

(B) OAR 629-43-043 effective April 13, 1987.

(C) ORS 477.515 effective 1971.

(D) Directive 1-4-1-601, *Operational Guidance for the Oregon Smoke Management Program*, effective October 23, 1992.

(E) OAR 340-26-0035 and 340-26-0040, effective March 10, 1993; OAR 340-26-0001, 340-26-0031, 340-26-0033, and 340-26-0045, effective May 11, 1993; 340-26-0003, 340-26-0005, 340-26-0010, 340-26-0012, 340-26-0013, 340-26-0015, and 340-26-0055, effective May 31, 1994.

(F) OAR 837-110-0010, 837-110-0020, 837-110-0030, 837-110-0040, 837-110-0070, 837-110-0080, 837-110-0090, 837-110-0110, 837-110-0120, 837-110-0130, and 837-110-0150, effective February 7, 1994; 837-110-0160, effective August 11, 1993; and 837-110-0050, 837-110-0060, and 837-110-0140, effective February 7, 1989.

(G) Union County Ordinance #1992-4 effective July 1, 1992.

(H) Jefferson County Ordinance #-0-58-89 effective May 31, 1989.

(I) Remove the following provision from the current incorporation by reference: OAR 340-26-025 effective March 7, 1984.

(ii) Additional Materials.

(A) OAR 340-20-047 Section 5.2 effective August 11, 1992 (except section 5.2.4.2 and section 5.2.5.1 introductory paragraph)

(B) "Oregon Smoke Management Plan, Appendix 5, Operational Guidance for the Oregon Smoke Management Program, Criteria for National Forest and Bureau of Land Management Lands in the Blue Mountains of NE Oregon (Volume 3, Section A1)", effective July 12, 1995.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 70

[PA-T5-AC2001a; FRL-7093-3]

#### Clean Air Act Full Approval of Partial Operating Permit Program; Allegheny County; Pennsylvania

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action fully approving a partial operating permit program under title V of the Clean Air Act (the Act). This program will allow the Allegheny

County Health Department (ACHD), located in the Commonwealth of Pennsylvania, to issue federally enforceable operating permits to all major stationary sources and certain other affected minor sources in its jurisdiction. The ACHD's operating permits program was submitted to EPA by the Commonwealth of Pennsylvania on behalf of Allegheny County. By this same rulemaking, EPA is also withdrawing its previously published notice of proposed rulemaking dated December 6, 1999. Any parties interested in commenting on this rulemaking granting full approval to the ACHD's operating permits program should do so at this time.

**DATES:** This rule is effective on December 17, 2001 without further notice, unless EPA receives adverse written comment by December 3, 2001. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments may be mailed to 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 the Allegheny County Health Department Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

**FOR FURTHER INFORMATION CONTACT:** Linda Miller, Permits and Technical Assessment Branch at (215) 814-2068 or by e-mail at miller.linda@epa.gov. Please note that comments on this rule must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On November 9, 1998 and March 1, 2001, the Pennsylvania Department of Environmental Protection (PADEP) submitted a request on behalf of the Allegheny County Health Department (ACHD) for approval of a partial operating program pursuant to 40 CFR part 70 for Allegheny County (the County). The ACHD will be the permitting authority for the operating permit program. On December 6, 1999, EPA proposed approval of the County's

partial operating permit program (64 FR 68066). The ACHD has subsequently revised its regulations. These revisions strengthen the ACHD's operating permitting program. In this final rulemaking, EPA is both withdrawing its previous proposal (64 FR 68066) and approving the County's part 70 operating permit program as submitted on November 9, 1998 and amended on March 1, 2001.

This section provides additional information on EPA's approval of the partial operating permit program by addressing the following questions:

- What is the operating permit program?
- What is a partial program approval?
- What are the operating permit program requirements?
- What is being addressed in this document?
- What is not being addressed in this document?

