

comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

**DATES:** Comments must be received in writing by November 15, 2001.

**ADDRESSES:** Written comments should be mailed to Ms. Makeba Morris, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

**FOR FURTHER INFORMATION CONTACT:** Paresh R. Pandya, (215) 814-2167, or by e-mail at [pandya.perry@epa.gov](mailto:pandya.perry@epa.gov).

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: October 10, 2001.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

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**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 70

[OK-FRL-7081-9]

### Clean Air Act Full Approval of Operating Permits Program; Oklahoma

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

**ACTION:** Proposed full approval.

**SUMMARY:** The EPA proposes to fully approve the Operating Permit Program of the State of Oklahoma. Oklahoma's Operating Permit Program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the States' jurisdiction. The EPA granted interim approval to Oklahoma's Operating Permit Program on February 5, 1996 (61 FR 4220). Oklahoma revised its program to satisfy the conditions of the interim approval and this action proposes approval of those revisions. Other program changes made by Oklahoma are also being proposed for approval as part of this action.

**DATES:** The EPA must receive your written comments on this proposed action no later than November 15, 2001.

**ADDRESSES:** Written comments on this action should be addressed to Ms. Jole Luehrs, Chief, Air Permits Section (6PD-R) at the EPA Region 6 Office listed below. Copies of the State's submittal and other supporting documentation relevant to this action are available for inspection during normal business hours at the U.S. EPA, Region 6, Air Permitting Section (6PD-R), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, and the Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73102. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

**FOR FURTHER INFORMATION CONTACT:** Mary Stanton, Regional Title V Air Operating Permits Projects Manager, Air Permitting Section (6PD-R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, at (214) 665-8377.

**SUPPLEMENTARY INFORMATION:** This section provides additional information by addressing the following questions:

What is the Operating Permit Program?  
 What is being addressed in this document?  
 What are the program changes that EPA is proposing to approve?  
 What is involved in this proposed action?

### What Is the Operating Permit Program?

Title V of the CAA Amendments of 1990 required all States to develop Operating Permit Programs that met certain Federal criteria. In implementing the Operating Permit 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 Permit Program is to improve enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable requirements for a facility into a single document, the source, the public, and the regulators can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include "major" sources of air pollution, as defined at 40 CFR 70.2, 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 (VOCs), carbon monoxide, lead, sulfur dioxide, nitrogen oxides, or particulate matter; those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of 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 of emitting 50 tons per year or more of VOCs.

### What Is Being Addressed in This Document?

Where an Operating Permit Program substantially, but not fully met the criteria outlined in the implementing regulations codified at 40 CFR part 70, EPA granted interim approval contingent on the State revising its program to correct the deficiencies. Because Oklahoma's Operating Permit Program substantially, but not fully met the requirements of part 70, EPA granted interim approval to the program in a rulemaking published on February 5, 1996 (61 FR 4220). The interim approval notice stipulated seven conditions that had to be met in order for Oklahoma's program to receive full approval. Oklahoma submitted revisions to its interim approved Operating Permit Program on July 27, 1998. This document describes the changes that

have been made in Oklahoma's Operating Permit Program.

### What Are the Program Changes That EPA Is Proposing To Approve?

The interim approval notice stipulated seven conditions that had to be met in order for Oklahoma's program to receive full approval. These seven conditions are as follows: (1) Revise Subchapter 8 of the Oklahoma Administrative Code (OAC) to incorporate the new transition schedule included in the Governor's request for source category-limited interim approval; (2) revise definition of "major source"; (3) revise definition of "insignificant activities"; (4) revise permit content provisions; (5) revise judicial review provisions; (6) revise administrative amendments provisions; and (7) submit State Implementation Plan (SIP) revision for Subchapter 7 of the OAC consistent with Subchapter 8 of the OAC and 40 CFR part 70. 60 FR at 4223. The State's July 27, 1998, submittal to EPA addressed these seven conditions. These items are discussed below.

As part of its process for correcting the deficiencies, the State also revised its Operating Permit Program regulations to correct some typographical errors and to make some editorial changes including the renumbering of the regulations. The renumbering accounts for the difference in citations between the old regulations and the revised regulations. Oklahoma also moved some new source review (NSR) provisions from Subchapter 7 to Subchapter 8. In addition, Oklahoma changed some regulations EPA previously approved. Some of these changes did not comply with part 70. These items are also discussed below.

