

*40 CFR Part 60*

Environmental protection, Air pollution control, Aluminum, Ammonium sulfate plants, Beverages, Carbon monoxide, Cement industry, Coal, Copper, Drycleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Grains, Graphic arts industry, Household appliances, Insulation, Intergovernmental relations, Iron, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Tires, Urethane, Vinyl, Waste treatment and disposal, Wool, Zinc.

*40 CFR Part 61*

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Vinyl chloride.

*40 CFR Part 62*

Environmental protection, Administrative practice and procedure, Air pollution control, Fluoride, Intergovernmental relations, Phosphate fertilizer plants, Reporting and recordkeeping requirements.

Dated: August 2, 2001.

**Jack W. McGraw,**

*Acting Regional Administrator, Region 8.*

Accordingly, under the authority of 42 U.S.C 7401–7671q, the proposed rule (66 FR 32594) (FR Doc. 01–15028) published on June 15, 2001, is withdrawn.

[FR Doc. 01–20039 Filed 8–10–01; 8:45 am]

**BILLING CODE 6560–50–P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 70**

[FRL–7031–7]

### **Clean Air Act Full Approval of Operating Permits Program in Idaho**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to fully approve the operating permits program submitted by the State of Idaho. Idaho's operating permits program was submitted in response to the directive in

the Clean Air Act that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authority's jurisdiction. EPA granted interim approval to Idaho's air operating permits program on December 6, 1996. Idaho has revised its program to satisfy the conditions of the interim approval and EPA therefore proposes to approve those revisions. Idaho has also made several other changes to its program and EPA proposes, with one exception, to approve these additional changes.

**DATES:** Comments on this proposal must be received in writing by September 12, 2001.

**ADDRESSES:** Written comments should be addressed to Denise Baker, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of Idaho's submittal, and other supporting information used in developing this action, are available for inspection during normal business hours at the U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

**FOR FURTHER INFORMATION CONTACT:** Denise Baker, Office of Air Quality (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–8087.

#### **SUPPLEMENTARY INFORMATION:**

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## **I. Background**

### *A. What Is the Title V Air Operating Permits Program?*

The Clean Air Act (CAA) Amendments of 1990 required all state and local permitting authorities to develop operating permits programs that meet certain Federal criteria. In implementing the operating permits programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the operating permits program is to improve enforcement by issuing each source a permit that consolidates all the applicable CAA requirements into a Federally-enforceable document. By consolidating all the applicable requirements for a source in a single document, the source, the public, and regulators can more easily determine what CAA requirements apply to the source and whether the source is in compliance with those requirements.

Sources required to obtain operating permits under the title V program include “major” sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. 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, or particulate matter; those that emit 10 tons per year or more of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of hazardous air

pollutants (HAPs). In areas that are not meeting the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as "serious," major sources include those with the potential to emit 50 tons per year or more of volatile organic compounds or nitrogen oxides.

#### *B. What Is the Status of Idaho's Title V Air Operating Permits Program?*

The State of Idaho (Idaho or State or IDEQ) originally submitted its application for the title V air operating permits program to EPA in 1993. Where an operating permits program substantially, but not fully, meets the criteria outlined in the implementing regulations codified in 40 Code of Federal Regulations (CFR) part 70, EPA is authorized to grant interim approval contingent on the state revising its program to correct the deficiencies. Because the operating permits program originally submitted by Idaho in 1993 substantially, but not fully, met the requirements of part 70, EPA granted interim approval to Idaho's program in an action published on December 6, 1996 (61 FR 64622). The interim approval notice identified the conditions that Idaho must meet in order to receive full approval of its title V air operating permits program.

This document describes the changes Idaho has made to its program in response to the interim approval issues identified by EPA, additional changes Idaho has made to its program since we granted Idaho's program interim approval, and the action EPA proposes to take in response to those changes.

## **II. What Changes Has Idaho Made To Address the Interim Approval Issues?**

On July 9, 1998, the State of Idaho sent a letter to EPA addressing the interim approval issues, transmitting its revised title V statutes and rules, and requesting full approval of Idaho's air operating permits program. EPA received additional submittals from Idaho addressing the interim approval issues and transmitting additional changes in its statutes and rules on May 25, 1999, and March 15, 2001. In these submittals, the State also discussed other changes it has made to its operating permits program since it obtained interim approval and requested approval of these changes. These changes include designating the Idaho Division of Environmental Quality, which was the permit issuing authority at the time of interim approval, as a State Department, now

entitled the Idaho Department of Environmental Quality (IDEQ). These changes also include a renumbering and recodification of all of Idaho's air quality regulations.

