

geographical areas under the authority of Allegheny County and the City of Philadelphia.

#### **§ 62.9636 Identification of sources.**

The plan applies to existing Pennsylvania landfills for which construction, reconstruction, or modification was commenced before May 30, 1991, that accepted waste at any time since November 8, 1987, or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, subpart Cc.

#### **§ 62.9637 Effective date.**

The effective date of the plan for municipal solid waste landfills is January 28, 2004.

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 70**

[CA 110-OPP; FRL-7603-1]

### **Approval and Promulgation of Operating Permits Program; San Diego County Air Pollution Control District**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the San Diego County Air Pollution Control District Operating Permits (Title V) Program. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving a rule revision that addresses a change in the major source threshold for volatile organic compounds (VOCs) and oxides of nitrogen (NO<sub>x</sub>). This change is based on the redesignation of San Diego County as in attainment of the federal one-hour ozone standard. As a result of this action, some sources that would have previously been considered major sources, and therefore would have been required to obtain a Title V operating permit, would no longer need to apply for a Title V permit. We are also approving revisions to several other parts of San Diego's Title V program. For more information see "What is being addressed in this document," below.

**DATES:** These rule revisions are effective on February 27, 2004 without further notice, unless EPA receives adverse comments by January 28, 2004. If we receive such comment, we will publish a timely withdrawal in the **Federal**

**Register** to notify the public that these revisions will not take effect.

**ADDRESSES:** Send comments to Gerardo Rios, Permits Office Chief (AIR-3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901 or e-mail to [rios.gerardo@epa.gov](mailto:rios.gerardo@epa.gov). Comments may also be submitted at <http://www.regulations.gov>.

You can inspect copies of the submitted rule revisions, EPA's technical support documents (TSDs), and public comments at our Region IX office during normal business hours by appointment.

#### **FOR FURTHER INFORMATION CONTACT:**

Kathleen Stewart, EPA Region IX, (415) 947-4119, [stewart.kathleen@epa.gov](mailto:stewart.kathleen@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

- I. The Part 70 Operating Permits Program
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  - C. Public comment and final action.
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### **I. The Part 70 Operating Permits Program**

#### *A. What Is the Part 70 Operating Permits Program?*

The Clean Air Act Amendments (CAA) of 1990 require all states to develop an operating permits program that meets 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 permits program (also known as a Title V 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.

#### *B. What Is the Federal Approval Process for Revisions to an Operating Permits Program?*

In order for state regulations to be incorporated into the federally-

enforceable part 70 operating permits program, states must formally adopt regulations consistent with state and federal requirements. Once a state regulation is adopted, the state submits it to the EPA for inclusion into the approved operating permits program. The EPA 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 EPA.

#### *C. What Does Federal Approval of State Revisions Mean to Me?*

Enforcement of a state regulation is primarily a state responsibility both before and after incorporation into the federal program. However, after a state regulation has been federally approved, the EPA is authorized to take enforcement action against violators, and under section 304 of the CAA, citizens are authorized to take civil action to address violations. In addition, federal approval of state regulations ensures that the state program is consistent with federal requirements.

### **II. This Action**

#### *A. What Revisions Are Being Approved?*

EPA has requested that each permitting authority periodically submit any revised part 70 rules for approval as a revision to their approved part 70 program. In a letter dated August 19, 2003, San Diego County Air Pollution Control District requested that EPA approve revisions to Rules 1401(c); 1410(i), (j), (l), and (q); 1418(b), (c), and (e); 1415 (a); 1421(a) and (b); and 1425(a) and (b). A complete listing of each rule change is contained in the technical support document which is a part of the docket for this action and which is available from the EPA contact above. A few of the rule revisions which may be of interest, however, are discussed here. The remaining revisions are administrative in nature and do not change the substantive requirements of the rule.

*Rule 1401(c):* The District added language to exclude non-road engines from the definition for major stationary source; added a definition for non-road engine by reference to 40 CFR part 89; changed the major source threshold for VOCs and NO<sub>x</sub> from 50 tons per year (tpy) to 100 tpy in response to the redesignation of San Diego County as in attainment of the federal one-hour ozone standard (see 68 FR 37976, June 26, 2003); and clarified the role of fugitive emissions in determining if a source is major.

*Rule 1410(j):* The District clarified the requirements needed to qualify for a minor permit modification and clarified that the time frame for action applies to complete applications.

*Rule 1410(l):* The District clarified the requirements for making section 502(b)(10) changes under Title V of the Clean Air Act, added requirements to notify the federal EPA of such changes, shortened the time period for notifying the Air Pollution Control Officer (APCO) and the federal EPA of such changes from 45 to 7 days, shortened the time period for the APCO and the federal EPA to object to such changes from 45 to 7 days, added provisions for incorporating changes into the permit, and added language requiring that any Title V monitoring or compliance certifications be based on the changed characteristic(s).

*Rule 1410(q):* The District added language expanding compliance plan requirements, clarifying the requirements for processing applications for minor or significant permit modifications using the Administrative Permit Amendment procedures in Rule 1410(i); shortened the public review and comment period from 45 to 30 days; added language committing the APCO to consider and respond to only those comments which are relevant to the permit review and appropriate for public comment; and clarified under what conditions the applicant may commence operation.

*Rule 1415(a):* The District shortened the period for public notice and comment from 45 to 30 days.

*Rule 1418(c):* In order to allow time for an appeal to the Hearing Board, the District increased the time period allowed for delay in the submission of decisions on permits to operate and appeals to the federal EPA from 10 to 30 days after notice has been provided to the applicant.

*Rule 1418 (e):* The District has added language to allow 30 days following the end of EPA review to address comments.

*Rule 1421(b):* The District clarified that the reports that must be maintained for at least five years and submitted to the District are monitoring reports.

### *B. Have the Requirements for Approval Been Met?*

Our review of the material submitted indicates that the District 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 has met the requirement for a program revision as established in 40 CFR 70.4(i).

### *C. Public Comment and Final Action*

EPA is fully approving the revisions to San Diego County's part 70 operating permits program because we believe they are consistent with Title V of the Clean Air Act and 40 CFR part 70. We are processing this action as a direct final action because the revisions to the existing rules are noncontroversial. Therefore, we do not think anyone will object to this approval. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by January 28, 2004, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on February 27, 2004. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

### **III. Statutory and Executive Order Reviews**

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).

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 (65 FR 67249, November 9, 2000). This 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 action 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 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing state operating permits programs submitted pursuant to Title V of the CAA, EPA will approve state programs 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 a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission 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. 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.*).

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**. 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).

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 27, 2004. 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: December 15, 2003.

**Keith Takata,**

*Acting Regional Administrator, Region IX.*

■ 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.*

**Subpart F—California**

■ 2. Appendix A to Part 70 is amended by adding under "California" paragraph (x)(5) to read as follows:

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

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California

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(x) \* \* \*

(5) Revisions were submitted on August 19, 2003, effective February 27, 2004.

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[FR Doc. 03-31872 Filed 12-24-03; 8:45 am]

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