

EPA-APPROVED VIRGINIA SOURCE-SPECIFIC REQUIREMENTS—Continued

Source name	Permit/order or registration number	State effective date	EPA approval date	40 CFR part 52 citation
Virginia Power (VP)—Possum Point Generating Station [Consent Agreement containing VOC RACT requirements].	Registration #70225	6/12/1995	January 2, 2001 .. [page citation]	52.2420(d).
Washington Gas Light Company—Springfield Operations Center [Consent Agreement].	Registration #70151	4/3/1998	January 2, 2001 .. [page citation]	52.2420(d).

§ 52.5450 [Amended]

3. Section 52.2450(f) is removed and reserved.

[FR Doc. 00-33165 Filed 12-29-00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 70

[FRL-6925-5]

Clean Air Act Full Approval of Operating Permits Program in Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking final action to fully approve the operating permits program submitted by the State of Washington. Washington's operating permits program was submitted in response to the directive in the Clean Air Act that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authority's jurisdiction. EPA granted interim approval to Washington's air operating permit program on November 9, 1994 (59 FR 55813); EPA re promulgated final interim approval on one issue, and a notice of correction for Washington's operating permits program, on December 8, 1995 (60 FR 62992). The state and local agencies that implement the Washington operating permits program have revised their programs to satisfy the conditions of the

interim approval and this action approves those revisions.

DATES: This direct final rule is effective on March 5, 2001 without further notice, unless EPA receives adverse comment by February 1, 2001. If adverse comment is received, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** and inform the public that the rule will not take effect. The public comments will be addressed in a subsequent final rule based on the proposed rule published in this **Federal Register**.

ADDRESSES: Copies of the State of Washington's submittal and other supporting information used in developing this final full approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Denise Baker, Office of Air Quality (OAQ-107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553-8087.

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I. Background
A. What Is the Title V Air Operating Permits Program?

The Clean Air Act (CAA) Amendments of 1990 required all state and local permitting authorities to develop operating permits programs that meet certain Federal criteria. In implementing the operating permits programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the operating permits program is to improve enforcement by issuing each source a permit that consolidates all the applicable CAA requirements into a Federally enforceable document. By consolidating all the applicable requirements for a source in a single document, the source, the public, and regulators can more easily determine what CAA

requirements apply to the source and whether the source is in compliance with those requirements.

Sources required to obtain an operating permit under the title V program include "major" sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides, or particulate matter; those that emit 10 tons per year or more of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as "serious," major sources include those with the potential to emit 50 tons per year or more of volatile organic compounds or nitrogen oxides.

B. What Is the Status of Washington's Title V Air Operating Permits Program?

The State of Washington (Washington or State) originally submitted its application for the title V air operating permits program to EPA in 1993. In Washington, the air operating permits program is implemented by the Washington Department of Ecology (Ecology), the Washington Energy Facility Site Evaluation Council (EFSEC); and the following seven local air pollution control authorities:

- The Benton County Clean Air Authority (BCCAA) [formerly known as the Benton-Franklin Counties Clean Air Authority (BFCCAA)];
- The Northwest Air Pollution Authority (NWAPA);
- The Olympic Air Pollution Control Authority (OAPCA);
- The Puget Sound Clean Air Agency (PSCAA) [formerly known as the Puget Sound Air Pollution Control Agency (PSAPCA)];
- The Spokane County Air Pollution Control Authority (SCAPCA);
- The Southwest Clean Air Agency (SWCAA) [formerly known as the Southwest Air Pollution Control Authority (SWAPCA)]; and
- The Yakima Regional Clean Air Authority (YRCAA) [formerly known as the Yakima County Clean Air Authority (YCCAA)].

Where an operating permits program substantially, but not fully, meets the criteria outlined in the implementing regulations codified in 40 Code of Federal Regulations (CFR) part 70, EPA is authorized to grant interim approval contingent on the state revising its program to correct the deficiencies. Because the operating permits program originally submitted by Washington in 1993 substantially, but not fully, met the requirements of part 70, EPA granted interim approval to Washington's program in an action published on November 9, 1994 (59 FR 55813). The interim approval notice identified the conditions that Washington must meet in order to receive full approval of its title V air operating permits program. On December 8, 1995 (60 FR 62992), EPA published a second final interim approval revising one of the conditions that Washington needed to meet to receive full approval of its program and making other minor corrections and revisions to the interim approval.