EPA has reviewed the program revisions submitted by the State of Idaho and has determined that the Idaho program now qualifies for full approval. This section describes the interim approval issues identified by EPA in granting the Idaho program interim approval and the changes Idaho has made to address those issues.<sup>1</sup>

#### *A. Applicability*

In granting Idaho interim approval, EPA stated that Idaho must demonstrate that its program covers all sources required to be permitted under part 70. First, EPA stated that Idaho must revise its definition of "major facility" to delete the "August 7, 1980" limitation unless EPA had finalized its proposal to change the definition of "major source" in the part 70 rules to include the August 7, 1980, limitation. Second, EPA stated that Idaho must revise the reference to "fugitive emissions" in the definition of "major facility" (then codified at IDAPA 16.01.01.008.14.h.iii (1994)) to refer instead to any "air pollutant" and must otherwise make any changes needed to demonstrate that its program covers all required sources. See 61 FR at 64632.

Idaho has addressed these issues. First, IDEQ has deleted the "August 7, 1980" limitation from its definition of "major facility," which is now codified at IDAPA 58.01.01.008.10.c.ii. Second, IDEQ revised the definition of major facility so that fugitive emissions from listed categories must be considered in determining if a facility is major if those air pollutants are regulated by the identified federal standards. The Idaho Attorney General's office has confirmed that, with these changes, IDEQ has authority to issue operating permits to all air pollution sources in Idaho that are required to have title V operating permits under title V of the Clean Air Act and the part 70 regulations.

#### *B. Temporarily Exempt Sources*

In granting Idaho interim approval, EPA stated that Idaho must demonstrate that the application and permitting deadlines for Phase II sources and sources with solid waste incineration

<sup>1</sup> Where an IDEQ rule has simply been moved from Chapter 16 to Chapter 58, but retains the same section number, this notice simply cites to the current codification in Chapter 58. Where the section number has also changed, this notice cites to both the section number at the time Idaho received interim approval and the current section number.

units meet the requirements of part 70. 61 FR at 64632. At the time of its original program submittal, Idaho rules allowed the State to defer permitting these sources and had a later permit application date for solid waste incineration units. See 60 FR 54990, 54994 (October 27, 1995) (proposal to grant interim approval to Idaho's operating permits program).

Idaho has revised its rules to make the permitting and application deadlines for Phase II sources and sources with solid waste incineration units consistent with the requirements of part 70. See IDAPA 58.01.01.301.02.b; 58.01.01.313.b, -313.c, and -313.d.

#### *C. New Sources*

As a condition of full approval, EPA stated that Idaho must demonstrate that all sources in Idaho applying for a title V permit for the first time are required to submit a permit application within 12 months after becoming subject to title V. See 61 FR at 64632. Idaho's rules now make clear that any source that becomes subject to title V after May 1, 1994 (the effective date of Idaho's title V program) must submit an application for a title V permit within 12 months after becoming a title V source or commencing operation. See IDAPA 58.01.01.313.01.b.

#### *D. Option To Obtain Permit*

In granting Idaho interim approval, EPA stated that the Idaho program must allow certain exempt sources to obtain a title V permit if they so requested. See 61 FR at 64632. Idaho has revised its regulations to include such a provision. See IDAPA 58.01.01.302.

#### *E. Fugitive Emissions*

As a condition of full approval, EPA stated that Idaho must address the requirement of 40 CFR 70.3(d) that fugitive emissions from title V sources be included in permit applications and permits in the same manner as stack emissions regardless of whether the source category in question is included in the list of sources contained in the definition of major source. See 61 FR at 64632. IDEQ regulations now make clear that fugitive emissions must be included in title V operating permit applications and permits in the same manner as stack emissions. See IDAPA 58.01.01.314.04.a. and 58.01.01.322. EPA is satisfied that Idaho's action resolves this issue.

#### *F. Insignificant Emission Units*

In granting Idaho interim approval, EPA stated that Idaho must make several changes in its provisions for "insignificant emission units" or "IEUs." EPA stated that Idaho must

define by regulation or guidance the terms used in its regulations addressing IEUs, provide documentation demonstrating that the units and activities identified as IEUs are appropriately defined as insignificant, assure that all activities that are defined as insignificant based on size or production rate be listed in the permit application, and remove any director's discretion provision that would allow the State to determine that an activity not previously reviewed by EPA is insignificant (except for clearly trivial activities). See 61 FR at 64632.