The first condition for full approval of Oklahoma's Operating Permit Program was the requirement that the State revise Subchapter 8 (OAC 252:100-8-7(a)(5)(A) and OAC 252:100-8-5(b)(2)) to reflect a transition schedule approval period for permitting certain sources during the interim period and then permitting all other sources during the first three years of full approval. 60 FR 13088, 13091 (March 10, 1995); 61 FR at 4223. In response, the State deleted provisions of OAC 252:100-7(a)(5)(A) and OAC 252:100-8-5(b)(2) and revised OAC 252:100-8-4(b)(4) to reflect a transition schedule providing for permitting certain sources during the two year interim approval period and the permitting of all other sources during the first three years of full approval. This deficiency has been corrected.

The second condition for full approval was that the language at OAC 252:100-8-2 must be revised to clarify that for criteria pollutants, units cannot be considered separately at a facility when determining whether a source is major. 61 FR at 4223. Subsection D of OAC 252:100-8-2's definition of "major source" did not allow aggregation of emissions for certain units at oil or gas exploration and pipeline compressor stations, contrary to EPA's definition of "major source" at 40 CFR 70.2. See 60 FR at 13091. In response, Oklahoma revised the definition of major source at OAC 252:100-8-2 to delete subsection D, which did not allow aggregation of emissions for certain units at oil or gas exploration and pipeline compressor stations. Therefore, this deficiency has been corrected.

The third condition for full approval required a revision of the Insignificant Activities Provisions at OAC 252:100-8-3(e) to reflect an insignificant emissions level of one pound per hour of operation, based on potential to emit, or some other level as the State may demonstrate is insignificant with respect to applicable requirements. 61 FR at 4223. In response, the State deleted the insignificant activities definition in OAC 252:100-8-3(e) and promulgated a revised insignificant activities definition in OAC 252:100-8-2. This definition defined insignificant activities as those on a list approved by the Administrator and contained in Appendix I of Subchapter 8, or whose actual calendar year emissions do not exceed certain limits.<sup>1</sup> The definition also excludes any activity to which a Federal or State applicable requirement applies. The emission levels in the revised definition are consistent with the levels in other approved State Operating Permit Programs (*i.e.*, Arkansas and Louisiana). However, in this action, EPA is not approving the list of insignificant activities contained in Appendix I. Thus, insignificant activities are limited to the emission limits in OAC 252:100-8-2. Therefore, this deficiency has been corrected.

The fourth condition for full approval required Oklahoma to revise Subchapter 8 Permit Content Language at OAC 252:100-8-6(a) to delete the phrase, "to the extent practicable." 61 FR at 4223. Permits issued by the state must include

<sup>1</sup> These limits include 5 tons per year (tpy) of any one criteria pollutant, 2 tpy for any one hazardous air pollutant (HAP) or 5 tpy for an aggregate of two or more HAPs, or 20% of any threshold less than 10 tpy for any single HAP that EPA may establish by rule, or 0.6 tpy for any one category A substance, 1.2 tpy for any one category B substance, or 6 tpy for any one category C substance defined in OAC 252:100-41-40.

all applicable requirements. 60 FR at 13092. The State revised 252:100-8-6(a) to delete the phrase "to the extent practicable". Therefore, this deficiency has been corrected.

The fifth condition for full approval required Oklahoma to revise its Subchapter 8 Judicial Review Provisions. The EPA required the State to revise the language at OAC 252:100-8-7(j) to provide judicial review for comments made during public review and provide judicial review for all final permit actions. 60 FR at 4223. The regulations only provided standing for those who submitted "written" comments during public review, not those who made oral comments (*e.g.*, at a public hearing). *Id.* at 4222. Oklahoma moved the Judicial Review provisions of OAC 252:100-8-7(j) to OAC 252:100-8-7.5 and deleted the word "written" from this regulation. The current language provides judicial review for all comments made during the public comment period and for all final permit actions. Thus, this deficiency has also been corrected.

The sixth condition for full approval required the State of Oklahoma to revise its Subchapter 8 Administrative Amendment Provisions. The EPA required the State to revise the language at OAC 252:100-8-7(d) to delete the phrase "or less" from subpart (1)(c),<sup>2</sup> and to define the term "Enhanced NSR procedures" consistent with part 70. 60 FR at 4223. The EPA's rules at 40 CFR 70.7(d)(1)(iii) allow administrative amendments to be used to require more frequent monitoring at a facility, but not to make the monitoring requirements less stringent. The State's regulation did not define the term "Enhanced NSR procedures". Furthermore, the NSR procedures in Subchapter 7 had not been submitted to EPA as a SIP revision. In response, the State moved the Administrative Amendment provisions from OAC 252:100-8-7(d) to OAC 252:100-8-7.2(a) and deleted the phrase "or less" from the regulatory language in 252:100-8-7.2(a)(1)(C)(E).

