REGION VIII.—DELEGATION STATUS OF NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS [1]

Subpart	CO	MT	ND [2]	SD [2]	UT [2]	WY
* * *	*	*	*	*	*	*

* Indicates approval of delegation of subpart to state.

[1] Authorities which may not be delegated include 40 CFR part 61.04(b), 61.12(d)(1), 61.13(h)(1)(ii), 61.112(c), 61.164(a)(2), 61.164(a)(3), 61.172(b)(2)(ii)(B), 61.172(b)(2)(ii)(C), 61.174(a)(2), 61.174(a)(3), 61.242–1(c)(2), 61.244, and all authorities listed as not delegable in each subpart under Delegation of Authority.

[2] Indicates approval of National Emission Standards for Hazardous Air Pollutants as part of the State Implementation Plan (SIP) with the exception of the radionuclide NESHAP subparts B, Q, R, T, W which were approved through section 112(l) of the Clean Air Act.

[3] Delegation only for asbestos demolition, renovation, spraying, manufacturing, and fabricating operations, insulating materials, waste disposal for demolition, renovation, spraying, manufacturing and fabricating operations, inactive waste disposal sites for manufacturing and fabricating operations, and operations that convert asbestos-containing waste material into nonasbestos (asbestos-free) material.

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671.

Subpart BB—Montana

2. Add a new and undesignated center heading and § 62.6613 to subpart BB to read as follows:

Fluoride Emissions From Existing Phosphate Fertilizer Plants

§ 62.6613 Identification of plan—negative declaration.

The Montana Department of Environmental Quality certified in a letter dated February 14, 2001, that there are no phosphate fertilizer plants in Montana that meet the definition of affected facility under any of the subparts T, U, V, W or X. Additionally, there are no phosphate fertilizer plants in Montana that meet the definition of affected facility under any of the subparts T, U, V, W, or X, constructed before October 22, 1974, and that have not reconstructed or modified since 1974.

[FR Doc. 01–19872 Filed 8–10–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL–7031–6]

Clean Air Act Full Approval of Operating Permits Program in Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: 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 1990 Clean Air Act Amendments 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.

DATES: Effective September 12, 2001.

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. A reasonable fee may be charged for copies.

FOR FURTHER INFORMATION CONTACT: Denise Baker, EPA, Region 10, Office of Air Quality (OAQ–107), 1200 6th Avenue, Seattle, WA 98101, (206) 553–8087.

SUPPLEMENTARY INFORMATION:

I. Background

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. Washington's operating permits program was submitted in response to this directive. EPA granted interim approval to Washington's air operating permit program on November 9, 1994 (59 FR 55813). EPA repromulgated final interim approval on one issue, and a notice of correction for Washington's operating permits program, on December 8, 1995 (60 FR 62992).

After the state and local agencies that implement the Washington operating permits program revised their programs to address the conditions of the interim approval, EPA promulgated a proposal to approve Washington's title V operating permits program on January 2, 2001, (66 FR at 84). At the same time, because EPA viewed the proposal as a noncontroversial action and did not anticipate adverse public comment on the proposal, EPA also published a direct final rule approving the Washington operating permits program (66 FR 16).

EPA received one adverse public comment on the proposal. Therefore, EPA removed the direct final approval on April 2, 2001 (66 FR 17512). After carefully reviewing and considering the issues raised by the commenter, EPA is taking final action to give full approval to the Washington operating permits program.

II. Response to Comments

The comment received by EPA related to Washington's provisions for insignificant emission units (IEUs). As discussed in the direct final approval notice, the Washington operating permits program 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); *see also* 66 FR at 19. Because 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 initially 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).

As also discussed in the direct final notice, however, the Western States Petroleum Association (WSPA), together with several other companies and the

Washington Department of Ecology, challenged EPA's determination that Ecology must revise its IEU regulations as a condition of full approval. *See* 66 FR at 19. 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. In light of the Court's order, EPA proposed in the direct final notice to give full approval to Washington's operating permits program even though Washington continued to exempt IEUs from monitoring, recordkeeping, reporting, and compliance certification requirements. *See* 66 FR at 19. EPA noted, however, that it continued to believe that part 70 does not allow the exemption of IEUs from the monitoring, recordkeeping, reporting, and compliance certification requirements of 40 CFR 70.6. *See* 66 FR at 19.

