority is contained in Ohio's enabling legislation and in regulatory provisions defining "applicable requirements" and stating that permits must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow the State to issue permits that assure compliance with all section 112 requirements.

EPA is interpreting the above legal authority to mean that Ohio is able to carry out all section 112 activities with respect to part 70 sources. For further rationale on this interpretation, please refer to the TSD.

b. *Implementation of 112(g).* EPA issued an interpretive notice on February 14, 1995 (60 FR 8333), which outlines EPA's revised interpretation of 112(g) applicability. The notice postpones the effective date of 112(g) until after EPA has promulgated a rule addressing that provision. The notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow States time to adopt rules implementing the Federal rule and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Ohio must have a federally enforceable mechanism for implementing section

112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing Federal regulations.

EPA is aware that Ohio lacks a program designed specifically to implement section 112(g). However, Ohio does have a preconstruction review program (OAC 3745-31) that can serve as an adequate implementation vehicle during the transition period because it would allow Ohio to select control measures that would meet MACT, as defined in section 112, and incorporate these measures into a federally enforceable preconstruction permit.

EPA is approving Ohio's preconstruction permitting program (OAC 3745-31) under the authority of Title V and Part 70 solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between 112(g) promulgation and adoption of a State rule implementing EPA's section 112(g) regulations. Although section 112(l) generally provides authority for approval of State air programs to implement section 112(g), Title V and section 112(g) provide for this limited approval because of the direct linkage between the implementation of section 112(g) and Title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purposes of any other provision under the Act (e.g., section 110). This approval will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. The duration of this approval is limited to 18 months following promulgation by EPA of the 112(g) rule to provide adequate time for the State to adopt regulations consistent with the Federal requirements.

c. *Program for delegation of Section 112 Standards as Promulgated.* The requirements for program approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a State program for delegation of section 112 standards, as promulgated by EPA, as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under 40 CFR part 70. Therefore, EPA is also proposing to grant approval, under section 112(l)(5) and 40 CFR 63.91, of Ohio's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated.

Because Ohio has historically accepted delegation of section 112 standards through automatic delegation, EPA proposes to approve the delegation of section 112 standards and requirements through automatic delegation. The details of this delegation mechanism will be set forth in a Memorandum of Agreement between Ohio and EPA. This approval applies to both existing and future standards but is limited to sources covered by the part 70 operating permit program.

d. *Limiting HAP Emissions Through a FESOP Program.* On October 25, 1994, EPA conditionally approved OAC 3745-35-07 for establishing a mechanism for creating federally enforceable limits on a sources potential to emit (59 FR 53586). This rulemaking, which became effective on December 27, 1994, authorizes the State to issue federally enforceable State operating permits addressing both criteria pollutants and HAPs.

e. *Title IV.* Ohio's program contains adequate authority to issue permits which reflect the requirements of Title IV and its implementing regulations. Further, Ohio provided a commitment on January 5, 1995, to incorporate by reference the Federal Acid Rain Program regulations (40 CFR part 72) by October 1, 1995.

#### B. Potential Interim Approval Issue

Ohio's definition of "title I modification" does not include changes reviewed under a minor source preconstruction review program. On August 29, 1994, EPA solicited public comment on whether the phrase "modification under any provision of title I of the Act" in 40 CFR 70.7(e)(2)(i)(A)(5) should be interpreted to mean literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under Title I of the Act (59 FR 44573). EPA is currently reviewing the public comments on this issue and is in the process of determining the proper definition of that phrase. EPA does not believe that it is appropriate to determine whether this is a program deficiency for Ohio until EPA completes its rulemaking on this issue. For a more complete discussion of this issue see the November 9, 1994, approval of the operating permit program for the State of Washington (59 FR 55813).

#### C. Proposed Action

EPA is proposing to grant full approval of the operating permit program submitted by Ohio on July 22, 1994, and amended on September 12, 1994, November 21, 1994, December 9, 1994, and January 5, 1995. Among other

things, Ohio has demonstrated that the program meets the minimum elements of an approvable State operating permit program as specified in 40 CFR part 70.

The scope of the Ohio program that EPA proposes to approve in this notice would apply to all part 70 sources (as defined in the approved program) within the State of Ohio.

As outlined in II.A.4.c., EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

### III. Administrative Requirements

#### A. Request for Public Comments

EPA is requesting comments on all aspects of this proposed full approval. Copies of the State's submittal and other information relied upon for the proposed full approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full approval. The principal purposes of the docket are:

- (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process; and
- (2) To serve as the record in case of judicial review. EPA will consider any comments received by May 15, 1995.

#### B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

#### C. Regulatory Flexibility Act

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permit programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

#### List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7671q.

Dated: March 29, 1995.  
Valdas V. Adamkus,  
*Regional Administrator.*  
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BILLING CODE 6560-50-P

### 40 CFR Part 76

[AD-FRL-5186-9]

RIN 2060-AD45

### Acid Rain Program; Nitrogen Oxides Emission Reduction Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; Response to Court remand.

**SUMMARY:** The EPA is today issuing a proposed rule in response to a remand by a U.S. Court of Appeals. The rule reinstates emission limitations for nitrogen oxides (NO<sub>x</sub>) from coal-fired utility units under section 407 of the Clean Air Act ("the Act"). The emission limitations for NO<sub>x</sub>, along with emission limitations for sulfur dioxide from utility plants, will reduce acidic deposition and prevent serious adverse effects on natural resources, ecosystems, materials, visibility, and public health.

On March 22, 1994, EPA promulgated a rule establishing NO<sub>x</sub> emission limitations. The rule established emission limits generally achievable using "low NO<sub>x</sub> burner technology" and established a procedure for obtaining an alternative emission limitation if a unit could not achieve the prescribed limit using such technology. On November 29, 1994, the U.S. Court of Appeals for the District of Columbia Circuit ruled that the definition of "low NO<sub>x</sub> burner technology" in the March 22, 1994 rule exceeded EPA's statutory authority. The Court vacated the rule and remanded it to the Agency for further proceedings. On March 28, 1995, EPA and environmental and utility-industry parties signed an agreement addressing the March 22, 1994 regulations, including issues raised by the Court's remand.

Based on the Court's decision and a review of the record, the Agency is now revising the March 22, 1994 regulations. The low-NO<sub>x</sub>-burner-technology definition is revised to comply with the Court's decision. Other provisions concerning the compliance date for Phase I NO<sub>x</sub> emission limitations, AELs, and plans for averaging NO<sub>x</sub> emissions of two or more units are also revised. Because the rule revisions are consistent with the Court's decision and the Agency does not expect to receive adverse comments, the revisions are