Idaho has better defined the terms used to implement its IEU provisions, refined the list of units and activities that qualify as IEUs, and provided additional documentation to support the list of units and activities. See IDAPA 58.01.01.317.01. Idaho has also revised its rules to clarify that all activities that are defined as insignificant based on size or production rate must be listed in the permit application. See IDAPA 58.01.01.317.01.a and -b. Finally, Idaho has deleted the director's discretion provision from its list of IEUs. With these changes, EPA believes that Idaho's IEU provisions qualify for full approval. In doing so, EPA notes that the part 70 provisions and Idaho's rules provide only an exemption for IEUs from certain permit application requirements, and not from permit content requirements.

#### G. Permit Content

Idaho's rules previously stated that the permit must contain all applicable requirements "identified in the application at the time the \* \* \* permit is issued" and must contain a permit term for every applicable requirement "identified in the application." See IDAPA 16.01.01.322.01 and -.03 (1994). In granting Idaho interim approval, EPA stated that this restriction impermissibly relieved the permitting authority from including in a permit applicable requirements that are not identified in a permit application, contrary to the requirement of 40 CFR 70.6 that each permit contain all applicable requirements. See 61 FR 64632. Idaho has revised these provisions to clarify that IDEQ can also include in the permit all applicable requirements "determined by the Department to be applicable to the source." See IDAPA 58.01.01.322.01 and -.03. These revisions resolve this interim approval issue.

#### H. Exemption From Applicable Requirements

At the time EPA granted Idaho interim approval, Idaho's rules allowed IDEQ to exempt sources from otherwise applicable requirements. See IDAPA

16.01.01.322.01.c (1994). EPA stated that, as a condition of full approval, Idaho must delete this provision. See 61 FR at 64632. Idaho has deleted this provision. See IDAPA 58.01.01.322.

#### I. Emission Trading

In granting Idaho interim approval, EPA stated that Idaho must demonstrate that its emissions trading provisions meet the requirements of part 70. See 61 FR at 64632. EPA also recommended that the requirement of IDAPA 16.01.01.322.05 (1994) (now codified at IDAPA 58.01.01.322.05) that a company contemporaneously record in a company log a change from one trading scenario to another should be specifically referred to in the list of requirements a source must meet in IDAPA 16.01.01.383.03 (1994) in order to make a "Type II" permit deviation."

IDEQ has made revisions to IDAPA 58.01.01.314.11.c and 58.01.01.322.05.a to ensure that a permit applicant requesting a permit with emission trading provisions propose replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable and that emissions trades for which the emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trade will not be approved. In addition, IDAPA 58.01.01.322.05.b now requires that each operating permit state that no permit revision shall be required under approved economic incentives, marketable permits, emissions trading, and other similar programs or processes for changes that are provided for in the permit.

IDEQ did attempt to respond to EPA's recommendation regarding IDAPA 58.01.01.322.05, but the cross-reference to section 383 added to IDAPA 58.01.01.322.05.c appears to be in error. EPA believes that the cross-reference should be to section 385. Because this change was a recommendation, and not required by the part 70 regulations, this error does not pose a bar to full approval. Nonetheless, to avoid unnecessary confusion, EPA urges the IDEQ to address this minor error in its next rulemaking.

With these changes, EPA is satisfied that Idaho has resolved the interim approval issues identified by EPA in connection with emission trading.

#### J. Alternative Emission Limits

EPA stated that as a condition of full approval, IDEQ must demonstrate that its operating permits program meets the requirement of 40 CFR 70.6(a)(1)(iii) that a permit with an allowable alternative emission limit contain provisions to ensure that any resulting

emissions limit has been demonstrated to be quantifiable, accountable, enforceable and based on replicable procedures. See 61 FR at 64632. Under the Idaho rules, alternative emission limits authorized by IDAPA 58.01.01.440 are subject to the same requirements as emission trading provisions, namely, that any resulting emissions limit must be demonstrated to be quantifiable, accountable, enforceable and based on replicable procedures. See IDAPA 58.01.01.314.11.a and .c; IDAPA 58.01.01.322.05a. Therefore, the changes made by IDEQ to address the interim approval issues for emission trading also address the interim approval issues identified by EPA for alternative emission limits.

