

contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 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. Section 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. section 804(2). This rule will be effective on November 30, 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 February 4, 2002. 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: November 27, 2001.

**Wayne Nastri,**  
*Regional Administrator, Region 9.*

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. Appendix A to part 70 is amended by adding paragraph (b) under Hawaii to read as follows:

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

\* \* \* \* \*

Hawaii

\* \* \* \* \*

(b) Revisions were submitted on September 21, 2001. The rule amendments contained in the September 21, 2001 submittal adequately addressed the conditions of the interim approval effective on December 1, 1994. The Department of Health, State of Hawaii, is hereby granted final full approval effective on November 30, 2001.

\* \* \* \* \*

[FR Doc. 01-29959 Filed 12-3-01; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 70**

[IL; FRL-7112-1]

**Clean Air Act Final Full Approval of the Operating Permits Program; Illinois**

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is taking final action to fully approve the Illinois Clean Air Act Permit Program (CAAPP), 415 ILCS 5/39.5, submitted by Illinois pursuant to subchapter V of the Clean Air Act, which requires states to develop and submit to EPA for approval, programs for issuing operating permits to all major stationary sources and to certain other sources.

**DATES:** The effective date of this action is November 30, 2001.

**ADDRESSES:** Copies of the state's submittal and other supporting information used in developing the full approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR-18J, Chicago, Illinois, 60604. Please contact Steve Marquardt at (312) 353-3214 to arrange a time if inspection of the submittal is desired.

**FOR FURTHER INFORMATION CONTACT:**

Steve Marquardt, AR-18J, 77 West Jackson Boulevard, Chicago, Illinois, 60604, Telephone Number: (312) 353-3214, E-Mail Address: marquardt.steve@epa.gov.

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

What is being addressed in this document?

What is involved in this final action?

What is the scope of EPA's full approval?

**What Is Being Addressed in This Document?**

As required under Subchapter V, generally known as title V, of the Clean Air Act ("the Act"), as amended (1990), EPA has promulgated regulations which define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, or withdraw approval of the state programs (see 57 FR 32250 (July 21, 1992)). These regulations are codified at 40 Code of Federal Regulations (CFR) part 70. Pursuant to title V, and EPA's implementing regulations, states developed and submitted to EPA programs for issuing operating permits to all major stationary sources and to certain other sources. Where a program substantially, but not fully, met the requirements of part 70, EPA granted the program interim approval. If EPA has not fully approved a state's operating permit program by the expiration of its interim approval period, a federal program under 40 CFR part 71 will automatically take effect in that state.

EPA promulgated final interim approval of the Illinois title V program on March 7, 1995 (60 FR 12478), and the program became effective on that date.

Illinois submitted amendments to its title V program for approval on May 31, 2001. Illinois intended the amendments to correct the four interim approval issues identified in the March 7, 1995 interim approval action. EPA proposed full approval of the Illinois title V program on October 22, 2001 (66 FR 53370), based on the resolution of the four identified interim approval issues.

In the October 22, 2001 notice, the EPA stated that Illinois needed to make two form clarifications as well as send a letter regarding its understanding of its ability to use the State's enhanced NSR provision at 415 ILCS 5/39.5(13)(c)(v). Illinois sent a letter dated November 9, 2001, to address the clarifications and

changes requested in the proposed full approval.

The first form change dealt with identifying specific requirements applicable to insignificant emission units (IEUs). EPA stated that, prior to receiving full approval, Illinois must clarify that applicants must include in their applications all information on IEUs necessary to determine applicability of and compliance with specific requirements. Illinois has added text to the instructions of its application form 297-CAAPP to clarify that sources must provide information regarding specific applicable requirements which apply to IEUs, and compliance of the IEUs with those specific applicable requirements.

The second form change and additional statements dealt with Illinois' enhanced NSR provision at 415 ILCS 5/39.5(13)(c)(v). The EPA stated that, to assure that Illinois will not use this provision, Illinois will amend the State's administrative amendment application form, 273-CAAPP, to delete the category that enables a source to take advantage of incorporation of a construction permit through administrative amendment procedures. Illinois has deleted from application form 273-CAAPP the statement regarding the ability to incorporate a construction permit into the title V permit through the administrative amendment procedures. Additionally, in the November 9 letter submitted by Illinois, the State expressed that it would not use this option until the proper procedures are in place. Specifically, Illinois stated, "the Illinois EPA understands that in order to use the enhanced NSR process, as described in 40 CFR 70.7(d)(1)(v), we must develop and obtain USEPA approval for program regulations which are substantially equivalent to the procedural requirements of 40 CFR 70.7 and 70.8 and compliance requirements substantially equivalent to those contained in 40 CFR 70.6." These form changes and clarifications provide adequate responses to the issues raised in the October 22, 2001 proposed full approval.

