

deficiency, EPA will promulgate, administer, and enforce a whole or partial program within 2 years of the date of the finding. The sanctions will go into effect unless the state has corrected this deficiency within 18 months after signature of this document.

This document is not a proposal to withdraw the state's title V program. Consistent with 40 CFR 70.10(b)(2), EPA will wait at least 90 days to determine whether the state has taken significant action to correct the deficiency.

### III. EPA Responses to Citizen Comments

As discussed above, EPA is responding in writing to all timely comments that citizens submitted pursuant to the settlement agreement. For all comments not resulting in an NOD, EPA is responding directly to the commenter, explaining the reasons why EPA did not find that an NOD was warranted. 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. Finally, EPA will publish a national notice of availability in the **Federal Register** notifying the public that EPA has responded in writing to the commenters and explaining how the public may obtain a copy of EPA's responses.

### IV. Administrative Requirements

Under section 307(b)(1) of the Act, petitions for judicial review of today's action may be filed under the United States Court of Appeals for the appropriate circuit within 60 days of December 11, 2001.

(Authority: 42 U.S.C. 7401-7671q.)

Dated: November 30, 2001.

**Thomas V. Skinner,**

*Regional Administrator, Region 5.*

[FR Doc. 01-30451 Filed 12-6-01; 3:44 pm]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-7115-2]

### Notice of Deficiency for Clean Air Act Operating Permit Program in Indiana

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

**ACTION:** Notice of deficiency.

**SUMMARY:** Pursuant to its authority at 40 CFR 70.10, EPA is publishing this Notice of Deficiency (NOD) for the State of Indiana's Clean Air Act title V

operating permit program. The NOD is based upon EPA's finding that several state requirements do not meet the minimum federal requirements of 40 CFR part 70 and the Act for program approval. Publication of this document is a prerequisite for withdrawal of Indiana's title V program approval, but EPA is not withdrawing the program through this action.

**EFFECTIVE DATE:** November 30, 2001. Because this NOD is an adjudication and not a final rule, the Administrative Procedure Act's 30-day deferral of the effective date of a rule does not apply.

**FOR FURTHER INFORMATION CONTACT:** Sam Portanova, EPA Region 5 (AR-18)], 77 W. Jackson Boulevard, Chicago, Illinois 60604, Telephone Number: (312) 886-3189, E-mail Address: portanova.sam@epa.gov.

### SUPPLEMENTARY INFORMATION:

#### I. Background

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). Sierra Club and the New York Public Interest Research Group challenged the action. In settling the litigation, EPA agreed to publish a document in the **Federal Register**, giving the public the opportunity to identify and bring to EPA's attention alleged deficiencies in title V programs. EPA published that document on December 11, 2000. 65 FR 77376.

As stated in the **Federal Register** document published on December 11, 2000 (65 FR 77376), EPA is responding 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. The EPA is publishing a NOD if the Agency determines that a deficiency exists, and is notifying the commenter in writing to explain the reasons for determining that other issues do not constitute a deficiency in the Indiana title V program. The EPA received two timely comment letters pertaining to the Indiana title V program. In reviewing the commenters' concerns, EPA determined that one commenter did identify deficiencies in Indiana's title V operating permit program.

#### II. Description of Action

EPA recognizes that the Indiana Department of Environmental Management (IDEM) has made an expeditious effort to correct the regulatory deficiencies identified by the commenter. These Indiana regulatory revisions, however, will not become

effective until after December 1, 2001. Therefore, the EPA is publishing a NOD for Indiana's Clean Air Act (Act) title V program. This document is being published to satisfy 40 CFR 70.10(b)(1), which provides that EPA shall publish in the **Federal Register** a notice of any determination that a state's title V permitting program no longer complies with the requirements of 40 CFR part 70 and the Act. The deficiencies being noticed are listed below. Because of IDEM's efforts to address these deficiencies as expeditiously as possible, EPA expects these regulatory deficiencies to be corrected by March 2002.

Under EPA's permitting regulations, citizens may, at any time, petition EPA regarding alleged deficiencies in state title V operating permitting programs. In addition, EPA may identify deficiencies on its own. If, in the future, EPA agrees with a new citizen petition or otherwise identifies deficiencies, EPA may issue a new NOD.