#### K. Reporting of Permit Deviations

As a condition of full approval, EPA stated that IDEQ must revise its rules to require prompt reporting of deviations from all permit requirements, not just those deviations attributable to startup, shutdown, scheduled maintenance, upset, or breakdown. See 61 FR at 64632. IDEQ has added IDAPA 58.01.01.322.15.q which requires the reporting of permit deviations attributable to excess emission events in the time periods specified by Idaho's excess emission rules (generally within 24 hours of occurrence) and the reporting of all other permit deviations every six months unless a shorter time period is specified. EPA is satisfied that Idaho's action resolves this issue.

#### L. Acid Rain Provisions

In granting Idaho interim approval, EPA stated that Idaho must demonstrate that its program includes the provision of 40 CFR 70.6(a)(4)(i) that no permit revision is required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement. See 61 FR at 64632. IDEQ has revised IDAPA 58.01.01.322.12.b to include this provision.

#### M. State-Only Enforceable Requirements

In granting Idaho interim approval, EPA stated that Idaho must demonstrate that its regulations define "State-Only" requirements in a manner consistent with the provisions of 40 CFR 70.6(b)(2), namely, that no requirement may be "State-Only" if it is required under the Act or under any of its applicable requirements. See 61 FR at 64632. IDEQ has revised its regulations to specify which provisions may be designated as "State Only" and the definition is

consistent with the requirements of part 70. IDAPA 58.01.01.322.15.k. Therefore, EPA is satisfied that Idaho's action resolves this issue.

#### *N. General Permits*

EPA stated that, as a condition of full approval, Idaho must revise its regulations authorizing general permits to be consistent with 40 CFR 70.6(d), including provisions that: (a) Require the permitting authority to grant the conditions and terms of a general permit to sources that qualify; (b) require specialized general permit applications to meet the requirements of title V; and (c) govern enforcement actions for operation without a permit if the source is later determined not to qualify for the conditions and terms of the general permit. See 61 FR at 64632.

IDEQ has revised IDAPA 58.01.01.335.04 to require IDEQ to grant the conditions and terms of a general permit to sources that qualify. IDAPA 58.01.01.335.03.c now requires that specialized general permit applications must meet the requirements of title V. IDAPA 58.01.01.316 now provides that, notwithstanding the permit shield provisions, an owner or operator is subject to enforcement action for operating a source without a title V permit if the source is later determined not to qualify for coverage under the terms and conditions of its title V permit. These revisions address the interim approval issues identified by EPA for general permits.

#### *O. Operational Flexibility*

In granting Idaho interim approval, EPA stated that IDEQ must ensure that the permitting authority attach a copy of the notice of a permitted operational change to the relevant permit, as required by 40 CFR 70.4(b)(12), as a condition of full approval. See 61 FR at 64633. IDEQ has revised IDAPA 58.01.01.364.02 to include this requirement.

#### *P. Off-Permit Provisions*

Part 70 authorizes an approved permit program to include certain "off-permit" provisions whereby a permittee can make a change at its facility without the need for a permit revision provided the permittee keeps a record at the facility of each off-permit change and provides notice of each such change to EPA and the permitting authority. See 40 CFR 70.4(b)(14) and (15). At the time EPA granted Idaho interim approval, Idaho's rules allowed a permittee seven days within which to record such a change in a log at its facility. See 16.01.01.382.02 (1994). EPA stated that this seven-day time frame was not consistent with the

requirements of 40 CFR 70.4(b)(14)(iv) and must be changed as a condition of full approval. See 61 FR at 64633.

Idaho has deleted the provision stating that a source has seven days in which to record the change and the language in Idaho's rules is now consistent with part 70. See IDAPA 58.01.01.385.02.b. Therefore, EPA believes that IDEQ has addressed this interim approval issue.

#### *Q. Permit Renewals*

EPA stated that Idaho must revise its regulations to ensure that an application for a permit renewal will not be considered timely if it is filed more than 18 months before permit expiration. See 61 FR at 64633. Idaho has revised its rules to specify that an owner or operator must submit its renewal application at least six months before, but no earlier than 18 months before, the permit expiration date. See IDAPA 58.01.01.313.03.

#### *R. Completeness Determination*

In granting Idaho interim approval, EPA stated that Idaho must revise its regulations to ensure that applications will be deemed complete within 60 days of receipt for all sources. See 61 FR at 64633. IDEQ has revised IDAPA 58.01.01.361.02 so that it is now clear that if, within 60 days of receiving the application, IDEQ fails to send written notice to the applicant regarding whether the application is complete, the application shall be deemed complete.