This document describes the changes the Washington permitting authorities have made to their programs since we granted Washington's program interim approval and the action EPA is taking in response to those changes.

II. What Changes Have the Washington Permitting Authorities Made To Address the Interim Approval Issues?

On June 5, 1996, Ecology sent a letter to EPA addressing the interim approval issues and requesting full program approval of Washington's air operating permits program. EPA received additional submittals from Ecology addressing the interim approval issues on October 3, 1996, August 25, 1998, and May 24, 1999. The submittals from Ecology included submittals from NWAPA, OAPCA, PSCAA, SCAPCA, and YRCAA.¹

EPA has reviewed the program revisions submitted by the Washington permitting authorities and has determined that the Washington program now qualifies for full approval. This section describes the interim approval issues identified by EPA in granting the Washington program interim approval and the changes the Washington permitting authorities have made to address those issues.

A. Maximum Criminal Penalty Authority

In granting Ecology interim approval, we stated that Ecology must revise RCW

70.94.430(1) to clarify that the maximum criminal penalty authority of \$10,000 applies per day per violation, as required by 40 CFR 70.11(a)(3)(ii). See 59 FR at 55818. The statute authorizing criminal penalty actions in Washington for title V violations authorizes a penalty of up to \$10,000 per violation, but does not specify whether the maximum penalty can be assessed for each day that a violation continues. EPA identified this same interim approval issue for NWAPA, OAPCA, PSCAA, and SCAPCA, the permitting authorities that had provisions addressing criminal penalties in their local regulations.

To address this issue, Ecology submitted an analysis from the Washington Attorney General's office stating that RCW 70.94.430(1), when read in conjunction with RCW 70.94.431(1), allows the State to collect a criminal penalty for each day that a violation continues. RCW 70.94.431(1), which addresses civil penalty authority, provides that "Each such violation shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance shall be a separate and distinct violation." Ecology has committed to following this interpretation when Ecology participates in, or provides a recommendation regarding, a criminal prosecution to be taken under Chapter 70.94 RCW.

Based on the information submitted by Ecology, we are deferring to the State's determination that RCW 70.94.430(1) and 70.94.431(1) authorizes the State to collect up to \$10,000 per day per violation for criminal violations, as required by 40 CFR 70.11(a)(3)(ii). EPA notes, however, that 40 CFR 70.4(b)(7) requires a permitting authority with an approved title V program to submit at least annually information regarding its enforcement activities, and 40 CFR 70.10(c)(iii) authorizes EPA to withdraw program approval where a permitting authority fails to enforce its title V program consistent with the requirements of part 70. To ensure that RCW 70.94.430(1) does not impermissibly limit Washington's authority to bring criminal enforcement actions seeking up to \$10,000 per day per violation, EPA intends to monitor Washington's enforcement programs closely during implementation and will consider withdrawing approval of Washington's title V program if EPA later determines that Washington lacks adequate criminal penalty authority. EPA urges Washington to clarify through legislative changes at the earliest opportunity that RCW 70.94.430(1) authorizes the assessment of criminal

¹ In granting Washington interim approval, EPA did not identify any specific changes that needed to be made to the operating permit programs for EFSEC, BCCAA, and SWAPCA. See 59 FR 55818-55819.

penalties in the maximum amount of not less than \$10,000 per day per violation.

With respect to the local air authorities, NWAPA has revised NWAPA section 132.1 to specifically provide for maximum criminal penalties of up to \$10,000 per day per violation. See NWAPA section 132.1(1997). SCAPCA has revised its regulations to provide for criminal fines and imprisonment "as provided by Chapter 70.94 RCW for each separate violation" and to clarify that "Each such violation shall be a separate and distinct offense, and in the case of a continuing violation, each day's continuance shall be a separate and distinct violation." See SCAPCA Reg. 1, section 2.11(A)(1)(1997). OAPCA and PSCAA, whose regulations on this matter contain the same language as RCW 70.94.430(1) and 70.94.431(1), are relying on the interpretation of the Washington Attorney General's Office and have expressly committed to following this interpretation in implementing their respective programs. See OAPCA Reg. 1, sections 3.26(b)(1998) and 3.27(a)(1)(1998); PSCAA Reg. 1, sections 3.11(a) (1999) and 3.13(a) (1999). Therefore, for the reasons discussed above with respect to the Department of Ecology, we are satisfied that these local permitting authorities have authority to assess criminal penalties in the maximum amount of not less than \$10,000 per day per violation, as required by 40 CFR 70.11(a)(3)(ii).