#### 1. Permit Shield

Under the Indiana title V program, minor permit modifications, which are not subject to public review, qualify for a title V permit shield. This is not consistent with 40 CFR 70.7(e)(2)(vi), which provides that "the permit shield under 70.6(f) of this part may not extend to minor permit modifications." During EPA's original review of Indiana's title V program, which resulted in granting interim approval on November 14, 1995, the Indiana regulations required minor modifications to be subject to public review equivalent to that required by 40 CFR 70.6, 70.7 and 70.8, and allowed such modifications to qualify for a permit shield. In reviewing that original regulation, EPA determined that the permit shield was acceptable in this situation because of the availability of public review. Subsequent to the November 14, 1995, interim approval, Indiana modified its regulations to remove the public notice requirement from the minor modification provision. However, the state did not remove the permit shield provision. Because Indiana's rules allow for a permit shield for these minor modifications, the state's program does not meet the program approval requirements of title V and 40 CFR part 70. Indiana is in the process of correcting this provision to re-instate the public review requirements for minor modifications. Indiana will revise 326 IAC 2-7-12(b)(4) of the state regulations to require that minor permit modifications go through public review.

## 2. Compliance Certification With Alternative or Streamlined Limits

Indiana rule 326 IAC 2-7-4(c) allows sources to certify compliance with alternative or streamlined requirements instead of original applicable requirements. For the initial compliance certifications submitted with permit applications, part 70 does not allow sources to certify compliance with alternative or streamlined requirements instead of the applicable requirements. EPA's March 5, 1996, memorandum entitled "White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program" states that a permitting authority may combine underlying applicable requirements into one streamlined permit term provided that the source's compliance with the streamlined term guarantees that the source is also in compliance with all underlying applicable requirements. Indiana's regulations currently only require sources to certify compliance with streamlined terms. Indiana must revise its regulations to further require sources to certify compliance with the underlying applicable requirements. We encourage states to use EPA guidance documents in implementing the title V program. When applying those guidance documents, however, a state must assure that its program is consistent with 40 CFR part 70.

Because Indiana's rules allow for compliance certification with alternative or streamlined limits, the state's program does not meet the program approval requirements of title V and 40 CFR part 70. Indiana is in the process of correcting this rule provision. Indiana will remove language from 326 IAC 2-7-4(c) which allows compliance certification with alternative or streamlined limits.

## 3. Supersession

Indiana's construction permits expire upon issuance of a valid title V permit; therefore, the construction permit conditions do not exist independently of title V permits. Permit conditions in previously issued permits must exist independently of title V permits. Allowing the basis for these conditions to expire could cause Indiana to lose the authority to include such conditions in renewed title V permits. Because Indiana's rules do not assure that construction permit conditions exist independently of title V permits, the state's program does not meet the program approval requirements of title V and 40 CFR part 70. Indiana is in the process of revising 326 IAC 2-1.1-9.5 which will address this deficiency by stating that any condition identified as

having been established in a permit issued pursuant to a State Implementation Plan-approved permit program will remain in effect even if the original construction permit expires.

## 4. Operating Parameter Exceedances

Indiana rule 326 IAC 2-7-5(1)(E) considers an exceedance of a permit limit and the corresponding operating parameter as only one violation. This rule provision restricts the state's enforcement authority to restrain or enjoin and to assess a civil penalty for the violation of any permit condition as required by 40 CFR 70.11. Therefore, Indiana's program does not meet the program requirements of title V and 40 CFR part 70. Indiana is in the process of correcting this rule provision. Indiana will remove this language from its rules by deleting paragraph 326 IAC 2-7-5(1)(E).

## 5. Startup, Shutdown, and Malfunction Exceedances

Indiana rule 326 IAC 2-7-5(1)(F) allows the state to address emission limit exceedances for startups, shutdowns, and malfunctions on a case-by-case basis in title V permits. This allows the permitting authority to establish through the title V permitting process limits which exceed applicable requirements. Because title V does not give permitting authorities the authority to establish new emission limits, Indiana's program does not meet the program approval requirements of title V and 40 CFR part 70. Indiana is in the process of correcting this rule provision. Indiana will remove this language from its rules by deleting paragraph 326 IAC 2-7-5(1)(F).

