

ENVIRONMENTAL PROTECTION AGENCY**[OH151-1; FRL-7173-3]****Notice of Deficiency for Clean Air Operating Permits Program; Ohio****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of deficiency.

SUMMARY: Pursuant to its authority under section 502(i) of the Clean Air Act and the implementing regulations at 40 CFR 70.10(b)(1), EPA is publishing this notice of deficiency (NOD) for the State of Ohio's Clean Air Act title V operating permits program. The notice of deficiency is based upon EPA's finding that Ohio's regulations governing insignificant emissions units and Ohio's regulations requiring reports of any required monitoring at least every six months and prompt reports of deviations do not meet the minimum Federal requirements of the Clean Air Act (Act) and 40 CFR part 70. Publication of this notice is a prerequisite for withdrawal of Ohio's title V program approval, but does not effect such withdrawal.

EFFECTIVE DATE: April 10, 2002. Because this notice of deficiency (NOD) is an adjudication and not a final rule, the Administrative Procedure Act's 30-day deferral of the effective date of a rule does not apply.

FOR FURTHER INFORMATION CONTACT: Genevieve Damico, Environmental Engineer, Permits and Grants Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-4761.

I. Background

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001 (65 FR 32035). The Sierra Club and the New York Public Interest Research Group challenged the action. In settling the litigation, EPA agreed to publish a notice in the **Federal Register**, so that the public would have the opportunity to identify and bring to EPA's attention alleged deficiencies in title V programs. EPA published that document on December 11, 2000 (65 FR 77376). As stated in the **Federal Register** document, EPA agreed to respond by December 1, 2001, to timely public comments on programs that have obtained interim approval; and EPA agreed to respond by April 1, 2002, to timely comments on fully approved programs.

EPA received three timely comment letters pertaining to Ohio's title V program from the United States Public Interest Research Group, Clean Air Conservancy, and the Earth Day Coalition. In reviewing the commenters' concerns, EPA agreed that one of the comments identified a deficiency in Ohio's program in that Ohio's reporting requirements fail to require that all deviations from permit terms be reported to the permitting authority. EPA is addressing this deficiency in this notice. In addition, the commenters raised other issues that EPA has determined are not deficiencies. EPA is responding to the commenters in writing, explaining the basis for EPA's decision.

In 1997, D. David Altman submitted and amended a petition on behalf of Ohio Citizen Action, the Ohio Environmental Council (which was later replaced by the Ohio Public Interest Research Group (PIRG)), Rivers Unlimited, and the Ohio Sierra Club asking EPA to withdraw or revoke Ohio's authorization and/or approval to administer the Act, the Clean Water Act National Pollutant Discharge Elimination System (NPDES) permit program, and the Resource Conservation and Recovery Act (RCRA) hazardous waste programs in Ohio based on the Ohio Audit Law.

Mr. Altman supplemented this petition on September 18, 1998, August 4, 1999, and January 27, 2000, to add allegations addressing how the Ohio EPA (OEPA) was implementing its programs. The petitioners' September 18, 1998, supplement alleged that OEPA was mishandling these three programs. Their August 4, 1999 supplement included additional justification for petitioners' allegations regarding these implementation issues. Their January 27, 2000 supplement/amendment added allegations to their petition regarding several Clean Air Act programs and the RCRA Solid Waste Management Plan. The petitioners also submitted numerous affidavits in support of the petition in the summer of 2000.

As supplemented, the petition expresses concerns with Ohio environmental programs and asks EPA to withdraw and/or revoke its authorization, delegation and/or approval of OEPA's RCRA hazardous waste program and Solid Waste Management Plan; Clean Water Act (NPDES) permit program; and Clean Air Act Standards of Performance for New Stationary Sources (NSPS), New Source Review (NSR), Prevention of Significant Deterioration (PSD), Noncompliance Penalty, and title V programs. Among other things, the petitioners question

how OEPA addresses regulated facilities, follows up on complaints, monitors facilities, issues permits, sets standards, releases information to the public, pursues enforcement, and conducts and oversees cleanups.

On September 4, 2001, U.S. EPA released a draft of a our evaluation of Ohio's programs. A copy of this draft report is at <http://www.epa.gov/region5/ohioreview/index.htm>. We held a public meeting on the draft report on November 13, 2001. We are currently working on the final report. In our draft report we addressed the issue of how OEPA addresses insignificant emissions units (IEUs) in it permits. After further consideration, we find that Ohio's regulation that allows exempting the applicable requirements and other information on IEUs from the permit is contrary to part 70. EPA is addressing this deficiency in this notice.