B. False Statements

In granting Ecology interim approval, we stated that Ecology must revise State law to provide for criminal penalties of up to \$10,000 per day per violation against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit, as required by 40 CFR 70.11(a)(3)(iii). See 59 FR at 55818. EPA identified this same interim approval issue for NWAPA, OAPCA, PSCAA, and SCAPCA, the four local permitting authorities that have specific provisions addressing criminal penalties in their local regulations.

To address this issue, Ecology revised WAC 173-400-105 by adding a new subsection (7), which states that "No person shall make any false materials (sic) statement, representation or certification in any form, notice or report required under chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit or order in force pursuant thereto." As confirmed by a submittal from the Washington Attorney General's office, knowing violation of this provision would subject the violator to criminal liability under RCW 70.94.430(1).

Attorney General's office, knowing violation of this provision would subject the violator to criminal liability under RCW 70.94.430(1).

With respect to the local permitting authorities, NWAPA and SCAPCA have revised their local regulations to include a false statements provision corresponding to 40 CFR 70.11(a)(3)(iii). See NWAPA section 132.6 (1997); SCAPCA Reg. 1, section 208(E)(1997). OAPCA and PSCAA have not revised their regulations to include this provision but are instead relying on WAC 173-400-105(7) which, as discussed above, now contains this requirement and applies throughout the State of Washington. Knowing violation of this provision would subject the violator to criminal liability under RCW 70.94.430(1) and local criminal provisions. See OAPCA Reg. 1, section 3.27(b)(1)(1998); PSCAA Reg 1, section 3.13(a) (1999). Based on these changes and the submittal from the Washington Attorney General's office, EPA has determined that Ecology and the local permitting authorities have addressed the false statements provision of 40 CFR 70.11(a)(3)(iii).

C. Tampering

In granting Ecology interim approval, we stated that Ecology must revise State law to provide for criminal penalties of up to \$10,000 per day per violation against any person who knowingly renders inaccurate any required monitoring device or method, as required by 40 CFR 70.11(a)(3)(iii). See 59 FR at 55818. EPA identified this same interim approval issue for NWAPA, OAPCA, PSCAA, and SCAPCA, the four local permitting authorities that have specific provisions addressing criminal penalties in their local regulations.

To address this issue, Ecology revised WAC 173-400-105 by adding a new subsection (8), which states that "No person shall render inaccurate any monitoring device or method required under chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit, or order in force pursuant thereto." As confirmed by a submittal from the Washington Attorney General's office, knowing violation of this provision would subject the violator to criminal liability under RCW 70.94.430(1).

With respect to the local permitting authorities, NWAPA and SCAPCA have revised their local regulations to include a provision corresponding to the tampering provision of 40 CFR 70.11(a)(3)(iii). See NWAPA section 132.5(1997); SCAPCA Reg. 1, section 208(F) (1997). OAPCA and PSCAA have

not revised their regulations to include this provision but are instead relying on WAC 173-400-105(8) which, as discussed above, now contains this requirement and applies throughout the State of Washington. Knowing violation of this provision would subject the violator to criminal liability under RCW 70.94.430(1) and local criminal provisions. See OAPCA Reg. 1, section 3.27(b)(1)(1998); PSCAA Reg 1, section 3.13(a) (1999). Based on these changes and the submittal from the Washington Attorney General's office, EPA has determined that Ecology and the local permitting authorities have addressed the tampering provision of 40 CFR 70.11(a)(3)(iii).