## 6. Emission Levels

a. Sulfur Dioxide, Nitrogen Oxides, Carbon Monoxide, Volatile Organic Compounds, and Lead Exemption Levels

Indiana rule 326 IAC 2-1.1-3(d) allows the state to exempt from the title V minor or significant modification requirements sulfur dioxide, nitrogen oxides (NO<sub>x</sub>), and volatile organic compound (VOC) emission increases of up to 10 tons per year and carbon monoxide emission increases of up to 25 tons per year. In addition, 326 IAC 2-1.1-3(g) allows the state to exempt from the title V minor or significant modification requirements lead emissions increases of up to 5 tons per year. Because 40 CFR 70.6(e) does not allow the permitting authority to create exemptions from the permit modification requirements, Indiana's program does not meet the program

approval requirements of title V and 40 CFR part 70. Indiana is in the process of correcting this deficiency. Indiana will remove language from 326 IAC 2-1.1-3(d) and 326 IAC 2-1.1-3(g) which apply these provisions to title V sources and title V modifications.

## b. NO<sub>x</sub> and VOC Insignificant Activity Threshold

The definition of insignificant activity in the Indiana rule (326 IAC 2-7-1(21)(A)) does not include specific insignificant activity threshold levels for NO<sub>x</sub> and VOC. The rule refers to the limits in 326 IAC 2-1.1-3(d)(1) to establish the insignificant activity threshold levels for these two pollutants. The threshold levels in this provision are 10 tons per year for both NO<sub>x</sub> and VOC. EPA considers this an unacceptably high threshold for insignificant activities and, as a result, Indiana's program does not meet the program approval requirements of title V and 40 CFR part 70. Indiana is in the process of correcting this deficiency. Indiana will revise 326 IAC 2-7-1(21)(A) to establish a VOC insignificant activity threshold of 3 pounds per hour or 15 pounds per day and a NO<sub>x</sub> insignificant activity threshold of 5 pounds per hour or 25 pounds per day. These threshold levels will be equivalent to the VOC and NO<sub>x</sub> thresholds that EPA approved as part of Indiana's original title V program.

## 7. Conclusion

Title V provides for the approval of state programs for the issuance of operating permits that incorporate the applicable requirements of the Act. To receive title V program approval, a state permitting authority must submit a program to EPA that meets certain minimum criteria, and EPA must disapprove a program that fails, or withdraw an approved program that subsequently fails, to meet these criteria. 40 CFR 70.4(k) and 70.10(b) and (c) provide that EPA may withdraw a part 70 program approval, in whole or in part, whenever the approved program no longer complies with the requirements of part 70 and the permitting authority fails to take corrective action. 40 CFR 70.10(c)(1)(i) lists a number of potential bases for program withdrawal, including failure of the permitting authority's legal authority to meet the requirements of 40 CFR part 70.

40 CFR 70.10(b), which sets forth the procedures for program withdrawal, requires as a prerequisite to withdrawal that EPA Administrator notify the permitting authority of any finding of deficiency by publishing a document in

the **Federal Register**. Today's document satisfies this requirement and constitutes a finding of deficiency. According to 40 CFR 70.10(b)(2), if Indiana has not taken "significant action to assure adequate administration and enforcement of the program" within 90 days after publication of this notice of deficiency, EPA may withdraw the state program, apply any of the sanctions specified in section 179(b) of the Act, or promulgate, administer, and enforce a federal title V program. 40 CFR 70.10(b)(3) provides that, if a state hasn't corrected the deficiency within 18 months after the date of the finding of deficiency and issuance of the NOD, EPA will apply the sanctions under section 179(b) of the Act, in accordance with section 179(a) of the Act. In addition, 40 CFR 70.10(b)(4) provides that, if the state hasn't corrected the deficiency within 18 months after the date of the finding of deficiency, EPA will promulgate, administer and enforce a whole or partial program within 2 years of the date of the finding. The sanctions will go into effect unless the state has corrected this deficiency within 18 months after signature of this document.

Since Indiana has made an expeditious effort to correct the deficiencies outlined in this document and has significantly completed the rulemaking process to correct these deficiencies, EPA considers the state to already have taken significant action to assure adequate administration and enforcement of the program. In fact, EPA expects Indiana's corrections to the deficiencies outlined in this document to be completed and in effect within 90 days after publication of this notice of deficiency.