#### What Is the Operating Permit Program?

The Clean Air Act Amendments of 1990 required all States to develop operating permit programs that meet established Federal criteria. When implementing the operating permit programs, the States require certain sources of air pollution to obtain permits that contain all of their applicable requirements under the Clean Air Act (CAA or the Act). The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of its applicable CAA requirements into a federally-enforceable document. By consolidating all of the applicable requirements for a given air pollution source into an operating permit, the source, the public, and the State environmental agency can more easily understand 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 and certain other sources specified in the Act 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 in Allegheny County include, but are not limited to, those that have the potential to emit 50 tons per year or more of volatile organic compounds; 100 tons per year or more of certain other criteria pollutants; those that emit 10 tons per year of any single hazardous air pollutant (HAP) specifically listed under the Act, or those that emit 25 tons per year or more of a combination of HAPs. In an area not meeting the national ambient air quality standards (NAAQS) for ozone, carbon monoxide,

or particulate matter, major sources are defined by the area's nonattainment classification.

#### *What Is a Partial Program Approval?*

The approved Pennsylvania part 70 operating permit program currently applies state-wide. A partial program approval means that a geographic region of Pennsylvania, Allegheny County, will have a separate program. The term "partial" is a geographic reference. It is not a reference to the approval status of the ACHD's program.

#### *What Are the Operating Permit Program Requirements?*

The minimum program elements for an approvable operating permit program are those mandated by title V of the Act and in EPA's implementing regulations at CFR 40, part 70—"State Operating Permit Programs." Title V required state and provided for local air pollution control agencies to develop operating permit programs and submit them to EPA for approval by November 15, 1993. Under title V, State and local air pollution control agencies that implement operating permit programs are called "permitting authorities." EPA granted full approval of PADEP's operating permit program on August 26, 1996 (61 FR 39597). That program currently applies in Allegheny County. The ACHD has adopted and requested approval of a separate program, referred to as a partial program. The PADEP has submitted a formal request to EPA for approval of a part 70 operating permit program for Allegheny County. EPA is approving this partial program for Allegheny County.

The regulations for the Allegheny County part 70 permit program are found in the County's Air Pollution Control Regulations. Definitions for the air pollution control program are found in Part A of the regulations (2101.01 et seq.). A list of the County's definitions relevant to this rulemaking is included in the Technical Support Document (TSD) prepared by EPA in support of this rulemaking. Copies of that TSD may be obtained, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. Part C of the County's regulations focuses on requirements for operating permits for all sources of air pollution. Part C is divided into two subparts. Subpart 1 includes requirements for all operating permits, including part 70 sources. Subpart 2 includes additional, and in some cases, more extensive, requirements for part 70 operating permit sources.

The County's program meets the minimum requirements of 40 CFR part

70. Several provisions differ from, but have been determined to be consistent with, 40 CFR part 70, in scope and stringency. These areas are highlighted below:

#### A. Legal Opinion

The legal opinion submitted by the County did not address the time frame required for petitions for judicial review and the judicial review requirements for failure to issue minor permits. However, as described below, the ACHD's regulations contain provisions which address the requirements:

(1) *Time frame for judicial review:* Although the ACHD's operating permit program regulations do not specify the time frame for filing a petition for judicial review, the ACHD is generally subject to Article XI, Hearings and Appeals. In order to obtain judicial review, section 1104(a) requires that an appellant must first file a notice of appeal to the Director of the ACHD and go through an administrative hearing process. The notice of appeal, as described in ACHD regulations, section 1104(b), requires the names, addresses, and telephone numbers of the appellant and his or her duly authorized attorney or agent, if any, and shall describe grounds for appeal. The notice of appeal must be filed no later than 10 days after written notice or issuance of the action by which the appellant is aggrieved. The remaining requirements for submission of information by the appellant is described in the procedures set forth in section 1105 of the ACHD's regulations. The ACHD regulations meet the requirement for initiating judicial review required by 40 CFR part 70.

(2) *Judicial review for failure to act on minor permits:* The ACHD's program does not specifically address judicial review for failure to issue a minor permit modification as a separate appealable action. However, section 2103.14(c)(8) clearly requires final action within 60 days for any proposed minor permit modification. Section 2103.11(f) states that the Department's failure to take final action is appealable and that the Court of Common Pleas may require action on the application without further delay. Therefore, the ACHD's regulations contain necessary authority to compel action on minor permit modifications.