Under EPA's permitting regulations, citizens may, at any time, petition EPA regarding alleged deficiencies in state title V operating permit programs. In addition, EPA may on its own identify deficiencies. If, in the future, EPA agrees with a new citizen petition or otherwise identifies deficiencies, EPA may issue a new NOD.

II. Description of Action

EPA is publishing a notice of deficiency for the title V operating permits program for the State of Ohio. This document is being published pursuant to section 502(i) of the Act and 40 CFR 70.10(b)(1), which provides that EPA shall publish in the **Federal Register** a notice of any determination that a state's title V permitting authority is not adequately administering or enforcing its title V operating permits program, or any portion thereof. The deficiencies that are the subject of this notice relate to Ohio's regulations governing insignificant emissions units (IEUs) and requiring reports of any required monitoring at least every six months and prompt reports of deviations. These deficiencies apply to all State and local permitting authorities that implement Ohio's title V program.

A. Approval of Ohio's Title V Program

The CAA requires all State and local permitting authorities to develop operating permits programs that meet the requirements of title V of the Act, 42 U.S.C. 7661-7661f, and its implementing regulations, 40 CFR part 70. Ohio submitted its operating permits program in response to this directive. EPA granted full approval to Ohio's air operating permits program on August 15, 1995 (60 FR 42045).

B. Limitation of Deviation Reports to Deviations Detected by Compliance Methods Required by Permits

Ohio Administrative Code (OAC) 3745-77-07(A)(3)(c)(ii) and (iii) limits the reporting of deviations to those which can be detected by the compliance method required by the permit. This limitation is contrary to the requirements of the Act and 40 CFR part 70. Specifically, § 70.6(a)(3)(iii)(A) requires that permittees submit reports of required monitoring at least every 6 months and that all instances of deviations from permit requirements be identified in these reports. Section 70.6(a)(3)(iii)(B) requires that permittees promptly report deviations from permitting requirements to the permitting authority. Section 70.6 does not provide for any exceptions to these requirements. Section 113(c)(2) of the Act, among other things, prohibits any person from knowingly making a false certification or omitting material information from any reports. Finally, 40 CFR 70.5(d) and 70.6(a)(3) require responsible officials to certify that all reports are true, accurate and complete. See also FR 8314 (February 24, 1997) (final rule promulgating credible evidence revisions). Together these statutory and regulatory requirements obligate sources to consider all available material information in evaluating and reporting deviations for purposes of promptly reporting deviations and submitting reports of any required monitoring at least semi-annually. Because Ohio's rule only requires permittees to consider compliance method test data when reporting deviations from permit requirements, Ohio's title V program does not meet the minimum requirements of part 70.

C. Exemption of IEUs From Permit Content Requirements

Part 70 authorizes EPA to approve as part of a state program a list of insignificant activities and emission levels (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. See 40 CFR 70.5(c). Nothing in part 70, however, authorizes a state to exempt IEUs from the permit content requirements of 40 CFR 70.6.

Ohio's regulations contain criteria for identifying IEUs. See OAC 3745-77-01(U). Ohio's regulations require that permit applications contain information necessary to determine the applicability of, or to impose, any applicable

requirement. See OAC 3745-77-03(A). The Ohio program, however, specifically exempts from the federally enforceable section of its Title V permits federally enforceable applicable requirements to which IEUs are subject. See OAC 3745-77-02(E). Although the part 70 regulations provide states some opportunity to exempt or limit the amount of information on IEUs required in a Title V application, the July 21, 1992, preamble to the Title V regulations makes it clear that this exemption does not apply to the permit content (57 FR 32273). Therefore, Ohio's regulations at OAC 3745-77-02(E) are inconsistent with part 70.