D. Writ of Mandamus

In granting Ecology interim approval, we identified a problem with Ecology's regulations for providing a cause of action in state court for a permitting authority's failure to take final action on a permit within the specified time period, as required by 40 CFR 70.4(b)(3)(xi). See 59 FR at 55818. We stated that Ecology must delete WAC 173-401-735(3) entirely or revise it so that it refers to RCW 34.05.570(4)(b), rather than RCW 7.16.360. To address this interim approval issue, Ecology has revised WAC 173-401-735(3) so that it now refers to RCW 34.05.570(4)(b). We have reviewed this change and determined that it resolves this interim approval issue.

E. Insignificant Emission Units

Another interim approval issue identified by EPA relates to Ecology's provisions for insignificant emission units and activities (IEUs). Part 70 authorizes EPA to approve as part of a state program a list of insignificant activities and emission levels which need not be included in the permit application, provided that an application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the EPA-approved schedule. See 40 CFR 70.5(c). Washington's regulations contain criteria for identifying IEUs. See WAC 173-401-200(16), -530, -532, and -533. Sources that are subject to a Federally-enforceable requirement other than a requirement of the State Implementation Plan that applies generally to all sources in Washington (a so-called "generally applicable requirement") are not deemed "insignificant" under Washington's program even if they otherwise qualify under one of the five lists. See WAC 173-401-530(2)(a). Washington's regulations also expressly

state that no permit application can omit information necessary to determine the applicability of, or to impose any applicable requirement. *See WAC 173-401-510(1)*. In addition, *WAC 173-401-530(1)* and *(2)(b)* provide that designation of an emission unit as an IEU does not exempt the unit from any applicable requirements and that the permit must contain all applicable requirements that apply to IEUs. The Washington program, however, specifically exempts IEUs from monitoring, recordkeeping, reporting, and compliance certification requirements except where such requirements are specifically imposed in the applicable requirement itself. *See WAC 173-401-530(2)(c)* and *(d)*.

EPA does not believe that part 70 exempts IEUs from the monitoring, recordkeeping, reporting, and compliance certification requirements of 40 CFR 70.6, but instead provides only a limited exemption from permit application requirements for IEUs. EPA therefore determined that Ecology must revise its IEU regulations as a condition of full approval. *See 60 FR at 62993-62997* (final interim approval of Washington's operating permits program based on exemption of IEUs from certain permit content requirements); *60 FR 50166* (September 28, 1995) (proposed interim approval of Washington's operating permits program on same basis).

The Western States Petroleum Association, together with several other companies and industry associations, filed a petition with the United States Court of Appeals for the Ninth Circuit seeking review of this IEU condition of EPA's final interim approval of Washington's operating permits program. *Western States Petroleum Association (WSPA) v. EPA*, No. 95-70034.² The State of Washington intervened in the petition on the side of the industry petitioners. Industry petitioners and the State challenged EPA's identification of this IEU exemption as grounds for interim approval, asserting that such an exemption was allowed by part 70 and that EPA had acted inconsistently by approving other title V programs with

similar exemptions. On June 17, 1996, the Ninth Circuit found in favor of the petitioners. *WSPA v. EPA*, 87 F.3d 280 (9th Cir. 1996). The Ninth Circuit did not opine on whether EPA's position was consistent with part 70. It did, however, find that EPA had acted inconsistently in its title V approvals, and had failed to explain the departure from precedent that the Court perceived in the Washington interim approval. The Court then remanded the matter to EPA, instructing EPA to give full approval to Washington's IEU regulations. EPA petitioned the Court for rehearing on the Court's decision to order EPA to approve Washington's IEU regulations. The Court denied EPA's request for rehearing on November 17, 1996. *WSPA v. EPA*, No. 95-70034 (9th Cir. October 17, 1996).

In light of the Court's order in the WSPA case, EPA must give full approval to Washington's IEU regulations in this action. EPA maintains its position, however, that part 70 does not allow the exemption of IEUs subject to generally applicable requirements from the monitoring, recordkeeping, reporting, and compliance certification requirements of 40 CFR 70.6. *See, e.g., 61 FR 64463, 64465-64467* (December 5, 1996) (final interim approval of Alaska title V program); *61 FR 49091, 49095-49097* (September 18, 1996) (proposed interim approval of Alaska title V program); *61 FR 39335, 39336-39339* (July 29, 1996) (final interim approval of Tennessee title V program). EPA believes that 40 CFR 70.5 authorizes a permitting authority to grant certain relief for insignificant emission units from title V permit application requirements so long as no application omits any information necessary to determine the applicability of or to impose any applicable requirement or any required fee. Nothing in part 70, however, authorizes a permitting authority to exempt from the title V permit applicable requirements that apply to insignificant emission units; any monitoring, recordkeeping, or reporting necessary to assure compliance with those applicable requirements; and the requirement to certify compliance with all permit terms and conditions, including those that apply to insignificant emission units.