**What Is Involved in This Final Action?**

The EPA is granting full approval of the Illinois title V operating permits program based on the revisions submitted on May 31, 2001 and the previously mentioned November 9, 2001 letter. These revisions and clarifications satisfactorily address the four program deficiencies identified in EPA's March 7, 1995, interim approval rulemaking and the clarifications required in the proposed full approval.

**What Is the Scope of EPA's Full Approval?**

In its program submission, Illinois did not assert jurisdiction over Indian country. To date, no tribal government in Illinois has applied to EPA for approval to administer a title V program in Indian country within the state. EPA regulations at 40 CFR part 49 govern how eligible Indian tribes may be approved by EPA to implement a title V program on Indian reservations and in non-reservation areas over which the tribe has jurisdiction. EPA's part 71 regulations govern the issuance of federal operating permits in Indian country. EPA's authority to issue permits in Indian country was challenged in *Michigan v. EPA*, (D.C. Cir. No. 99-1151). On October 30, 2001, the court issued its decision in the case, vacating a provision that would have allowed EPA to treat areas over which EPA determines there is a question regarding the area's status as if it is Indian country, and remanding to EPA for further proceedings. EPA will respond to the court's remand and explain EPA's approach for further implementation of part 71 in Indian country in a future action.

**Citizen Comment Letter on Illinois' Title V Program**

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001. (65 FR 32035) The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPPIRG). In settling the litigation, EPA agreed to publish a notice in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** notice.

One citizen group commented on what it believes to be deficiencies with respect to the Illinois title V program. As stated in the **Federal Register** notice published on October 22, 2001 (66 FR 53370), proposing to fully approve Illinois' operating permit program, EPA takes no action on those comments in today's action. Rather, EPA expects to respond by December 1, 2001 to timely public comments on programs that have obtained interim approval, and by April 1, 2002 to timely comments on fully approved programs. We will publish a notice of deficiency (NOD) when we

determine that a deficiency exists, or we will notify the commenter in writing to explain our reasons for not making a finding of deficiency. In addition, we will publish a notice of availability in the **Federal Register** notifying the public that we have responded in writing to these comments and how the public may obtain a copy of our response. EPA Region 5 will also post its response letters on the Internet at <http://yosemite.epa.gov/r5/ardcorre.nsf/Title+V+Program+Comments>. EPA Region 5 includes the states of Michigan, Minnesota, Illinois, Indiana, Ohio, and Wisconsin. An NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight. Furthermore, in the future, EPA may issue an additional NOD if EPA or a citizen identifies other deficiencies.

### Administrative Requirements

#### A. What Are the Administrative Requirements for This Action?

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. 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 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 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 an unfunded mandate nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

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 Act.

This final approval is also not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), 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.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272 note, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing state operating permit programs submitted pursuant to title V of the Act, EPA will approve state programs provided that they meet the requirements of the Act and EPA's regulations codified at 40 CFR part 70. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a state operating permit program for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a state program that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA 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. The 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 November 30, 2001.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 2002. 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) of the Act.)

#### B. What Is the Effective Date of EPA's Full Approval of Illinois' Title V Program?

EPA's approval of Illinois' title V program is effective on November 30, 2001. Pursuant to section 502(h) of the Act, the effective date of a permitting program approved under title V is the date of approval by the Administrator or her delegatee. Furthermore, the good cause exception under the Administrative Procedure Act (APA) allows EPA to make the full approval of the state's program immediately effective. In relevant part, the APA provides that publication of "a substantive rule shall be made not less than 30 days before its effective date, except— \* \* \* (3) as otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. § 553(d)(3). Section 553(b)(3)(B) of the APA provides that good cause may be supported by an agency determination that a delay in the effective date is impracticable, unnecessary, or contrary to the public interest. The EPA finds that it is necessary and in the public interest to make this action effective sooner than 30 days following publication. In this case, EPA believes that it is in the public interest for the program to take

effect before December 1, 2001. The EPA's interim approval of Illinois' program expires on December 1, 2001. In the absence of this full approval of Illinois' amended program taking effect on November 30, the federal program under 40 CFR part 71 would automatically take effect in Illinois and would remain in place until the effective date of the fully-approved state program. The EPA believes it is in the public interest for sources, the public and Illinois to avoid any gap in coverage of the state program, as such a gap could cause confusion regarding permitting obligations. Furthermore, a delay in the effective date is unnecessary because Illinois has been administering the title V permit program under an interim approval. Through this action, EPA is approving a few revisions to the existing and currently operational program. The change from the interim approved program which substantially met the part 70 requirements, to the fully approved program is relatively minor, in particular if compared to the changes between a state-established and administered program and the federal program.

