

Subpart H—National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks

24. Section 63.175 is amended by revising paragraph (d)(4) introductory text to read as follows:

§ 63.175 Quality improvement program for valves.

* * * * *

(d) * * *

(4) The owner or operator must demonstrate progress in reducing the percent leaking valves each quarter the process unit is subject to the requirements of paragraph (d) of this section, except as provided in paragraphs (d)(4)(ii) and (d)(4)(iii) of this section.

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25. Section 63.182 is amended by revising paragraphs (a)(6)(ii) and (d)(2)(vii) to read as follows:

§ 63.182 Reporting requirements.

(a) * * *

(6) * * *

(ii) A request for an extension of compliance must include the data described in § 63.6(i)(6)(i) (A), (B), and (D) of subpart A of this part.

* * * * *

(d) * * *

(2) * * *

(vii) The number of agitators for which leaks were detected as described in § 63.173(a) and (b) of this subpart;

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BILLING CODE 6560-50-P

40 CFR Part 70

[AD-FRL-5344-9]

Clean Air Act Final Interim Approval of the Operating Permits Program; Nevada Division of Environmental Protection; Nevada

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Final Interim Approval.

SUMMARY: The EPA is promulgating interim approval of the title V operating permits program submitted by the Nevada Division of Environmental Protection ("NDEP" or "State") for the purpose of complying with federal requirements that mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

EFFECTIVE DATE: January 11, 1996.

ADDRESSES: A copy of NDEP's submittal and other supporting information used

in developing the final approval are available for inspection (docket number NV-DEP-95-1-OPS) during normal business hours at the following location: U.S. Environmental Protection Agency, Region IX, Air & Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT:

Celia Bloomfield (telephone 415/744-1249), Mail Code A-5-2, U.S. Environmental Protection Agency, Region IX, Air & Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Title V of the 1990 Clean Air Act Amendments (sections 501-507 of the Clean Air Act ("Act")), and implementing regulations at 40 Code of Federal Regulations ("CFR") part 70, require that states develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a federal program.

On August 7, 1995, EPA proposed interim approval of the operating permits program for NDEP ("NPRM"). See 60 FR 40140. In that Federal Register document, EPA also proposed approval of NDEP's interim mechanism for implementing section 112(g) and its program for delegation of section 112 standards as promulgated as they apply to title V and non-title V sources. Public comment was solicited on the three proposed actions, and EPA is responding to those comments in this document and in a separate "Response to Comments" document that is available in the docket at the Regional office.

II. Final Action and Implications

A. Analysis of State Submission and Response to Public Comments

The August 7, 1995 Federal Register notice proposed interim approval of NDEP's title V operating permits program as submitted on February 8, 1995. EPA is aware that NDEP has

revised its implementing regulations since the February 8, 1995 submission; however, those revisions have not been submitted to EPA for approval and are not part of the program being approved in today's final action.

EPA received comments on the NPRM from two commenters: the National Mining Association ("NMA") and NDEP. With one exception, the program deficiencies identified in the NPRM remain unchanged as a result of public comment. Based on public comment and further analysis, the deficiency identified in section II.B.1.(2) of the NPRM has been removed; i.e., NDEP's definition of "regulated air pollutant" is fully approvable. See section II.A.4. below for further discussion. The commenters also provided a few program clarifications which are discussed below. Furthermore, please note that an issue raised as a deficiency in the context of "insignificant activities" and discussed in section II.A.2.c. of the proposed notice has become a separate interim approval issue as a result of public comment. See section II.A.1. for more information. No adverse public comment was received on the proposed approvals of NDEP's program for delegation of section 112 standards as promulgated or transition mechanism for implementing section 112(g), and hence, those approvals have not been altered as a result of public comment.

1. Applicability

In response to a program deficiency identified by EPA in section II.B.1.(10) of the NPRM, NDEP commented that it does not plan to permit *any source* that is subject to the New Source Performance Standard ("NSPS") for new residential wood heaters or the National Emissions Standard for Hazardous Air Pollutants ("NESHAP") for asbestos demolition because the State has not accepted delegation for such standards.

In order to have a fully approvable program, a state must have authority to permit *all major sources* and to write permits that assure compliance with all federal applicable requirements. If under State law NDEP must receive delegation of a federal requirement before it can write that requirement into a permit or assure compliance with that requirement, then NDEP must seek and receive delegation in sufficient time to issue the permit. It is possible for Nevada to obtain delegation of an NSPS or NESHAP requirement solely for title V sources.