Since issuance of the Court's order in WSPA case, EPA has carefully reviewed the IEU provisions of those eight title V programs identified by the Court as inconsistent with EPA's decision on Washington's regulations. EPA has determined that three of the title V programs identified by the WSPA Court (Massachusetts, North Dakota, Knox County, and Tennessee) are in fact

consistent with EPA's position that insignificant sources subject to applicable requirements may not be exempt from permit content requirements. *See 61 FR 39338* (July 29, 1996). With respect to the other five programs cited by the Ninth Circuit as inconsistent with EPA's decision on Washington's program (Florida, Hawaii, Ohio, North Carolina, and Jefferson County, Kentucky), EPA has been working with these permitting authorities to make changes to their IEU provisions and to get those provisions submitted as title V program revisions. *See, e.g., 65 FR 38744, 38745* (June 22, 2000) (giving full approval to Forsyth County, North Carolina's IEU regulations after the regulations had been revised to address the deficiencies identified by EPA after publication of the WSPA decisions).³ EPA also intends to work with Washington's permitting authorities to ensure Washington's IEU regulations are revised to conform with the requirements of part 70 and intends to issue a notice of deficiency in another rulemaking action if the deficiencies in Washington's IEU regulations are not promptly addressed.

F. NWAPA: Penalty Authority for Multiple Standards

In granting NWAPA interim approval, we stated that NWAPA must revise NWAPA section 133.1 to ensure it had authority to assess civil penalties of not less than \$10,000 per day per violation in the case of violations of multiple standards by a single emissions unit, as required by 40 CFR 70.11(a)(3). *See 59 FR at 55819*. At that time, section 133.1 appeared to cap penalties for violations of multiple standards by a single emissions unit at \$10,000 per day. NWAPA has revised section 133.1 to delete the restriction on penalties for violation of multiple standards by a single emissions unit.

G. OAPCA: Potential To Emit

In granting OAPCA interim approval, EPA stated that OAPCA must revise the definition of "potential to emit" in OAPCA Reg. 1, section 6.00, to provide that any physical or operational limitation on the capacity of a source to emit a pollutant shall be treated as part of its design only if the limitation is Federally enforceable, as required by 40 CFR 70.2 (definition of potential to emit)). *See 59 FR at 55819*. OAPCA has made this change. *See OAPCA Reg. 1, section 6.00 (1998)*.

² The petitioners originally filed a petition on January 6, 1995, in response to EPA's initial final interim approval of Washington's title V program. *See 59 FR 55813* (November 9, 1995). In response to that petition, EPA moved for vacatur and remand of its decision, which the Court granted on July 7, 1995. On remand, EPA again rejected Washington's exemption of IEUs from part 70's permit compliance requirements and clarified the basis for its decision. *See 60 FR 62992* (September 28, 1995). Petitioners then renewed their challenge to EPA's action on the IEU provisions of Washington's title V program.

³ The regulations of Florida and the other North Carolina permitting authorities have been revised at the state level to address the IEU deficiencies, although EPA has not yet taken final action on the revisions.

H. SCAPCA: Limitation on Criminal Authority

In granting SCAPCA interim approval, we stated that SCAPCA must revise SCAPCA Reg. 1, section 2.04(B), to eliminate the limitation on the control officer's authority to request criminal penalties to cases in which a violator has failed to correct the violation after a "reasonable and/or required period of time." 59 FR at 55819. SCAPCA has eliminated this restriction on its criminal penalty authority. *See* SCAPCA Reg. 1, section 2.04(B)(1997)

I. YRCAA: Knowing Violations

In granting YRCAA interim approval, we stated that YRCAA must revise YRCAA Reg. 1, section 2.01, to delete the requirement that civil violations be "knowing" because 40 CFR 70.11(a)(3)(i) prohibits a permitting authority from including a mental state as an element of proof for civil violations. 59 FR at 55819. YRCAA has revised its regulations to delete this requirement. YRCAA Regulation 1, 5.02 (D)(1) (2000).