#### B. Transition Plan

The transition plan included in section 2103.01 of the ACHD's regulations specified deadlines for permit application submittal and permit issuance. These dates have passed. Nonetheless, EPA previously approved the Commonwealth of Pennsylvania's

part 70 operating permit program on August 29, 1996 (see 61 FR 39598) which established deadlines for permit applications that applied state-wide. The ACHD's request to have partial program approval does not affect, or change in any way, the dates established in the Commonwealth's approved program.

#### C. De Minimis Changes

The ACHD's program limits changes without a permit revision to de minimis levels in section 2103.14. The ACHD regulations allow a permit shield for de minimis changes, unless prohibited by the CAA. In this final rulemaking, EPA is clarifying that the Act's implementing regulations, 40 CFR part 70, do prohibit permit shield for de minimis changes to a title V permit.

#### D. Absence of Part 70 Emergency Defense Provisions

The ACHD has incorporated most of the recordkeeping and reporting requirements required under part 70 for an emergency to be considered an affirmative defense. However, consistent with Pennsylvania's program, the ACHD program does not allow an emergency to be considered an affirmative defense. EPA clarified in its August 31, 1995 (60 FR 45530) supplemental part 70 document that "the part 70 rule does not require the States to adopt the emergency defense. A State may include such a defense in its part 70 program to the extent it finds appropriate, although it may not adopt an emergency defense less stringent than that set forth at 40 CFR 70.6 (g)." As the adoption of emergency defense provisions under part 70 is discretionary, the ACHD's program is not inconsistent with part 70.

A detailed description of Allegheny County's submittal and EPA's evaluation are included in a technical support document (TSD) in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

#### *What is Being Addressed in This Document?*

The November 5, 1998 submittal, as amended March 1, 2001, requested approval of numerous revisions of the Pennsylvania State Implementation Plan (SIP) as well as approval of the ACHD's operating permit program. This final rule addresses only the ACHD's part 70 operating permit program approval. The part 70 operating permit program is also referred to as the title V program, referencing the CAA citation for part 70 operating permit programs.

### *What is Not Being Addressed in This Document?*

The November 9, 1998, submittal, as amended March 1, 2001, contained numerous requests for revisions to the Pennsylvania SIP, including a recodification of the regulations in general, amendments to major and minor new source review (NSR) and prevention of significant deterioration (PSD) programs, as well as requests for approval or delegation of programs under 40 CFR parts 52, 63 and part 70 permitting programs, and approval for delegation of programs under section 112 of the Act. These requests have been or will be the subjects of separate rulemakings.

## II. Final Action

EPA is taking direct final action fully approving a partial operating permit program to allow ACHD to issue operating permits to all major stationary sources in Allegheny County, Pennsylvania. In addition, EPA is withdrawing its proposed rule of December 6, 1999 (64 FR 68066). EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the “Proposed Rules” section of today’s **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the operating permit program approval if adverse comments are filed relevant to the issues discussed in this action. This rule will be effective on December 17, 2001 without further notice unless EPA receives adverse comment by December 3, 2001. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

## III. Administrative Requirements

### A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, (May 22, 2001)). 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 rule 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 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 rule 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 rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing state operating permit programs, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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 an operating permit program submission 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 an operating permit 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this 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 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.).

### B. Submission to Congress and the Comptroller General

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**. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

### C. Petitions for Judicial Review

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 December 31, 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 approving a partial title V operating permit program for the ACHD, Allegheny County, Pennsylvania 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: October 17, 2001.

**James W. Newsom,**

*Acting Regional Administrator, Region III.*

Appendix A of part 70 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

### **PART 70—[AMENDED]**

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

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

2. Appendix A to part 70 is amended by revising paragraph (b) in the entry for Pennsylvania to read as follows:

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

\* \* \* \* \*

Pennsylvania

(a) \* \* \*

(b) The Pennsylvania Department of Environmental Protection submitted a request on behalf of the Allegheny County Health Department pertaining to operating permit programs in the Commonwealth of Pennsylvania. The submission, dated November 9, 1998 and amended March 1, 2001, includes a request for approval of a partial operating program pursuant to 40 CFR part 70 for Allegheny County. The Allegheny County Health Department's partial operating permit program is hereby granted full approval effective on December 17, 2001.