#### C. What Is the Scope of EPA's Full Approval?

In its program submission, Illinois did not assert jurisdiction over Indian country. To date, no tribal government in Illinois has applied to EPA for approval to administer a title V program in Indian country within the state. The EPA regulations at 40 CFR part 49 govern how eligible Indian tribes may seek approval from EPA to implement a title V program on Indian reservations and in non-reservation areas over which the tribe has jurisdiction. The EPA's part 71 regulations govern the issuance of federal operating permits in Indian country. The EPA's authority to issue permits in Indian country was challenged in *Michigan v. EPA*, (D.C. Cir. No. 99-1151). On October 30, 2001, the court issued its decision in the case, vacating a provision that would have allowed EPA to treat areas over which EPA determines there is a question regarding the area's status as if it is Indian country, and remanding to EPA for further proceedings. The EPA will respond to the court's remand and explain EPA's approach for further implementation of part 71 in Indian country in a future action.

#### 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.

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

Dated: November 27, 2001.

**David A. Ullrich,**

*Deputy Regional Administrator, Region V.*

40 CFR part 70 is amended as follows:

#### PART 70—[AMENDED]

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

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

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

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

\* \* \* \* \*

Illinois

\* \* \* \* \*

(b) The Illinois Environmental Protection Agency: program revisions submitted on May 31, 2001; submittal adequately addressed the conditions of the interim approval which expires on December 1, 2001. Illinois is hereby granted final full approval effective November 30, 2001.

\* \* \* \* \*

[FR Doc. 01-29960 Filed 12-3-01; 8:45 am]

**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 70

[MI; FRL-7111-6]

#### Clean Air Act Final Full Approval Of Operating Permit Program; Michigan

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is taking final action to fully approve the operating permit program submitted by the state of Michigan. Michigan submitted its operating permit program pursuant to subchapter V of the Clean Air Act (Act), which requires 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.

**EFFECTIVE DATE:** November 30, 2001.

**ADDRESSES:** Copies of the state's submittal and other supporting information used in developing the final full approval are available for inspection during normal business hours at the following location: EPA Region 5, 77

West Jackson Boulevard (AR-18)), Chicago, Illinois 60604. Please contact the person listed below to arrange a time to inspect the submittal.

**FOR FURTHER INFORMATION CONTACT:** Beth Valenziano, 77 West Jackson Boulevard (AR-18)), Chicago, Illinois 60604, (312) 886-2703, [valenziano.beth@epa.gov](mailto:valenziano.beth@epa.gov).

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

What is being addressed in this document?  
What is involved in this final action?

#### What Is Being Addressed in This Document?

As required under Subchapter V of the Act, EPA has promulgated regulations that define the minimum elements of an approvable state operating permit program and the corresponding standards and procedures by which EPA will approve, oversee, or withdraw approval of state operating permit programs (see 57 FR 32250 (July 21, 1992)). These regulations are codified at 40 Code of Federal Regulations (CFR) part 70. Pursuant to Subchapter V, generally known as title V, states and local permitting authorities developed, and submitted to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The EPA's program review occurs under section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA granted the program interim approval. If EPA has not fully approved a state operating permit program by the expiration of its interim approval period, EPA must establish and implement a federal operating permit program under 40 CFR part 71.

The Michigan Department of Environmental Quality (MDEQ) submitted the state's title V operating permit program for approval on May 16, 1995, with supplements submitted on July 20, 1995, October 6, 1995, November 7, 1995, and January 8, 1996. The EPA promulgated interim approval of the Michigan title V program on January 10, 1997 (62 FR 1387), finding that Michigan's program substantially, but not fully, met the requirements of title V and part 70 and identifying certain deficiencies that Michigan would need to correct. The interim approved program became effective on February 10, 1997. Subsequently, EPA extended Michigan's title V interim approval period on several occasions, most recently to December 1, 2001 (65