III. What Other Changes Has Washington Made to Its Program—Outside of Addressing the Interim Approval Issues?

Washington permitting authorities have made several other minor changes to their operating permits programs since EPA granted Washington interim approval in 1995. These changes, as well as EPA's action on the changes, are discussed below.

A. Compliance Assurance Agreement

In a letter dated August 25, 1998, Ecology requested that the current Compliance Assurance Agreement be part of the program approval package for the Washington State air operating permits program. This Compliance Assurance Agreement was negotiated between Ecology, Washington's local air authorities, EFSEC, the Washington Department of Health, and EPA. The last signatory party signed the document on December 23, 1999. EPA has included the Compliance Assurance Agreement in the docket for this action.

B. SWAPCA Regulations

In a May 23, 1997 letter to EPA, SWAPCA stated that it was repealing its operating permits rule, SWAPCA ch. 401, and was relying on the state-wide rule as authority for its operating permits program. SWAPCA made this change effective November 14, 1997. SWAPCA ch. 401 was a local rule that restated WAC ch. 173-401, the Ecology's operating permit rule. This revision only results in a change to the authority SWAPCA is relying on in

issuing its title V permits and is not a substantive change to the permit issuance process or the terms of title V permits issued by SWAPCA. Therefore, EPA is approving this change.

C. RCW Ch. 43.05

In 1995, the Washington Legislature enacted the Regulatory Reform Act of 1995, codified at RCW ch. 43.05. In general, RCW ch. 43.05 precludes Ecology from assessing a civil penalty except where (1) the violation is of a specific permit term or condition; (2) the violation is a repeat violation; (3) the violator does not come into compliance within a specified time period; or (4) the violation "has a probability of placing a person in danger of death or bodily harm, has a probability of causing more than minor environmental harm, or has a probability of causing physical damage to the property of another in an amount exceeding one thousand dollars." *See* RCW 43.05.050; 43.05.070. RCW 43.05.901 provides that if a regulatory agency determines any part of the statute conflicts with Federal law or program requirements or with Federal requirements prescribed as a condition to the allocation of Federal funds to the State of Washington, the conflicting part of the statute is inoperative to the extent of the conflict.

In letters dated June 10, 1997, and November 20, 1997, EPA advised Ecology that RCW ch. 43.05, conflicted with the necessary enforcement authority required for authorization or approval of Federal environmental programs to Ecology, including the title V operating permits program. On December 10, 1997, in accordance with RCW 43.05.902, Ecology formally notified the Governor of Washington that a conflict existed between the Regulatory Reform Act and the requirements for EPA authorization or approval of certain Federal environmental programs to Ecology, including the title V operating permits program. As a result of this determination of an existing conflict, RCW 43.05.040, .050, .060(3), and .070, which prohibits Ecology from issuing civil penalties except under certain circumstances, do not apply to Washington's title V program. Counsel for the PSCAA has provided EPA with a legal opinion stating that the Regulatory Reform Act does not apply to local air pollution control authorities in Washington because local air pollution control authorities are not "regulatory agencies" within the meaning of the Act. EPA has reviewed the statutory and regulatory authority relied on by PSCAA's counsel in reaching this conclusion and agrees that the Act does

not constrain the enforcement authority of local air pollution control authorities and therefore does not pose a bar to delegation of Clean Air Act programs to local air pollution control agencies in Washington.

In addition, EPA is relying on the State's interpretation of another technical assistance law, RCW 43.21A.085 and .087, to conclude that the law does not impinge on the State's authority to administer Federal environmental programs, including the title V program. The Washington Attorney Generals' Office has concluded that RCW 43.21A.085 and .087 do not conflict with Federal authorization requirements because these provisions implement a discretionary program. EPA understands from the State's interpretation that technical assistance visits conducted by the State will not be conducted under the authority of RCW 43.21A.085 and .087.