In the NPRM, EPA relied on the Nevada Attorney General's legal opinion (dated November 15, 1993) that NDEP has authority to issue permits to all

sources required to have permits pursuant to section 502(a) of the Act and § 70.3 of part 70 (p. 2 of legal opinion), and authority to "require that all applicable requirements be incorporated into an operating permit" (p. 8 of legal opinion). In addition, NDEP has committed to implement all applicable requirements, including those that would necessitate State rule adoption prior to incorporation into the permit. (See Program Submittal, Section II.A.2., pp. II-1 to II-2.) EPA expects NDEP to issue permits to all major sources and to include all applicable requirements in those permits. If a regulatory impediment exists outside of the submitted program, then NDEP must eliminate it in order to have a fully approvable program.

In response to EPA's discussion in the NPRM (section II.A.2.c.) on insignificant activities, NDEP commented that two of the listed insignificant activities, agricultural land use and equipment or contrivances used for food processing, are "unpermissible activities." EPA regards this comment as ambiguous given that NAC 445B.293.1 (previously NAC 445.705.1) requires, and the Attorney General's legal opinion confirms, that all major sources (with the two exceptions noted above) must obtain operating permits. Furthermore, EPA assumed that if information is provided in the application because it is needed to "establish the basis for the applicability of standards" (section 445B.295.2(b), previously 445.7054.2(b)), then the units subject to such standards (i.e., applicable requirements) would be contained in the permit. EPA expects NDEP to implement its insignificant activities provisions in a manner consistent with both part 70 and the provisions of the NAC relied upon in the NPRM, that is:

- (1) Emissions from insignificant activities must be considered in applicability determinations;
- (2) Class I permit applications may not omit any information needed to determine or impose any applicable requirement; and
- (3) if an applicable requirement applies to a unit at a major source, that unit must be permitted. In order to have a fully approvable program, NDEP must remove all ambiguity regarding the permitting of agricultural and food processing activities and clearly require all major sources to obtain Class I permits. If a regulatory impediment exists outside of the submitted program, then NDEP must eliminate that impediment prior to full program approval.

Also, in the NPRM, EPA noted that NDEP's program contains inconsistencies with regard to the

applicability of nonmajor sources to title V. (See 60 FR 40141-40142, section II.A.2.a. "applicability.") EPA requested a letter from NDEP clarifying how it intends to carry out the applicability requirements in its program.

In the comment letter received from NDEP on September 6, 1995, the State informed EPA that it has already corrected the ambiguity regarding whether or not nonmajor sources subject to a section 111 or 112 standard are subject to title V. NDEP revised the Nevada Administrative Code on April 4, 1995 to clearly state that "major," and not "minor," new sources subject to sections 111 and 112 will be permitted as Class I-B sources.

2. Insignificant Activities

One commenter asserted that EPA's position in the NPRM regarding insignificant activities is inconsistent with the July 10, 1995 "White Paper," which gives states flexibility in designating insignificant activities. EPA disagrees that the NPRM is inconsistent with the "White Paper" with regard to insignificant activities. EPA is not questioning the State's authority to identify insignificant activities; rather, EPA is rejecting the unbounded nature of some of the listed activities.

The meaning of the term "insignificant" as used in section 70.5(c) is that information is unessential for determining whether and how an applicable requirement applies at a source. If emissions at an activity are extremely low, that activity is unlikely to be subject to an applicable requirement. That is why EPA suggested that NDEP create an across-the-board emissions threshold above which activities could not qualify as insignificant. Without an across-the-board threshold or unit-specific limits, activities on NDEP's list, such as "agricultural land use" and "equipment or contrivances used exclusively for the processing of food" could be construed as being "insignificant" even if subject to an applicable requirement. Where there is a chance that an activity is subject to an applicable requirement (e.g., food processing activities may be subject to the yeast manufacturing NESHAP), EPA needs additional criteria, such as an emissions threshold, to ensure that the activity is insignificant for part 70 permitting purposes.

The commenter further contended that NDEP's regulation already prohibits activities subject to an applicable requirement from qualifying as insignificant. Nevertheless, the commenter asked whether the following language would resolve EPA's concerns:

"[N]o source subject to an applicable requirement may qualify as an insignificant activity."

EPA disagrees that NDEP's regulation clearly prohibits activities subject to an applicable requirement from qualifying as insignificant. In fact, NDEP's list of insignificant activities contains activities, such as air-conditioning equipment, that are almost certainly subject to an applicable requirement. Unless NDEP removes from the list of insignificant activities those activities that are likely to be subject to a unit-specific applicable requirement, the language proposed by the commenter might only cause confusion. However, the language proposed by the commenter would help clarify that insignificant activities provisions do not exempt sources from title V and do not relieve sources from having to comply with any applicable requirements.

Another comment received on insignificant activities is that EPA's recommended emissions thresholds are arbitrary and unnecessary. The commenter pointed out that other state programs have allowed emission thresholds that are higher than EPA's recommended limits for HAP emissions.