\* \* \* \* \*

[FR Doc. 01-27281 Filed 10-31-01; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 271**

[FRL-7097-1]

**Hawaii: Final Authorization of State Hazardous Waste Management Program**

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

**ACTION:** Notice of final determination on application of Hawaii for final authorization.

**SUMMARY:** Hawaii has applied for final authorization of its hazardous waste management program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Hawaii's application and has reached a final determination that Hawaii's hazardous waste management program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to the State to operate its program subject to the limitations on its authority retained by EPA in accordance with RCRA, including the Hazardous and Solid Waste Amendments of 1984 (HSWA).

**EFFECTIVE DATE:** Final authorization for Hawaii shall be effective at 1 p.m. on November 13, 2001.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Smith, WST-2, U.S. EPA

Region 9, 75 Hawthorne Street, San Francisco 94105-3901, (415) 744-2152.

**SUPPLEMENTARY INFORMATION:**

**A. Why are State Programs Authorized?**

Section 3006 of RCRA allows EPA to authorize State hazardous waste management programs to operate in the State in lieu of the Federal hazardous waste management program subject to the authority retained by EPA in accordance with RCRA, including HSWA. EPA grants authorization if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is consistent with the Federal program and other State programs, and (3) provides for adequate enforcement (section 3006(b), 42 U.S.C. 6926(b)). EPA regulations for final State authorization appear at 40 CFR part 271.

**B. When Are Revisions to State Programs Necessary?**

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste management program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

**C. What Were the Comments and Responses to EPA's Proposal?**

On May 5, 1999, Hawaii submitted an official application for final authorization to administer the RCRA program. On June 22, 2000, EPA published a tentative determination announcing its intent to grant Hawaii final authorization. Further background on the tentative decision to grant authorization appears at 65 FR 38802-38806, June 22, 2000.

Along with the tentative determination, EPA announced the availability of the application for public comment and the dates of a public meeting and a public hearing. The public meeting was held on July 25, 2000 and the public hearing was held on July 27, 2000.

The EPA received three oral comments, one of which was supplemented in writing, and one letter containing written comment during the public comment period. Additionally,

in April 2001, after the close of the comment period, EPA received a Petition To Withdraw Hawaii Certification and Title VI Complaint of Discriminatory Acts (Petition to Withdraw) document challenging the administration and enforcement of environmental programs by the State of Hawaii and seeking withdrawal of authorization for all environmental programs, including RCRA. We have taken into consideration comments in the Petition relating to the Hawaii hazardous waste management program in taking today's action. In addition, the EPA Office of Civil Rights (OCR), which is responsible for processing and investigating complaints of discrimination filed against programs or activities that receive financial assistance from EPA, has notified the complainant that it will review the Title VI Complaint of Discriminatory Acts under the procedural rules for handling Title VI Complaints. The significant issues raised by the commenters and EPA's responses are summarized below. Today's action is not a final determination on the merits of the Petition to Withdraw federal authorization for all environmental programs in Hawaii.

1. *Comment:* EPA received comments relating to the Hawaii Department of Health's (HDOH) implementation of other programs for which Hawaii had been delegated authority by EPA. The comments generally asserted that the HDOH could not adequately enforce the laws and regulations of the hazardous waste management program because its record of performance in other environmental programs is poor. Some specific examples cited were that Hawaii's enforcement of the Clean Water Act is poor, its implementation of the Total Maximum Daily Load program (TMDL) is poor, and, in general, it lacks adequate funds, staff and commitment for environmental programs, such as the solid waste program. The Petition to Withdraw also raised these concerns. Please note, today's action is not a final determination on the merits of the Petition to Withdraw.

*Response:* Each environmental program is unique and must be evaluated in light of the particular federal and state requirements applicable to that program. Among other things, programs differ significantly in the numbers and types of pollutants regulated; the number, size and type of facilities which are regulated; complexity and scope of regulatory requirements; regulatory mechanisms (for example, use of permits and prohibitions); tools for assessing compliance (e.g., inspections, self-