D. YRCAA Regulations

YRCAA has recently revised its air regulations. *See* YRCAA Regulation 1 (2000). As part of these revisions, YRCAA has adopted a regulation specifically addressing title V air operating permits, YRCAA Reg. 1, section 4.04, and has also revised its regulations addressing general authority for its title V program, such as the YRCAA records and enforcement provisions. In section 4.04, YRCAA specifically incorporated Ecology's state-wide operating permit regulation by reference. This revision only results in a change to the authority YRCAA is relying on in issuing its title V permits and not a substantive change to the permit issuance process or the terms of title V permits issued by YRCAA. Therefore, EPA is approving this change.

EPA has also reviewed the provisions of YRCAA Regulation 1 addressing YRCAA's general authority for its title V program, including sections 1.03 (Policy), 1.06 (Records), 1.07 (General Provisions), 2.02 (Authority to Collect Fees), 2.03 (Applicable State and Federal Regulations), 2.04 (Public Participation), 2.05 (Appeals), 5.01 (General Information), 5.01 (Additional or Alternative Enforcement), 5.02 (Penalties). In some instances, these regulations closely follow the comparable Ecology regulations, but have been rewritten in an attempt to be more easily understood by the general public. *Compare* YRCAA Reg. 1, 1.06, with RCW (70.94.205). The general provisions of the revised YRCAA regulations which state that the YRCAA regulations are intended to "ensure equity and consistency with" the

Federal Clean Air Act and the Washington Clean Air Act. See YRCAA Reg. 1, 1.03(A)(7); see also YRCAA Reg. 1, 1.06(B) (stating that the YRCAA records regulation is “To provide access to any information available under federal or state law concerning the business of the authority.”) EPA therefore understands that, to the extent the YRCAA regulations referenced above are closely modeled after comparable Ecology regulations, the changes to these YRCAA regulations were not intended to effect a change in meaning. On that basis, EPA has determined that the regulations referred to above, in conjunction with the other provisions of Washington law that apply to sources in YRCAA’s jurisdiction, provide adequate authority for YRCAA’s operating permits program.

IV. Final Action

EPA is granting full approval of the State of Washington’s operating permits program implemented by Ecology, EFSEC, and the seven local air authorities in Washington. Except with respect to non-trust lands within the 1873 Survey Area of the Puyallup Reservation,⁴ this approval does not extend to “Indian Country”, as defined in 18 U.S.C. 1151. See 64 FR 8247, 8250–8251 (February 19, 1999); 59 FR at 55815, 55818; 59 FR 42552, 42554 (August 18, 1994).

V. What Happens If EPA Gets Comments on This Federal Register?

EPA has reviewed the State of Washington’s submittal and has determined that the Washington operating permits program now qualifies for full approval. Accordingly, EPA is taking final action to fully approve the air operating permits programs for Ecology, EFSEC, and all seven of the local air authorities in Washington.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to grant full approval of the title V operating permits program submitted by the State of Washington should adverse comments be filed. This rule will be effective March 5, 2001 without further notice unless the Agency receives adverse comments by February 1, 2001.

⁴ As these terms are defined in the Agreement among the Puyallup Tribe of Indians, local governments in Pierce County, the State of Washington, the United States, and certain private property owners dated August 27, 1988.

If EPA receives such comments, then EPA will publish a notice withdrawing this final rule and informing the public that this rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 5, 2001 and no further action will be taken on the proposed rule.

VI. Are There Any Administrative Requirements That Apply to This Action?

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), this final approval is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this final approval will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this final rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this final approval also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084, 63 FR 27655 (May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government, as specified in Executive Order 13132, 64 FR 43255 (August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This final approval also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

As this is not a “major” rule as defined by 5 U.S.C. 804(2), EPA will not submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of

Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**, as specified in the Congressional Review Act, 5 U.S.C. 801 et seq.

As required by section 3 of Executive Order 12988, 61 FR 4729, (February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630, 53 FR 8859 (March 15, 1988), by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 5, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See CAA section 307(b)(2).

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.

Dated: December 15, 2000.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

40 CFR part 70, chapter I, 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. In appendix A to part 70, the entry for Washington is amended by revising paragraphs (a), (b), (c), (d), (e), (f), (g), (h), and (i) to read as follows:

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

* * * * *

Washington

(a) Department of Ecology (Ecology): submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on March 5, 2001.