As stated in the proposed notice, EPA will review and evaluate any emissions thresholds proposed by NDEP. Emissions thresholds should reflect state-specific circumstances. Part 70 specifically provides that the permitting authority is responsible for providing the "criteria used to determine insignificant activities or emission levels." NDEP may use levels approved in other state programs as guidance.

3. Reporting of Permit Deviations

Both commenters disagreed with EPA's statement that each permit must define "prompt" for purposes of prompt reporting of deviations. According to the commenters, "prompt" is already defined in NAC 445B.232.4 (previously 445.667.4) as reporting any excess emissions within 24 hours. In addition, NAC 445B.326 (previously 445.7133) defines prompt for emergencies.

The purpose of defining "prompt" in either the title V program or the title V permit is to notify the source of its exact reporting obligation. While NAC 445B.232.4 defines "prompt" in an acceptable manner, it is not currently part of NDEP's title V program. However, NAC 445B.326 was submitted as part of NDEP's title V program, and EPA agrees that "prompt" has already been defined for emergencies covered by that provision.

Given that permits must contain "all applicable reporting requirements" and that the definition of "applicable

requirement" in NDEP's program includes State-only requirements, EPA believes that sources are adequately notified of their reporting obligation for the interim period. Therefore, during the interim period, NDEP may rely on NAC 445B.232.4 to define "prompt" rather than defining it in each individual permit. For full approval, however, NDEP must either submit NAC 445B.232.4 for inclusion in its approved program, or define "prompt" in each permit.

4. Regulated Air Pollutant

Both commenters disagreed with EPA's position that the definition of "regulated air pollutant" in NAC 445B.153 (previously 445.5905) is deficient. EPA identified NDEP's definition of "regulated air pollutant" as a program deficiency because it appeared to be inconsistent with the part 70 definition. Specifically, NDEP's definition seemed to exclude pollutants that are subject to requirements of the Act (such as title VI and sections 112(g), 112(j), and 112(r)), but are not subject to promulgated standards. This apparent inconsistency is not an issue, however, for Class I and Class II pollutants since they are all currently subject to promulgated requirements (57 FR 31242, July 14, 1992). It is also not an issue for section 112 requirements since NDEP's definition of "regulated air pollutant" can be interpreted broadly to include pollutants regulated by sections 112(g), 112(j), and 112(r) of the Act.

5. Duty to Apply

One commenter asked EPA to clarify what application trigger is missing from the State's title V program. In order to understand the deficiency, one must look at the language in part 70 which states that an initial title V application is due "within 12 months after the source becomes subject to the permit program" (section 70.5(a)(1)). As is the case in NDEP's regulation, a source may "become subject" upon the effective date of the program or after commencing operation of a new source. However, these two situations are not the only scenarios that would make a source subject to title V for the first time. For instance, a source may become subject to title V upon promulgation of a MACT standard that does not exempt nonmajor sources to obtain title V permits. Similarly, the Administrator could designate a category of nonmajor sources to be subject to title V. Finally, facility modifications may increase a source's potential to emit to above the major source level, thus making a source newly subject to title V. For these

reasons, NDEP's regulation must be revised for full approval.

6. Permit Shield

NDEP disputed EPA's comment in the NPRM that the program's permit shield provisions are deficient. Because a permit shield may insulate a source from enforcement, it is essential for EPA and the public to know when a permit shield is in the permit and exactly which conditions the permit shield is covering. According to NDEP's regulation, permits may be written to provide the benefits of a permit shield without expressly stating that a permit shield exists. This approach is plainly inconsistent with § 70.6(f)(2) which states that: "[a] part 70 permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield." NDEP must make all the changes identified in the proposed notice in order to have fully approvable permit shield provisions.

7. Emissions Trading

NDEP commented that it does not intend to provide the emissions trading opportunity specified in § 70.6(a)(10) and that it intends to remove the existing provisions for trading under a federally enforceable emissions cap, which are now located in NAC 445B.316.1(g) (previously NAC 445.7114.1(g)) and which satisfy the requirements of § 70.4(b)(12)(iii). Consequently, NDEP indicated that it will not correct the regulatory deficiencies with regard to trading identified in the proposed approval notice under section II.B.1.(9). NDEP noted, however, that it will allow trading as an alternative operating scenario.

The federal part 70 regulation does not give states discretion about whether to allow the emissions trading provisions of §§ 70.6(a)(10) and 70.4(b)(12)(iii). First, § 70.6(a)(10) says that the permitting authority cannot deny trading opportunities where such opportunities are provided by the underlying applicable requirement. For instance, if NDEP permits a source subject to the Hazardous Organic NESHAP (HON), which allows for trading without a case-by-case approval, and the source requests to take advantage of the trading provisions of the HON, then NDEP must establish trading terms and conditions in the source's permit. Second, § 70.4(b)(12)(iii) states that the permitting authority "shall" allow for trading under a federally enforceable emissions cap. In the proposed approval, EPA relied on NAC 445.7114.1(g) to satisfy the requirements

for trading under a federally enforceable emissions cap. If NDEP removes such trading provisions from its program, the program will become deficient with regard to operational flexibility. Moreover, EPA is not convinced that NDEP's alternative operating scenario provisions provide an adequate framework for these types of trading opportunities.

