

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

Subpart DD—Nevada

■ 2. Section 52.1470 is amended by adding paragraph (c)(62) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(62) The following plan revision was submitted on December 8, 2006, by the Governor's designee.

(i) Incorporation by reference.

(A) Nevada Division of Environmental Protection.

(1) The following sections of Chapter 445B of the Nevada Administrative Code were adopted on September 6, 2006: 445B.134, 445B.230, 445B.258, 445B.259, and 445B.260.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA-R09-OAR-2007-0090; FRL-8303-5]

Clean Air Act Full Approval of Revisions to the State of Hawaii Operating Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the State of Hawaii's ("Hawaii" or "State") operating permit program that amend Hawaii's regulations for insignificant emissions units (IEUs). In an April 1, 2002 Notice of Deficiency published in the *Federal Register*, EPA notified Hawaii of EPA's finding that Hawaii's provisions for IEUs did not meet minimum Federal requirements. Hawaii has revised its program to correct the deficiency identified in the Notice of Deficiency and this action fully approves of those revisions.

DATES: This operating permits program rule is effective on June 19, 2007 without further notice, unless EPA receives adverse comments by May 21, 2007. 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: Submit comments, identified by docket number EPA-R09-OAR-2007-0090, by one of the following methods:

1. Federal eRulemaking Portal: www.regulations.gov. Follow the on-line instructions.

2. E-mail: Rios.Gerardo@epa.gov.

3. Mail or deliver to Gerardo Rios, Permits Office Chief, Air Division (AIR-3), EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail. www.regulations.gov is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Robert Baker, EPA Region IX, at (415) 972-3979, (Baker.Robert@epa.gov).

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. What Is the Operating Permit Program?

The Clean Air Act Amendments of 1990 required all state and local permitting authorities to develop operating permit programs that met certain federal criteria. In implementing

the operating permit programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the Clean Air Act (CAA). The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable requirements for a facility, 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 EPA's implementing regulations. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides (NO_x), or particulate matter (PM₁₀); those that emit 10 tons per year or more of any single hazardous air pollutant (HAP) listed under the CAA; or those that emit 25 tons per year or more of a combination of HAPs.

Hawaii's operating permits program was submitted to EPA in response to this directive. EPA granted interim approval to Hawaii's air operating permits program on December 1, 1994 (59 FR 61549). After Hawaii revised its program to address the conditions of the interim approval, EPA promulgated final full approval of Hawaii's title V operating permits program on November 26, 2001 (66 FR 62945).

II. What Is Being Addressed in This Document?

When an operating permit program does not fully meet the criteria outlined in the implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA may withdraw part 70 program approval if the permitting authority fails to take corrective action. 40 CFR 70.10(b) sets forth the procedures for program withdrawal, and requires as a prerequisite to withdrawal that the permitting authority be notified of any finding of deficiency by the Administrator and that the notice be published in the *Federal Register*.

Deficiencies involving the provisions in the State's program that exempt insignificant activities from part 70 permitting requirements came to light as a result of the court decision in *Western States Petroleum Association (WSPA) v.*

Environmental Protection Agency, 87 F.3d 280 (9th Cir. 1996). The court found in the WSPA case that EPA had acted inconsistently in its approval of the insignificant activities provisions in several part 70 programs, including the State of Hawaii's program. As a result, on April 1, 2002 EPA published a Notice of Deficiency for the State of Hawaii's title V operating permits program based upon the finding that Hawaii's provisions for IEUs did not meet minimum Federal requirements for program approval. This **Federal Register** notice describes the changes that the State has made to its operating permit program (Chapter 60.1 of the Hawaii Administrative Rules) to correct the deficiency identified in the Notice of Deficiency.

III. What Are the Program Changes That EPA Is Approving?

As discussed above, EPA published a Notice of Deficiency on April 1, 2002 that identified a deficiency in the State's title V program. In response to the Notice of Deficiency, the State revised its operating permit program to remove or correct the deficiency identified by EPA. The State made its revised rule available to public review and comments. On November 4, 2003, the State adopted the revisions. The revised program was submitted to EPA on November 14, 2003. We have included below a discussion of the identified deficiency, the conditions for correction, and a summary of how the State has corrected the deficiency. The Technical Support Document (TSD) for this action includes more information about the State's submittal and more details of the revisions made. In the discussion here, we have listed the EPA cited deficiency identified in the April 1, 2002 **Federal Register** notice (see 62 FR 15385), followed by a brief description of the State's revisions to its operating permit program to remove the deficiency.

Insignificant activities: Part 70 authorizes EPA to approve as part of a state program a list of IEUs which need not be included in the permit application, provided that an application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the EPA-approved schedule. Nothing in part 70, however, authorizes a state to exempt IEUs from the testing, monitoring, recordkeeping, reporting, or compliance certification requirements of 40 CFR 70.6. Since the Hawaii program exempted IEUs from all permitting requirements including testing,

monitoring, recordkeeping, reporting, and compliance certification requirements, EPA has required that Hawaii revise its IEU regulations.

State's response: The State revised rule § 11-60.1-82(e) removing the provision exempting IEUs from permitting requirements.

IV. What Is Involved in This Action?

Today, we are fully approving the State's revised operating permit program (Chapter 60.1 of the Hawaii Administrative Rules). We have determined that the revisions made by the State remove or correct the deficiency identified by us in 2002. In addition, the State has made other changes to its operating permit program that are unrelated to the changes made to correct the identified program deficiency. EPA is not approving any action on these additional program changes in this notice. EPA will evaluate the additional program changes and will take appropriate action at a later date.

V. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the revisions into the State of Hawaii State Implementation Plan because we believe it is 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 made to the program to resolve the Notice of Deficiency are not controversial. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of this same rule. If we receive adverse comments by May 21, 2007, 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. Copies of the Hawaii submittal and other supporting documentation used in developing the approval are contained in docket files maintained at the EPA Region IX office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this full approval. The primary purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and (2) to serve as the record in case of judicial review. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on June 19, 2007. Please note that if we receive adverse comment

on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the revision that are not the subject of the adverse comment.

VI. 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 (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 (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 approves a state rule implementing a Federal standard.

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.

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: April 4, 2007.

Jane Diamond,

Acting Regional Administrator, Region IX.

■ 40 CFR part 70, chapter 1, 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 (c) under Hawaii to read as follows:

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

* * * * *

Hawaii

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(c) Department of Health: Program revisions submitted on November 14, 2003; submittal corrects the deficiency outlined in an April 1, 2002 Notice of Deficiency. These revisions are hereby granted full approval effective June 19, 2007.

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