The EPA also required the State to amend these regulations to define the term "Enhanced New Source Review (NSR) procedures" consistent with part 70. The regulations did not define or specify the NSR procedures mentioned and therefore required clarification. 61 FR at 4223; 60 FR at 13091-92. 40 CFR 70.7(d)(1)(v) allows the incorporation "into the part 70 permit the requirements from preconstruction review permits authorized under an

<sup>2</sup> The FR notice (60 FR at 4223) incorrectly identified this citation as OAC 252:100-8-7(d)(1)(d).

EPA-approved program, provided that such a program meets procedural requirements substantially equivalent to the requirements of [40 CFR 70.7 and 70.8] that would be applicable to the change if it were subject to review as a permit modification and compliance requirements substantially equivalent to those contained in § 70.6.” Rather than define the term “enhanced NSR procedures”, the sentence containing the term was deleted from OAC 252:100–8–7.2(a)(1)(E) (formerly OAC 252:100–8–7(d)(1)(E)). This change did not correct the sixth condition for full approval. However, as discussed below, the state has agreed to other steps to address this concern.

The seventh, and final, condition for full approval was the submission of Subchapter 7 as a SIP Revision. EPA required the State of Oklahoma to revise Subchapter 7 to define enhanced NSR procedures consistent with Subchapter 8 and 40 CFR part 70. The EPA required that the revised regulation be submitted as a SIP revision within 18 months after interim approval was granted to ensure consistency between the SIP and Title V of the CAA for major sources. 61 FR at 4223. As stated above, the term “enhanced NSR procedures” was deleted from the regulation. The first sentence of OAC 252:100–8–7.2(a)(1)(E) (formerly OAC 252:100–8–7(d)(1)(E)) was changed from “[i]ncorporates into the permit the requirements from preconstruction review permits issued by the DEQ under OAC 252:100–7” to “[i]ncorporates into the permit the requirements from preconstruction permits issued by the ODEQ under this Part.” However, the State failed to show that program meets procedural requirements substantially equivalent to the requirements of [40 CFR 70.7 and 70.8] that would be applicable to the change if it were subject to review as a permit modification and compliance requirements substantially equivalent to those contained in § 70.6. The State also failed to submit Subchapter 7 to EPA as a SIP revision. Therefore, Oklahoma failed to correct the seventh condition for full approval.

On June 12, 2001, EPA notified Oklahoma that it had four options to address the outstanding issues with the sixth and seventh conditions:

1. EPA could approve the regulation without any additional changes provided Oklahoma includes provisions in the permit that meet the requirements of 40 CFR 70.7 and 70.8 (e.g., affected state review, EPA review, EPA petition);

2. EPA could postpone full approval of Oklahoma's part 70 program, until the state submits and EPA approves Subchapter 8, as a revision to their State Implementation Plan.

This is provided that Subchapter 8 contains NSR provisions that address major sources and minor modifications to major sources, and that Subchapter 8 meets procedural requirements substantially equivalent to 40 CFR 70.7 and 70.8 (e.g., affected state review, EPA review, EPA petition);

3. Oklahoma can amend the regulation so that the language tracks the language in 40 CFR 70.7(1)(v); or

4. Oklahoma can amend the regulation to delete the provision.

By correspondence dated September 4, 2001, and September 19, 2001, Oklahoma agreed to implement Option 1. EPA and Oklahoma have agreed on the following language that Oklahoma will include in its permits to implement Option 1.

1. The construction permit goes out for a 30 day public notice and comment using the procedures set forth in 40 Code of Federal Regulations (CFR) 70.7(h)(1). This public notice shall include notice to the public that this permit is subject to EPA review, EPA objection, and petition to EPA, as provided by 40 CFR 70.8; that the requirements of the construction permit will be incorporated into a Title V permit through the administrative amendment process; that the public will not receive another opportunity to provide comments when the requirements are incorporated into the Title V permit, and that EPA review, EPA objection, and petitions to EPA will not be available to the public when requirements from the preconstruction review permit are incorporated into the Title V permit.

2. A copy of the construction permit application is sent to EPA, as provided by 40 CFR 70.8(a)(1).

3. A copy of the draft construction permit is sent to any affected State, as provided by 40 CFR 70.8(b).

4. A copy of the proposed construction permit is sent to EPA for a 45 day review period as provided by 40 CFR 70.8(a) and (c).

5. The DEQ complies with 40 CFR 70.8(c) upon the receipt within the 45 day comment period of any EPA objection to the construction permit. The DEQ shall not issue the permit until EPA's objections are resolved to the satisfaction of EPA.

6. The DEQ complies with 40 CFR 70.8(d).

7. A copy of the final construction permit is sent to EPA as provided by 40 CFR 70.8(a).

8. The DEQ shall not issue the proposed construction permit until any affected State and EPA have had an opportunity to review the proposed permit, as provided by these permit conditions.