#### *S. Administrative Amendments*

As a condition of full approval, EPA stated that Idaho must delete from the list of changes that may be accomplished by administrative amendment the categories of compliance orders and applicable consent orders, judicial consent decrees, judicial orders, administrative orders, settlement agreements, and judgments. See 61 FR at 64633. Idaho has revised these provisions and IDAPA 58.01.01.381.01 (previously codified at IDAPA 16.01.01.384.01.a (1994)) no longer lists compliance orders and applicable consent orders, judicial consent decrees, judicial orders, administrative orders, settlement agreements, and judgments as changes that may be accomplished by administrative amendment. EPA is satisfied that this revision resolves this issue.

#### *T. Minor Permit Modifications*

EPA stated that, as a condition of full approval, Idaho must revise its rules to prohibit the issuance of any permit until after the earlier of expiration of EPA's

45-day review period or until EPA has notified the permitting authority that EPA will not object to issuance of the permit modification. See 61 FR at 64633. Idaho has amended IDAPA 58.01.01.383.03.d (previously codified at IDAPA 16.01.01.385 (1994)) to expressly prohibit the issuance of any minor permit modification until after the earlier of expiration of EPA's 45-day review period or until EPA has notified the permitting authority that EPA will not object to the issuance of the permit. Therefore, EPA believes that Idaho has addressed this issue.

#### *U. Group Processing of Minor Permit Modifications*

As a condition of full approval, EPA stated that Idaho must delete the "director's discretion" provision in its group processing procedures or make a showing consistent with 40 CFR 70.7(e)(3)(i)(B) for alternative thresholds. In addition, as with Idaho's procedures for minor modification, EPA stated that Idaho must revise its rules to prohibit the issuance of any permit until after the earlier of expiration of EPA's 45-day review period or until EPA has notified the permitting authority that EPA will not object to issuance of the permit modification. See 61 FR at 64633.

To address the first issue, IDEQ has deleted the language regarding "director's discretion" in its provisions regarding group processing of minor permit modifications. See IDAPA 58.01.01.383 (previously codified at IDAPA 16.01.01.385 (1994)). With respect to the second issue, Idaho has revised its group processing provisions so that they now prohibit the issuance of any minor permit modification until after the earlier of expiration of EPA's 45-day review period or until EPA has notified the permitting authority that EPA will not object to the issuance of the permit. See IDAPA 58.01.01.383.03.d.

#### *V. Reopenings*

Idaho's provisions for reopenings originally stated that, in the case of a reopening for cause initiated by EPA, the notice sent by EPA to the permittee and IDEQ must contain more information than required by the part 70 regulations. In granting Idaho interim approval, EPA stated that Idaho must revise its regulations to ensure that the EPA notice was only required to contain the information specified by 40 CFR 70.7(g)(1). See 61 FR 64633. IDEQ has revised the notice provisions, IDAPA 58.01.01.386.02.c (previously codified at IDAPA 16.01.01.387 (1994)), to be

consistent with the requirements of part 70.

#### *W. Public Participation*

In granting Idaho interim approval, EPA stated that Idaho must demonstrate to EPA's satisfaction that its restrictions on the release to the public of permits, permit applications, and other related information under its laws governing confidentiality do not exceed those allowed by 40 CFR 70.4(b)(3)(viii) and section 114(c) of the Clean Air Act. See 61 FR 64633. In 1998, Idaho revised its provisions regarding the disclosure of information submitted to the Department and claimed as "confidential." State law now provides authority to make available to the public any permit application, compliance plan, permit and monitoring and compliance criteria report except for information which qualifies for confidential treatment as a trade secret, which shall be kept confidential. See Idaho Code sections 9-342A; 39-111. State law also provides that the contents of an operating permit shall not be entitled to confidential treatment. Idaho Code section 9-342A(1)(b). The Idaho Attorney General's office has clarified that Idaho interprets the definition of the term "air pollution emissions data" consistent with section 114(c) of the CAA and 40 CFR 2.301(2)(a). Thus, EPA believes that Idaho's laws governing public access to title V records meet the requirements of 40 CFR 70.4(b)(3)(viii) and section 114(c) of the CAA.

