

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]

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### 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.*

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### 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 supplemental 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.

### B. What Is the Background Information?

On December 29, 2000, IDEM issued a "New Source Construction Permit and Minor Source Operation Permit" which authorizes the construction and operation of [8] Twin Pac combustion turbine units, which consist of 16 simple cycle combustion turbines and [8] electric generators. The Permit restricts allowable emissions of any regulated pollutant to no more than 249 tons per year and was issued pursuant to the state's minor source new source review ("NSR") permit program. In issuing the Permit, IDEM did not in any way invoke its permit-issuing authority pursuant to the prevention of significant deterioration ("PSD") program that it administers in the state as a federal delegatee.

On January 23, 2001, Stephen A. Loeschner filed a petition contending that IDEM should have issued a federal PSD permit to DPL Energy rather than a minor source NSR permit because, according to Petitioner, the proposed DPL Energy facility, which Petitioner characterizes as a fossil fuel-fired steam electric plant and which has the potential to emit more than 100 tons per year of any air pollutant, is a major emitting facility and, thus, requires a PSD permit.

On February 14, 2001, IDEM filed a Motion for Summary Disposition with the EAB, in which IDEM asserted that the EAB lacked jurisdiction to review the DPL Energy minor source permit. DPL Energy also filed a motion seeking summary disposition on the same grounds. The Office of General Counsel and Office of Regional Counsel in Region 5 filed an amicus curiae brief maintaining that the EAB lacked jurisdiction in this matter.

### C. What Did the EAB Determine?

On March 13, 2001, the EAB denied the petition for review for lack of jurisdiction. The EAB explained that none of the sources of the Board's authority to review permit determinations confers jurisdiction on the Board for the sole purpose of reviewing permits issued under an approved minor source NSR program of any state. See *In re Carlton, Inc.*, North Shore Power Plant, PSD Appeal 00-9 [ADMIN. MAT. 41236] (EAB, Feb. 28, 2001), 9 E.A.D. It therefore follows that the Board does not have jurisdiction to review the minor source permit issued by IDEM to DPL Energy. Also, since Carlton further instructs that the Board's jurisdiction to review PSD permits "is limited to federal PSD permits that are actually issued," it necessarily follows

that a state decision not to issue a PSD permit (in contrast to a state decision to deny a PSD permit under a federal program) is not a reviewable decision by the Board.

Dated: November 28, 2001.

**Bertram C. Frey,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 01-30593 Filed 12-10-01; 8:45 am]

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### ENVIRONMENTAL PROTECTION AGENCY

[FRL-7115-9]

#### Interagency Project To Clean Up Open Dumps on Tribal Lands: Request for Proposals

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

**ACTION:** Notice of availability.

**SUMMARY:** The Tribal Solid Waste Interagency Workgroup (Workgroup) is soliciting proposals for its fourth year of the Tribal Open Dump Cleanup Project (Project). In FY01, the Workgroup made more than \$2.8 million available to fully or partially fund 16 selected projects. Each of these projects will result in the closure or upgrade of one or more open dumps located on tribal lands. We are projecting a similar amount of funding for FY02. The Cleanup Project is part of a federal effort to help tribes comprehensively address their solid waste needs. The purpose of the Cleanup Project is to assist with closing or upgrading tribal high-threat waste disposal sites and providing alternative disposal and integrated solid waste management.

The Workgroup was established in April 1998 to coordinate federal assistance to tribes in bringing their waste disposal sites into compliance with the municipal solid waste landfill criteria (40 CFR part 258). Current Workgroup members include representatives from the U.S. Environmental Protection Agency (EPA); the Bureau of Indian Affairs (BIA); the Indian Health Service (IHS); the Bureau of Land Management; the departments of Agriculture, Defense, and Housing and Urban Development; and the National Oceanic and Atmospheric Administration.

**Criteria:** Eligible recipients of assistance under the Cleanup Project include federally recognized tribes and intertribal consortiums. A full explanation of the submittal process, the qualifying requirements, and the criteria that will be used to evaluate proposals

for this project may be found in the Request for Proposals package.

**DATES:** For consideration, proposals must be received by close of business on January 31, 2002. Proposals postmarked on or before but not received by the closing date will not be considered. Please do not rely solely on overnight mail to meet the deadlines.

**FOR FURTHER INFORMATION:** Copies of the Request for Proposals package may be downloaded from the Internet at <[www.epa.gov/tribalmw](http://www.epa.gov/tribalmw)> by clicking on "What's New." Copies may also be obtained by contacting EPA, IHS or BIA regional or area offices or one of the following Workgroup representatives:

EPA—Melanie Barger Garvey, 202-564-2579, Christopher Dege, 703-308-2392, or Tonya Hawkins, 703-308-8278.

IHS—Steve Aoyama, 301-443-1046.  
BIA—Debbie McBride, 202-208-3606.

Dated: November 30, 2001.

**ELIZABETH A. COTSWORTH,**

*Director, Office of Solid Waste.*

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### ENVIRONMENTAL PROTECTION AGENCY

[FRL-7117-1]

#### Cape Fear Wood Preserving Superfund Site; Notice of Proposed Settlement

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed settlement.

**SUMMARY:** The United States Environmental Protection Agency is proposing to enter into a settlement with SECO Investments, Inc. pursuant to 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, regarding the Cape Fear Wood Preserving Superfund Site located in Fayetteville, Cumberland County, North Carolina. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4 (WMD-CPSB), Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562-8887.

Written comments may be submitted to Ms. Batchelor within thirty (30)