The United States Court of Appeals for the Ninth Circuit in *Western States Petroleum Association (WSPA) v. Environmental Protection Agency*, 87 F.3d 280 (9th Cir. 1996) required EPA to approve the State of Washington's title V program even though Washington's regulations exempted IEUs from certain permit content requirements. The Court did this because EPA had acted inconsistently in previously approving at least eight other State or local programs that the Court found were also deficient in their treatment of IEUs in permits. Ohio was one of the eight permitting authorities identified by the WSPA Court as exempting IEUs from certain permit content requirements. Since issuance of the Court's order in the WSPA case, EPA has carefully reviewed the IEU provisions of those eight title V programs identified by the Court as inconsistent with EPA's decision on Washington's regulations and taken action to bring all State programs into consistency with part 70 with regard to the treatment of IEUs in permits. EPA has determined that three of the title V programs identified by the WSPA Court (Massachusetts; North Dakota; Knox County, Tennessee) are, in fact, consistent with EPA's position that insignificant sources subject to applicable requirements may not be exempt from permit content requirements. See 61 FR 39338 (July 29, 1996). North Carolina, Florida and Jefferson County, Kentucky have made revisions to their IEU provisions and EPA has approved these. 65 FR 38744, 38745 (June 22, 2000) (Forsyth County, North Carolina); 66 FR 45941 (August 31, 2001) (all other North Carolina permitting authorities); 66 FR 49837 (October 1, 2001) (Florida); 67 FR 7973 (February 21, 2002) (Jefferson County, Kentucky). EPA has also issued a notice of deficiency to the States of Washington and Hawaii; 67 FR 72 (January 2, 2002) (Washington); 67 FR 15385 (April 1, 2002) (Hawaii).

Having addressed the inconsistencies in all other state or local programs identified by the Ninth Circuit when it ordered EPA to approve Washington's IEU provisions, EPA is now notifying Ohio that it must bring its IEU provisions into alignment with the requirements of part 70 and other State and local title V programs or face withdrawal of its title V operating permits program. USEPA committed to address those inconsistent programs in the **Federal Register** notice that granted final interim approval to the title V programs of the State of Tennessee and Memphis-Shelby County (61 FR 39335, July 29, 1996).

Because OAC 3745-77-02, the regulations that exempt IEUs, applies throughout the State of Ohio, this notice of deficiency applies to all State and local agencies that implement Ohio's operating permits program.

III. Availability of 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 why it found that a NOD was not warranted. EPA will publish a notice of availability in the **Federal Register** notifying the public that EPA has done so. EPA will also post its response letters on the Internet at <http://www.epa.gov/oar/oaqps/permits/response/> or you may obtain a copy by contacting Genevieve Damico, EPA Region 5, by phone at (312) 353-4761 or by e-mail at damico.genevieve@epa.gov.

IV. Effect of Notice of Deficiency

Part 70 provides that EPA may withdraw a part 70 program approval, in whole or in part, whenever the approved program no longer complies with the requirements of part 70 and the permitting authority fails to take corrective action (40 CFR 70.10(c)(1)). This section lists a number of potential bases for program withdrawal, including the case where the permitting authority's legal authority no longer meets the requirements of part 70. Section 40 CFR 70.10(b) sets forth the procedures for program withdrawal, and requires as a prerequisite to withdrawal, that the EPA notify the permitting authority of any finding of deficiency by the Administrator and that the document be published in the **Federal Register**. Today's document satisfies this requirement and constitutes a finding of program deficiency. If the permitting authority has not taken "significant action to assure adequate

administration and enforcement of the program" within 90 days after publication of a NOD, 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)(2). Section 70.10(b)(3) provides that if a state has not corrected the deficiency within 18 months of the finding of deficiency, EPA will apply the sanctions under section 179(b) of the Act, in accordance with section 179(a) of the Act.¹ In addition, section 70.10(b)(4) provides that, if the state has not corrected the deficiency within 18 months after the date of NOD, EPA must promulgate, administer, and enforce a whole or partial program within 2 years of the date of the finding. This document is not a proposal to withdraw approval of Ohio's title V program. Consistent with 40 CFR 70.10(b), EPA will wait at least 90 days, at which point it will determine whether Ohio has taken significant action to correct the deficiencies.

V. 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 April 18, 2002.

Dated: April 10, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

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BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30525; FRL-6831-9]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket control number OPP-30525, must be received on or before May 20, 2002.

¹ EPA is developing an Order of Sanctions rule to determine which sanction applies at the end of this 18 month period.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-30525 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Geri McCann, Registration Division, Office of Pesticide Programs (7505C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 605-0716; e-mail address: mccann.geri@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production Animal production Food manufacturing Pesticide manufacturing
	112	
	311	
	32532	

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this

document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

2. *In person.* The Agency has established an official record for this action under docket control number OPP-30525. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-30525 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.