#### *X. Permits for Solid Waste Incineration Units*

EPA stated that, as a condition of full approval, Idaho must ensure that no permit for a solid waste incineration unit may be issued by an agency, instrumentality, or person that is also responsible, in whole or in part, for the design and construction or operation of the unit, as required by 40 CFR 70.4(b)(3)(iv). See 61 FR 64633. EPA was concerned because, at the time of interim approval, the Idaho Department of Health and Welfare, the agency that issued title V permits in Idaho, was also responsible for the design, construction, and operation of a small number of solid waste incineration units. During the 2000 legislative session, the Division of Environmental Quality became a separate department rather than a division of the Idaho Department of Health and Welfare, which remained a separate department. The Department of Environmental Quality is not responsible for the design, construction, or operation of any solid waste incineration units. Therefore, no permit for a solid waste incineration unit will

be issued by an agency, instrumentality, or person that is also responsible, in whole or in part, for the design and construction or operation of the unit.

#### *Y. Maximum Criminal Penalties*

EPA stated that, as a condition of full approval, Idaho must demonstrate to EPA's satisfaction that it has sufficient authority to recover criminal penalties in the maximum amount of not less than \$10,000 per day per violation, as required by 40 CFR 70.11(a)(3)(ii). See 61 FR 64633. During the 1998 legislative session, the Idaho Legislature revised Idaho Code section 39-117(2) to clarify that criminal fines may be recoverable in a maximum amount of \$10,000 per day per violation, by stating that:

Any person who knowingly violates any of the provisions of the air quality public health or environmental protection laws or the terms of any lawful notice, order, permit, standard or rule issued pursuant thereto shall be guilty of misdemeanor and upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars (\$10,000) per day per violation.

EPA is satisfied that Idaho's action resolves this issue.

#### *Z. False Statements and Tampering*

In granting Idaho interim approval, we stated that Idaho must revise State law to provide for criminal penalties of up to \$10,000 per day per violation against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit or who knowingly renders inaccurate any required monitoring device or method, as required by 40 CFR 70.11(a)(3)(iii). See 61 FR at 64633.

To address this issue, Idaho added IDAPA 58.01.01.125 and 126, which specifically prohibit a person from knowingly making a false statement, representation, or certification in any form, notice, or report required under any permit, or any applicable rule or order in force pursuant thereto, or from knowingly rendering inaccurate any required monitoring device or method required. The Idaho Attorney General's office has confirmed that the criminal penalties described in Idaho Code section 39-117 apply to those who knowingly violate IDAPA 58.01.01.125 or 126.

#### *AA. Environmental Audit Statute*

In granting Idaho interim approval, EPA stated that Idaho must revise both the immunity and disclosure provisions of the Idaho Audit Act, Idaho Code title 9, chapter 8, to ensure that they do not interfere with the requirements of section 502(b)(E)(5) of the Clean Air Act

and 40 CFR 70.11 for adequate authority to pursue civil and criminal penalties and otherwise assure compliance. Alternatively, EPA stated that Idaho must demonstrate to EPA's satisfaction through an Attorney General's opinion that these required enforcement authorities are not compromised by the Idaho Audit Act. See 61 FR 64633.

The Environmental Audit Protection Act lapsed by its terms on December 31, 1997 and the implementing rules were repealed in 1998. EPA is therefore satisfied that Idaho has resolved this issue.

#### *BB. Correction of Typographical Errors and Cross-References*

EPA also noted several typographical errors and erroneous cross references that Idaho must address to obtain full approval. Idaho has made each of the changes.

### **III. What Other Changes Has Idaho Made to Its Program—Outside of Addressing the Interim Approval Issues?**

Idaho has made several other changes to its operating permits program since EPA granted Idaho interim approval in 1996. These changes, as well as EPA's action on the changes, are discussed below.

#### *A. Designation of the Idaho Department of Environmental Quality*

As discussed above, during the 2000 legislative session, the Division of Environmental Quality became a separate department rather than a division of the Idaho Department of Health and Welfare, which remained a separate department. See Idaho Code sections 39-102A and 39-104. At the same time, the Department of Environmental Quality was given the title V authorities previously held by the Department of Health and Welfare. See Idaho Code sections 39-108 to 39-118D. EPA proposes to approve as a revision of Idaho's title V program the transfer of the program from the Department of Health and Welfare, Division of Environmental Quality, to the Department of Environmental Quality.

#### *B. Recodification*

As discussed above, Idaho has also renumbered and recodified all of its air quality regulations. Idaho's title V rules are now codified in IDAPA Chapter 58. EPA proposes to approve this renumbering and recodification as a revision to Idaho's title V program.