The commenter on EPA's direct final action objected to EPA giving full approval to the Washington operating permits program without first requiring correction of the Washington's provisions for IEUs. The commenter agreed with EPA that part 70 does not allow the exemption of IEUs subject to applicable requirements from the monitoring, recordkeeping, reporting, and compliance certification requirements of 40 CFR part 70. The commenter further asserted, however, that the Ninth Circuit's decision in *WSPA* v. *EPA* does not compel EPA to now grant full program approval to Washington because the procedural circumstances forming the basis for that decision no longer exist. EPA assumes the commenter is referring to EPA's statement in the direct final notice that, with respect to three of the states identified by the Ninth Circuit, EPA has determined that the states' regulations were not in fact inconsistent with EPA's position on IEUs and, in the case of the five other states identified by the Ninth Circuit, EPA has been working with these permitting authorities to ensure changes are made to their IEU provisions. *See* 66 FR at 19.

After carefully reviewing the Ninth Circuit's order, EPA continues to believe that it must give full approval to Washington's operating permits program even though Washington's regulations exempt IEUs from monitoring, recordkeeping, reporting, and compliance certification requirements because the Court ordered EPA to do so. The Court subsequently denied EPA's request for rehearing on the matter. *WSPA* v. *EPA,* No. 95–70034 (9th Cir. October 17, 1996).

As stated in the direct final notice, however, EPA maintains its position 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* 66 FR at 19. EPA will therefore be addressing this deficiency in Washington's IEU regulations in another context. On December 11, 2000 (65 FR 77376), EPA published a **Federal Register** notice notifying the public of the opportunity to submit comments identifying any programmatic or implementation deficiencies in state title V programs that had received interim or full approval. In that notice, EPA committed to respond to the merits of any such claims of deficiency on or before December 1, 2001, for those states, such as Washington, that have received interim approval and on or before April 1, 2002, for states that have received full approval. In response to that December 11, 2000, **Federal Register** notice, a commenter identified Washington's IEU regulations as deficient because Washington exempts IEUs subject to generally applicable requirements from monitoring, recordkeeping, reporting, and compliance certification requirements. Therefore, if the deficiencies in Washington's IEU regulations are not promptly addressed, EPA will respond to the deficiencies in Washington's IEU regulations and those of any other states identified by the *WSPA* Court that have not already been addressed in accordance with the time frames set forth in the December 11, 2000, **Federal Register** notice.

III. 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,[1] this approval does not extend to ''Indian Country'', as defined in 18 U.S.C. 151. *See* 64 FR 8247, 8250–8251 (February 19, 1999); 59 FR at 55815, 55818; 59 FR 42552, 42554 (August 18, 1994).

[1] 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.

IV. Administrative Requirements

Under Executive Order 12866, ''Regulatory Planning and Review'' (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. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this final approval will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it approves pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it 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, ''Federalism'' (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This final approval also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) or Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any

collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In reviewing State operating permit programs submitted pursuant to title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program , to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will 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 the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective September 12, 2001.

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 October 12, 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* 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: July 31, 2001.

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 September 12, 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 September 12, 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 September 12, 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 September 12, 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 September 12, 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 September 12, 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 September 12, 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 September 12, 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 September 12, 2001.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRL–7033–4]

RIN 2090–AA18

Project XL Site-specific Rulemaking for Yolo County Landfill, Davis, Yolo County, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating today a site-specific rule proposed on May 9, 2001 to implement a project under the Project XL program, an EPA initiative to allow regulated entities to achieve better environmental results at decreased costs. Today's rule provides site-specific regulatory flexibility under the Resource Conservation and Recovery Act (RCRA), as amended, for the Yolo County Landfill, Davis, Yolo County, California. The terms of the XL project are defined in a Final Project Agreement (FPA) signed by Yolo County, California Regional Water Quality Control Board, Yolo-Solano Air Quality Management District, the Solid Waste Association of North America, Institute for Environmental Management, and EPA on September 14, 2000. Today's rule is applicable only to the Yolo County Central Landfill, to facilitate implementation of the XL project to use certain bioreactor techniques at its municipal solid waste landfill (MSWLF), specifically the addition of bulk or non-containerized liquid wastes