9. Any requirements of the construction permit may be reopened for cause after incorporation into the Title V permit by the administrative amendment process, by DEQ as provided in OAC 252:100–8–7.3(a), (b), and (c), and by EPA, as provided by 40 CFR 70.7(f) and (g).

To the extent that these conditions are not followed, the Title V permit must go through the Title V review process.

Therefore, Oklahoma has corrected the sixth and seventh conditions for full approval.

Oklahoma made additional program changes after the interim approval became effective on March 6, 1996. The State revised its Operating Permits Program regulations to correct some typographical errors and to make some editorial changes including the renumbering of the regulations. Oklahoma also changed some regulations EPA previously approved. These regulations are discussed below. Oklahoma also moved some NSR provisions into Subchapter 8, and amended OAC 252:002.Subchapter 15, “Uniform Permitting Procedures.” However, EPA is only proposing to approve Subchapter 8—Permits for Part 70 Sources, as it pertains to the Title V operating permits program. EPA is also proposing to approve OAC 252:2–15–41—Air Quality Applications—Tier II. It is not proposing to approve any provision of Subchapter 8 which relates to construction permits, or any other provision contained in the submittal which does not pertain to Title V. It is not proposing to approve Appendix J—Trivial Activities List, or OAC 252:2–15–41—Air Quality Applications—Tier I. It is also not proposing to approve any regulation as part of the SIP.

Some of the changes Oklahoma made did not meet the requirements of part 70. These deficiencies involved public participation, Tier I air quality applications, definitions, permit content, administrative permit amendments, minor permit modification procedures, and permit review by EPA and affected States. These deficiencies were identified in a June 12, 2001 letter to Oklahoma.<sup>3</sup> All but one of these deficiencies were minor. One major deficiency was discovered, OAC 252:100–8–8(i)(5)(B). This provision allowed Oklahoma to disregard EPA's objection to a permit if it determined that it was inconsistent with state or federal law or regulations. This provision is prohibited by section 505(b)(3) of the CAA and 40 CFR

<sup>3</sup> These deficiencies will be addressed in a Notice of Deficiency published in the *Federal Register* at a later date.

70.8(c). However, EPA has never objected to a CAA Title V permit in Oklahoma.<sup>4</sup>

Oklahoma has proposed revisions to OAC 252:100-8-8 which correct this deficiency. The Oklahoma Air Quality Council and the Oklahoma Air Quality Board have both approved the proposed revisions. Before this revision becomes effective it must be approved by the Governor. Oklahoma also needs to submit the revisions to EPA for approval. If EPA does not receive the revisions in a time frame that would allow full approval to become effective by December 1, 2001, then EPA would still grant Oklahoma full approval of its program (assuming that no relevant comments are received that would cause us not to approve the program). However, EPA would include the EPA Review Deficiency along with the other minor deficiencies identified in the June 12, 2001, letter in a Notice of Deficiency published in the **Federal Register**. Since this deficiency is not identified as an interim approval deficiency, it does not need to be corrected prior to the granting of full approval. Also, Oklahoma has agreed in writing not to issue a permit over EPA's objection.

Therefore, based on the foregoing, EPA believes that since Oklahoma has corrected all of its interim approval deficiencies, and the new deficiencies are either minor or have been adequately addressed in the interim, these deficiencies are not a barrier to proposing full approval of Oklahoma's Operating Permits Program. However, a notice of deficiency will be issued to Oklahoma in the near future requiring Oklahoma to take action to correct these deficiencies.

#### What Is Involved in This Proposed Action?

The State of Oklahoma has fulfilled the conditions of the interim approval granted on February 5, 1996 (61 FR 4220), so EPA is proposing full approval of the State's operating permit program. EPA is also proposing approval of certain other program changes made by the State since interim approval was granted.

#### Administrative Requirements

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this proposed action 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 proposed rule 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 proposes to approve 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). The rule merely proposes to approve 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 proposed rule 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 significantly 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.

#### 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: October 2, 2001.

**Lawrence E. Starfield,**

*Acting Deputy Regional Administrator,*  
*Region 6.*

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**BILLING CODE 6560-50-P**

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 01-2250, MM Docket No. 01-262, RM-10231]

#### Radio Broadcasting Services; La Pryor, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Katherine Pyeatt proposing the allotment of Channel 278A at La Pryor, Texas, as that community's first local FM service. The coordinates for Channel 278A at La Pryor are 28-58-09 and 99-56-05. There is a site restriction 8.9 kilometers (5.6 miles) west of the community. Since La Pryor is located within 320 kilometers of the U.S.-Mexican border, concurrence of the Mexican Government will be requested for the allotment at La Pryor.

<sup>4</sup> These deficiencies will be addressed in a Notice of Deficiency published in the **Federal Register** at a later date.