B. Final Action

1. Title V Operating Permits Program

The EPA is promulgating interim approval of NDEP's title V operating permits program as submitted on February 8, 1995. In order to receive full approval, NDEP must correct the ten program deficiencies listed in the proposed interim approval document under section II.B.1.(1, 3-11)¹ as well as one additional deficiency regarding the unpermissible status of agricultural and food processing activities which was identified as a result of public comment and is discussed above in section II.A.1.

The scope of NDEP's part 70 program approved in this notice applies to all sources under NDEP's jurisdiction. It does not apply to any sources of air pollution over which an Indian tribe has jurisdiction. See, e.g., 59 FR 55813, 55815-18 (Nov. 9, 1994). The term "Indian tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." See section 302(r) of the Act; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

This interim approval, which may not be renewed, extends until January 12, 1998. The specific conditions of the interim approval, NDEP's obligation to submit a complete corrective program, and the potential use of sanctions were set out in the proposed notice (60 FR 40140, August 7, 1995, section I.B.) and will not be repeated in this document.

2. State Preconstruction Permit Program Implementing Section 112(g)

EPA is approving the use of NDEP's integrated preconstruction/operating permit program as a mechanism to implement section 112(g) during the transition period between promulgation of EPA's section 112(g) rule and adoption by NDEP of rules specifically designed to implement section 112(g).

¹ Please see the proposed interim approval document (60 FR 40143-40144, August 7, 1995) for a list of changes that must be made in order for NDEP's program to be fully approvable.

EPA is limiting the duration of this approval to 18 months following promulgation by EPA of the section 112(g) rule.

3. Program for Delegation of Section 112 Standards as Promulgated

EPA is promulgating approval under section 112(l)(5) and 40 CFR section 63.91 of NDEP's program for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated. EPA is approving NDEP's delegation mechanism for part 70 and non-part 70 sources.

III. Administrative Requirements

A. Docket

Copies of NDEP's submittal and other information relied upon for the final interim approval, including public comment letters received and reviewed by EPA on the proposal, are contained in docket number NV-DEP-95-1-OPS 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 final interim approval. The docket is available for public inspection at the location listed under the ADDRESSES section of this document.

B. Executive Order 12866

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

C. Regulatory Flexibility Act

The 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.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small

governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action promulgated today does not include a federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

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

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

Dated: December 1, 1995.

Felicia Marcus,

Regional Administrator.

* * * * *

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70--[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

2. Appendix A to part 70 is amended by adding paragraph (a) to the entry for Nevada:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

The following state program was submitted by the Nevada Division of Environmental Protection:

(a) Nevada Division of Environmental Protection: submitted on February 8, 1995; interim approval effective on January 11, 1996; interim approval expires January 12, 1998.

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[FR Doc. 95-30261 Filed 12-11-95; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1004

RIN 0991-AA73

Health Care Programs: Fraud and Abuse; Revisions to the PRO Sanctions Process

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule.

SUMMARY: This final rule revises and updates the procedures governing the imposition and adjudication of program sanctions predicated on recommendations of State Utilization and Quality Control Peer Review Organizations (PROs). These changes are being made as a result of statutory revisions designed to address health care fraud and abuse issues and the OIG sanctions process. In addition, this final rule sets forth new appeal and reinstatement procedures for practitioners and other persons excluded by the OIG based on a PRO recommendation.

EFFECTIVE DATE: December 12, 1995.

FOR FURTHER INFORMATION CONTACT:

Joe J. Schaer, Office of Management and Policy, (202) 619-3270
Joanne Lanahan, Office of Civil Fraud and Administrative Adjudication, (410) 786-9609.

SUPPLEMENTARY INFORMATION:

I. Background

A. The PRO Sanctions Process

Section 1156 of the Social Security Act imposes specific statutory obligations on practitioners and other persons to furnish necessary services to Medicare and State health care program beneficiaries that meet professionally recognized standards, and authorizes the Secretary—based on a PRO's recommendation—to impose sanctions on those who fail to comply with these statutory obligations.

Under the PRO sanctions process, no practitioner or other person is recommended for an exclusion or a monetary penalty until the practitioner or other person has an opportunity to provide additional information and have an extensive discussion with the PRO. After the receipt of a recommendation from a PRO, the OIG excludes or imposes a monetary penalty only after a careful review of all submitted documents and a separate determination that the practitioner or