(b) Energy Facility Site Evaluation Council (EFSEC): submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on March 5, 2001.

(c) Benton County Clean Air Authority (BCCAA): submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on March 5, 2001.

(d) Northwest Air Pollution Authority (NWAPA): submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on March 5, 2001.

(e) Olympic Air Pollution Control Authority (OAPCA): submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on March 5, 2001.

(f) Puget Sound Clean Air Agency (PSCAA): submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on March 5, 2001.

(g) Spokane County Air Pollution Control Authority (SCAPCA): submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on March 5, 2001.

(h) Southwest Clean Air Agency (SWCAA): submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on March 5, 2001.

(i) Yakima Regional Clean Air Authority (YRCAA): submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on March 5, 2001.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-6926-8]

Florida: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule-response to comments.

SUMMARY: On September 18, 2000, EPA published an action to grant Florida final authorization for several changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA) (65 FR 56256). These revisions consisted of the Corrective Action provisions contained in rules promulgated on July 15, 1985 (HSWA Codification Rule; HSWA Corrective Action), December 1, 1987 (HSWA Codification Rule: Corrective Action Beyond the Facility Boundary), February 16, 1993 (Corrective Action Management Units and Temporary Units), and December 6, 1994, as amended May 19, 1995, September 9, 1995, November 13, 1995, February 9, 1996, June 5, 1996, and November 25, 1996 (Consolidated Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers). As was indicated in this document, EPA accepted written comments on this action until October 18, 2000. EPA received five written comments. Two of the commenters supported EPA's decision to grant Florida final authorization but offered recommendations regarding Florida's proposed manner of administration and implementation of the HSWA corrective action program. One commenter expressed the concern that the additional responsibilities the State would assume could negatively impact Florida's implementation of the RCRA program. EPA explained to this commenter that a Capability Assessment was performed on the State's program which concluded that Florida is capable of administering the Corrective Action and subpart CC programs. Another commenter was concerned that authorizing Florida for the subpart CC rules would relinquish EPA's oversight authority. EPA's response to this commenter explained that federal regulations are in place that give the Agency oversight responsibilities to evaluate the State's performance in administering the RCRA program. Finally, EPA received a written letter from a commenter that supported the

intended delegation in principle, but expressed concern that the Final Authorization application, including the proposed Memorandum of Agreement, did not incorporate the RCRA Reforms which were announced on July 8, 1999, and which provide for "faster, focused, and more flexible cleanups." To this commenter, EPA responded that "The RCRA Reforms do not constitute rulemaking for which Florida is obliged to seek authorization. The purpose of the authorization process is to show equivalence to federal statutes and regulations to demonstrate the State's ability to carry out its program responsibilities once it is authorized." Further, the proposed language in the Memorandum of Agreement states that "The State will conduct its hazardous waste program in a manner equivalent to the EPA program policies and guidance." EPA and the State interpret this to include all guidance published by EPA's Office of Solid Waste including the July 8, 1999, directive and any other appropriate guidance. EPA has communicated with Florida reemphasizing the importance of Florida's continued support and implementation of the corrective action program in a manner consistent with the RCRA Reforms. Florida acknowledges the importance of the Reforms and has reaffirmed its commitment to implementation of the Reforms. EPA has revised the attachment to the proposed Memorandum of Agreement to include more specific program guidance references which reflect the Reforms. EPA has determined that the addition of specific references to the proposed Memorandum of Agreement does not constitute a substantive change to the authorization document. In view of the fact that such guidance and policy was cited in a comprehensive way in the MOA, EPA made a decision to not withdraw the Immediate Final rule that grants Florida authorization as published in the September 18, 2000, *Federal Register*.

DATES: This final authorization became effective on November 17, 2000.

FOR FURTHER INFORMATION CONTACT:

Narindar M. Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, GA 30303-8960; (404) 562-8440.

SUPPLEMENTARY INFORMATION: EPA, through this final action, retains its decision to authorize revisions to Florida's Hazardous Waste Management Program as published on September 18, 2000 (65 FR 56256).