### III. EPA Responses to Citizen Comments

As discussed above, EPA is responding in writing to all timely comments that citizens submitted pursuant to the settlement agreement. For all comments not resulting in a NOD, EPA will explain the reasons why EPA found that a NOD was not warranted. 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.

### IV. Administrative Requirements

Under section 307(b)(1) of the Act, petitions for judicial review of today's action may be filed in the United States Court of Appeals for the appropriate

circuit within 60 days of December 11, 2001.

(Authority: 42 U.S.C. 7401-7671q.)

Dated: November 30, 2001.

**Thomas V. Skinner,**

*Regional Administrator, Region 5.*

[FR Doc. 01-30452 Filed 12-6-01; 3:44 pm]

**BILLING CODE 6560-50-P**

### ENVIRONMENTAL PROTECTION AGENCY

[FRL-7115-5]

#### Federal NO<sub>x</sub> Budget Trading Program: Applicability Determination

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

**ACTION:** Notice of applicability determination under Federal NO<sub>x</sub> Budget Trading Program.

**SUMMARY:** EPA established 40 CFR part 97, the Federal NO<sub>x</sub> Budget Trading Program ("the Program"), to reduce interstate transport of ozone under section 126 of the Clean Air Act ("section 126"). The Program applies to existing or new large electric generating units ("EGU's") and large non-EGU's (as defined at 40 CFR 52.34) in states subject to section 126. EPA finds, in an applicability determination dated November 30, 2001, that Point 30 at Weirton Steel Corporation's Plant 0001 in West Virginia is not subject to the Program because it is not a "boiler," "combustion turbine," or "combined cycle system" under 40 CFR 97.2. Since Point 30 is not subject to the Program, NO<sub>x</sub> allowances will not be allocated for this unit in EPA's NO<sub>x</sub> Allowance Tracking System.

**DATES:** Any comments regarding this applicability determination must be submitted in writing to EPA at the address below no later than January 10, 2002.

**ADDRESSES:** U.S. EPA, Clean Air Markets Division (6204N), Attn: Robert Miller, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Robert Miller, U.S. EPA Headquarters, Clean Air Markets Division, (202) 564-9077.

Dated: November 30, 2001.

**Brian J. McLean,**

*Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.*

[FR Doc. 01-30585 Filed 12-10-01; 8:45 am]

**BILLING CODE 6560-50-P**

### ENVIRONMENTAL PROTECTION AGENCY

[FRL-7115-4]

#### Notice of Prevention of Significant Deterioration (PSD) Final Determination for DPL Energy Montpelier Electric Generating Station, Wells County, IN

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

**ACTION:** Notice of final action.

**SUMMARY:** This notice announces that on March 13, 2001, the Environmental Appeals Board (EAB) of the EPA dismissed a petition for review of a permit issued for DPL Energy Montpelier Electric Generating Station in Wells County, Indiana by the Indiana Department of Environmental Management (IDEM) pursuant to the State of Indiana's approved minor source New Source Review (NSR) permit program.

**DATES:** The effective date for the EAB's decision is March 13, 2001. Judicial review of this permit decision, to the extent it is available pursuant to section 307(b)(1) of the Clean Air Act, may be sought by filing a petition for review in the United States Court of Appeals for the Seventh Circuit within 60 days of December 11, 2001.

**ADDRESSES:** The documents relevant to the above action are available for public inspection during normal business hours at the following address: EPA, Region 5, 77 West Jackson Boulevard (AR-18J), Chicago, Illinois 60604. To arrange viewing of these documents, call Julie Capasso at (312) 886-1426.

**FOR FURTHER INFORMATION CONTACT:** Julie Capasso, United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard (AR-18J), Chicago, Illinois 60604, telephone (312) 886-1426. Anyone who wishes to review the EAB decision can obtain it at <http://www.epa.gov/eab/disk11/montpelier.pdf>.

**SUPPLEMENTARY INFORMATION:** This supplementary information is organized as follows:

- A. What Action is EPA Taking?
- B. What is the Background Information?
- C. What did EPA Determine?

#### A. What Action Is EPA Taking?

We are notifying the public of a final decision by EPA's EAB on a permit issued by IDEM pursuant to the State of Indiana's approved minor source (NSR) permit program.