

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 70**

[IA 0146-1146; FRL-7128-5]

Approval of Operating Permit Program; State of Iowa**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: EPA is proposing to approve amendments to the Iowa Title V operating permit program. EPA granted full approval of Iowa's Title V program on July 14, 1997. These amendments incorporate existing periodic monitoring guidance and adopt by reference compliance assurance monitoring requirements.

DATES: Comments must be received on or before February 11, 2002.

ADDRESSES: Written comments should be mailed to Lynn M. Slugantz, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. Interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lynn M. Slugantz at (913) 551-7883.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is the Part 70 operating permit program?

What is the Federal approval process for an operating permit program?

What does Federal approval of a state operating permit program mean to me?

What is being addressed in this document?

Have the requirements for approval of an operating permit program revision been met?

What action is EPA taking?

What Is the Part 70 Operating Permit Program?

The Clean Air Act (CAA) Amendments of 1990 require all states to develop an operating permit program that meets certain Federal criteria listed in 40 Code of Federal Regulations (CFR) part 70. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements

under the CAA. One purpose of the Part 70 operating permit program is to improve enforcement by issuing each source a single 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 one document, the source, the public, and the permitting authorities 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 and certain other sources specified in the CAA or in our implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or particulate matter that is 10 micrometers in size (PM₁₀); 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.

Revisions to the state and local agencies' operating permit program are subject to public notice, comment, and our approval.

What Is the Federal Approval Process for an Operating Permit Program?

In order for state regulations to be incorporated into the Federally enforceable Title V operating permit program, states must formally adopt the regulations consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the operating permit program. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 502 of the CAA are incorporated into the Federally approved operating permit program. Records of such actions are maintained in the CFR at Title 40, Part 70, Appendix A, entitled

"Approval Status of State and Local Operating Permits Program."

What Does Federal Approval of an Operating Permit Program Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved operating permit program is primarily a state responsibility. However, after the state program is Federally approved, we oversee the program and review proposed permits submitted by the state in accordance with 40 CFR part 70. We are also authorized to enforce the permit program and individual permits issued under the program. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

The Iowa Department of Natural Resources (IDNR) has adopted amendments to 567 Iowa Administrative Code (IAC) 22.108(3). The purpose of the amendments is to incorporate IDNR's existing Title V Periodic Monitoring Guidance into its rules. Periodic monitoring is required by 40 CFR 70.6 and 71.6 where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring. Also, the amendments to 567 IAC 22.108(3) adopt by reference Compliance Assurance Monitoring (CAM) that is required to be included in 40 CFR part 70 or 71 operating permits for major stationary sources of air pollution that are required to obtain operating permits under Title V of the CAA. Periodic monitoring and CAM are needed to provide reasonable assurance of compliance with applicable requirements under the CAA. The amendments were adopted and filed by the Environmental Protection Commission on June 21, 2001; published on July 11, 2001; and became effective on August 15, 2001.

As a part of our review of these amendments, EPA requested clarification from IDNR regarding the list of factors to be considered in evaluating the type of periodic monitoring appropriate for an applicable requirement, as set forth in the narrative of the June 18, 2001, Periodic Monitoring Guidance. This narrative lists numerous factors to be considered, while Attachment 1 to that guidance contains a decision matrix considering only type of source and whether the source is controlled or uncontrolled. In response to EPA's request, IDNR sent EPA a November 7, 2001, letter in which the state clarified that it has flexibility in deciding to

follow the matrix which is found in Appendix A to that guidance or to make a case-by-case determination that differs from the periodic monitoring guidance and the matrixes.

EPA believes that the state's ability to deviate from the guidance on a case-by-case basis is essential to implementation of this program, and our proposed approval of the state program revisions is based, in part, on the state's assurance that it retains authority to establish appropriate periodic monitoring on a case-by-case basis. In proposing to approve this rule revision, EPA reserves its authority to object to permit provisions regarding periodic monitoring if they do not meet the requirements of the CAA or 40 CFR 70.6(a)(3).

Have the Requirements for Approval of a Revision to the Operating Permit Program Been Met?

Our review of the material submitted indicates the state has amended rules for the Title V program in accordance with the requirements of section 502 of the CAA and the Federal rule, 40 CFR part 70, and met the requirement for a program revision as established in 40 CFR 70.4(i).

What Action Is EPA Taking?

EPA is proposing to approve amendments to Iowa rule, 567 IAC 22.108(3), effective August 15, 2001, as supplemented on November 7, 2001, as a revision to the Iowa Title V operating permit program.

Administrative 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 proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposed rule would approve 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).

This proposal 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 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it does 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). This proposal would merely approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and

responsibilities established in the CAA. This proposal also is 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 economically significant.

In reviewing Title V operating permit program submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 submission, to use VCS in place of an operating permit program submission that otherwise satisfies the provisions of the CAA. 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. This proposal would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects In 40 CFR Part 70

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: January 2, 2002.

William Rice,

Acting Regional Administrator, Region 7.
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