#### *C. Permit Fees*

Idaho has revised its fee rules to allow payment of fees based on actual annual

emissions, an estimate of actual annual emissions, or/and allowable emissions based on permit limitations. See IDAPA 58.01.01.530 through 538. The per ton fee is \$30. IDEQ stated in its submittal that it recognized the \$30 per ton fee may need adjustment once IDEQ better understands the amount of fees it collects under its revised rules and the amount it costs to run a successful title V program.

The sufficiency of Idaho's fee rules was not identified by EPA as an interim approval issue. EPA will be conducting a review of Idaho's title V fees to determine whether the fees collected are sufficient to cover its title V permit program costs and whether title V fees are used solely for title V permit program costs, as required by 40 CFR 70.9. Therefore, EPA is taking no action on Idaho's fee rules at this time and defers its determination of the sufficiency of Idaho's fee rules until the fee review is completed.

#### D. Permit Revision Procedures

Since obtaining interim approval, IDEQ has revised the following regulations of IDAPA 58.01.01 governing permit revision procedures in an attempt to clarify these requirements: section 209.05 (permit to construct procedures for Tier 1 sources); section 380 (changes to Tier 1 permits); section 381 (administrative permit amendments); section 382 (significant permit modifications); section 383 (regarding minor permit modifications); section 384 (section 502(b)(10) changes and certain emission trades); section 385 (off-permit changes and notices); and section 386 (permit reopenings for cause). The goal of the revisions was to clarify, consistent with the requirements of part 70, what kinds of changes qualify for each type of permit revision procedure and make them easier to apply by phrasing the rules in the positive as opposed to the negative (i.e., what changes qualify for a specific permit revision procedure, instead of what changes do not qualify for a certain permit revision procedure), as is currently the case in several of the part 70 permit revision provisions. EPA has reviewed IDEQ's revised permit revision procedures and believes they meet the requirements of part 70. Therefore, EPA proposes to approve Idaho's revised permit revision procedures as a revision to Idaho's part 70 program.

#### E. Compliance Certification Requirements

IDEQ has revised its rules so that the compliance certification requirements are consistent with the revised compliance certification requirements of

part 70. See IDAPA 58.01.01.314.11. EPA proposes to approve Idaho's revised compliance certification procedures as a revision to Idaho's part 70 program.

#### F. Deferral of Minor Sources

IDEQ has revised its rules to defer the permitting of nonmajor sources that are not affected sources under the acid rain program, are not required to obtain a permit under section 129(e) of the CAA, and are not subject to a standard under section 111 or 112 of the CAA promulgated after July 21, 1992. See IDAPA 58.01.01.301.02.b.iv. EPA is proposing to approve this revision.

#### IV. Proposed Final Action

EPA proposes full approval of the operating permits program submitted by IDEQ based on the revisions submitted on July 9, 1998, May 25, 1999, and March 15, 2001, which satisfactorily address the program deficiencies identified in EPA's December 6, 1996 Interim Approval Rulemaking. See 61 FR 64622. In addition, EPA is proposing to approve, as a title V operating permit program revision, IDEQ's designation as a department and the Idaho title V permitting authority; the recodification and renumbering of Idaho's title V rules; and Idaho's revised regulations for permit revision procedures, compliance certification, and the deferral of permitting nonmajor sources submitted on the same dates. EPA is not proposing to take action on Idaho's revised fee rules. As previously discussed, EPA will be conducting a review of Idaho's title V fees to determine whether the fees collected are sufficient to cover its title V permit program costs and whether title V fees are used solely for title V permit program costs.

Consistent with EPA's action granting Idaho interim approval, 61 FR at 64623, this approval does not extend to "Indian Country", as defined in 18 U.S.C. 1151. See 64 FR 8247, 8250-8251 (February 19, 1999); 59 FR 42552, 42554 (August 18, 1994).

#### V. Request for Public Comment

We are soliciting public comment on all aspects of this proposal. These comments will be considered before taking final action. To comment on today's proposal, you should submit comments by mail or in person (in triplicate if possible) to the ADDRESSES section listed in the front of this document. Your comments must be received by September 12, 2001 to be considered in the final action taken by EPA.

#### VI. Are There any Administrative Requirements That Apply to This Action?

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) because it proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. 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, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will 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, "Federalism" (64 FR 43255, August 10, 1999). The rule merely proposes to approve existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This proposed 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) or Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001), because it is not a significantly regulatory action under

Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060-0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

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, Incorporation by reference, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: August 1, 2001.

**Ronald A. Kreizenbeck,**

*Acting Regional Administrator, Region 10.*

[FR Doc. 01-20215 Filed 8-10-01; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 70

[CT-066-7223; A-1-FRL-7032-6]

#### Full Approval of Operating Permit Program; State of Connecticut

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

**ACTION:** Proposed rulemaking.

**SUMMARY:** The EPA is proposing to fully approve the operating permit program for the State of Connecticut. Connecticut's operating permit program was created to meet the federal Clean Air Act (Act) directive that states

develop, and submit to EPA, programs for issuing operating permits to all major stationary sources of air pollution and to certain other sources within the states' jurisdiction. EPA is proposing to approve Connecticut's program at the same time Connecticut is proposing changes to its state regulations to address EPA's interim approval issues. EPA will only finalize its approval of Connecticut's program after Connecticut finalizes its rule consistent with the program changes and interpretations described in this notice. The public comment period for Connecticut's program regulations (R.C.S.A. Sections 22a-174-2a and 22a-174-33) is open for comment from July 17, 2001 until September 7, 2001.

**DATES:** Comments on this proposed rule must be received on or before September 12, 2001.

**ADDRESSES:** Comments may be mailed to Donald Dahl, Air Permits Program Unit, Office of Ecosystem Protection (mail code CAP) U.S. Environmental Protection Agency, EPA—New England, One Congress Street, Suite 1100, Boston, MA 02114-2023. EPA strongly recommends that any comments should also be sent to Ellen Walton of the Department of Environmental Protection, Bureau of Air Management, Planning and Standards Division, 79 Elm Street, Hartford, Connecticut 06106-5127. Copies of the State submittal and other supporting documentation relevant to this action, are available for public inspection during normal business hours, by appointment at the above addresses.

#### FOR FURTHER INFORMATION CONTACT:

Donald Dahl at (617) 918-1657.

#### SUPPLEMENTARY INFORMATION:

#### I. Why Was Connecticut Required To Develop an Operating Permit Program?

Title V of the Clean Air Act ("the Act") as amended (42 U.S.C. 7401 and 7661 *et seq.*), requires all states to develop an operating permit program and submit it to EPA for approval. EPA has promulgated rules that define the minimum elements of an approvable state operating permit program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permit programs. See 57 FR 32250 (July 21, 1992). These rules are codified at 40 Code of Federal Regulations (CFR) Part 70 (Part 70). Title V directs states to develop programs for issuing operating permits to all major stationary sources and to certain other sources. The Act directs states to submit their operating permit programs to EPA by November 15, 1993, and requires that

EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act (42 U.S.C. Sec. 7661a) and the Part 70 regulations, which together outline criteria for approval or disapproval.

Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program either partial or interim approval. If EPA has not fully approved a program by two years after the November 15, 1993 date, or before the expiration of an interim program approval, it must establish and implement a federal program. EPA granted the State of Connecticut final interim approval of its program on March 24, 1997 (see 62 FR 13830) and the program became effective on April 23, 1997.

#### II. What Did Connecticut Submit To Meet the Title V Requirements?

The Governor of Connecticut submitted a Title V operating permit program for the State of Connecticut on September 28, 1995. In addition to regulations (Section 22a-174-33 of the Department of Environmental Protection Regulations), the program submittal included a legal opinion from the Attorney General of Connecticut stating that the laws of the State provide adequate legal authority to carry out all aspects of the program, and a description of how the State would implement the program. The submittal additionally contained evidence of proper adoption of the program regulations, application and permit forms, and a permit fee demonstration. This program, including the operating permit regulations, substantially met the requirements of Part 70.

#### III. What Was EPA's Action on Connecticut's 1995 Submittal?

EPA deemed the program administratively complete in a letter to the Governor dated November 22, 1995. On December 6, 1996, EPA proposed to grant interim approval to Connecticut's submittal. After responding to comments, EPA granted interim approval to Connecticut's submittal on March 24, 1997. In the notice granting interim approval, EPA stated that there were several areas of Connecticut's program regulations that would need to be amended in order for EPA to grant full approval of the state's program. EPA has been working closely with the state and has determined that the state is proposing to make all of the rule changes necessary for full approval. The following section contains details regarding the areas of Connecticut's